Clean Water Act State Revolving Fund: In-Lieu Fee Projects/Programs

Approach:
The State Revolving Fund (SRF) loan monies can be utilized to supply capital for in-lieu fee program activities which generate compensatory mitigation credits. These compensatory mitigation credits are then acquired by Clean Water Act §404 permit recipients to satisfy their compensatory mitigation requirements.

How would this work?
- A State provides the SRF loan to an eligible in-lieu fee program sponsor.
  - Requirements for the establishment and operation of in-lieu fee programs can be found at 40 CFR Part 230 Subpart J (see also 33 CFR Part 332).
  - 2009 stimulus (ARRA\(^1\)) funds may be grants or loans. Regular SRF funds are loans.
- Funds collected through the sale of in-lieu fee program compensatory mitigation credits to Clean Water Act §404 permit recipients are used to repay the SRF loan.
  - SRF funds can be given to state/tribal agencies, municipalities, or other entities eligible to receive SRF funds; however, in-lieu fee program sponsors are limited to governmental and non profit natural resources management entities [40 CFR 230.92].
  - SRF grant monies cannot be used to capitalize in-lieu fee projects [40 CFR 230.93(j)(2)].

Why would a State want to utilize its SRF funds this way?
- Enables States to take a watershed approach to wetland and stream compensation projects under Clean Water Act §404, if they so choose.
- Accelerate the planning and implementation of in-lieu fee programs and projects, including:
  - Administrative costs for establishing or modifying an in-lieu fee program.
  - Development of a compensation planning framework to support a watershed approach to in-lieu fee project selection.
  - Project planning and design:
    - Identification of potential project sites
    - Design of compensatory mitigation projects
    - Determination of number, type, and valuation of credits
  - Land or easement acquisition Note: 2009 stimulus (ARRA) funds cannot be used for land or easement acquisition; however, states may make regular SRF funds available for this purpose.
  - Construction/restoration of resource: plant materials, labor, legal fees etc . . .
- The cost of credits can effectively reflect the actual costs\(^2\) associated with restoration, establishment, enhancement, and/or preservation of aquatic resources.
- Ensures that the required amount and type of credits will be constructed prior to impact and be available to permit applicants in a timely way, and in a landscape configuration that augments watershed planning goals.

\(^2\)These costs should include the upfront costs mentioned above as well as contingency costs associated with construction and costs associated with long-term management and protection of the project.