

UNRBA Work Group Meeting

Discussion of Stage 1 Alternative

Slide Deck Presented on 4/15/2019—Red Text is Comments from the Workgroup



April 15, 2019



Agenda

- Initial comments
- Agenda Review/Revisions
- Review and refine potential core principles of a framework
- Identify main questions and concerns
- Implementation considerations
- Tracking information
- Logistic steps to establish an optional approach
- Assign action items/individuals to develop information for the next work group meeting
- Schedule follow up meeting
 - Share information
 - Determine path forward
 - Identify appropriate vehicle
 - Develop plan to engage external stakeholders
- Closing comments/additional discussion

Discussion and Comments

- Text in **red font** reflects discussion that occurred during the meeting on April 15th
- Original material distributed before the meeting is in regular font

Potential Core Principles

- Proceed with a proposal only if there is consensus among members
 - May include a core group of participants that moves forward with the framework
 - Would like to proceed with consensus if we can
 - Compliance among subwatersheds is allowed in the rules: legislation could allow for coordination among jurisdictions across the subwatersheds
 - Group to discuss non-member participation

Potential Core Principles

- An alternate framework would require jurisdictional participation (or they revert back to rules as currently written):
 - Is being a member of the UNRBA a requirement?
 - Perhaps local governments would be required to be UNRBA members with allowances for cooperation with State/Fed agencies and agriculture

Discussion of Potential Framework

- NGO proposal has been discussed with DEQ
 - Investment based, list of types of projects that would count including land conservation, programmatic, and stormwater controls measures
 - There are some actions by local governments that don't currently earn credit that should; this approach would address that
 - Focus on implementation
 - Regulatory certainty: easier to measure if investment based; counting pounds presents challenges
 - DEQ thoughts on this approach relative to Rule requirements: changes in Rules or law would be needed, DEQ seems open to the approach
 - May move risk from local governments to the State
 - Interest in holistic approach including land conservation; DWR has not established credits for land conservation and several other practices

Discussion of Potential Framework

- Jurisdictional load uncertainties/questions
 - Some jurisdictions have already met their requirement (through point source credits and other projects), why would they participate?
 - Efforts under an Optional Stage I approach must be creditable under the re-examination
 - The re-examination also has uncertainty in terms of what it will look like
 - This alternative framework is a “bridge” to the re-examination but could lay a foundation for a more innovative approach that is supported by the results of the re-examination
 - How to secure regulatory certainty

Potential Core Principles/Aspects of an Optional Approach

- Project-based or investment-based framework
 - Must be fair and equitable
 - Potentially could be based on setting one jurisdiction's responsibility and then scale others responsibility
 - This framework models a potential framework for the re-examination
 - Would replace current rule requirements and provide a bridge to the completion of the re-examination process

Potential Core Principles / Aspects of an Optional Approach

- Cost efficiencies should be considered
 - Pooling resources
 - Flexible use of resources; can pool but not required (may be more difficult to implement); each jurisdiction can do its own projects but allow other jurisdictions to participate/buy credits; need to allow smaller jurisdictions a way to contribute to projects and to participate;
 - Pending actions that could affect an Optional Approach: EMC proposed rule changes on the ability to trade: local governments building credit projects for their own use have to establish a mitigation bank with funding for remedial action established in advance (this requirement would apply to developers as well)
 - Watershed association/interlocal agreement; could UNRBA establish a bank?
 - Private developers can purchase or construct offsets; they do not have to form a bank

Potential Core Principles/Aspects of an Optional Approach

- Cost efficiencies would be considered
 - Transport factors/proximity to the lake
 - Given that lower lake is in compliance and mid lake is generally compliant; upper lake has greatest difficulties; could focus projects above 85
 - Through cooperative agreement: Potential use of specific jurisdictions' staff resources to undertake joint projects
 - Healthy watersheds concept; current framework of counting pounds is challenging for nonpoint source reductions
 - Need to consider resiliency and long-term benefits

Potential Core Principles/Aspects of an Optional Approach

- Project prioritization should consider
 - Costs: capital and long-term maintenance should be factored in
 - Project placement: consider contribution of the project site relative to its ability to improve “hot spot” area above 85 (upper lake) as well as tributaries including 303(d) listed waters
 - Opportunity for sites and projects

Potential Core Principles/Aspects of an Optional Approach

- All projects accounted for under the “bridge” framework would be counted as part of the revised re-examination strategy
 - Projects already completed since 2006 would also count
 - **How to address jurisdictions that have already met their Stage I requirement through WWTP reductions and SCM implementation**
 - Certainly, projects completed after establishing the “bridge” framework would count
- Additional projects (above and beyond those agreed-to under the bridge framework) will also be accounted for under the future revised strategy developed by the reexamination process

Potential Core Principles/Aspects of an Optional Approach

- Investment approach: flexible, hybrid participation
- Not all jurisdictions have a utility
- Would require a minimum annual investment
- Options for setting the participation levels
 - May use stormwater utility members to set the baseline
 - May base on impact, per capita set aside for projects, tax base, change in impervious area, etc.
 - Could also base on the contribution level of one jurisdiction scaled by jurisdictional loads using an equivalent method of pre-development calculation (e.g., JFSLAT pre and post)—Just as a basis of comparison, not as a commitment to a jurisdictional load under the current rule

Potential Core Principles/Aspects of an Optional Approach

- Options for setting the participation levels, continued
 - May consider Raleigh's watershed protection program which raises \$2 million per year from rate payers for watershed and water quality improvement (land conservation at this point) as a starting point in determining participation
 - Could, with Raleigh's agreement and cooperation, redirect some of those funds to other nutrient reduction measures that are shown to provide more benefit
 - Consideration of current commitment of these funds: Smith Creek property purchase will use 2-3 years of funds; however, this project would count under this program
 - Raleigh would consider using these resources to fund innovative projects including stormwater control measures

Identify Main Questions and Concerns

- Equitable allocation considerations
 - If based on relative impact to the lake during 2007 to 2012 (jurisdictional loads), then equivalent and agreed-to methods need to be used

Identify Main Questions and Concerns

- Pending Regulatory change (federal) affecting some jurisdictions with Phase 2 MS4 permits: requires that permit application has to show how you will comply with the permit in the next 5 years; section that deals with 303(d) is no longer limited to TMDLs – any water listed as impaired have to identify your contribution and how you will fix them within the 5 year period of the permit (can request a longer period); for Falls Lake impairment: could look at bubble permit – does that help the MS4 communities?
 - State does not have much flexibility with this change; State has a draft permit; Hillsborough is reviewing;
 - Local governments could show addressing the Falls Lake impairment under the bridge framework
 - 303(d) listings may drive where the \$ has to be spent
 - Evaluate economic models/jurisdictional responsibility
 - Bubble permit provides some insurance for compliance for individual members

Identify Main Questions and Concerns

- Involvement of NGO's & DEQ
 - If DEMLR is willing to write permits that resolves this issue for now, and EPA does not reject, this would help us through the establishment of an optional approach
 - DEQ needs to be willing to take on some of the risk
 - If law change is determined essential, UNRBA will need partnership with NGOs and DEQ to get legislation passed
 - MOA
- Equivalent calculation method / fair approach
- Do interested parties understand that existing compliance with Stage I can be met with WWTP credits and that the goal of Stage I--water quality in the lower lake—has been met?
 - In practical terms, Stage I requirements have been met
 - This alternative framework should be considered a head start on Stage II

Schedule Follow Up Meeting

- Will continue discussion of implementation concerns on April 29th



Closing Comments Additional Discussion