

# SFY 2024 Clean Water Fund Program Responses to Public Comments

*A 30-day public comment period for the SFY 2024 Clean Water Fund Program (CWFP) Intended Use Plan (IUP) opened on July 26, 2023, and closed on August 25, 2023. The comments and the corresponding responses are listed below. In many cases, the comments have been shorted to highlight their recommendations. We appreciate the engagement we received and the patience commenters have shown while awaiting responses.*

## Comment letter 1

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Submitted by Shanyn Viars, American Rivers

### **1. Comment: Clarify the Importance and Priority of Green Stormwater Infrastructure (GSI) in Draft SFY2024 IUP Project Scoring**

- The Federal 10% allocation expressed in the BIL represents the minimum required. WDNR provides for a wide variety of project types in the Green Project Reserve; increasing the dedicated allocation from 10% to the 30% maximum would increase the likelihood of GSI funding in a large pool of allowable project types.
- Increase the amount of principal forgiveness for nature-based infrastructure projects to strengthen long-term resiliency across the state
- Amend short-term goals #5 and 6 to explicitly promote GSI green infrastructure and nature-based solutions as eligible activities to address water quality challenges as innovative.
- Amend long-term goals #5, 6 and 7 to reference nature-based solutions and GSI as innovative, and essential to establishing more resilient systems and reduce climate and equity burdens.
- Clarify project eligibility in the Pilot Project Program and support additional pathways to leverage funding through private-public partnerships and incentive-based programs that encourage nature-based implementations on private property that achieve certified measurable water quality improvements.
- Add a short-term goal dedicating resources to exploring alternative mechanisms for providing permanent funding for GSI and nature-based infrastructure projects, like the US EPA Sponsorship Lending which pairs traditional POTW and nontraditional non-point source (NPS) projects, applying a reduced interest rate that makes the NPS project economically feasible and close to budget neutral.
- Commit to support existing grant programs for nature-based infrastructure using revolving fund interest payments. The capacity of the SRF program can utilize SRF net cashflow to develop for new funding opportunities such as a localized revolving funding ran by municipalities that finance SRF eligible projects as described by the EPA's Environmental Finance Advisory Board (EFAB).

**Response:** Although 10% of the capitalization grants funds GPR costs on projects, we have a history of greatly exceeding the 10% requirement. The table below shows historical data from the CWFP Annual Report regarding GPR funding.

FFY	SFY	Amount of GPR Funding Required	Amount of GPR Funding Provided
2020	2021	\$4,296,100	\$20,016,377
2021	2022	\$4,295,500	\$24,898,404
2022	2023	\$7,939,700	\$19,861,125
<b>Total</b>		<b>\$16,531,300</b>	<b>\$64,775,906</b>

DNR recognizes the value of GI projects and is continuing to explore ways to promote the CWFP for funding GI projects. Short term goals 5 and 6 currently include green infrastructure and environmentally innovative projects, and innovative projects that enhance water quality. We thank you for your suggestions and want to take a broad look at next year’s IUP to clarify GI and storm water project eligibility. Updates to NR 162 Wis. Adm. Code may help in that regard.

Green storm water projects on private property are eligible when meeting the requirements of NR 162.22 Wis. Adm. Code. Further clarification regarding the eligibility of such projects is warranted, and it may be more effective to include in outreach materials, website, etc. A good example of a recent publication put out by DNR is the [Build a Solution for Storm Water Pollution](#), in which green infrastructure is specifically mentioned.

**2. Comment: Prioritizing Affordability and Environmental Justice**

For example, the City of Manitowoc’s outdated and deteriorating water infrastructure capacity and function compromises water quality in Lake Michigan and the Manitowoc River, poses public health risk, and endangers vital ecosystem services. In addition, census tracts within Manitowoc are identified as “disadvantaged” in the CJEST tool with legacy pollution, workforce and housing burdens and a high population without a high school education. Per the existing criteria and policies described in the CWSRF SFY2024 Intended Use Plan, the City of Manitowoc could receive up to 15% PF (out of 70%). Although in this example, the existing metrics provide some financial assistance for a small community, it does not account for the historical lack of investment, nor are the ability to pay for the necessary repairs in the short-term and proactive investments in longer-term solutions that strengthen resiliency addressed.

In consideration of making the distribution of PF more equitable and addressing these concerns, we:

- Reiterate [EPIC’s SFY2023 recommendation](#) to remove flat caps on general PF, which could undermine eligibility assessments determined by Tables 1-7. If flat caps must remain, we appreciate the increase to \$2.1 million per applicant.
- Recommend WDNR assess Mean Household Income (MHI) percentage based at the census track level, allowing communities of color within larger municipalities to also receive PF benefits instead of using [Census Designated Places \(CDPs\)](#).
- Modify existing principal forgiveness scoring to include existing climate burdens identified by the (CJEST) or (EPA) EJ Screen or WEET and prioritize funding to disadvantaged” communities with existing legacy pollution, social vulnerabilities and climate burdens.

- Increase transparency measures on reporting funding allocations that include subsidy amount and type for project categories and nature-based infrastructure projects.
- Prioritize and set-aside technical assistance funds to provide utility training and education, community education and engagement, and project prioritization for financially disadvantaged and climate-vulnerable communities.
- Commend WDNR on supportive capacity building with allowable administrative funds in the draft SFY2024 IUP. We further encourage amending descriptions for these additional staff to include engaging with and leveraging through partnerships the expertise of non-profit advocates working directly with municipalities, utilities, and communities to ensure projects from historically underserved communities are supported from inception to implementation.

**Response:** The flat cap is used because larger utilities can achieve economies of scale not feasible for smaller utilities. The economy of scale advantage is why smaller municipalities receive higher points under the population criterion. In addition, the PF cap helps to distribute PF to a larger number of applicants and prevents all of the PF from going to a few high-cost projects in a given year.

Given that many projects' benefits are not specific to an area or a particular neighborhood, calculating the PF scores based on census tract data would have to be limited to a few types of projects. For example, NR 162.50 Wis. Adm. Code provides additional points for basement backups.

DNR is considering applying a census tract-based approach to certain project types with place-based benefits when occurring in more disadvantaged areas, such as the aforementioned green infrastructure projects. We understand that there are benefits to these types of projects beyond the financial benefit of receiving principal forgiveness. Most of the data used in the affordability criteria is not available for a smaller geographic area than the census tract level. This will be considered more fully after we have experience with scoring lead service line removal projects at the census-tract level which will first occur in SFY 2024.

The CJEST and EPA EJ Screen were both studied when developing the current PF scoring methodology. DNR believes that the criteria currently in use provide a well-rounded representation of a community's disadvantaged status. If the commenter has specific criteria from those tools that they suggest would be a good addition to the PF scoring methodology, please let us know.

The technical assistance set aside authority comes from Section 603(k) of the Clean Water Act, which says, "...entities to provide technical assistance to rural, small, and tribal publicly owned treatment works..." DNR must provide the Technical Assistance to rural, small, and tribal publicly owned treatment works.

# Comment letter 2

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Submitted by Chuck Anderas, Michael Fields Agricultural Institute

**1. Comment: Allow Principal Forgiveness for NPS Projects.**

Principal Forgiveness is an important aspect of the CWFPP for many communities, but it is not available for NPS projects. This shows that, despite NPS pollution accounting for approximately three out of four identified water quality impairments nationwide, NPS solutions using CWFPP are not on an equal playing field. Allowing Principal Forgiveness for NPS projects would increase the demand for NPS projects and give much needed flexibility to the kinds of projects local governments could pursue.

**Response:** NPS projects are currently able to receive a 0% interest loan through the Pilot Projects Program. This is a lower interest rate than most projects receive and helps to meaningfully reduce the cost of borrowing. Further, an interest rate subsidy is more predictable when compared to principal forgiveness in that the interest rate subsidy does not require competition with other projects and is not at risk of demand exceeding availability.

**2. Comment: Create an NPS Pilot Project Program that Goes Beyond Water Quality Trading.**

Currently, the only way to engage in an SRF NPS project is through the Pilot Projects Program. According to the DNR's fact sheet on the Pilot Projects Program, its purpose is to provide "loans to municipalities seeking to fund water quality trading and other non-traditional projects for compliance with a municipality's Wisconsin Pollutant Discharge Elimination System (WPDES) permit." The same fact sheet also states that eligible applicants include "Wisconsin municipalities, including cities, towns, villages, counties, county utility districts, sanitary districts, public inland lake protection and rehabilitation districts, metropolitan sewerage districts, joint local water authorities, and federally recognized American Indian tribes or bands." In practice, the Pilot Projects Program is used almost exclusively by cities, towns, and villages for WQT projects (18 of 19 of the 2024 Project Priority List). DNR should establish a set of guidelines and rules tailor-made for NPS pilot projects that allow for solutions outside of WQT and are not tied to WPDES permits. This would allow stakeholders the necessary flexibility for creative solutions and bring in the broader community of stakeholders that are best situated to implement NPS projects.

DNR should clearly communicate its goals for NPS as a part of its SRF strategy and to grow demand for NPS loan projects. Currently, demand can't be built or communicated outside of a limited set of stakeholders because DNR doesn't have an NPS loan program, and its Pilot Project Program keeps key players, like County Conservation and Tribal governments (see below), on the sidelines. Allowing for a broader range of NPS pilot projects would allow local governments and their partners to create solutions that meet their needs and provide models for other local governments to adopt. In turn, DNR will be able to evaluate successful models to develop into statewide programs.

**Response:** When the PPP was first developed, it was expected that most of the projects would be for adaptive management or WQT, but other types of projects were allowed. We focused on adaptive management and WQT because we knew that many municipalities would need to take action as very low phosphorus limits were incorporated into their WPDES permits, and these

compliance alternatives offered them the opportunity to realize significant cost savings. Furthermore, municipal wastewater utilities are familiar with our program and used to receiving subsidized loans from us.

Regarding demand for NPS loans and the involvement of stakeholders, the fact sheet mentions that “A municipality may want to consider partnering with local land and water conservation experts (e.g., county land conservation staff) to fully implement a water quality trading project.”

As the PPP continues to gain experience through funding of WQT and adaptive management, the DNR should be able to better clarify what sort of nontraditional projects, if any, will be eligible for funding in the future.

- 3. Comment: Reduce Interest Rates for Municipalities that Invest in NPS Projects.** Some states, like South Dakota, incentivize municipalities to invest in NPS projects by reducing the interest rate on their municipal infrastructure SRF loans. The South Dakota Department of Agriculture & Natural Resources gives a 1% interest rate reduction when a municipality also applies for an NPS loan. Wisconsin DNR should also explore the feasibility of refinancing existing loans with a reduced interest rate to incentivize more municipalities to explore NPS solutions. An additional way this would increase demand for NPS loans is that municipalities are not the local governments most likely to engage with farmers. There are financial and quality-of-life benefits for communities that invest in NPS, but they can be more difficult to communicate than benefits from investments in municipal infrastructure projects. A 1% reduction in interest rates would simplify communicating the benefits of investing in NPS solutions to municipal governments and their ratepayers.

**Response:** Refinancing existing loans with a further-reduced interest rate is not possible given the leveraged structure of the CWFP.

- 4. Comment: Use All Available Technical Assistance Funds.** The EPA recommends that states use the full 2% of TA funds. DNR is understaffed, and that leads to an understandable reluctance from current DNR employees to develop new programs. Our water quality problems require creative and innovative solutions that are not met by currently available programs. Proper staffing levels are a prerequisite for new programs that will meet Wisconsin’s water quality goals. Staffing shortages will continue to be a hindrance to the kinds of innovations we need from the CWFP.

**Response:** Ramping up technical assistance activities has taken time as new staff members have been hired. For SFY 2024, DNR is budgeting (1,484,093/1,532,600) = 96.8% of the available technical assistance authority. The remaining will be reserved for future years.

- 5. Comment: Create a Flexible NPS Pilot Project Program.** In addition to the benefits listed above, creating an NPS Pilot Project Program would allow for experimentation to be in the hands of local governments and their partners. DNR then could invest time and effort into a standing NPS Loan Program after evaluating the demand and effectiveness of projects tried out around the state. This would reduce the need for DNR staff to develop new programming beyond guidelines for a Pilot Project Program and would ensure that the most effective projects are funded in the long run.

**Response:** The PPP does have some flexibility built into the program. DNR has considered applications for other kinds of projects like adaptive management and WQT.

**6. Comment:** Pass-through Loans to Farmers. Many of the County Conservation staff that I've met with in the past year have expressed very little interest in participating in a program similar to Minnesota's AgBMP Loan Program. This is partly because many of them do not see loans being the ideal mechanism to assist farmers in transitioning to clean water practices. It is also because of the perception of high administrative burden for relatively small loans. Minnesota's, for example, is capped at \$20,000. Unless the loan process can be streamlined to be simpler than a commercial loan, small loans for BMPs are not the route that DNR should take. There are some meaningful exceptions. Two ideas have risen to the top for using pass-through loans to address NPS pollution from agriculture. Both are larger loan amounts that address key water quality issues in Wisconsin.

- **Funding Buy-Protect-Sell.** Of the ideas I presented to stakeholders statewide, none has been received with as much enthusiasm as the idea to use the CWFPP to fund land access. From on-the-ground conversations with farmers, county conservationists, and others, many late-career farmers are reluctant to make the significant investments in their operations necessary to address NPS pollution, and farmland can be prohibitively expensive for beginning farmers. Local officials have few tools to address problematic NPS sites like feedlots close to waterways.

The solution, as developed collaboratively with staff from counties, land trusts, and lenders, is to fund Buy-Protect-Sell projects. Using CWFPP funds, the county works with the land trust to purchase a farm, protect the farmland with an agricultural conservation easement, and then sell the farm to a beginning farmer at a reduced price. The easement removes the development rights, limiting nonagricultural development. In doing so, it reduces the sale price, making the farm more affordable for a beginning farmer to purchase. The conservation easement can also stipulate farming practices that reduce NPS. Many farmers state that the pressure of high land prices contributes to their management choices that maximize production at the expense of environmental outcomes. Removing this barrier will help make these choices more economically viable for the new farmer for their entire career. The county, land trust, and a local lender work collaboratively to administer the loan and service the easement.

- **Financing Alternative Manure Management.** Based on a successful program in California, Alternative Manure Management looks at the problem of manure management from a holistic perspective by supporting pasture-based management, alternative manure treatment and storage (like compost bedded pack barns), and solid separation or conversion from flush to scrape in conjunction with some form of drying or composting of collected manure. This is particularly appealing to stakeholders because it addresses water quality challenges by both improving manure handling and by reducing acres in row crop production by conversion to managed pasture. A low interest loan, coupled with Principal Forgiveness, would provide a transformational investment in farms to address their water quality problems.

**Turning Loans into Grants.** For smaller projects, grants are the preferred mechanism to empower farmers to address their water quality impairments. Because of the high

administrative burden, county governments are not likely to participate in small loan BMP projects. There are many examples around the country of cities, like New York City, using their budgets to invest in upstream water quality solutions through grants. Coupled with an interest rate reduction, the DNR should encourage municipalities to use the loan fund to create local grant programs for NPS projects. The municipalities should work with counties, who have the expertise, relationships, and credibility with the local farming community, to administer the grants. The DNR should clearly communicate the financial and quality-of-life benefits to municipalities and create a streamlined process for them to pass the funds through to counties. The DNR could play a critical role in educating municipal officials of the necessity of investing in NPS solutions.

**Response:** DNR is committed to the continued consideration and evaluation of different approaches to funding NPS-type projects through the CWFP. DNR has evaluated many different approaches over the years and found WQT and adaptive management projects to be the most compatible approaches. While DNR will continue to consider new approaches to NPS funding, development of these programs is time intensive and requires careful consideration.

- 7. Comment: Collaboratively Develop Requirements with Tribal Governments that Respect Tribal Sovereignty.** Zero of the projects listed on the 2024 Project Priority List came from Tribal Governments. My conversations with Indigenous leaders from multiple Tribal Nations around the state revealed that while the CWFP provides a unique and exciting opportunity to invest in their communities, program rules like financial disclosure requirements infringe on Tribal sovereignty. I am not an expert in these issues, but my experience working with Tribes to encourage them to participate in the CWFP showed that key structural issues related to Tribal sovereignty will keep Tribal participation at zero until they are addressed. I urge the DNR to work with Tribal leaders to solve this urgent issue.

**Response:** Tribal government are eligible applicants for the CWFP, and we have executed agreements with tribal governments in previous years. We understand there may be additional considerations that need to be made before a successful agreement can be made. We encourage tribes interested in applying to contact the DNR so that we could work through potential obstacles.

## Comment letter 3

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Submitted by Ben Nerad, Madison Metropolitan Sewerage District

- 1. Comment:** The District appreciates the consideration of multiple eligibility factors for Emerging Contaminants principal forgiveness, including PFAS concentration levels and project type, in addition to financial need. This balanced approach recognizes the prevalence of emerging contaminants throughout the state, including in the District's service area, and provides greater opportunity for the District to address PFAS contamination in support of the Clean Water Fund Program and the Bipartisan Infrastructure Law.

The District understands that to potentially receive Emerging Contaminant principal forgiveness, applicants will need to expend funds on PFAS testing in advance of application submission without knowing whether the results of that testing (and other eligibility criteria) will result in

principal forgiveness funding. This uncertainty may result in potential applicants being less willing to investigate and test for contamination sources during a project's design/planning phases and to pursue principal forgiveness. Consideration of a pre-screening step for principal forgiveness eligibility prior to construction may provide greater assurance to applicants and ultimately result in the completion of additional Emerging Contaminants projects.

**Response:** Eligible EC projects are eligible for EC PF. EC PF is allocated using a two-pass system detailed in Section XV.B of the IUP. To determine if the project would be eligible for Regular PF, see Section XI.A, which describes the six criteria used to determine Regular PF eligibility. Existing PFAS sampling data may be able to be used if it is representative. If any potential applicant is unsure about the available existing data, please contact the DNR to discuss.

- 2. Comment:** The District requests the ability to use existing PFAS concentration data in cases where testing has been completed at or immediately adjacent to areas that may be future Emerging Contaminant project sites, such as sewer lining or dewatering projects, rather than requiring new testing be completed for application purposes. Such existing data could be provided as part of a pre-screening step recommended above in comment #2.

**Response:** In general, if existing PFAS concentration data is representative, then it can be used in the calculation of eligibility and the project priority score. In Section XI.C under the public sanitary or storm sewer reconstruction or lining project eligibility, the IUP says “Groundwater sample locations should be spaced no more than 500 feet apart along the project footprint, with a minimum of 2 samples collected, unless otherwise approved by the DNR plan review engineer in writing.” In the commenter’s example, the District could reach out to DNR to see if existing PFAS concentration data could be used to determine eligibility of the project.

- 3. Comment:** The District would appreciate additional clarification regarding how PFAS levels for treatment plant projects should be measured. For example, it is unclear whether these levels should be based on a single measurement or multiple measurements taken over several months.

**Response:** To clarify, we added the following sentence to Section XV.C, “Applicants must consult with the DNR plan review engineer to identify which PFAS concentration data is representative for use in the calculation of eligibility and the project priority score.”

## Comment letter 4

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Submitted by Brenda Coley and Joe Fitzgerald, Milwaukee Water Commons

- 1. Comment:** Milwaukee Water Commons would like the IUP to do more to incentivize major upgrades to aging or failing infrastructure that foster climate resilience and address environmental justice concerns. During interviews with a range of utilities from around Wisconsin in 2022, when asked about the full scope of their service area’s water infrastructure needs many stakeholder’s initial response outlined planned capital investments and budgeting over a given timeframe rather than large-scale systems upgrades or replacements of aging infrastructure that fall outside of planned investments. With only a limited window to leverage federal funding through the Bipartisan Infrastructure Law, it is critical that utilities and local



governments applying for funding through Wisconsin's SRF program are using this opportunity to take on projects that meet the urgency felt by communities dealing with a legacy of aging waste water and storm water infrastructure, or infrastructure systems that are underprepared to meet the realities of the climate crisis. To build this momentum, we are encouraging the WDNR to designate principal forgiveness available to incentivize projects that will have a demonstrated impact on fostering community climate resilience and addressing environmental hazards that threaten public health.

Your draft includes a goal to "Implement policy changes that encourage municipalities to make their wastewater treatment systems and stormwater systems more resilient, sustainable and adaptive to climate impacts." Though WDNR has allotted principal forgiveness for programs focused on regionalization, phosphorus reduction, and energy efficiency, urban stormwater and urban nonpoint source projects focused on flood control are funded at market rate and additionally are therefore ineligible for principal forgiveness. Though the WDNR has expressed a commitment to working with utilities to take on projects that make their systems more climate resilient, we would like to see a more explicit commitment to incentivizing projects that will foster community resilience to climate change and address environmental hazards. As administrators of this program, your agency plays a pivotal role in influencing how investments in water infrastructure are utilized and implemented. We urge you to consider the impact that this funding can have on how communities around Wisconsin perceive their waterways, and would look forward to opportunities to discuss this recommendation further.

**Response:** In general, climate resiliency projects and project components are CWFPP eligible. DNR recognizes the importance of climate resiliency and will continue to explore ways to promote GI and climate resiliency projects within the CWFPP. The IUP includes funding for a full-time Climate Resiliency Specialist full time role to assist with outreach to small, rural, or tribal communities to help them pursue funding for climate resiliency projects.

Per [s. NR 162.03\(4\)\(e\), Wis. Adm. Code](#), dams, pipes, conveyance systems, and BMPs designed solely for drainage or flood control are ineligible project types. However, the cost for a portion of an eligible project designed solely for flood control may be eligible at market rate ([s. NR 162.23 \(1\)\(b\)\(3\), Wis. Adm. Code](#)). We encourage any potential applicants with eligibility questions to reach out to the respective program contact. In addition, priority score points are provided to projects that address public health concerns such as basement backups and sanitary sewer overflows.

Urban storm water projects may be eligible (including eligibility for general PF) but must have a demonstrable and justifiable water quality benefit, in addition to meeting eligibility requirements in [s. NR 162.22, Wis. Adm. Code](#). The requirement of a water quality benefit for storm water projects is reflected in EPA eligibility guidelines - [Overview of CWSRF Eligibilities \(epa.gov\)](#). CWFPP funding may be used to relocate WWTPs out of floodplains.

# Comment letter 5

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Submitted by Lucas Lilly, RES (Resource Environmental Solutions, LLC)

**1. Comment: Confirm Use of CWSRF for Water Quality Trading Credits, including those within the Clearinghouse**

DNR should take this opportunity to incorporate specific intended uses in FY2024 IUP, consistent with the CWSRF, to promote water quality improvements through market mechanisms, including through the purchase of water quality trading credits. Wisconsin, through the continued efforts of DNR, the legislature, and active industry and non-profit partnerships has committed to promote water quality trading on a statewide basis to reduce phosphorus. These efforts should be underscored and clearly incorporated into FY2024 IUP.

As described in the FY2024 IUP, the CWSRF has a short-term goal to “Work with internal and external parties to identify options for funding innovative projects that enhance water quality, including nonpoint-source pilot projects for meeting phosphorus requirements through water quality trading.” The FY2024 IUP also explains that the CWSRF has a long-term goal to “Identify and implement innovative programs necessary to fill funding gaps in the state for meeting water quality standards and objectives” and another long-term goal to “Implement policy changes that encourage municipalities to make their wastewater treatment systems and stormwater systems more resilient, sustainable, and adaptive to climate change impacts.” These short- and long-term goals are fully aligned with the work RES has undertaken, in partnership with the State, to promote water quality improvements in Wisconsin through market mechanisms, including water quality trading.

Since taking on the role of the Clearinghouse, RES has heard concerns raised by DNR staff that EPA, in its oversight role, will not permit the use of CWSRF funds to purchase credits through the Clearinghouse. We understand EPA’s concern is that the generation of water quality credits may not be tied to a traditional capital project. RES notes that the City of Independence water quality trade functioned just like the financing of a capital project—water quality credits were generated from a single project and sold to a single buyer. That trade occurred in lieu of plant upgrades but was done using the same simple structure and performance guarantees as a traditional infrastructure project. RES urges DNR to reconfirm that CWSRF funds may be used in the future in the same way they were used by the City of Independence, including for trades that are transacted through the Clearinghouse. Unnecessarily limiting the use of CWSRF funds will only serve to slow our shared statewide water quality improvement goals.

**Response:** We have clarified with EPA that certain trades are acceptable. EPA has said that CWSRF funds cannot be used to purchase credits directly, but that we can finance capital projects that generate credits. We can only fund a project done through the clearinghouse if there is a direct tie-in to a specific eligible project done by an eligible recipient. Fees charged by the clearinghouse in connection with trades are ineligible costs. An example of an ineligible project would be one in which a municipality does not build a capital project that generates credits but buys credits from the clearinghouse to offset its phosphorus discharges.

**2. Comment: Municipalities who meet the affordability criteria for principal forgiveness should be equally incentivized to implement a green solution as a gray one. As the CWSRF dollars are**

currently administered, no principal forgiveness is available to communities who utilize water quality trading to comply with more protective phosphorus limits. Principal forgiveness is specifically provided only for hard infrastructure upgrades and regionalization. RES strongly believes that broadening this funding source to be available for guaranteed water quality trading projects could dramatically increase the use of this compliance strategy in the very near term, if not immediately. It could also lead more communities to opt out of the MDV program and achieve phosphorus compliance years earlier than previously contemplated. In the BIL Implementation Memorandum, EPA encourages expressly states to strategically use funds from BIL to continue building and maintaining a robust project pipeline of SRF projects.

**Response:** Water quality trading projects are currently able to receive a 0% interest loan rate through the Pilot Projects Program. This is a lower interest rate than most projects receive and helps to meaningfully reduce the cost of borrowing. Further, an interest rate subsidy is more predictable when compared to principal forgiveness in that the interest rate subsidy does not require competition with other projects and is not at risk of demand exceeding availability.

## Comment letter 6

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Submitted by Caroline Koch, WaterNow Alliance

- 1. Comment: Clarify that Wisconsin Administrative Code NR 162.50(3) Informs the Project Priority Scoring Criteria for Storm Water Projects.** Section XIII of the IUP provides that projects are scored under one of three categories: sewage collection systems, wastewater treatment plants, or stormwater projects. This section then states that each of these categories are scored on certain factors. Three factors are listed for stormwater projects: “project type, human health, and water quality criteria.” However, the IUP provides no additional information about these categories, the factors that go into the categories, or the criteria, which creates challenges for applicants.

In our experience, municipalities looking to the IUP for guidance on how their stormwater project might score for purposes of receiving CWFP support would benefit substantially from more detailed information at their fingertips to fully understand how their project will rank. Having a sense of whether or not a proposed project will rank highly significantly influences whether small and mid-sized communities will even consider undertaking the challenging CWFP application process. Fortunately, a starting point is readily available. Wisconsin Administrative Code NR 162.50 appears to be the relevant rule informing IUP scoring. This code section states: “Projects shall be scored under one of the following three categories: sewage collection systems, wastewater treatment plants, or storm water projects.” It goes on to list specific factors for how stormwater projects should be scored and establishes point allocations depending on project type, whether pretreatment strategies to protect human health are included, and how water quality goals will be achieved.

We recommend that the final IUP incorporate these stormwater project scoring criteria details, with the recommended revisions outlined below, into the IUP text.

**Response:** Thank you for this comment. Information about priority scoring could be reorganized in the hopes of making it clearer. We will keep this in mind for SFY 2025 IUP. At that time, the

code revision of NR 162 will be complete and further changes will be needed for section XIII and XIV.

- 2. Comment: Revise the Storm Water “Project Type” Scoring Criteria to Elevate GSI.** When included in a municipal storm water management permit or plan, GSI is a storm water management strategy eligible to receive CWFPP funds. The storm water “project types” included in the scoring criteria do not expressly include GSI, however. “Project type” points are allocated according to whether an applicant for CWFPP support is a municipal separate storm sewer (MS4) permittee: 50 points to MS4 permittees and 25 points to non-permittees. Five points are also awarded for “a project for construction or replacement of runoff treatment works that violate a permit ... or that has been the subject of an enforcement action ... for violation of a performance standard.”

Expressly highlighting GSI as an eligible project type that receives additional project type points would be an important way to encourage municipalities to include these strategies in their storm water management planning. Thus, the IUP storm water scoring criteria for project type offers an opportunity to advance the CWFPP’s long-term goal to leverage the program’s policies to encourage municipalities to make their water systems more “resilient, sustainable, and adaptive to climate change impacts.” It also offers an opportunity for smaller non-MS4 permittee municipalities to receive additional project type points. Given that these small communities’ projects currently only score half of MS4 permittee communities, ensuring smaller communities’ projects rank well can help ensure CWFPP dollars go to communities most in need of these low- cost loans.

To take advantage of this opportunity, we recommend the IUP award an additional five points for storm water projects that include green infrastructure by adding the blue text to the list of project types already included in the scoring criteria:

*Project type score.* The following points shall be awarded to each storm water project:

1. Fifty points shall be awarded to a project if the municipality has a municipal storm water discharge permit under subch. [1 of ch. NR 216](#).
2. Twenty-five points shall be awarded to an [sic] storm water project in a non- permitted municipality. [NR 162.50\(3\)\(a\)3](#).
3. Five points shall be awarded for a project for construction or replacement of runoff treatment works that violate a permit issued under ch. [283](#), Stats., or that has been the subject of an enforcement action pursuant to s. [281.98](#), Stats., for violation of a performance standard. This includes eligible projects or costs identified under s. [NR 162.03 \(3\)](#) and [\(4\)](#).
4. *Five points shall be awarded to a project that includes green infrastructure to manage storm water*

**Response:** DNR is currently evaluating our priority scoring for storm water projects and considering potential revisions.

- 3. Comment: Revise the Storm Water “Water Quality” Scoring Criteria to Elevate GSI.** GSI can provide the water quality benefits identified in the storm water scoring criteria, i.e., storm water capture from impervious drainage areas, TSS removal, and infiltration. Yet, the storm water

scoring criteria do not expressly mention GSI with the exception of three points for “mechanical nutrient removal technology or other green technology.” Many municipalities may not understand GSI’s eligibility or how these strategies fit into these scoring criteria given that GSI is a newer approach that has not traditionally been funded by the CWFP.

We recommend the following revisions to the water quality scoring criteria for storm water projects set as indicated in the table below.

<b>Current Scoring Criteria</b>	<b>Suggest Revision to Elevate GSI Provided in <i>Blue Text</i></b>
Connected drainage areas associated with storm water projects shall be awarded the following points:	Connected drainage areas associated with storm water projects, <i>including projects capturing storm water with green infrastructure</i> , shall be awarded the following points:
Storm water projects that provide TSS removal shall be awarded the following points:	Storm water projects that provide TSS removal, <i>including those that employ green infrastructure</i> , shall be awarded the following points:
Storm water projects that include the following features shall be awarded the following points: Three points for infiltration.	Storm water projects that include the following features shall be awarded the following points: Three points for infiltration <i>through green infrastructure; two points for infiltration.</i>

**Response:** Most of the suggestions would serve to clarify green infrastructure’s eligibility. Such a change as proposed would require an edit to the code. DNR is considering other approaches to clarifying GI eligibility: clarification in the IUP, use of various outreach methods, provide targeted technical assistance, or promotion on our website. Scoring changes would require careful consideration of the impact on rankings across all project categories. We will continue to review storm water management project scoring.

- 4. Comment: Include in IUP Section XIII that Eligible Storm Water Projects Include GSI on Private Property.** 82.5% of land in Wisconsin is privately owned. Accordingly, to implement GSI at a scale that fully leverages the water quality and multiple co-benefits of these solutions, stormwater managers will need to install GSI on private property. Private property installations are typically achieved via incentive programs, e.g., Milwaukee Metropolitan Sewerage District’s Green Infrastructure Partnership Program. For this reason, WaterNow recommends revising Section XIII of the final IUP to expressly state that GSI on private property is an eligible type of stormwater project.

Under the Wisconsin statute, there are two categories of eligible stormwater projects: “area-wide stormwater projects” and “individual stormwater projects.” An area-wide project is defined as a: “publicly owned project that is necessary to control storm water runoff rates,

volumes, and discharge quality.” Area-wide projects “may consist of individual systems that treat runoff and serve one or more properties,” i.e., individual stormwater projects, if the municipality:

1. Owns each individual BMP.
2. Is responsible for the proper installation, operation and maintenance of each individual BMP.
3. Has unlimited access to each individual BMP at all reasonable times for the purposes of inspection, monitoring, construction, maintenance, operation, rehabilitation, and replacement of the BMP.
4. Establishes a comprehensive program for the regulation, inspection, operation, and maintenance of individual BMPs, and for monitoring the impact of the BMPs on the groundwater where required by the department.
5. Complies with all other applicable requirements, limitations, and conditions for projects funded under [Chapter 162].

Given these definitions, GSI on private property distributed throughout a community could qualify as eligible individual stormwater projects that make up an area-wide project. Distributed GSI are individual systems that treat stormwater runoff from one or more properties. This eligibility may not be readily or widely understood by stormwater managers. An ownership requirement is not a barrier to GSI on private property being eligible for CWFPP loans and grants. It may be very helpful to Wisconsin municipalities if this point could be made clear in the IUP.

Specifically, municipalities can satisfy an ownership requirement by obtaining a conservation easement over the individual green infrastructure BMPs. Easements are legally binding property interests in another person’s land that represent a very high level of control by the easement holder. They are enforceable property rights, generally recorded as permanent changes to the property deed. This level of ownership satisfies the Governmental Accounting Standards Board’s definition of control over an “asset” that can be booked and financed by a public agency or utility. It has also been interpreted as meeting Wisconsin laws governing what can be treated as a capital expense.

To provide a similar opportunity in Wisconsin, we recommend that the IUP include the following blue text in Section XIII explaining how GSI projects on private property can be eligible:

Storm water projects are scored on three factors:

- project type,
- human health, and
- water quality criteria.

*Green storm water infrastructure projects on private property are eligible and scorable under these factors when there will be an easement containing an operation and maintenance agreement in place between the property owner and the municipality or local water utility.*

**Response:** Green storm water projects on private property are eligible when meeting the requirements of NR 162.22 Wis. Adm. Code. Further clarification regarding the eligibility of such projects is warranted, and it may be more effective to include in outreach materials, website, etc. DNR is currently exploring ways to promote CWFPP funding for GI projects, including storm water guidance documents, application materials, and other outreach methods. A good example

of a recent publication put out by DNR is the [Build a Solution for Storm Water Pollution](#), in which green infrastructure is specifically mentioned.

## Comment letter 7

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Submitted by Jennifer Western Hauser, Wisconsin Wetlands Association

- 1. Comment:** Healthy and plentiful wetlands are critical to our clean water goals. For this reason, EPA's Overview of Clean Water State Revolving Fund Eligibilities details that wetland restoration (and other types of natural resource projects) could be considered eligible by states for CWSRF funding. Some state clean water revolving loan programs, like Vermont's program, have made various types of natural resource projects eligible, including wetland, stream, and floodplain restoration. Vermont's IUP is accessible at this webpage: <https://dec.vermont.gov/water-investment/water-financing/srf/intended-use-plans>. We believe Wisconsin could similarly make its program more effective by introducing concepts of restoring natural infrastructure including wetlands, streams, and floodplains to help address clean water goals.

**Response:** Wetland, stream, and floodplain restoration projects may be eligible as part of a Water Quality Trading or Adaptive Management plan, which can be funded through the pilot project program. Over the years, DNR has evaluated many different approaches to funding these types of projects but has thus far not identified other feasible approaches.