

**Clean Water Council Meeting Agenda**  
**Monday, February 27, 2012**  
**9:00 a.m. – 2:30 p.m.**  
**MPCA Board Room**  
**520 Lafayette Road North, St. Paul**

<b>9:00-9:15</b>	<b>Convene Full Council</b> <ul style="list-style-type: none"><li>• Comments/additions to the agenda</li><li>• Approve 1/23/12 meeting minutes</li><li>• Council introductions and updates</li></ul>	
<b>9:15-9:30</b>	<b>Steering Committee Report</b>	<b>Information item</b>
<b>9:30-10:00</b>	<b>Conflict of Interest policy / form</b>	<b>Information item</b>
<b>10:00-10:30</b>	<b>By-law revision discussion</b>	<b>Information item</b>
<b>10:30-10:45</b>	<b>Break</b>	
<b>10:45-12:00</b>	<b>Budget and Outcomes Committee update and Council discussion</b> <ul style="list-style-type: none"><li>• Proposed Council funding priorities for fiscal years 2014-15</li><li>• 2012 Clean Water Fund budget recommendation</li></ul>	<b>Decision item</b>
<b>12:00-12:30</b>	<b>Lunch</b>	
<b>12:30-1:30</b>	<b>Clean Water Fund Performance report</b> Linda Bruemmer (MDH)	<b>Information item</b>
<b>1:30-2:30</b>	<b>Groundwater discussion on past presentations</b>	<b>Information item</b>
<b>2:30</b>	<b>March meeting agenda / adjournment</b>	

***2:30~3:30 Council Steering Team***

***2:30~3:30 SSTS Ad Hoc Team***

***Next Meeting: March 19, 2012***

**Clean Water Council Meeting Minutes**  
**Monday, February 27, 2012**  
**9:00 a.m. – 2:30 p.m.**  
**MPCA Lower Level Board Rooms**  
**520 Lafayette Road North, St. Paul**

**Council members present:** Marilyn Bernhardson, Pam Blixt, Linda Bruemmer, Warren Formo, Keith Hanson, John Harren, Scott Hoese, Mark Knoff, Michael McKay, Dave Leuthe, Gene Merriam, Gaylen Reetz, Victoria Reinhardt, Louis Smith, Rep. Paul Torkelson, Matthew Wohlman, Steve Woods.

**Absent:** Rep. Kent Eken, Frank Jewell, Bradley Kalk, Gary Pedersen, Senator John Pederson, Todd Renville, Sandy Rummel, Senator Dan Sparks, Deb Swackhamer.

**1. Convene Full Council**

- Comments/additions to the agenda
  - Approve 1/23/12 meeting minutes
  - Council introductions and updates
- Upcoming Budget and Outcomes Committee (BOC) meetings: March 9, April 13, May 4 and June 1.
- Comments on the agenda - BOC Proposed Council funding priorities. Is it additional funds or remaining funds? Jen - it is remaining funds, \$9.1 million. So the total dollars didn't go up? Jen - right.
- Council member introductions:
- Gene Merriam - two [Freshwater Society](#) events; March 1 there will be a series of programs at the [U of M](#) including a speaker on Sustainable Investing and on March 29 there will be an all day conference on "Precision Conservation: Technology Redefining Local Water Quality Practices."
- Dave Leuthe - sustainable agriculture.
- Linda Bruemmer presented the report card on Friday and it was very well received.
- Gaylen Reetz - two draft TMDLs go on notice today; the [Minnesota River Turbidity TMDL](#) and the [South Metro Mississippi River Turbidity TMDL](#). Our intention is to go out and provide additional information about what the TMDLs are and what they mean. Both TMDLs are on a 60-day public notice period.
- Victoria Reinhardt will go to Washington on Thursday for the National Association of Counties conference. The topic is the Waters of the U.S.
- Steve Woods said the BWSR Board approved the [new strategic plan](#) and it's on their website.
- Louis Smith said it's in our best interest to train citizens and local governments in the inspection process for aquatic invasive species (AIS).
- Marilyn Bernhardson said the Soil & Water people had a successful event at the Capital and discussed Clean Water issues and easements.
- Chair Hanson – the Council has two vacancies and they are posted on the [Secretary of State's website](#). There are four applications. We suspect someone applied for the business position. We also need someone to represent fishing organizations. He and Jen Maleitzke

met with Lessard-Sams Council staff and chair and talked about the AIS issue. As a result, we requested that Peter Sorenson come to the CWC meeting. We have connected with Lessard-Sams on that. The Lessard-Sams Council has allocated about \$5 million dollars in funding for this issue. Scott and Marilyn will do a report on this.

## **2. Steering Committee Report**

- Steering Committee is talking about a field tour either with BWSR or in Scott Hoese's area probably in March or April.
- Motion to approve minutes from January. Motion by Gene Merriam, seconded by John Harren, motion passed.

## **3. Conflict of Interest policy / form**

- **Leah Hedman, Attorney General's office**
- Jen Maleitzke - look at the three documents in your packet. Our members don't make recommendations for specific projects, but we wanted to talk about it today.
- Leah Hedman (attorney for CWC) - refer to the handbook, "Board Members Handbook on Legal Issues" and to the conflict of interest section. The Legislative Auditor was correct to say it's best to have policies and procedures because you are the gateway authorization for funding. Also, you want everyone to know there's a "level playing field" – no favoritism. When you have a potential conflict of interest – maybe the person feels that they cannot be impartial and fair or even just the appearance seems that way, rather than a direct conflict - you must give notice and not participate in the action related to it.
- There is a Conflict of Interest form which goes to the public disclosure board. If there is no time to file in advance, you must orally inform the board chair. If there is potential conflict of interest, remove yourself. "When in doubt, sit it out" – is Leah's recommendation. Always take the most prudent course.
- Clean Water Council members are here because of their interest in water. They are uniquely situated to have an opinion on water issues. We can look at specific examples. When we do Council member introductions, members can just say if there is a conflict of interest. Members need to notify us immediately. If you think you have a conflict, talk to Jen and Keith and Leah. Then if it can't be resolved, the Council would establish an ethics committee (people would rotate through) which would resolve the issue. If there is a conflict, you need to recuse yourself.
- Leah Hedman - the procedures we're recommending aren't hard and fast. The Council members need to decide on this. She likes idea of rotating membership, and it's important to keep notes on what you do. We want consistency.
- Gene - it would help me understand if we can focus on what constitutes a conflict – direct, indirect and potential. What if someone is on the payroll of an organization that potentially may get money from some stream project that's recommended by this Council? Leah thinks that is a conflict.
- Gene - no giving yeah or neah to an organization. We make recommendations on appropriations to agencies. That's the hard thing. Leah - look at examples...
- Rep. Torkelson - does this apply to voting and nonvoting members? Leah - it applies to voting members, but it applies to both voting and nonvoting members when the person should sit out of the discussion. This isn't a classic case...

- Leah - her role is to help you develop a policy. There's nothing hard and fast. We want a level playing field consistent with policy and pathway – how to address and approach. You will always get into trouble if you don't say anything.
- Rep. Torkelson - this process was instituted by the Legislative Auditor who had some criticism. Leah - criticism is too harsh. They looked and saw you don't have that. Jen - the Council has always had the statement about conflict of interest, but they wanted more.
- Rep. Torkelson - we make recommendations on direct appropriations.
- Leah - if there is a potential conflict of interest, the idea is that there is a discussion.
- Louis - it's a very important subject. We need to affirm that we care about conflict of interest.
- When in doubt expose, not necessarily recuse. It's about money, not about friendship. The notion that we have a conflict of interest policy that's relationship driven is tough. We need to tighten up our focus here based on what the statute asks us here.
- Leah - thanks for clarification.
- Victoria - the example of a judge doesn't apply here. If there is a personal financial interest in question, then it must be disclosed. That's what we should look at. She's signed a form for most of the boards she sits on. The question is does the member gain anything personally from that? If you think there's an issue, disclose it. But be careful about how strictly we enforce this.
- Chair Hanson - that's a great lead in... Jen – looked at different scenarios...
- Leah – the safest path is to state what you are a member of and then weigh in...
- Chair Hanson - is that a perceived conflict? Leah - yes she sees it that way. You've called it out, so it's clear that it was discussed and was above board.
- Mark - an example might be that sometimes Deb Swackhamer may receive a portion of her salary from a grant. Leah - if she raised it, you can discuss it and you can decide.
- Mike - please answer a question for me - if it's limited to financial interest vs. interest. Agrees with Louis.
- There are other strong interests that we have.
- Leah - you're here because you have something to bring to the table – streams, public health – but the statutes generally trigger on a financial component.
- Dave - this Council recommends funding through legislative initiatives which go out to groups who will accomplish these goals. The dollars really come through the state agency process, so we are a couple points removed from the money.
- Jen - that's what we talked about, figured out that that wouldn't be a conflict of interest.
- Rep. Torkelson - there was a direct recommendation for the U of MN, but it didn't come from the CWC. The Legislature added that appropriation. So we would still want someone from the U of MN here. Leah - everyone deserves the same level playing field.
- Rep. Torkelson - but we are not making appropriations or make recommendations. Leah - then that helps you. Why should this person from the U – direct funding, it's more concerning if the county board...
- Mark - we disclose at every meeting by stating what group we represent.
- Victoria - when you sign your name, that's the important part that the policy is very straight forward. She thinks it does have to be direct financial interest. Agrees with Mark's comment. If there's any possibility of any financial gain, which is very different from what Lessard Sams does.

- Gene is a little concerned that you keep raising the specter of impartiality. We're not a body to dispense justice impartially. We're all here with our interest for the mission of clean water. And the entire focus of the statute talks solely about personal financial interest, so he doesn't think we have to be concerned about who perceives what except for the aspect of direct or indirect personal financial interest, and the potential for the personal financial interest. If you think about it, no one should be here if you have the ability or the potential ability to line our own pockets.
- It gets murky; have to frame the discussion in direct or indirect personal financial interest.
- Matt thinks Gene and Victoria made his point. Agency people sit on the Council as nonvoting members and they get funding. We don't have a personal financial interest, but we are advocating for programs that we believe work.
- Leah – it sounds like personal financial interest is the point. Chair Hanson - so if we focus on the direct or indirect personal financial gain and have a discussion about it, we can move forward.
- Mark Knoff moves that we accept the policy as outlined on the sheet showing seven steps. Motion is seconded by Scott Hoes.
- Louis – it's good to move forward but the language is overbroad. The form needs more work. Can the motion say that we'll have.... Leah - in generalities, if he'd accept a friendly amendment... Chair Hanson - just leave the conflict of interest and disclosure forms off. Just talk about the seven step process. Linda - nonvoting state agency members should not be included. [Chapter 43A](#) already covers us (state personnel). Thinks we need to focus... Jen – we need to note that the senators and agency people would not have to sign the form. Victoria - we'll come back to the form. As long as it's clear that it's personal financial gain, she thinks it is fine. Mark - people can also state if they're voting or nonvoting members of a particular group.
- Mark will amend the motion that we look at this policy guideline (7 steps), and a small committee will look at the verbiage that was discussed today. Scott seconded. Motion passed. Gene and Louis will work with Jennifer and Leah on the policy/form.

#### **4. By-law revision discussion**

- Chair Hanson – the next agenda item is revisions to the Council's bylaws. Removal is at the Governor's request. He wants to point out that a member will get a letter. Attendance is an issue. We're not voting on this at this time. Any bylaw change needs a thirty-day review, so this will be a decision item at the April meeting. Give Keith any other comments.
- Victoria - as far as the three consecutive meetings, as far as other councils, it's unexcused. Is this just anything? She thinks it should be unexcused. However, bad weather conditions affect us. Chair Hanson agrees with what you're saying, but the bylaws say what the statute says. Maybe we can have a policy around this because that would alleviate the issues that currently face us. Victoria - an excused absence is when you have something unexpected or don't have control over, an illness, or had to be out of town. You can as chair.
- Mike – clarification, if you don't have a quorum, do you have a meeting? Jen – no. Mike - if you report to the Governor in a letter, that doesn't mean they have to resign? Jen – no.
- Chair Hanson - any removal is at the pleasure of the Governor.
- Mark – a conference call counts as attendance. Maybe we should also put that in there.
- Warren - the issue of extenuating circumstance works.
- Chair Hanson - the Governor has done removal before based on attendance.

- Victoria - she's done the same thing. She thinks the chair has to look at extenuating circumstances. If you have a regularly scheduled meeting, the people who didn't show up are not off the hook. It is still a meeting, but the extenuating circumstances must be taken into account. It's not a lack of interest.
- Gaylen - we've had two meetings that aren't regularly scheduled. He thinks the letter to the Governor should include the intent.
- Chair Hanson said this came up when Steve Pedersen told us he needed to resign. Keith first realized we had this provision here. There are some issues with this policy with some people.
- Scott - they are regularly scheduled meetings (referring to Gaylen's comment).
- Chair Hanson – we need to draft one letter for sure, and ask about the intentions of the individual, and he will call that individual so he's not going to be blindsided.
- Steve W. - this is just for the Governor's appointments? Chair Hanson - right. Victoria - you also have the state legislators. Chair Hanson - it only applies to the voting members. Victoria - as chair you have some discretion. Chair Hanson - for sure. Victoria - if there are weather related issues, there are valid reasons. Chair Hanson - the letter should ask these other questions.
- Scott - can we adopt this today? Chair Hanson - that's why we'll send this out prior to the March meeting. On the provision on removal, nothing's changed.

#### **5. Budget and Outcomes Committee update and Council discussion**

- Proposed Council funding priorities for fiscal years 2014-15
- 2012 Clean Water Fund budget recommendation
- Marilyn Bernhardson – the BOC Committee met on February 10th and had a presentation by Dr. Peter Sorensen from the U of MN. It was a very enlightening presentation on aquatic species. Dave Leuthe summarized a white paper at the end - tried to find the connectivity between Clean Water Funds and carp. Thinks the consensus was yes, we need to spend money on it, but not Clean Water Funds. As Deb Swackhamer also commented, there are the Mississippi River Basin dollars and Great Lakes dollars. The federal government will be spending \$50 million on the Great Lakes carp fight.
- Gene - to set the record straight, he's not on the list of attendees for the minutes from the BOC meeting, and he should be. Mary Reilly - we'll fix that.
- Marilyn - in the afternoon, we looked at Council priorities. We looked at what percentage of funding had been done in previous years, and did a range on them. Also looked at potential funding recommendations for the \$6 million. The Senate is also interested in hearing from the Council. Look at the back of the BOC Committee meeting sheet.
- Wellhead protection --talked about doing 10%, however it's been determined that there is adequate funding in their wellhead protection program, so we need to have a discussion on the recommendations on the \$6 million. Pam has agreed that she will sit on the BOC committee. OK, what else do we need to talk about?
- Scott - Dr. Sorenson wants money for his lab, too, but the committee decided against that.
- Marilyn - didn't he indicate that it didn't mirror his request?
- Rep. Torkelson - there's more money on the bottom line, about \$9 million dollars total. In the past, we've not indicated how much should be left; recommended that there should be around \$5 million. The Legislature will decide on the appropriate level. There is pressure to spend Clean Water Council money on AIS, so it's important to discuss whether spending in

this area is appropriate. In his opinion, he would be very cautious because this is opening a new door. Is that the direction we think is appropriate? There are lots of different bills floating around. Lessard Sams appropriated \$5 million to invasive species. There's talk about electric barriers etc., some may be bondable. This is really kind of squishy. You should come up with a recommendation to the Legislature.

- Marilyn - when we put that 10% in, it was to go more toward educating the public, at boat ramps for example.
- Rep. Torkelson - maybe you want to send a letter to the Legislature.
- Marilyn – Steve, would you comment on the wellhead easement program that BWSR has?
- Steve W. – we have \$900,000 available for that. One potential modification would be to do some work in the karst areas. The tracking system, eLINK, could use funds. Also talk about large amounts of pattern tiling to better manage drainage.
- Jen - the document they sent out was just for discussion. Note the 4th one is not currently in need of money.
- Dave - did you send our white paper to anyone other than BOC? Jen - no, but we could, and we will when it gets up on the website.
- Mike - now that the feds just kicked in another \$50 million, will that influence you? Marilyn said not me. Gene - the money is only for carp in the Great Lakes. He thinks zebra mussels is more of an issue. Dave - it's the Great Lakes initiative. It's not Minnesota issues and how carp might move in the Mississippi.
- Mike thinks this enters territory that they're not asking the CWC to address. We could package that money into an area that we've prioritized in the past.
- Louis wants to hear more on the science side of this from Dave and others. Curley leaf pondweed is another issue. We need to know where this should fit, and what the white paper said about that connection.
- Dave - Gaylen and myself...zebra mussels are probably the invasive species that's going to spread the fastest. Can you narrow it a little bit more. Impairments have looked at AIS – the solution for clean water may be better land management. Doesn't know how far to go with what you want. Gaylen - need to look at the white paper. While we haven't listed AIS as impairments yet, and some states won't, he thinks it's going to end up being a policy decision on which way does the state go with it.
- Victoria - regarding Paul's comment, the Legislature is going to do something with this \$9 million dollars dealing with aquatic invasive species, and would like the Council to make a recommendation rather than staying silent.
- The Legislature will do whatever it wants, but at least it describes why we care. Are you good with this?
- Dave - what are the principles you want for these Clean Water approaches, realizing that you need to summarize the white paper: This was the pollution control and DNR tried to compile all the aspects of AIS, how you could look at use of CWF funds. There are some specific questions in terms of AIS prevention and management.
- Victoria - do you need a motion?
- Marilyn - we need to come up with what we want to do with the 10% we had assigned to wellhead protection.

- Victoria - it makes sense to move up to nonpoint source restoration; adding language to civic engagement as it relates to water quality, so she moves it with those two changes. Scott seconded.
- Scott – the Legislators will spend the money anyway.
- Mike personally doesn't think it's buttoned down enough. Research and education, there's no definition on that.
- Marilyn – the BOC talked about measurable outcomes, so she supports what Mike's saying.
- Mike – we need something substantial... Mark agrees with Mike and he is afraid we'll open Pandora's Box. The tie is not well enough established yet. Agrees with Mike – 100% should go to nonpoint source preservation and restoration.
- Victoria – maybe we could make a recommendation that 100% should go to nonpoint source preservation and restoration. So if they choose to do that, we know they're going to consider it. Is that acceptable?
- Chair Hanson - so you're saying to put 100% of the funding that's available to nonpoint source preservation and restoration. However, if the Legislature chooses to take these funds (i.e. items 2 & 3)...
- Louis thinks this is a tough one. Picture a typical Minnesota recreation lake impaired for phosphorus, and we've felt it's been difficult to get everyone engaged and participating. Maybe they are fertilizing lawns too much, for example. Our biggest struggle is to get everyone tuned into the problem, the old civic engagement piece. Now people are worked up that zebra mussels will ruin habitat, etc. He thinks to come to them is a huge opportunity to educate about the health of that lake, etc. Ideal to integrate AIS information, also embracing phosphorus, can't dismiss it easily.
- Gaylen thinks three's enough of a contribution from AIS. That it would be shortsighted to not manage it.
- A recommendation that contains it is long-term sensible. The other piece is it also establishes a line item for education and ?? focused on AIS. Lastly, he's uncomfortable with the percentage column because it could be taken out of context at a later date. He would just go with a straight recommendation amount.
- Mike - clarification: I thought we had a line item on civic engagement. We've never been able to establish a line item on civic engagement that's made it to the legislative process. Chair Hanson - in the last legislative session, the Legislature made the recommendation that public involvement be embedded in other programs.
- Gene - couple of points, Marilyn, you commented on measureable outcomes for these. What are these? Marilyn - is there a measurable outcome in the invasive species research? What can you use as a measureable outcome?
- Gene - what's a measurable outcome for BMPs? Marilyn - reducing phosphorus, etc.
- Gene - we need principles about how we allocate optimally the CWF. How does it relate to measurable outcomes? Got a lot of good work, but all of these seem so episodically driven. We do need to connect with the groundswell of public concern.
- Chair Hanson - are you referring to both recommendations? Gene - he's concerned with WQ water concerns, and the AIS Initiatives.
- Matt - there are other more pressing issues we've talked about. AIS is important – use \$\$ from this fund? Questionable.



- Does it dilute our ability to focus on our ability to report at the end of 25 years? Perhaps. We need to focus on the greatest key points.
- Dave - working off Louis' theme, there are problems that will involve AIS as part of the problem. Best to figure out how funds should be applied. What are the watershed solutions that we'd put into place. Clean water would be a part of that. Submit it as a plan. If you put it under restoration and protection, you don't say how you decide.
- Sheila - also speaking to Louis' point, we should include AIS in the discussion because people are already concerned about it. Trying to find a way to tie this back to a Council priority – so it goes to a current priority so it's a separate category item. Maybe ask locals to explore how to incorporate AIS into their program. Concerned about identifying these two separate categories. This recommendation could have implications down the road that the Council hasn't explored yet. Direct this money to current priorities that you've already identified.
- Victoria - back to the original motion, she thinks we're putting our heads in the sand if we think the Legislature isn't looking at this money. If it's OK, the recommendation would be 100% for nonpoint source. If the Legislature chooses to look at the CWF appropriation for AIS it should limit it to the amount that's here, and it must be directly related to water quality. This limits how far this door should be open.
- Chair Hanson - Scott are you OK with amended motion? Scott – yes.
- Steve Woods – as to the question, can we award grants where AIS is part of the issue, the answer is yes. Implicit in grants is you can upgrade ordinances, you can address AIS. As far as making it a big priority, the BWSR members could award more points. He doesn't know how they will feel about that. It depends on how the community feels. So yes, they could, but he doesn't know whether they would.
- Mark – is there something in place already? He recommends that we make the Legislature aware that we're already addressing this. It could be addressed within grant programs that are already in place so we've already addressed it. Dave - yes.
- Steve W. - yes it could be, but we'd fund it only if it was comprehensive. As far as a statewide deal, that won't come through the grants BWSR put's out.
- Chair Hanson - the challenge here is \$9 million dollars – re-appropriating \$6 million – how long would it take to award the dollars out in grants so those dollars are actually earmarked? Can we get those allocated in a nonpoint plan shortly? Steve W. - yes. We could go back to the listing. It would probably take about a month to get that out the door.
- Louis - that sounds very responsive, and unlikely that AIS would be included in any of those. So, this \$6 million will go to AIS issues, because it probably won't. Steve – we could include it in the next grant cycle next fall.
- Chair Hanson - maybe BOC people ... He recalls there is a link that if you have good water quality, it's a deterrent to invasive species to a degree. Dave - that's too broad a statement.
- Chair Hanson - any other questions? We'll ask for raised hands on this vote.
- Fund item #1 100% with \$6 million. **(Nonpoint source protection and restoration implementation??)**
- Chair Hanson - Mark-- whatever they allocate, we recommend ...
- Spend \$6 million on nonpoint protection and restoration; use \$1.2 of that \$6 million on AIS research; 100% of whatever and up to \$1.2 million for research and up to (how much??) for education and civic engagement.

- You don't want the \$6 million in the first line item? Chair Hanson - yes we do.
- Nonpoint source research & recommendations.
- Warren has some concerns about telling them that they have a choice. We should just lop it off. Another alternative is to encourage the agencies to incorporate with local people as to what they think is important.
- Victoria - if this motion fails, it's appropriate to start over. We just don't want them to take the \$6 million. We want to give the message that you can't take this water quality money. She's trying to limit what they may do.
- Gene - the \$1.2 and the \$6 was within the \$6? Victoria – yes.
- Gaylen - the Council believes that the ability to fund AIS is within the nonpoint source...
- AIS is a fundable element within...
- Mark - so let's just go for \$6 million with the recommendation that the Chair write a letter to the agencies that you should include an emphasis on AIS within your current programs.
- Marilyn - Steve indicated that they'd go back and look at applications that they didn't fund, it would almost deceive the Legislature.
- Mark - the Council needs to send a message that this is important. We can address it in the next biennium and we can put a renewed emphasis.
- Sheila wants to echo that point, as far as a letter from the Chair, it might just be a matter of awareness for the locals. Something they can incorporate into their plans in the future – for future allocations.
- Steve - how rapid could it be? It could happen in the following round.
- So, \$6 million dollars to nonpoint source protection & restoration with a statement to the Legislature that the Council believes they can fund AIS through the existing programs, and only fund item #2 and #3, to the tune of \$1.2 and \$1.6 million dollars, respectively.
- VOTE: 4 against; 7 in favor
- Motion passed.

## Lunch

### 6. Clean Water Fund Performance report

- Linda Bruemmer (MDH)
- Get a copy of her presentation
- (Rob Sip filled in for Matt Wohlman after lunch)
- Linda Bruemmer - they release the CWF Performance Report every two years. Addressed investments and "is my drinking water getting better".
- Chair Hanson - how do they select contaminants of emerging concern? Tannie Eshenaur (MDH) - it's a nomination process. You can find more information about this [on the web site](#). There are also advisory forums. Once nominated, they are screened. Chair Hanson - what factual information would be necessary to nominate? Tannie Eshenaur - there is all kinds of information on the website.
- Chair Hanson - what is goal for next biennium? Tannie Eshenaur - six each year.
- Chair Hanson - what is priority system for something to make the list? Tannie Eshenaur – it depends on the staff resources available. Chair Hanson - does this staff do more? Tannie Eshenaur: different teams do different things.

- When a chemical gets put on the list, does it stay on forever? Linda – the first criterion is that it has to be found in water. They put together a fact sheet on the chemical. They might change the name of what they call them (contaminants of emerging concern). Sometimes what they find is pretty benign.
- Chair Hanson - it's different than the rest of the measurements. Linda - USGS does their study and finds chemicals in people's water.
- Gene - the report card – mercury in fish – how do you determine the trend? You say mercury emissions are going down in Minnesota and increasing on a worldwide scale. He thinks there's more mercury. Gaylen – we have seen a decrease in mercury in fish, then it leveled out, and now it's going back up. In Minnesota with the mercury TMDL, we are still making progress. Gene - the trend in northern pike and walleye is up. Why is that black instead of red or yellow? Tammy - it's because we have many years of mercury data. We'll see what happens in the next round of data analysis.
- Chair Hanson - the TMDL established goals to be met in 2018. Currently, mercury emissions have met the 2018 goal. Worldwide there is no decrease in trend.
- Gene - when we show green arrows...
- Mark - mercury is such a global scale pollutant. There's such a large amount of mercury coming from China and India tied to using coal and oil. Jeff - look at page 26 of the big report, you'll see the timeframe on emissions in Minnesota.
- Clarification - green does not mean an increasing trend, it means an improving trend.
- Linda - this report is our first try. We'll go on the road and present it to others.
- Mike - you've measured some things for a long time and some not very long. Is there any way you can reflect that because he thinks it gives people a benchmark. Linda - there's another level of information, and that was the challenge the team had. There's a pyramid of information. Tannie Eshenaur - you can go to the metadata pages and look. The [report](#) is on the web site and the [report card](#) is on the web site. There a separate link for each one. Jeff - all [CWF information](#) is on the web. It's pretty easy to find and navigate.
- Chair Hanson - another comment – good job. Thinking about CWC 2014 goal and how we're doing. We'll need more indicators or outcomes somewhat below this high level of analysis, and anything you can come up with. We need to find a way to express short-term improvements.
- Gaylen drew pyramid with 18 at the top.
- 18
- 36
- 100s – tracking social measures, monetary, water quality measures.
- When you do measures, it's in the eyes of the beholder. The agencies are providing information well.
- Dave – we have to figure out what is it you want to see.
- Mike - be more useful where our dollars are involved. We want to know if agencies are spending dollars and not making any progress, or what.
- Louis - this is hard work and valuable because it's also very clear. Did the Legislature ask for this report by statute? The Legislature asked this Council for this report, and we haven't produced one. He told the Legislature we're working on a report, but he's uncomfortable with where the Council sits.... Gaylen - this is the evolution of that process.
- Louis - where is the Council in this report?

- Chair Hanson - maybe need to know those water quality... We're getting a lot of questions on what we've got for what's been spent.
- Mike - can you track the dollars you got from us, and give us a layover?
- Jen - this report is all Clean Water Fund money.
- Gaylen – on our websites (MPCA) and the Legislative Coordination Committee (LCC) [Clean Water Fund website](#) we are tracking all the dollars. That's also available.
- Chair Hanson – it might be beneficial to get agencies to come back and provide more level of detail - maybe focus on those 100's – to develop the measures and outcomes piece.
- Marilyn - the BOC is in the process of asking each agency to do something like that. And it's due to us May 1<sup>st</sup>. The BOC will meet to review that the following Friday. Then we will meet with different agencies in June to have a conversation. So the earliest would be June.
- Mike - it's a good idea. We should be building this... Suggestion that you add a column for the "general" dollar amounts. Could we know how many dollars are being spent on nitrate reduction? Yes.
- Rob Sip - look at page 16 on the big report. There must be at least a couple hundred or so, for future reports data can be flushed out.
- Chair Hanson - this goes a long way to help us out. We look forward to continued discussion on it.

## **7. Groundwater discussion on past presentations**

- Chair Hanson - groundwater discussion on past presentations. We will have one more groundwater discussion at the March meeting. Take 5 minutes to walk through it on your own. The goal is for the Council to provide direction to the BOC Committee.
- Chair Hanson - this is one person's view – go to page 3 of 18. What are people thinking about since we've had presentations of what groundwater issues are all about. He wants some gut reactions.
- Gene - the 3 discussion questions you hit pretty well. The USSGS report on White Bear Lake shows what's happening – a microcosm of what we need to know.
- Victoria - the Council should see the numbers of what's happening on White Bear Lake. Maybe interesting to see that at a future meeting. When you see the change in a ten year period, it's shocking.
- Pam - her reaction was that we got the answers pretty clearly that "no one knows". Not sure what there is to discuss. Anyone have different answers? Gene - it's more nuanced than that. Pam - of course.
- Steve W. - a lot of this stuff is what Steve calls groundwater quantity and the WBL example. Is that our charge to look at groundwater quantity? Gene - prior to 2011, it was not, but it is now.
- Marilyn - we have to remember the diversity of our state. The map showing the location of groundwater in the state needs to be remembered. Haven't answered these questions – will be very difficult to address any of those.
- Chair Hanson - how do we take the information we've learned to date and give it back to the Legislature as a funding recommendation? What will help us come up with a recommendation?

- Victoria - wouldn't help a lot because there are some things in common, but the diversity of our state and the lakes - it won't be the same circumstances for each one. Can't really parlay into funding recommendations. What's happening right now to WBL has to change.
- Chair Hanson - will you get additional information back from DNR? Jen - the BOC will send a letter to all agencies asking them to show how they've spent the funds, what the outcomes are, any money returned and why, etc.
- Gaylen - the budget question is important, but it's only one. The Council should ask the interagency groundwater team. It shouldn't just be up to the Council. Don't leave it as a blank slate, but ask questions back and forth between the Council and agencies.
- Louis agrees. The presentations convinced him that it's a much more serious problem, not to look just at past commitments. Maybe there are some different, bigger things here. The graph going off the cliff presented by Jason. In the last 20 years we've been irrigating where we've never gone before.
- Dave - there needs to be investments in protection and restoration. EQB process brought in consultants and local government officials. There are some recommendations we should move forward on. The Council just has to decide what they want to move on.
- Chair Hanson - should someone from the groundwater work group come back to just highlight? Louis – yes.
- Marilyn wants Steve Woods' question answered. We're not charged with addressing water quantity. Linda - the public health approach is, if there isn't quantity, then what is the quality for drinking water. And remember, a minimum of 5% is supposed to go to drinking water. Chair Hanson - two bullets relate to water quantity. Marilyn just wants clarification that we're charged with quantity. Dave - as you take from the deeper sources it will be replaced with something else, usually of less good quality. You can't separate quantity and quality. Marilyn was hoping to narrow the focus to the quality part. The quantity issue is too big. Victoria - it's not easy to separate them.
- Randy - when evaluating multiple possible sources of groundwater, we evaluate on the cost of treatment and if there is adequate quantity. On the drinking water side, quantity and quality go hand in hand.
- Gene - among the changes we made ...
- Chair Hanson - could someone from DNR walk through what is the current thinking on groundwater and groundwater quality?
- Pam would like to see a summary of what the groundwater team sees as the top gaps.
- Gaylen: missed.
- Chair Hanson - putting the quantity funding issue
- Dan Stoddard has been working on the groundwater/drinking water team and we made the decision that you really can't separate groundwater quantity and quality. Also we discussed strategy using the surface water approach. You can't use it in every situation. A lot of what you've just surfaced, we have discussed and we have strategies to address them.
- Randy - the question is how can we take the information they presented and condense it. Would a recap be valuable in that regard?
- Mark looked up the [CWLA statute](#), which includes spending clean water funds to support the groundwater degradation rule. It depends on how you want to interpret it.

- Dave – the Council had a team on groundwater protection. The bottom of page 1 of 18 shows what the Council has already approved. It lays out the strategy. If it's going to change, it must come from a recommendation from the BOC.
- Pam - not clear when agencies were asked to do recommendations to the BOC committee.
- Dave - what emphasis do you want to use toward what priorities?
- Chair Hanson – Pam, my goal today is to ensure that BOC has the information that they'll need to make a recommendation back to the full Council. If we focus this discussion on these eight priorities to flush out what you need, it would be better to spend time on that.
- Pam is looking at the eight and wondering what would we discuss? Chair Hanson - it will get at your priority system. What activities would you fund? Mark - it would be good to see how it fits with our recommendations. The BOC group should do it.
- Dan Stoddard stated that these eight are protection strategies.
- Chair Hanson - Scott, Marilyn and Jennifer will address groundwater/drinking water at the BOC.
- Jen – we'll have a team come back in March. Randy, how do you feel about that? Randy – we will provide a presentation to the BOC to see how it relates to the eight recommendations. Would that be appropriate? We will proceed to prepare groundwater, wastewater, reuse and recycling presentation and will link priorities and see how it ties in with overall strategies.
- Chair Hanson – on page 1; are any one of those categories really big right now? Dave - it follows population and growth. It's the total demand on the system, rather than any one of the 6 priorities.
- Steve - it's helpful to know where the agency wouldn't want BWSR to go.
- Gaylen - last session the Legislature asked
- Suzanne Reese is the staff person leading a study including the U of MN and other agencies about water governance. It's useful to know what this Council is up to. Maybe book some space on your agenda. Maybe set the stage for further study.
- Jen - John Stine presented at the November meeting.

#### **8. March meeting agenda / adjournment**

- Chair Hanson - tentative agenda for March; short discussion on conflict of interest, expect a report on SSTS, and a BOC update. Leave the Minnesota River TMDL on the agenda for right now. Look at work plan topics.
- Meeting adjourned.

***2:30~3:30 Council Steering Team***

***2:30~3:30 SSTS Ad Hoc Team***

***Next Meeting: March 19, 2012***

***Location: MPCA Board Room***



## Developing a Conflict of Interest Policy

The Office of Legislative Auditor recommended the Council develop a more robust Conflict of Interest Policy in the Legacy Program Audit (released December 2011). Since then, Council staff has been developing the Conflict of Interest Policy and Form in coordination with the Department of Administration's Office of Grants Management and the Minnesota Attorney General's Office.

While the draft Policy and Form are somewhat similar to policies/forms that the Lessard-Sams Outdoor Heritage Council and Legislative Citizen Commission on Minnesota Resources already have in place, the Council's versions vary due to the nature of the Council's work (the Council makes programmatic budgetary recommendations, while LSOHC and LCCMR provide recommendations through an RFP process).

At the February 27 Council meeting, members will consider the following policy:

1. At the beginning of each calendar year, Council members will review the conflict of interest policy in concert with the annual Council by-law review.
2. All new members will receive a copy of the conflict of interest policy.
3. At each Council meeting, Council members will disclose if they have any actual or perceived conflicts of interest with agenda items.
4. Prior to each budget recommendation process, Council members will complete a conflict of interest form, which will be posted to the Council's website.
5. A Council member must act immediately upon any suggestion, inquiry, or intimation that a conflict of interest exists at any other point in the budget recommendation process. Upon identification, such matters are referred to Council Staff. If the conflict involves Council Staff, the Council member should contact the Governor's Office.
6. If it is determined by Council staff that an actual, potential or perceived conflict of interest exists, as defined by this policy or relevant law, it is important that appropriate steps must be taken to avoid the conflict. These steps include:
  - a. The member with the actual, potential or perceived conflict of interest will meet with the Council Chair, Council Staff and assigned Attorney General Staff to discuss the conflict.
  - b. In the event there is not resolution after the first point of contact with the Chair, Council Staff and Attorney General Staff, the Council Ethics Committee\* will meet to discuss and resolve the issue.
7. If it is determined that an actual, potential or perceived conflict of interest exists and needs mitigation, it is important that appropriate steps must be taken to avoid the conflict. These steps include:
  - a. Reassigning the duties associated with that particular budget recommendation to another Council member, and
  - b. Requiring the Council member to remove themselves from the discussion or decision that is affected by the conflict.

\*The Council Ethics Committee is composed of three rotating Council members. The Committee listens to the actual, potential or perceived conflict of interest and decides if the Council member needs to remove themselves from the discussion or decision that is affected by the conflict.

# Clean Water Council

Advising the Legislature and the Governor on state programs to restore and protect Minnesota's waters.

**Because this is a new policy and the Council has not discussed conflicts of interest at great depths in the past, please consider the following scenarios for discussion.**

1. Members have been appointed because of their expertise or connection/membership in an organization. If the Council recommends funding for a member's organization, should that member remove themselves from the discussion or decision?
  - a. Met Council
  - b. University of Minnesota
  - c. Minnehaha Creek Watershed District
  - d. City of Mankato
2. If the Council recommends funding for an agency program, and a Council member's spouse, child or sibling works for that agency, should that member remove themselves from the discussion or decision?
3. If the Council recommends funding for a program outside of a state agency (perhaps to a university), and a Council member has an indirect connection to that university through a co-worker or friend, should that member remove themselves from the discussion or decision?



## **Clean Water Council Conflict of Interest policy**

**From MN Statutes Chapter 114D.30:** A Clean Water Council member may not participate in or vote on a decision of the Council relating to an organization in which the member has either a direct or indirect personal financial interest. While serving on the Council, a member shall avoid any potential conflict of interest.

### **Addressing conflict of interest concerns:**

The Council will address conflict of interest concerns in the following ways:

1. At the beginning of each calendar year, Council members will review the conflict of interest policy in concert with the annual Council by-law review.
2. All new members will receive a copy of the conflict of interest policy.
3. At each Council meeting, Council members will disclose if they have any actual or perceived conflicts of interest with agenda items.
4. Prior to each budget recommendation process, Council members will complete a conflict of interest form, which will be posted to the Council's website.

### **What is a conflict of interest?**

A conflict of interest, actual, potential, or perceived, occurs when a person has actual or apparent duty or loyalty to more than one organization and the competing duties or loyalties may result in actions which are adverse to one or both parties. A conflict of interest exists even if no unethical, improper or illegal act results from it.

- **Actual conflict of interest:** An actual conflict of interest occurs when a decision or action would compromise a duty to a party without taking immediate appropriate action to eliminate the conflict.
- **Potential conflict of interest:** A potential conflict of interest may exist if a Council member has a relationship, affiliation, or other interest that could create an inappropriate influence if the person is called on to make a decision or recommendation that would affect one or more of those relationships, affiliations, or interests.
- **Perceived conflict of interest:** A perceived conflict of interest is any situation in which a reasonable third party would conclude that conflicting duties or loyalties exist.

### **Individual conflict of interest:**

A conflict of interest that may benefit a Council member is any situation in which a Council member's judgment, actions or non-action could be interpreted to be influenced by something that would benefit them directly or through indirect gain to a friend, relative, acquaintance or business or organization with which they are involved.

An individual conflict of interest occurs when any of the following conditions is present:

- A Council member uses his/her status or position to obtain special advantage, benefit, or access to a Clean Water Fund appropriation recipient's time, services, facilities, equipment, supplies, badge, uniform, prestige, or influence.
- A Council member receives or accepts money or anything else of value from a Clean Water Fund appropriation recipient or has equity or a financial interest in or partial or whole ownership of an appropriation recipient organization.

- A Council member is an employee or board member of a Clean Water Fund appropriation recipient or is a family member of anyone involved in a Clean Water Fund appropriation recipient agency or recipient organization.

Instances in which the Council member works in a volunteer capacity for a Clean Water Fund appropriation recipient organization should be evaluated on a case-by-case basis. Volunteer status has the potential to but does not necessarily create a conflict of interest, depending on the nature of the relationship between the two parties.

**Procedures to avoid individual conflicts of interest: Guidance from [MS Chapter 10A.07](#)**

- Council members must sign a conflict of interest disclosure form prior to each budget recommendation process. On the conflict of interest disclosure form, Council members must identify if they have an actual, potential or perceived conflict of interest, although they do not need to provide the reason for the conflict.
- Additionally, a Council member must act immediately upon any suggestion, inquiry, or intimation that a conflict of interest exists at any other point in the budget recommendation process. Upon identification, such matters are referred to Council Staff. If the conflict involves Council Staff, the Council member should contact the Governor's Office.
- If it is determined by Council staff that an actual, potential or perceived conflict of interest exists, as defined by this policy or relevant law, it is important that appropriate steps must be taken to avoid the conflict. These steps include:
  - The member with the actual, potential or perceived conflict of interest will meet with the Council Chair, Council Staff and assigned Attorney General Staff to discuss the conflict.
  - In the event there is not resolution after the first point of contact with the Chair, Council Staff and Attorney General Staff, the Council Ethics Committee\* will meet to discuss and resolve the issue.
- If it is determined that an actual, potential or perceived conflict of interest exists and needs mitigation, it is important that appropriate steps must be taken to avoid the conflict. These steps include:
  - Reassigning the duties associated with that particular budget recommendation to another Council member, and
  - Requiring the Council member to remove themselves from the discussion or decision that is affected by the conflict.
- At a minimum, all parties who are involved with the situation must be made aware of the actual, potential or perceived conflict, even if it is not serious enough to remove or reassign the Council member.
- The conflict and its resolution should be noted in any meeting minutes, documents or records that the Council keeps as regular business documentation.

\*The Council Ethics Committee is composed of three rotating Council members. The Committee listens to the actual, potential or perceived conflict of interest and decides if the Council member needs to remove themselves from the discussion or decision that is affected by the conflict.

## Clean Water Council Conflict of Interest Disclosure Form

Pursuant to Minnesota Statutes, Chapters [114D.30](#) and [10A.07](#), this form gives Clean Water Council (Council) members an opportunity to disclose any actual, potential or perceived conflicts of interest that exist during the Council budget recommendation process. It is the Council member's obligation to disclose any actual or potential conflicts of interest. The Council member is not required to explain the reason for the conflict of interest as this form is considered public data. Once completed, this form will be posted to the Clean Water Council website. **A disclosure does not automatically result in the Council member being removed from the budget recommendation process.**

Please read the definition of conflict of interest below and mark the appropriate boxes that pertain to you and your status as a Clean Water Council member, making recommendations for funding from the Clean Water Fund.

**Description of conflicts of interest** - A conflict of interest shall be deemed to exist when a review of the situation by the Council member or other agency personnel determines any one of the following conditions to be present:

- (a) A Council member uses his/her status or position to obtain special advantage, benefit, or access to a Clean Water Fund appropriation recipient's time, services, facilities, equipment, supplies, badge, uniform, prestige, or influence.
- (b) A Council member receives or accepts money or anything else of value from a Clean Water Fund appropriation recipient or has equity or a financial interest in or partial or whole ownership of an appropriation recipient organization.
- (c) A Council member is an employee or board member of a Clean Water Fund appropriation recipient agency or organization, or is a family member of anyone involved in a Clean Water Fund appropriation recipient agency or appropriation recipient organization.

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☐ I certify that I have read and understand the description of conflict of interest above and (check one of the four boxes below):

☐ I DO NOT have any conflicts of interest and I will participate in the budget recommendation process.

AND/OR

☐ I have an ACTUAL OR POTENTIAL conflict of interest. I will still participate in the budget recommendation process and I will abstain from discussing and making decisions on any issues in relation to the agencies/organizations listed below. *(The Council member may state any and all agencies or organizations with which they have a conflict of interest and describe the nature of the conflict in the space below, but it is not required since this form is considered public information.)*

Describe Here: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

AND/OR

- ☐ I have a possible PERCEIVED conflict of interest. (*Describe the nature of the perceived conflict of interest.*)

Describe Here: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

AND/OR

I am UNABLE to participate in this budget recommendation process.

If at any time during the budget recommendation process I discover a conflict of interest, I will disclose that conflict immediately to appropriate Council staff.

Council member's printed name: \_\_\_\_\_

Council member's signature: \_\_\_\_\_

Date: \_\_\_\_\_

**This section to be completed by Clean Water Council staff:**

I certify that the issue of Conflicts of Interest has been discussed with this Council member and the following actions have been taken:

- ☐ Council member has no conflict(s) and will fully participate in the budget recommendation process.
- ☐ Council member has disclosed an actual, potential or perceived conflict(s) but will continue to participate in the budget recommendation process. The Council member has been instructed to avoid discussing the potential Clean Water Fund appropriation recommendations from agencies/organizations with which the Council member has a conflict of interest.
- ☐ Council member has disclosed a conflict(s) and will not be participating in the budget recommendation process in any manner.
- ☐ Council member has disclosed a conflict(s) and it has been mitigated in the following way: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Staff signature: \_\_\_\_\_

Date: \_\_\_\_\_

*Created: December 2011*

## Clean Water Council By-Laws

### Council Purpose and Membership

Council purposes, responsibilities and organization are specified in [MN Statutes Chapter 114D.30](#). Specifically, the Clean Water Council is charged with the responsibility to advise on the administration and implementation of this chapter.

Membership of the Council is specifically identified in [MN Statutes Chapter 114D.30, subdivision 2](#).

### Council Member Conduct

Council members have a duty to act in good faith and with complete accuracy, candor, truthfulness and disclosure in all formal or informal discussions, communications or related actions between any members of the Council.

### Conflict of Interest

A Clean Water Council member may not participate in or vote on a decision of the council relating to an organization in which the member has either a direct or indirect personal financial interest. While serving on the Clean Water Council, a member shall avoid any potential conflict of interest. [More information can be found in the Council's Conflict of Interest policy.](#)

### Terms, compensation, removal, resignation, appointment

Terms, compensation, nomination, appointment and removal of a Council member are governed by [MN Statutes Chapter 114D.30](#).

- **Terms:** ~~The initial terms of members representing state agencies and the Metropolitan Council expire on the first Monday in January 2007. Thereafter, the~~ terms of members representing the state agencies and the Metropolitan Council are four years and are coterminous with the governor. ~~Following the initial staggered term expiration dates, the~~ terms of other [nonlegislative](#) members of the Council shall be four years as provided in [section 15.059, subdivision 2](#) ~~(see attached: MN Statutes 15.059)~~. Members may serve until their successors are appointed and qualify.
- [Council members representing state agencies or Legislative members may designate representatives to attend Council or Committee meetings in their absence.](#)
- **Compensation** ~~and removal of nonlegislative~~ of Council members is as provided in [section 15.059, subdivision 3 and 4](#). [Compensation of legislative members is as determined by the appointing authority. A vacancy on the council may be filled by the appointing authority provided in subdivision 1 for the remainder of the unexpired term.](#)
- **Removal:** A member may be removed by the Governor at any time at the pleasure of the Governor. The chair of the advisory council or committee shall inform the Governor of a member missing three consecutive meetings. After the second consecutive missed meeting and before the next meeting, Council staff shall notify the member in writing that the member may be removed for missing the next

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meeting. In the case of a vacancy on the board, the appointing authority shall appoint a person to fill the vacancy for the remainder of the unexpired term. ([Section 15.059, subdivision 4](#)).

*The Steering Team recommends that Council members who miss three consecutive standing committee meetings will be asked to resign from that committee.*

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- **Resignation:** If a Council member wishes to resign prior to the end of his/her term, he/she must write a letter of resignation to the Governor and send copies to the Council Chair and Council staff. Staff will submit a Notice of Vacancy to the Secretary of State Office of Open Appointments, where the vacancy will be posted.
- **Vacancies and application process:** A vacancy on the Council may be filled by the Governor for the remainder of the unexpired term. A person interested in applying for a vacancy must submit an application to the [Secretary of State's Office of Open Appointments](#). ~~Application forms are available on the web site. (application form available at: <http://www.sos.state.mn.us/index.aspx?page=5>).~~ If a successor has not been appointed by July 1 after the scheduled end of a member's term, the term of the member for whom a successor has not been appointed shall be extended until the first Monday in January four years after the scheduled end of the term.

#### **Election of Chair and Vice-Chair**

The Council shall elect from its non-agency members a chair and vice-chair. Elected chair and vice-chair will serve one two-year term, beginning in January. The Council shall use the methods of nomination and elections consistent with Robert's Rules of Order, and in compliance with Minnesota Open Meeting Law, as outlined below.

**Election Process:** (*Process to be followed separately; first for election of Chair and subsequently, election of Vice-Chair*)

1. Council members submit nominees to Chair prior to election.
2. Current Chair may designate another Council member to facilitate the election of Chair.
3. Chair or designee presents list of nominees for Chair/Vice-Chair to the Council. There is no vote taken on accepting this list of nominees, these nominations are treated as if made by members from the floor.
4. Chair or designee opens floor for further nominations for Chair/Vice-Chair.
5. Council member makes verbal nomination, nominees name is noted. Nomination need not be seconded.
6. Chair or designee seeks any further nominations.
7. Chair seeks motion to close nominations. Council members makes a motion, motion is seconded by another Council member.
8. Chair or designee calls for a vote on the motion to close nominations.
9. When the Council votes on closing the floor for nominations, Council then proceeds to the election.
  - a). *If there are no nominees for the position of Chair/Vice-Chair, the Council shall vote on continuing the term of the current Chair/Vice-Chair.*

b). *When there is one nominee for Chair/Vice-Chair:* Chair or designee calls for a vote to elect this individual to the position. If majority of Council members vote in favor, nominee is elected as Chair/Vice-Chair.

c). *When there are multiple nominations:* Chair or designee calls for a vote for each nominee. Each Council member may only vote once. Council member may vote for him/herself. A member has the right to change his/her vote up to the time the vote is finally announced. Nominee with the majority vote is elected to the position.

10. Chair or designee announces who is elected as Chair/Vice-Chair, their effective starting date (typically, January of proceeding year), and length of term (typically 2 years from start date).

**The powers and duties of the Chair shall be as follows:**

1. To preside as Chair at all meetings of the Council.
2. To see that the laws of the State, pertaining to the purpose and functions of the Council, the resolutions of the Council and its policies are faithfully observed and executed.
3. To call special meetings of the Council, on his/her own initiative, or upon request of three or more members.
4. To serve on the Steering Committee.

**The powers and duties of the Vice-Chair shall be as follows:**

1. Whenever the Chair is absent from any regularly scheduled meeting, his/her duties shall be performed by the Vice-Chair. Whenever the Chair is absent from a special meeting called by him/her or upon the request of three or more members, his/her duties shall be fulfilled by the Vice-Chair.
2. Whenever the Chair's absence from the State or his/her incapacity due to illness prevents him/her from handling necessary Council business, at time other than the Council meetings, such business shall be handled by the Vice-Chair.
3. To serve on the Steering Committee.

**Council Organization**

1. The **Steering Committee and the Budget and Outcomes Committee** are standing committees.
2. A **Steering Committee** will consist of the following members:
  - Chair
  - Vice-Chair
  - Past Chair (two-year term on Committee)
  - Agency representatives on the Council
  - Budget and Outcomes Committee Chair
  - Agency staff

The Steering Committee plans meetings and develops Council calendar each year.  
The Steering Committee is accountable to the Council.

3. The **Budget & Outcomes Committee** shall consist of a minimum of four members and a maximum of a non-majority of the current seated Council members. The Budget and Outcomes Committee:
  - Prepares initial input on budget recommendations to Council;
  - Reviews existing measurable outcomes information to show effectiveness of accomplishments;
  - Is accountable and advisory to the full Council; and
  - Elects its own Chair.

Membership of this Committee is reviewed every two years.

4. **Administrative Support:** The Pollution Control Agency and the other state agencies represented on the Council shall provide administrative support for the Council, as appropriate.

#### **Council Procedures**

- **Council Decisions** - All formal actions of the Council shall be made at open public meetings. A simple majority vote of the voting Council members present at the meeting, at which a quorum has been established, is needed to take formal action. Agency representatives on the Council are non-voting members.
- **Quorum** - A simple majority of seated voting Council members constitutes a quorum.
- **Record of Decisions** - The Council shall use meeting minutes or resolutions to transmit a record of its formal actions. Upon their adoption, copies of the resolutions shall be sent to affected parties/organizations. Resolutions shall be kept on file and shall be made available to the public.
- **Speaking on Behalf of the Council** - Members speaking on behalf of the Clean Water Council may speak only in terms of ideas or resolutions supported and agreed upon by the Council, either by a formal vote, resolution or supported in discussion at a regularly scheduled Council meeting.
- **Legislative Input** - Members of the Clean Water Council may not be registered lobbyists. Communication with the legislature is limited to providing information on Council matters, and submittal of the legislative reports, specified in [MN Statutes Chapter 114D.30](#).

#### **Council Meetings**

- **Frequency and location** - Regular Council meetings shall be held the third Monday of the month, on a monthly basis, unless determined otherwise. When the third Monday falls on a holiday, the Council shall meet the fourth Monday of that month. Meetings will be held in St. Paul, unless determined otherwise.
- **Accessibility to the Public** – Meetings of the Council shall be held at facilities that are readily accessible to the public. All regular Council meetings and work group meetings shall be open to the public.
- **Public Information** – Information regarding regular Council meetings, meeting minutes and meeting agendas will be available on the [Clean Water Council](#)



website: [http://www.pca.state.mn.us/water/cleanwatercouncil/cwc\\_meetings.html](http://www.pca.state.mn.us/water/cleanwatercouncil/cwc_meetings.html)  
for public information.

- **Public Input** - The Council welcomes public input on matters relevant to Council work. Members of the public may comment at Council meetings during specified times, as the agenda allows. Time for public comment is under the discretion of the Council chair.
- **Agendas** - The Council chair, in collaboration with the Steering Committee, shall establish the agenda for Council meetings. The chair shall provide an opportunity to obtain Council member input at each meeting regarding the substance of future Council agendas.
- **Rules of Order** - Robert's Rules of Order shall be the parliamentary authority for all matters of procedure of this Council not otherwise covered in these By-Laws. In the event of conflicts between Robert's Rules of Order and the Minnesota Open Meeting Law or Data Practices Act, the Minnesota law requirements shall prevail.

#### Council Work

As specified in [MN Statutes Chapter 114D.30, subdivisions 5-7](#):

- **Recommendations on Appropriation of Funds** - The Clean Water Council shall recommend to the Governor the manner in which money from the clean water legacy account shall be appropriated. (Expected recommendations will be needed by May of even-numbered years).
- **Implementation Plan\*** - The Clean Water Council shall recommend a plan for implementation of this chapter. The recommended plan shall address general procedures and time frames for implementing this chapter, and shall include a more specific implementation work plan for the next fiscal biennium and a framework for setting priorities to address impaired waters consistent with [section 114D.20, subdivisions 2 to 7](#). The Council shall submit a revised implementation plan by December 1 of each even-numbered year.
- **Biennial Report\*** - By December 1 of each even-numbered year, the Council shall submit a report to the legislature on the activities for which money has been or will be spent for the current biennium, the activities for which money is recommended to be spent in the next biennium, and the impact on economic development of the implementation of the impaired waters program. The report due on December 1, 2014, must include an evaluation of the progress made through June 30, 2014, in implementing this chapter, the need for funding of future implementation of those sections, and recommendations for the sources of funding.

*\*The Council prefers to submit an annual report to the Legislature, rather than the statutorily specified biennial report.*

#### Council Per Diem and Expenses

[MN Statutes § 15.059, Subd. 3](#) governs compensation to be made to Council members for their participation in Council activities.

*Last Updated 4-22-2010  
Approved 6-21-2010  
Revised February 2012*

The procedure to be used by Council members for requesting and receiving payment of per diem and expenses is identified in the *Council Per Diem and Expenses Policy*.

**Changes to By-Laws**

Any additions, deletions or revisions to the approved Clean Water Council By-Laws must be submitted as an amendment in writing with a 30 day notice prior to approval by the Council.

**BOC Committee Meeting  
Friday, February 10, 2012  
11:00 a.m. – 3:00 p.m.**

Barr Engineering office  
4700 West 77th Street, Minneapolis

OR

Conference call  
888-742-5095  
Conference code: 5931748700

## **Agenda**

**11:00 a.m. – 12:30 p.m.**

Aquatic invasive species (AIS)

- AIS Research Center Proposal: Dr. Peter Sorenson, University of Minnesota
- AIS impact to water quality (White paper and short discussion with state agency representatives)

**12:30 p.m. – 1:00 p.m.**

Lunch (provided) + scheduling BOC meetings for 2012

*(Please bring your calendars as we will be selecting standing meeting dates for 2012)*

**1:00 p.m. – 2:00 p.m.**

Council priorities: ranking exercise\*

**2:00-3:00 p.m.**

BOC discussion: 2012 Clean Water Fund recommendation\*

\*At the February 27 Clean Water Council meeting, the Budget and Outcomes Committee will share the results from the priority ranking exercise and its 2012 Clean Water Fund budget recommendation.

## **Minutes**

Attendees: Marilyn Bernhardson, Scott Hoese, Mark Knoff (by phone), Todd Renville (phone), Keith Hanson, Pam Blixt, Paul Torkelson, Deb Swackhamer (by phone), Peter Sorenson, Dave Leuthe, Mary Reilly, Jen Maleitzke

**Aquatic invasive species, Dr. Sorenson presentation and AIS research center proposal**

By invitation, Dr. Sorenson gave a proposal, "A way forward with the aquatic invasive species and water quality problems"

- An invasive species is an alien [nonnative / exotic / introduced] species whose introduction does or is likely to cause economic or environmental harm or harm to human health
- Dr. Sorenson refers to invasive species as “eco system engineers” -- ‘an organism that modifies, creates or destroys habitat and directly or indirectly modulates the availability of resources to other species, causing physical state changes in biotic or abiotic materials’
- Aquatic invasives that function in this manner will alter water chemistry and quality
- Asian carp are also now an issue and have been caught in both the Mississippi and St. Croix rivers (in low numbers so far, but up to the Ford Dam and to Taylor’s Falls)
- Other invasives include Snakehead, zebra mussels, quaga mussel, veneroidea, curly pondweed.
- Lessons from failed MN experiments with invasives:
  - We can expect a continuous stream of invaders (this is a war (not a battle—no time to lose)
  - These species are going to do a lot of damage, the damage is complex and broad (ecosystem-wide), and includes water quality (the stakes are very high)
  - These species are fundamentally different from native species (conventional approaches to control them do NOT work)
  - Aquatic environments are especially difficult to work in (you cannot even see what you are working with)
- One success story: controlling the sea lamprey: after more than 6,000 compounds were tested, 3-trifluoromethyl-4-nitrophenol (TFM ) found to be effective, producing 90%+ reduction in lamprey and the recovery of other fish
- Also had some success with controlling common carp: after learning adult carp migrate to wetlands to spawn, spawning is only successful if there are no native fish in wetlands (winterkill, pollution, overfishing) and adult carp return to lakes and over-winter in large aggregations; used solution methods of population dynamics, improving gamefish populations in wetlands and removing aggregations of adults using Judas fish. Had success in Lakes Riley, Susan, Lucy and Ann.
- Lessons learned from successful control approaches:
  - Conventional approaches simply do not work
  - Knowledge is empowering
  - Every species has its weakness
  - Need to find and target this weakness
  - Exotic species will have exotic weaknesses
  - We can improve water quality by controlling exotics
- The way forward on AIS work:
  - Prevent introduction  
...*while seeking ways to delay invasion*
  - Delay invasion  
...*while seeking ways to reduce numbers*
  - Reduce numbers  
...*while seeking ways to manage*
  - Control  
...*while seeking ways to eradicate*
  - Eradicate

- Dr. Sorenson's proposal for an Invasive Species Research Center at the University of Minnesota:
  - To develop new, reliable, and useful molecular monitoring programs
  - To develop new deterrence techniques
  - To develop new control techniques
  - To develop new eradication techniques
  - To develop statistically sound control strategies
  - To assist the DNR and others in the state with AIS
- Budget: For 8 years (two four-year budget cycles)
  - **Startup** \$2,000,000
  - (new labs, equipment and refurbishing)
  - **Operations** \$1,990,000/yr x 8
    - Monitoring \$294,000
    - Deterrence \$258,000
    - Control \$940,000
    - Eradication \$290,000
    - Statistical guidance \$77,000
    - Extension \$129,000
- BOC question: Why labs couldn't be shared in this proposal; Dr. Sorenson responded that this work requires special facilities
- BOC question: Are there other funds available(federal funds, i.e: Mississippi River Basin Initiative, Great Lakes Commission) for this effort; Dr. Sorenson responded that he receives \$98k/year in federal funding; Dr. Sorenson also indicated that Federal money is to stop them from getting through the canal to Lake Michigan, but not much funding for Mississippi River Basin
- BOC question: are barriers effective? Dr. Sorenson: No one really knows – this is the problem; don't know how many are there, and if we have a bad flood, it doesn't matter anyway; we should do whatever we can that's reasonable right, realizing it's a band aid, and get on to develop better systems

Mark Knoff joined the call.

- BOC question: you mentioned labs need to be replaced; Dr. Sorenson: current lab that must be replaced – the fish holding facility is just not there – everything's broke; already have a facility that was built for holding fish for agriculture and it needs substantial upgrades, need to get others up and running
- The BOC discussed Rep. Wagenius' bill, HF1963; Representative Torkelson indicated that this was simply the first step to a bill, and it is to represent the first year of that 8 year cycle, then LCCMR could pick up the on-going funding; also looking at bonding to rehab labs

Dr. Sorenson departed the meeting.

### **AIS impact to water quality: Agency white paper, presented by Dave Leuthe (DNR)**

- There is a relationship between clean water and AIS
- In many cases the impairments is aggravated by invasive species, but can still have water problems after it's cleaned up
- Need solutions to both parts of this equation
- Need long-term source of funding for AIS
- DNR trying to manage the part about boats and transfers from lake-to-lake

- BOC question: how much of DNR budget goes to AIS; Dave Leuthe: not exactly sure, somewhere between \$3-8M, from a variety of sources, noted people are starting to look at Clean Water Funds as a potential funding source
- BOC member discussed organizations that are doing AIS work – Carver County and Minnehaha Watershed monitoring and doing other projects
- Pam: thinks BOC should consider setting parameters for use of Clean Water funds for AIS activities
- Jen noted the Lessard-Sams Outdoor Heritage Committee recommended \$5.5M for barriers
- Marilyn: AIS is a Great Lakes issue, it's a Mississippi River issue; federal programs should be addressing AIS, Congressmen all up and down the Mississippi River should have bills on invasive species

Deb Swackhamer joined the conference call.

- Deb indicated that the research center proposal would be developing microbiological controls for the future; it has nothing to do with barriers; it's a bit of a risk in the sense that these things have been tried and they don't work that well. There's a much bigger network across Canada might work, Deb's skeptical because the Canadians have been unable to find any magic bullets. She doesn't think the Clean Water Fund should be used for this – there are other funding sources for AIS activities
- BOC members agreed the Clean Water Fund doesn't have enough money to fund current activities
- Jen: Updated Clean Water Fund balance – at the end of FY 13 there'll be \$9.3M; Rep. Torkelson indicated the Legislature would be comfortable if the fund had roughly \$3M in reserve
- BOC members discussed the availability of LCCMR funds to address AIS issue; Rep. Torkelson indicated that LCCMR has no money right now so Legislature looking at start-up funds then LCCMR would be involved in long-term funding
- Mark: Legislation doesn't point out any funds to be given for research (began priority discussion)

Representative Torkelson and Dave Leuthe departed the meeting.

### **Council priorities: ranking exercise**

- BOC discussed looking at priority document and discussed giving each priority a percentage range (ex: 60% to research and tools, 25% for water quality monitoring, and +5% for drinking water)
- BOC request: Agencies will be asked to provide the BOC with input about how FY12-13 funds were spent and an estimate about future needs by May 1
- The next Clean Water Council legislative report and biennial budget recommendation is due 12/1/12
- Priorities in the past have been: monitoring and assessment, watershed restoration and protection strategies, groundwater, implementation, applied research and tool development and education and civic engagement

- Marilyn: Talked about revisiting the priorities every funding cycle; it's imperative to look at them as a whole at the beginning of every funding cycle; should have flexibility with a range for each one of these categories
- BOC members calculated the range of priority percentages for FY10-11 and FY12-13:

Activity	Actual FY10-11	%	Actual FY12-13	%
Monitoring and assessment	\$21.512M	14.2	\$23.410M	11.9
Watershed restoration and protection strategies	\$20.100M	13.3	\$22.260M	12.9
Drinking water protection	\$13.050M	8.6	\$17.908M	8.1
Nonpoint source protection, restoration and preservation	\$54.708M	36.2	\$69.118M	39.5
Education and civic engagement*	\$0.250M	.2		.5
Applied research and tool development	\$9.755M	6.5	\$11.700M	7.3
Point source protection and restoration	\$32.700M	21.6	\$35.020M	19.8
Legislature	\$0.025M		\$0.013M	
<b>Total</b>	<b>\$151.200M</b>		<b>\$179.429M</b>	

\*Council recommended \$900k in FY12-13 which did not get funded.

- Based on the above percentages, BOC members talked about using the following percentage ranges for ranking Council priorities and for FY14-15 recommendations:

Council priority	Budget percentage range recommendation
Monitor / Assess	11-15%
Watershed protect / restore strategy	11 – 14%
Groundwater	7 – 9%
Restoration / protection implementation Nonpoint: 19-36% Point: 21 – 39%	57 – 60%
Applied research / tool develop	6 – 8%
Education / civic engagement	Up to 1%

- BOC members revisited the December 2010 report and talked about these priorities over the life of the Clean Water Fund:

- Monitoring and assessment funding will remain steady
- Watershed restoration and protection strategy funding may decrease once a plan has been completed for all 81 watersheds
- Drinking water funding will increase
- Nonpoint and point source implementation funding will increase
- Education and civic engagement funding will increase
- Applied research and tool development funding will increase
- Additionally, in the 2011 Special Session bill, a provision was added that Clean Water Fund purpose includes providing funds to state agencies to carry out their responsibilities, including enhanced compliance and enforcement; BOC will be asking Rep. Torkelson the intention of this sentence and if enhanced compliance and enforcement should be added to the Council's list of priorities
- BOC will bring the priority ranking schema to the Council meeting on Feb. 27 for discussion

#### **BOC discussion: 2012 Clean Water Fund recommendation**

- BOC members discussed possible programs to recommend funding in 2012:
  - Nonpoint source restoration and protection implementation
  - Wellhead protection
  - AIS research and civic engagement/education
- BOC discussed a \$6M recommendation:

<b>Activity</b>	<b>Percentage</b>
Nonpoint source protection and restoration implementation	60%
Aquatic invasive species research	20%
Aquatic invasive species education and civic engagement	10%
Wellhead protection	10%

- BOC will bring the following draft recommendation to the Council meeting on Feb. 27 for discussion

#### **Setting standing BOC dates for 2012**

- BOC needs standing dates; discussed the first or second Friday of the month
- Jen will develop schedule and send out for team review



# Clean Water Council

Advising the Legislature and the Governor on state programs to restore and protect Minnesota's waters.

## **Council funding priorities: background**

In June 2008, the Clean Water Council adopted a resolution to endorse a watershed framework for monitoring, assessment, planning and restoration of impaired waters. The framework operates on a continuous 10-year cycle of watershed management and evaluation, which includes monitoring and assessment, planning; and implementation activities.

In November 2008, Minnesotans passed the Clean Water, Land and Legacy Amendment, to the Minnesota Constitution to: protect drinking water sources; to protect, enhance, and restore wetlands, prairies, forests, and fish, game, and wildlife habitat; to preserve arts and cultural heritage; to support parks and trails; and to protect, enhance, and restore lakes, rivers, streams, and groundwater. Thirty-three percent of the sales tax revenue from the Legacy amendment is dedicated for the Clean Water Fund, and may only be spent to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation. At least five percent of the Clean Water Fund must be spent to protect drinking water sources. 2011 Special Session law requires the Clean Water Council recommends to the governor and legislature the manner in which money from the Clean Water Fund should be appropriated.

Based on these two items, the Budget and Outcomes Committee suggests the following priorities for the 2014-15 biennium.

## **Fiscal years 2014-15 Clean Water Council funding priorities**

- Monitoring and assessment: *For the 2014-15 biennium, the BOC recommends funding these activities in the range of 11-15% of total Clean Water Funds available.*
- Watershed restoration and protection strategies: *For the 2014-15 biennium, the BOC recommends funding these activities in the range of 11-14% of total Clean Water Funds available.*
- Groundwater/drinking water protection and implementation: *For the 2014-15 biennium, the Council recommends funding these activities in the range of 7-9% of total Clean Water Funds available.*
- Restoration and protection implementation: *For the 2014-15 biennium, the Council recommends funding these activities in the range of 57 – 60% of total Clean Water Funds available.*
- Education and civic engagement: *For the 2014-15 biennium, the Council recommends funding these activities up to 1% of total Clean Water Funds available.*
- Applied research and tool development: *For the 2014-15 biennium, the Council recommends funding these activities in the range of 6-8% of total Clean Water Funds available.*

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## Funding guidance from MS 114D

### **114D.30 CLEAN WATER COUNCIL.** (Clean Water Legacy Act)

#### Subd. 6. **Recommendations on appropriation of funds.**

(a) The Clean Water Council shall recommend to the governor and the legislature the manner in which money from the clean water fund should be appropriated for the purposes stated in article XI, section 15, of the Minnesota Constitution and section [114D.50](#).

(b) The council's recommendations must:

(1) be to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation and ensure that at least five percent of the clean water fund is spent only to protect drinking water sources;

(2) be consistent with the purposes, policies, goals, and priorities in this chapter; and

(3) allocate adequate support and resources to identify degraded groundwater and impaired waters, develop TMDL's, implement restoration of groundwater and impaired waters, and provide assistance and incentives to prevent groundwater and surface waters from becoming degraded or impaired and improve the quality of surface waters which are listed as impaired but have no approved TMDL.

(c) The council must recommend methods of ensuring that awards of grants, loans, or other funds from the clean water fund specify the outcomes to be achieved as a result of the funding and specify standards to hold the recipient accountable for achieving the desired outcomes. Expenditures from the fund must be appropriated by law.

### **114D.50: Clean Water Fund**

Subdivision 1. **Establishment.** The clean water fund is established in the Minnesota Constitution, article XI, section 15. All money earned by the fund must be credited to the fund.

Subd. 2. **Sustainable drinking water account.** The sustainable drinking water account is established as an account in the clean water fund.

#### Subd. 3. **Purpose.**

(a) The clean water fund may be spent only to protect, enhance, and restore water quality in lakes, rivers, and streams, to protect groundwater from degradation, and to protect drinking water sources by:

(1) providing grants, loans, and technical assistance to public agencies and others testing waters, identifying impaired waters, developing total maximum daily loads, implementing restoration plans for impaired waters, and evaluating the effectiveness of restoration;

(2) supporting measures to prevent surface waters from becoming impaired and to improve the quality of waters that are listed as impaired, but do not have an approved total maximum daily load addressing the impairment;

(3) providing grants and loans for wastewater and storm water treatment projects through the Public Facilities Authority;

(4) supporting measures to prevent the degradation of groundwater in accordance with the groundwater degradation prevention goal under section [103H.001](#); and

(5) providing funds to state agencies to carry out their responsibilities, including enhanced compliance and enforcement.

(b) Funds from the clean water fund must supplement traditional sources of funding for these purposes and may not be used as a substitute.