

**Clean Water Council Meeting Agenda**  
**Monday, June 18, 2012**  
**9:00 a.m. – 2:30 p.m.**  
**MPCA Board Room**  
**520 Lafayette Road North, St. Paul**

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|--------------------|--|--------------------------------------|
| <b>9:00-9:15</b>   | <b>Convene Full Council &amp; Steering Team Report</b> <ul style="list-style-type: none"><li>• Comments/additions to the agenda</li><li>• Approve 5/21/12 meeting minutes</li><li>• Welcome to new Council member, Patrick Flowers (representing businesses)</li><li>• Council introductions, updates and conflict of interest notifications</li></ul> |                                      |
| <b>9:15-9:45</b>   | <b>Summary of public comments on draft Total Maximum Daily Load (TMDL) reports for the South Metro Mississippi, Minnesota River</b><br>Gaylen Reetz/Bob Finley (MPCA)  | <b>Information item</b>              |
| <b>9:45-10:00</b>  | <b>BOC update</b><br><br><b>Agency presentations of past and current Clean Water Fund activities and FY14-15 proposals</b><br>Met Council<br>Public Facilities Authority   | <b>Information item</b>              |
| <b>10:30-10:45</b> | <b>Break</b>   |                                      |
| <b>10:45-12:00</b> | <b>Continued presentations</b><br>Board of Water and Soil Resources<br>Department of Health<br>Department of Agriculture<br>Department of Natural Resources<br>Pollution Control Agency  | <b>Information item</b>              |
| <b>12:00-12:30</b> | <b>Lunch</b>   |                                      |
| <b>12:30-2:15</b>  | <b>Council discussion, directions on seeking input from represented organizations</b>  | <b>Information / discussion item</b> |
| <b>2:15</b>        | <b>July meeting agenda / August field tour / adjournment</b>   |                                      |

***2:30-3:00 Council Steering Team***

***Next Meeting: July 16, 2012***

**wq-cwc2-12f**

**Clean Water Council Meeting Minutes**  
**Monday, June 18, 2012**  
**9:00 a.m. – 2:00 p.m.**  
**MPCA Lower Level Board Rooms**  
**520 Lafayette Road North, St. Paul**

**Council members present:** Marilyn Bernhardson, Pam Blixt, Tom Hogan for Linda Bruemmer, Patrick Flowers, Keith Hanson, John Harren, Scott Hoese, Frank Jewell, Michael McKay, Julie Westerlund for Dave Leuthe, Gaylen Reetz, Victoria Reinhardt, Louis Smith, Deb Swackhamer, Rep. Paul Torkelson, Matthew Wohlman, Steve Woods.

**Absent:** Linda Bruemmer, Rep. Kent Eken, Warren Formo, Bradley Kalk, Mark Knoff, Dave Leuthe, Gene Merriam, Senator John Pederson, Todd Renville, Sandy Rummel, Senator Dan Sparks.

**1. Convene Full Council & Steering Team Report**

- Comments/additions to the agenda
- Approve 5/21/12 meeting minutes
- Welcome to new Council member, Patrick Flowers (representing businesses)
- Council introductions, updates and conflict of interest notifications
- Chair Hanson called the meeting to order and asked members for comments on the agenda. There were none. Motion to approve the 5/21/12 meeting minutes. Motion passed.
- Council member introductions and conflict of interest announcements.
- Chair Hanson introduced Patrick Flowers, the newly appointed Council member representing business interests. Council Member Flowers introduced himself; he is an Xcel Energy employee doing environmental health and safety work.
- Tom Hogan is substituting for Linda Bruemmer today.
- Louis Smith said Minnesota Waters no longer exists. They are working with Conservation Minnesota to work together as one organization.
- Jen Maleitzke said the Council has two vacancies; township representative and fishing representative. The Governor's office is reviewing applications today. We may hear something by the end of the week.
- Marilyn Bernhardson talked about changes made in the last Legislative session in the development of watershed management plans.
- Scott Hoese said last month was too dry. This month it's too wet.
- There were no conflict of interest notifications from any of the Council members.
- Audience introductions.

**2. Summary of public comments on draft Total Maximum Daily Load (TMDL) reports for the South Metro Mississippi River, Minnesota River; Gaylen Reetz/Bob Finley (MPCA)**

- Bob Finley - update on the total suspended solids (TSS) draft TMDL reports currently on public notice; South Metro Mississippi River, Minnesota River, and Greater Blue Earth TMDLs. Comment period was extended to February 29-May 29, 2012.
- Summary of comments; South Metro Mississippi 360 comments, MN River 321 comments; Blue Earth 3 comments. 300 letters for South Metro and MN River were identical.

- We heard some key themes.
- Regulated MS4 communities, agriculture, environmental responses.
- Web letter - in support of TMDLs, but looking for accountability from the agriculture community. Need better targeting of resources. Citing TMDLs for lacking specificity on goals. They want to see more defined interim targets or goals.
- Contested case hearing requests. There is a lot of duplication in these requests that needs to be sorted out.
- Central issues;
  - Natural Background
  - Remove MS4s upstream of MN River
  - Recalculate urban contribution
  - Arbitrary wasteload reduction for urban areas
- Next Steps;
  - Assemble review & response team
  - Acknowledge receipt of comments
  - Sort & organize comments & hearing requests
  - Reach decision to grant or deny hearing requests
  - Develop findings of fact
  - Respond to comments

#### Questions:

- What is the timeline for the next steps? Bob – we will know more about the next steps once we sort and catalogue the comments.
- Does MPCA defend natural background or the questioner? Bob – it may not matter a lot because it's all part of the sediment load allocation. Natural background doesn't change the requirement to reduce the pollutant amount, but it may change how aggressively it's done. The burden of proof would be on the petitioner that it's wrong.
- Gaylen – the definition of natural background is being questioned. The definition is in MN Rules Chapter 7050, the Clean Water Legacy Act, and the Clean Water Act. Some are using agricultural ecoregions to imply that contributions from agriculture are now part of the background. A definitional difference will be defined after this dispute.
- Does changing the definition change the goal? No, it doesn't change the total load. It just changes the distribution of the load.
- Is natural background raised by all of the sectors? It's raised by the agriculture sector.

### 3. BOC Update, Scott Hoes

- Funding guidance handout.
- Submitting a two year budget for FY14-15.
- Clean Water Fund (CWF) purpose – what is the charge for the Council.
- Jen – ongoing concerns handout talks about the supplement/substitute issue.
- Vice Chair Hoes – BOC process and timeline.
- Louis has been asked to report on the impact of clean water spending on economic development. Jen – we've addressed that more broadly in the past. We need to look at it more closely. Chair Hanson – the BOC needs to address that. Jeff – one way is to look at the leveraging of funds by CWF funds.

- Do we need to appreciate the economic impact on our decisions or make decisions that make an economic impact? Gaylen – showing the economic impact of protecting clean water is a dilemma. It's harder to show what would happen if the water is degraded. Easier to show the impact of restoration.
  - Is there a way to track job creation? The impact on jobs is on the web site. Agencies have been asked to show the impact on jobs.
  - Rep. Torkelson – it helps to show that the work we do to protect and preserve our waters also has an impact on economic development. It would be good to have a report that identifies how this fund not only helps clean up waters, but has positive impact on economic development; helps businesses expand.
  - Steve Woods said federal funds for this work also have an impact, not just the state funds.
  - Lisa Thorvig talked about the impact on WWTPs not being able to expand (Annandale).
4. **Agency presentations of past and current Clean Water Fund activities and FY14-15 proposals;**
- Metropolitan Council
  - Public Facilities Authority
  - Board of Water and Soil Resources
  - Department of Health
  - Department of Agriculture
  - Department of Natural Resources
  - Pollution Control Agency

**Metropolitan Council, Ali Hassan, Water Supply Planning:**

- Metro water supply serves over 50% of Minnesota population.
- Regional growth impacts on water supply and the water supply plan. Goal of plan is to promote sustainable activities.
- Funding needed for FY14-15; Council total funding request is \$1,566,000.
- 2 initiatives;
  - Implementation of Water Supply Master Plan – Original: \$1,400,000
  - Identification and Ranking of Regional Recharge Areas - New: \$166,000
- Outcomes: implement water supply master plan, regional recharge areas.

**Public Facilities Authority (PFA) – Terry Kuhlman/Jeff Freeman**

- Introduction by Terry Kuhlman about what PFA does.
- Jeff Freeman – three grant programs on handout are separate from PFA base programs. These programs funded by clean water funds are targeted and follow MPCA's priorities. No administration costs are funded by clean water funds.
- Proposing to expand TMDL program to include the phosphorus program. Proposed funding for the phosphorus program in FY14-15 is \$0.
- Small Community WWTP – few construction projects to date. Tough spots for construction for some small communities. We can take some of the funds from phosphorus grants, but we still need to deal with it. Use for this fund. Construction grants – at least half of non-complying systems classified as imminent health threat or failure to protect groundwater.
- Total PFA request \$32.5 million; about \$1 million less than last year.

### Questions:

- How are we doing with the backlog? Terry – we caught up with ERA funding (federal?). The economy slowed down so there's not as much expansion, more maintenance. When the economy picks up, demand will go up.
- Jeff Freeman – the demand for TMDL grants depends on how many TMDLs are completed. The numbers will rise as TMDLs are completed. Affected by the economy.
- How does \$34 million compare with revolving loan funding? Terry - \$150 million per year for that. This is \$16 million per year. This about 10% of PFA funding, but a critical 10%.

### BWSR – John Jaschke

- We will have a summary of the process at the end of July.
- What is new - watershed approach. Legislation change in the next 3-10 years to watershed management. One plan for one watershed.
- Civic engagement - how can it be improved for the future. We currently require a civic engagement component in each project that comes through.
- Drainage/CRP - 10-15 year contracts will be expiring for riparian buffers, etc. We need to take action to help offset that. The goal is to save the best lands before they remove the conservation practices.
- Buffers – CWF/OHF linkages; look at places where funds are linked. We want to show places where we have actually fixed a problem. Talk to OHF (Outdoor Heritage Fund) about this.
- CWF long term investment plan – we will contact the Council to help with this.
- Allocation criteria – prioritize allocations.

### Break

### MDH – Tom Hogan, Bruce Olson, Jim Kelly, Chris Elvrum, Chris Ehresmann

- Contaminants of Emerging Concern (COEC) – MDH provided health guidance for 10 COEC. We will screen 20 additional chemicals.
- Bruce Olson, Source Water Protection (SWP) - propose that if we had an increase in funding we could accelerate SWP. CWF is about 1/3 of the budget for wellhead protection programs.
- County Well Index Enhancement – we will need a couple biennia of CWF to complete database.
- Number of wells constructed since 1992.
- Well sealing/new initiatives.
- Private well testing – estimate 10% of wells have arsenic above the standard. Evaluate factors to provide context for private well owners.
- Lake Superior Beach monitoring. Map of St. Louis County beaches monitored. 80 beaches were looked at. 39 were tested either biweekly or weekly depending on amount of use.

### Questions:

- Deb Swackhamer - private well water supply program – does the MDH do more than educate? Provide incentives? Chris – more could be done in that area to be more proactive.
- Deb – based on the science, we can't predict where arsenic will appear in the aquifer. Chris - yes, we're working with U of MN scientist. It's getting better.

- Beach monitoring replaces federal funding. If federal funding is restored, what will happen to your funding request? Tom Hogan – we would take it off the table.
- Why are we focusing on Lake Superior when there are many areas in the state with contamination problems? Chris – good question. It's up to you to provide that feedback.
- Is there a TMDL in Lake Superior for this? Gaylen – no, we're working on TMDLs for some of the tributaries to the lake.
- Do you correlate with Metropolitan Council in SWP? Makes more sense to have aquifer protection area in metro than a series of wellhead protection areas.
- Rep. Torkelson – well sealing program – do you use them for test wells before you seal them? Bruce – we send the list to DNR to see if there are candidates to use. Case by case basis. Some wells were closed because of a problem with the well.

#### **MDA – Adam Birr, Matthew Wohlman**

- FY12-13 \$15.4 million, proposed FY14-15 \$13.83-18.18 million.
- Jen – the upper range is included in the BOC budget. MDA is the only agency that submitted a budget range.
- Adam Birr went over the handout with details on funding requests.
- Irrigation water quality protection - irrigators support having a position at MDA or Extension for training. Accelerated.
- AgBMP loans – request is lower than in the past.
- Impaired waters technical assistance – technology transfer, BMPs, transfer knowledge from demonstration projects. MPCA's 10 year watershed approach. MDA doesn't have the capacity to meet the demands of the 10 year approach.
- Matt Wohlman – MOU signed; advisory committee will have recommendations this fall. We will have more information then.
- Manure applicator education – training manuals. This is one time funding. Additional funds for training.
- BMP Development to identify where the holes are in our knowledge about agricultural BMPs.
- Funds for research inventory database.
- **Question:** How closely do you work with MDH? Adam – MDA has a pesticides focus. Two separate labs. Matt – it's time consuming to switch analytical processes.

#### **DNR - Jason Moeckel**

- DNR's CWF work pie chart slide.
- Stream flow monitoring to support MPCA's assessments – DNR will add hundreds of sites to work with MPCA to get load monitoring flow.
- \$600,000 more for equipment and staff. Staffing in regions.
- Lake IBI assessment – collaboration with MPCA for near shore fish collection. We will add a plant element.
- Fish contamination assessment – lab costs have increased.
- TMDL development – stream geomorphology; local water planning.
- Drinking water protection, water supply planning.
- Irrigation wells – we need new way to allocate groundwater for irrigation; groundwater appropriations.

- Applied research and tools.
- Biomonitoring database – to be able to store and share DNR and MPCA data.
- County Geologic Atlas – map springs. Comb files for information and do temperature survey mapping for springs.
- DNR's clean water work – coordinated, integrated, transformative.
- **Question:** Give us a sense of the timing of the database and coordination with other agencies. The database will be designed and constructed this biennium, with screens and input next biennium. Other agencies are involved with the specs of this.

#### **MPCA – Rebecca Flood; Clean Water Legacy Act Goals**

- Our Watershed Approach cycle
- Monitoring and assessment – maintain funding. On track with the 10 year schedule. 52% of the state involved. 30% of watersheds have been assessed.
- Watershed Restoration and Protection Strategies - integrate with the watershed management plans BWSR presented earlier today.
- Watershed Data Integration System (WDIP) – finish this work in upcoming biennium.
- Watershed web pages – project information.
- Wild Rice Standard Study – work ongoing. Maintain funding, research effective treatment technologies.
- NPDES Wastewater/Stormwater TMDL Implementation - need a staff person to work with unsewered communities.
- MPCA request summary - generally maintaining same funding with additional funding for SSTs.
- Interagency Request – interagency data portal. Jen – the Council will hear more about the portal at the July meeting.
- **Question:** No inflation built in for big ticket items? Rebecca – there is inflation built in. We have gained efficiencies.

#### **Lunch**

#### **5. Council discussion, directions on seeking Information / input from represented organizations**

- Marilyn asked members to take a few minutes to review the Council Funding Priorities (available on the web [wq-cwc4-75h](#)).
- Explanations were developing in January before agencies were asked to provide recommendations.
- Budget recommendation development slide;
  - Budget recommendation developed for fiscal years 2014-2015 (July 1, 2013 -June 30, 2014)
  - Minnesota Management and Budget Department recommendation for target budget number: **\$185M**
  - Proposed total for all agency activities: **\$210.668M**
- Jen – the CWF amount available may change with the next forecast.

- Rep. Torkelson – what is the cushion? Jen – they estimate 5%; \$5 million. Rep. Torkelson – what is the total using the low end of the range? Jen – not sure. MDA is the only one with a range. Victoria - \$4.2-4.8 million is the difference for MDA.
  - Proposed monitoring and assessment total: \$23.12 million.
  - Proposed watershed restoration / protection strategies total: \$22.74M
  - Proposed groundwater /drinking water total: \$32.09M
  - Proposed point source implementation total: \$34.5M
  - Proposed education and civic engagement total: \$410K
  - Proposed applied research and tool development total: \$14.47M
- Gaylen – Lake Superior Beach Monitoring should be in monitoring and assessment.
- Marilyn went over the categories to show BOC priority recommendations vs. proposed agency totals. Most topic areas have requests greater than the recommendations.
- BOC follow-up discussion items – next BOC meeting is July 6' 2012. The BOC will also meet in August.
- Today's discussion items: supplant vs. substitute.
- 10 minutes to read OLA Concerns document.
- Jen – BOC discussion items handout. Concern of the BOC is that some of the agency proposals were substitutions for past funding.
- Victoria – part of this is common sense. If an agency budget is cut, but the program is still important, then the traditional funds are no longer available. It's beyond the agency's control. One of the criteria she would use is, is it outside of their control.
- Rep. Torkelson – difficult questions. Legislature has struggled with these questions. Huge shift from general fund to specific funding. Hard questions to answer.
- Mike McKay – we are making recommendations, not final decisions. The Legislature can change them. They make the final decision.
- Gaylen – we have two bienniums of experience – set some precedents. We haven't been challenged yet. Less likely to be.
- Pat Flowers – at what point does a source become a traditional funding source? Legislative language; didn't want Legacy funding to become traditional funding source.
- Chair Hanson – the CWF will go away in 21-22 years.
- Victoria – it was more about not seeing funding for traditional programs cut.
- Gaylen – federal funding uses the term, maintenance of effort. They will provide funding above the baseline effort.
- Marilyn – it's harder to look at this now because we know more about the budgets. If we didn't have clean water funds, we wonder how agencies would fund some of their programs. It's not difficult with new projects but that's why we struggle with supplant and supplement. They've always done something for 20 years and somehow funded it, and now they are asking for clean water funds for it. Gaylen – it would help if you give an example.
- Mike – monitoring, data portal – \$3 million. Maybe we want to switch funding to implementation from monitoring.
- Marilyn – these funds are supposed to be for cleaning up our waters.
- Victoria – our job is to make recommendations to the Legislature for agency funding. There is not much that is totally new. For example, Discovery Farms were done before. Now they are doing more. Not much that is totally new, but now they can do more of it.



- Chair Hanson – it's acceleration, like the 10 year monitoring cycle. He also struggles with the core responsibilities of agencies, i.e., developing wasteload allocations which you do already. Maybe you can tell us how this meets the criteria. Gaylen – if we accelerate one part, we have to accelerate other parts of process. It is additional. If we didn't accelerate the process, we wouldn't need to accelerate WLAs. Chair Hanson – that helps.
- Why are we having this discussion? Chair Hanson – we're trying to get input from the Council so the BOC can come back with recommendations that are in line with that.
- Julie Westerlund – what program areas are you having problems with? It would be helpful for the DNR to know which program areas you have questions about so we can respond. Specifics would help clarify. Marilyn – can't provide that right now.
- Chair Hanson – the agencies did a good job today responding to what was asked by the BOC. Julie – we talk about this a lot in our internal discussions. So we should be able to respond easily.
- Rep. Torkelson – some of this is out of the Council's control. The Legislature can make decisions on general fund base funding to cut funding for programs and this is out of your control. Last biennium we were facing a huge deficit. Hopefully going forward the state economy continues to improve and we have fewer of these questions.
- Chair Hanson – the Council could develop a set of criteria for determining supplement vs. substitute. Are you comfortable with that? Victoria – it's the agencies responsibility to do that. It's outside of our purview.
- Louis – we can show in our report that we have wrestled with this. We should show that we have been very careful to consider this, but before the amendment was passed, there were TMDLS and state resources dealing with state waters. And everyone said to use the clean water funds for those programs. It's great that the BOC is looking at this.
- Deb – I support what Louis said. I don't support setting criteria. It's not in our purview at all. We can say we are recommending these expenditures and we believe that the agencies have considered supplement vs. substitute. We just need to talk about the appropriateness of the spending of the clean water funds.
- Rep. Torkelson – the agencies are the ones to do the work. We don't want to abandon agencies or ignore their recommendations.

#### **Activity category recommendations:**

- Chair Hanson - are these ranges of budget recommendations appropriate?
- Victoria – trust the BOC. You've done the hard work, set framework.
- Jen – the groundwater/drinking water category is the one with the greatest discrepancy. Victoria – move the 5% for civic engagement to groundwater/drinking water. We don't want to lose sight of it, but having only one item in the category – people don't know that it is included in other categories.
- Chair Hanson – we made some category shifts in the past, i.e. applied research. We need to move Lake Superior Beaches to the Assessment and Monitoring category.
- Louis is not sure we can point to success yet in civic engagement.
- Jen – FYI, the July meeting agenda will be about civic engagement. When the priority document was developed, the Council felt strongly that civic engagement was very important. But then you found out it's embedded in the programs. All of the programs have some element of civic engagement.

- Louis - how much to dedicate for groundwater/drinking water. He still struggles with how the various agencies keep track of each other in the groundwater/drinking water issues. Julie – the Council had a presentation on groundwater/drinking water. How are agencies working together? Julie – we have a very high functioning interagency group on groundwater/drinking water issues.
- Rep. Torkelson likes the idea of embedding civic engagement in projects, but we're missing some kind of accountability. Ask projects to report on how they are doing civic engagement, how effective it is, and if there is a need for more funds. He likes all the groundwater programs.
- Mike likes embedding civic engagement in projects. If you're talking about some overarching education campaign, that's not part of that or can we just assume it's a part?
- Gaylen – the activities we're doing are for civic engagement, not education. We've lost funding for education. We fund civic engagement for projects, but there is a gap in funding to continue civic engagement at the local level when the project moves to implementation. Discussion with other agencies about this and we may hire a contractor to take a look at what's been going on in civic engagement and make recommendations.
- Frank Jewel is not clear on civic engagement yet. We recommend it, but the Legislature says no. Rep. Torkelson – political pressure for these dollars to be spent on work on the ground. Much easier to sell if it's part of a package.
- Pam – we need some definitions on the table for next time. Civic engagement is about doing things on the ground. Education isn't. Communication is another area we should be spending money on. About priorities – percentages will be constantly shifting. We have to go with what our experts are telling us are priorities.
- Deb supports the idea of providing definitions. Counterproductive for agencies to pull out budgets for civic engagements. Education as part of programs. Suggest taking the civic and education category out. Add an asterisk where there is significant education and civic engagement.
- Steve Woods – big item for BWSR is to put projects on the ground. Big part of projects is public involvement through watershed management plans.
- Victoria – include a section that talks about education and civic engagement and highlights areas where it is done.
- Jen – the MPCA supports the Council's administrative costs. Example, the bill from the Attorney General's office with the CWC line item budget. Should staffing be included in the budget recommendations? Should we continue this way?
- Deb – we need more transparency on staffing time. Include it in a line item budget.
- Victoria – it's not worth opening legislation in order to get that change. Staffing costs should be included in line item budget, but staff should still work for the MPCA.
- Julie – CWC doesn't have fiscal authority.
- Rep. Torkelson – hesitate to venture down this path. Don't think this should be a line item budget.
- The money for CWC is from legacy funds. Rep. Torkelson – how much? Gaylen – about \$150,000 per year. Compared to Lessard Sams Council costs, it's a lot less.
- Jen – pass through funding, earmarks. Do you think it's appropriate for the Council to offer guidance on pass through funding? Victoria – pass through funding is no different than any other contract.

- U of MN extension funding. Gaylen – issue when the Legislature earmarks specific funding. Project may not follow agency procedures, etc. Steve – there may be times when earmarks are appropriate. Good opportunity to leverage federal funds for example. Rep. Torkelson – it has been his effort to cut down the number of specific projects funded with legacy funds.
- 6. **July meeting agenda / August field tour / adjournment**
  - Chair Hanson – directions for seeking input from represented organizations. Council members bring that for August meeting. We will send letter from Celine or Jeff. Budget recommendations, list of issues for your represented organizations.
  - Plaque was presented to Jen Maleitzke.
  - August field tour in Chaska. Regular Council meeting will be on Monday, August 20<sup>th</sup>. Bus or carpooling.
  - Adjourned.

*2:30~3:00 Council Steering Team*

*Next Meeting: July 16, 2012*

*Location: MPCA Board Room*

# Clean Water Council

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

## 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.

# 3

## Ongoing Concerns

### We identified four ongoing concerns.

As discussed in Chapter 2, legislators and other state officials have given considerable attention to accountability concerns in implementing the Legacy Amendment. They have put in place structures, policies, procedures, and requirements to help ensure legal compliance, financial transparency, and outcome monitoring in the use of Legacy money. However, implementation of the Legacy Amendment remains a "work in progress," and ensuring strong accountability will require continuous oversight and, possibly, adjustments in the state's approach.

In this chapter, we discuss four topics that are likely to remain "ongoing concerns." They involve the following:

- Questions about the constitutional requirement that Legacy money be used to "supplement not substitute" for traditional sources of funding for Legacy-related purposes.
- Questions about how to appropriately and effectively limit the use of Legacy money for administrative costs.
- Concerns that some people involved in implementing the Legacy Amendment have conflicts of interest.
- Concerns about how Legacy money should be used to achieve the outcomes intended by the Legacy Amendment.

While we will offer our perspective on these questions and concerns, our purpose is to provide a full discussion that recognizes differing points of view and uncertainties. In fact, we think these issues are "ongoing concerns" because they involve complex questions without easy answers.

### "SUPPLEMENT NOT SUBSTITUTE"

One of the most perplexing, unresolved issues is the Legacy Amendment's "supplement not substitute" provision. Specifically, the amendment states:

The dedicated money under this section [the Legacy Amendment] must supplement traditional sources of funding for these purposes and may not be used as a substitute.<sup>1</sup>

However, we found that:

<sup>1</sup> *Minnesota Constitution*, art. XI, sec. 15. In talking about this provision, people often use the word "supplant" rather than "substitute"; thus, they say: "The Legacy money must be used to supplement not supplant traditional sources of funding."

- **The Legacy Amendment’s requirement that Legacy money be used to supplement not substitute for traditional sources of funding has caused confusion and uncertainty.**

The confusion and uncertainty result in part from the language of the provision itself. A memorandum from the Minnesota House of Representatives Research Department (House Research) dated February 18, 2009, put the issue succinctly. It said:

The overall intent and effect of the language is clear—that the newly dedicated funding should provide additional revenue for the specified purposes, not replace prior funding sources.... [However,] the exact scope and impact of this language is not clear on its face, or based on the legislative history.<sup>2</sup>

In this section, we discuss the impact of the “supplement not substitute” provision on both the Legislature and recipients of Legacy money. We conclude that questions about the meaning and impact of the “supplement not substitute” provision are likely to remain, and we offer some observations on how the Legislature and recipients of Legacy money might cope with this ongoing concern.

## Impact on Legislature

Since it was first presented as part of the proposed Legacy Amendment, the “supplement not substitute” provision has been the subject of differing interpretations among legislators. Some legislators have argued that the “supplement not substitute” provision was inserted into the Legacy Amendment simply as a guide for future legislative decision making and not as a restriction on the authority of future legislatures to establish budgets for state government. Other legislators have said that the provision restricts the Legislature’s ability to reduce funding from “traditional” sources to support Legacy-related activities. They also have expressed concern that the provision could result in a lawsuit against the state if the Legislature appropriated Legacy money to programs or projects that experienced reductions in their appropriations from other revenue sources.

During legislative debates in 2008, the Senate chief author of the proposed Legacy Amendment explained the “supplement not substitute” provision as follows:

This language cannot lock in a future Legislature. So, if in its wisdom the Legislature needs to make reductions for other reasons, a particular water program has become outdated or something, they could do that. This doesn’t prevent that. So, again, I think that [the “supplement not substitute” provision] needs to be viewed as an attempt to describe for future

**The scope and impact of the Legacy Amendment’s “supplement not substitute” requirement is not clear.**

**The requirement says not to substitute Legacy money for “traditional” sources of funding.**

<sup>2</sup> Mark Shepard, Research Department, Minnesota House of Representatives, Memo to Interested Legislators, *Constitutional Issue: Supplement/Substitute*, February 18, 2009.

legislatures the intent of this [new] revenue, not so much to lock them in as to what they are doing with their current expenditures.<sup>3</sup>

Despite assurances from the Senate chief author, other legislators expressed concern about the “supplement not substitute” provision. In responding to the chief author’s explanation, one senator said:

...with all respect, the language that is in the bill doesn’t conform with what you just described. What it says here is that [the Legislature] can’t reduce those funds at all.<sup>4</sup>

Another senator also raised questions about the provision’s impact and expressed concern that it could result in a lawsuit if the Legislature reduced the level of funding from traditional sources for certain programs. She said:

I’m concerned about potential lawsuits about this. What is our traditional funding source that we would need to protect? Would it be the highest level we have ever achieved for funding these programs, or would it be something else?<sup>5</sup>

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**Legislators had different interpretations of the requirement when it was first proposed.**

The same concern was expressed during the 2011 legislative session. For example, the chair of the Senate Finance Committee said: “I think there are a lot of us concerned about it. We definitely want to understand what would put us into a court situation. We can’t be afraid of somebody filing a suit, but we can be worried about them winning it.”<sup>6</sup>

Understanding what the Legacy Amendment’s “supplement not substitute” provision requires of the Legislature is far from a simple matter. As the discussion above illustrates, legislators had questions and varying interpretations of what the provision would require of the Legislature before the Legacy Amendment was approved. Now, after three legislative sessions, additional debates, analysis, and experience, there are even more—and more specific—questions about what the provision requires. For example:

- **When does a funding source become “traditional”?** The provision says that Legacy revenue should not be used to substitute for “traditional sources of funding” for the purposes specified in the Legacy Amendment. “Traditional” implies some level of historical consistency, but exactly how many years of continuous funding would be required from a particular source for it to be considered traditional?

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<sup>3</sup> Mark Shepard, Research Department, Minnesota House of Representatives, Memo to Interested Legislators, *Constitutional Issue: Supplement/Substitute*, February 18, 2009, 3. The debate took place on the floor of the Minnesota Senate on February 14, 2008.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> Briana Bierschbach, “Can Legacy dollars allay state budget woes,” *Politics in Minnesota*, January 21, 2011.

- **Does frequency alone define “traditional”?** For example, the Legislature may have used revenue from bond proceeds to fund certain projects for several years but without the intention of maintaining that approach for a more extended period of time. Nevertheless, based on history rather than intention, have bond proceeds now become a traditional source of funding for those types of projects?
- **What happens when a “traditional” source is no longer available?** The Legislature may have used federal funds to support certain programs and projects over several years. But now, some of those funds are not available from the federal government. To maintain those programs and projects, the Legislature might use Legacy revenues. Would that violate the Legacy amendment’s “supplement not substitute” provision?
- **Does the provision allow the Legislature to reduce but not eliminate a traditional funding source?** For example, if the Legislature reduced state park permit and fishing license fees (“traditional” funding sources for certain programs administered by the Department of Natural Resources) to encourage greater public participation in outdoor activities and simultaneously increased Legacy funding for these programs, would that violate the “supplement not substitute” provision?

These and other questions about what the “supplement not substitute” provision requires makes it difficult for the Legislature to ensure that it is complying. That difficulty is compounded by the fact that compliance with the provision may rest more on the allocation of non-Legacy money than on revenue raised by the Legacy Amendment itself.

## Impact on Recipients

**Recipients of Legacy money have also struggled to understand the meaning and impact of the “supplement not substitute” requirement.**

Recipients of Legacy money have also had to struggle with questions and concerns about the “supplement not substitute” provision. Initially, the question was simply: Does the “supplement not substitute” provision apply to recipients of Legacy money?<sup>7</sup> The 2011 law that appropriated money from Legacy Amendment funds resolved any doubt about the application of the “supplement not substitute” provision to state agencies and other recipients of Legacy money, at least from the Legislature’s perspective. The 2011 appropriations law says: “A recipient of money from a Legacy fund must comply with the Minnesota Constitution, article XI, section 15, and may not substitute money received from a Legacy fund for a traditional source of funding.”<sup>8</sup>

Although the application of the “supplement not substitute” provision to Legacy fund recipients has been clarified, other questions remain. In effect, recipients of Legacy money must consider the same questions the Legislature has asked. The

<sup>7</sup> That question was addressed in the House Research memorandum cited in footnote 2. The memo concluded that “there is a good argument that the supplement/substitute requirement also applies to state agencies...[and] other entities, including nonstate entities, that receive grants or other funding from an appropriation of the dedicated [Legacy] money.”

<sup>8</sup> *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 5, sec. 7, subd. 2.



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**A central question is: What constitutes a “traditional” source of funding?**

principal question is: What constitutes a “traditional” source of funding? This question is particularly difficult for state agencies and private nonprofit organizations that receive funding from multiple sources to support their programs and projects. For example, officials at the Minnesota Pollution Control Agency pointed out to us that certain lake monitoring activities have been supported over the years with money from the state’s General Fund, federal funds, the Environment and Natural Resources Trust Fund, and now money from the Legacy Amendment’s Clean Water Fund. In their view, none of these funding sources are “traditional” in that they are all subject to change and even termination, given the annual and biennial budget cycles used in government.

Some of the private nonprofit organizations we talked with made similar observations. For example, one organization told us that a large grant they had previously received from a foundation and used to support their conservation easement program was no longer available because the foundation changed the focus of its grant making. The nonprofit organization wanted to continue its work on conservation easements with Legacy money it had received from the state but was concerned it would be criticized for “substituting” Legacy money for the foundation grant.

To avoid allegations of “substituting,” the most common approach by state agencies and nonprofit organizations is to fund projects that are new, or at least somewhat different, from projects previously funded with non-Legacy money. However, we were also told that this approach can potentially lead to a perverse result, as organizations use Legacy money to support new activities but do not have enough money from traditional sources to support their core programs.

Another concern for recipients is using Legacy money to pay for administrative and overhead costs. The most common examples recipients cite are the costs associated with providing office space for staff working on Legacy-funded programs and projects. As we will discuss in the next section, state law authorizes the use of Legacy money for these costs—and all other costs—if they are “directly related to and necessary for” implementation of a specific appropriation of Legacy money. However, some agency staff expressed concern that if they use Legacy money to pay costs associated with office space (rent or lease payments, utilities, security, etc.) they will be criticized for violating the “supplement not substitute” provision since the agency has paid those costs from other revenue sources in the past. From the agency’s perspective, however, this criticism would not be justified since they would not be occupying the space and incurring the costs except for the fact they are administering Legacy-funded programs and projects.

## **Discussion**

Given the many unresolved questions about the meaning and impact of the Legacy Amendment’s “supplement not substitute” provision, our ability to offer clear conclusions is limited. We know that some legislators, agency officials, and other stakeholders were expecting that, through this evaluation and our financial audits, the Office of the Legislative Auditor would provide detailed guidance on what the Legislature and recipients of Legacy money must do—and

not do—to comply with the “supplement not substitute” provision. We found no basis from which to offer that kind of guidance.

Despite the questions and uncertainties about the Legacy Amendment’s “supplement not substitute” provision, it should not be ignored. The provision is in the Minnesota Constitution, and it must be given consideration in both the appropriations process and the administration of public agencies and programs. In the discussion that follows, we assess one suggestion—benchmarking—that has been made by advocacy groups for judging the Legislature’s compliance with the “supplement not substitute” provision. We then offer an alternative approach that we think would be more workable. Finally, we offer some suggestions to recipients of Legacy money on how they might address their obligation to comply with the “supplement not substitute” provision.

### Budget Benchmarking

**Some advocacy groups offered an overall spending benchmark from the past to judge state compliance with the “supplement not substitute” requirement.**

On June 23, 2011, 30 environmental and conservation organizations sent a letter to Governor Dayton and legislative leaders concerning the state’s compliance with the “supplement not substitute” provision. In the letter, they questioned whether the state was adequately supporting Legacy-related purposes with revenue from “traditional sources.”<sup>9</sup> They suggested that to comply with the “supplement not substitute” provision, the Legislature must maintain a certain level of funding for Legacy-related purposes from non-Legacy—“traditional”—revenue sources. The groups that signed the letter proposed that compliance should be judged by measuring in percentage terms how much financial support is being provided to “Minnesota’s Great Outdoors” from the state’s General Fund and Bond Fund.

The letter said that compliance with the “supplement not substitute” provision should be judged by three “simple guide posts,” as follows:

- (1) “Minnesota’s Great Outdoors” must maintain its traditional 1-percent share of the total state general fund budget; (2) statutorily dedicated funds already in place for the “Great Outdoors” cannot be used to pay for other budget items; and (3) capital investments for the “Great Outdoors” must be at least 22 percent of the total general obligation bonds—a level equal to the 10-year average.<sup>10</sup>

While this type of budget benchmarking may be a useful tool for policy advocates, we do not think it would be a workable mechanism to establish within

<sup>9</sup> Steve Morse, Executive Director, Minnesota Environmental Partnership, et al., letter to The Honorable Mark Dayton [and ten named legislative leaders], *Protecting Minnesota’s Great Outdoors in the Special Session*, June 23, 2011.

<sup>10</sup> *Ibid.*

the appropriations process.<sup>11</sup> First, the budget benchmarking approach that was proposed by the advocacy groups presumes that the Legacy Amendment’s “supplement not substitute” provision requires the state to maintain spending on certain programs and activities (in this case, related to the “Minnesota Great Outdoors”) at a fixed proportion to spending on other programs and activities (education, public safety, health, human services, etc.). That presumption reads into the “supplement not substitute” provision a requirement that is not there. The provision only requires that Legacy money not be substituted for a traditional funding *source*; it does not explicitly require that a certain *level* of support from a source be maintained. More specifically, nothing in the provision’s language or legislative history suggests any intent to freeze the proportions of the state budget allocated to various state responsibilities for 25 years regardless of changing needs, priorities, or requirements.

In addition, any effort to establish budget benchmarking as a measure of the Legislature’s compliance with the “supplement not substitute” provision would face a range of questions. There would, for example, be questions about what to include within particular budget categories. In addition, there would be questions about which funds to include; specifically, whether to include federal funds and bond funds. And, there would be questions about what time period to use in setting benchmarks and how to address fluctuations in spending levels during that time period.

### Legacy Funding Reviews

**We think a review of past funding sources and levels for specific programs and projects would be more workable and meaningful.**

For the reasons noted above, we do not recommend that the Legislature institute the kind of aggregate budget benchmarking that was presented by the environmental and conservation groups in June 2011. On the other hand, we think some amount of historical budget information could be useful to legislators attempting to monitor and assess whether Legacy money is being used to supplement and not substitute for traditional sources of funding. To provide that kind of information, we recommend:

### RECOMMENDATION

***The Legislature should consider establishing a process that legislators could use to obtain information on past funding sources and levels for programs and projects being considered for funding with Legacy money.***

<sup>11</sup> By law, spending from the Environment and Natural Resources Trust Fund is also required to “supplement not substitute” spending from traditional sources; see *Minnesota Statutes* 2011, 116P.03. In an early attempt to monitor compliance with this requirement through benchmarking, the 1988 law that established the “supplement not substitute” mandate also required the Legislative-Citizen Commission on Minnesota Resources (LCCMR) to “determine the amount of the state budget spent from traditional sources to fund environmental and natural resources activities before and after the trust fund [was] established and include a comparison of the amount in the [annual] report....” According to LCCMR staff, the commission has not been able to fully implement this requirement because of the complexities associated with changing budgets and budget categories. The LCCMR’s annual report simply contains the section on environment, energy, and natural resources spending contained in the document, *Fiscal Review*, annually prepared by the Office of Senate Counsel, Research, and Fiscal Analysis, and cited in Chapter 1, footnote 1.

We think the kind of limited funding reviews we are recommending would be more manageable and meaningful than the aggregate budget benchmarking approach proposed by the environmental and conservation organizations. The reviews would be limited to appropriations requests being considered before committees with jurisdiction over Legacy funds, and they would focus on specific programs or projects. The objective would be to inform, not to trigger, an enforcement mechanism for compliance with the Legacy Amendment’s “supplement not substitute” provision.

Similar to the fiscal note process, executive branch agencies would be the primary source for data and analysis for the Legacy-related funding reviews, and the Department of Management and Budget would coordinate the process and provide guidance and quality control. To the degree data are available, we think all funding sources, including federal funds and other dedicated funds, should be included in a review. The timeframe to be covered would be specified in the legislative request. However, we do not think it would be practical for a review to take account of contemporaneous budget deliberations and decisions; the appropriations process during a legislative session is simply too fluid to expect that type of assessment.

We have no expectation that providing the funding reviews we are recommending will resolve questions about the meaning and requirements of the Legacy Amendment’s “supplement not substitute” provision. But providing historical information at a detailed level will, we think, facilitate a more focused and productive discussion about the “supplement not substitute” issue.

### Recipients of Legacy Money

Our observations—and advice—on how recipients of Legacy money might cope with the uncertain meaning and application of the “supplement not substitute” provision is also limited. We sympathize with the difficult situation they face and appreciate the consideration they have already given this issue. However, like the Legislature, recipients of Legacy money cannot ignore the “supplement not substitute” provision or diminish its importance because its meaning and application are uncertain. At the very least, they must make good faith efforts to comply as fully as possible, document their decision criteria, and be prepared to defend their decisions. Therefore, we recommend the following:

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#### RECOMMENDATIONS

*Recipients of Legacy money should document their consideration of the “supplement not substitute” provision and how their allocations comply with the provision. They should also establish accounting structures and procedures to ensure they can demonstrate in detail that the ultimate use of the Legacy money was appropriate in terms of supplementing and not substituting for traditional sources of funding.*

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**Despite uncertainties, recipients of Legacy money should be prepared to demonstrate their compliance with the “supplement not substitute” requirement.**

Some recipients of Legacy money have expressed concern that this type of extra documentation, segregated accounting, and special reporting adds administrative

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**Legacy money  
comes with  
“strings  
attached.”**

costs and takes staff time away from the substance of programs and projects funded with Legacy money. On the other hand, the extra accounting, documentation, and reporting requirements related to the use of Legacy funds are similar to those for other dedicated funds (e.g., money from the Environment and Natural Resources Trust Fund, General Obligation Bond Fund, Game and Fish Fund, and various federal funds).<sup>12</sup> For some agencies, the methods they have developed to ensure compliance with the requirements of using these other dedicated funds may be adequate for their use of Legacy funds. However, some agencies may have to modify their methods or develop ones specific to their use of Legacy money. In the final analysis, recipients must accept that Legacy money comes with “strings attached,” including the requirement to comply with the Legacy Amendment’s “supplement not substitute” provision—and the willingness to demonstrate compliance as fully as possible.

## ADMINISTRATIVE COSTS

Administrative costs are a part of every organization, whether it is in the public, private nonprofit, or private for-profit sector.<sup>13</sup> In fact, they are often essential to an organization’s ability to plan, develop, and deliver its goods and services. Table 3.1 lists some examples of common administrative costs.

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**Table 3.1: Examples of Common Administrative Costs**

- Accounting
- Clerical Support
- Executive and Supervisory Personnel
- Facilities Management
- General Office Equipment and Supplies
- Human Resources
- Information Technology
- Insurance
- Legal Services
- Purchasing
- Rent/Lease
- Security

SOURCE: Office of the Legislative Auditor.

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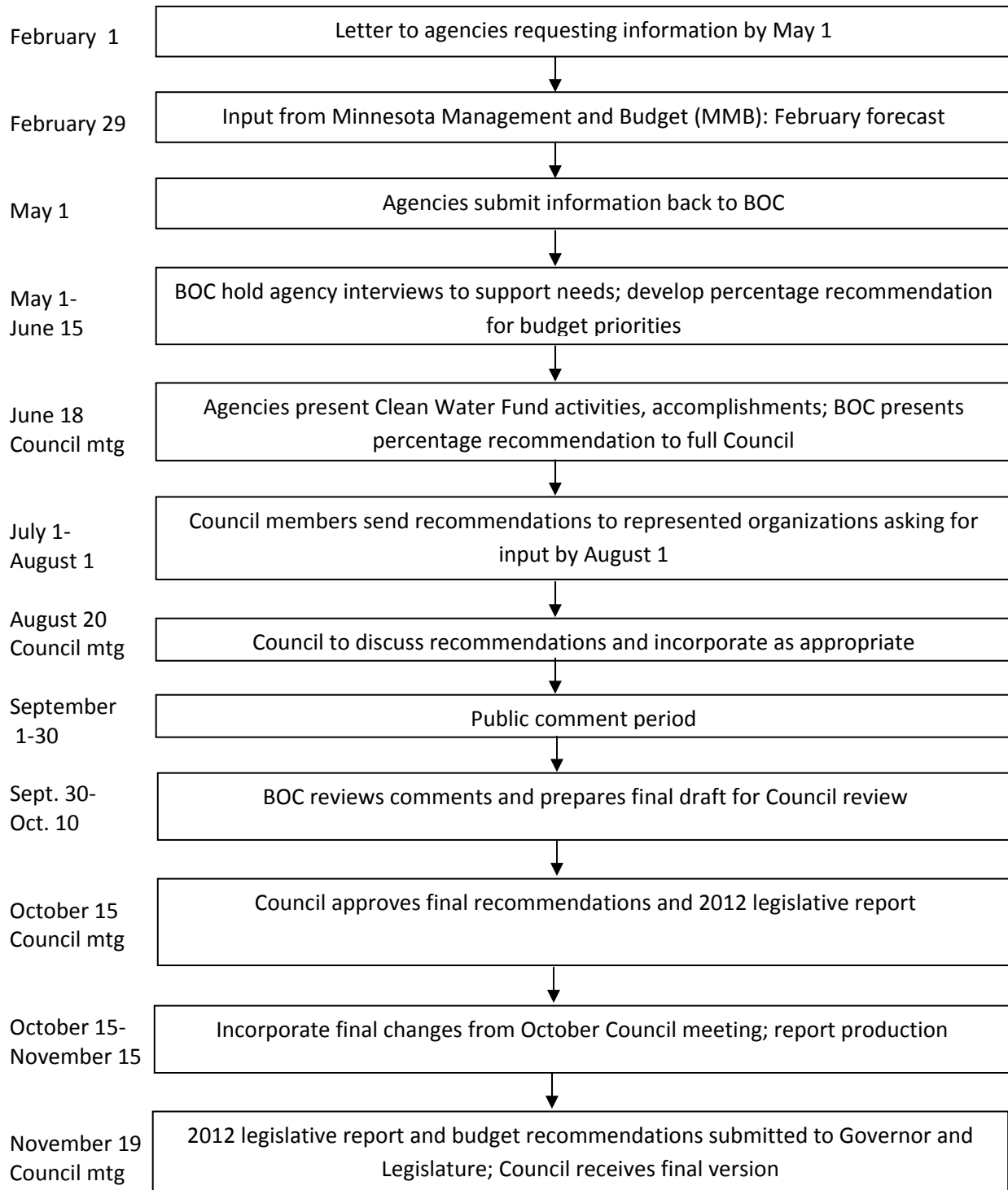
<sup>12</sup> Through an annual audit of the State of Minnesota’s use of federal funds, OLA has an understanding of the accounting and documentation required of state agencies that receive grants from the federal government. Through periodic audits and evaluations, we have also gained an understanding of the accounting and documentation requirements imposed by various state dedicated funds. For example, see Office of the Legislative Auditor, Financial Audit Division, *General Obligation Bond Expenditures* (St. Paul, 2008); and Office of the Legislative Auditor, Program Evaluation Division, *Game and Fish Fund Special Stamps and Surcharges* (St. Paul, 1994).

<sup>13</sup> In this discussion, we use the term “administrative costs” to include all support costs, including costs that are referred to as “indirect,” “overhead,” or “institutional” costs.

# Clean Water Council

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

## 2012 Budget Recommendation Process





## Minnesota Public Facilities Authority

### CLEAN WATER FUND PROGRAMS



#### General

- PFA Clean Water Fund programs are separate from the PFA's base loan and grant programs for municipal wastewater and stormwater infrastructure projects.
- PFA Clean Water Fund programs are targeted to help local governments meet specific treatment requirements for water quality restoration and protection needs.
- All PFA clean water programs follow the Pollution Control Agency's Project Priority List which ranks projects based on environmental and public health criteria.

#### Total Maximum Daily Load (TMDL) Grant Program

- Provides 50% grants up to \$3 million to help municipalities implement wastewater and stormwater projects to comply with wasteload reductions required by TMDL implementation plans.
- FY10-11 awards: 17 projects, \$11.9 million
- FY12-13 biennial appropriation: \$22.37 million
  - FY12 awards and active applications: 19 projects, \$15.9 million
    - Funds are not awarded until projects are bid and ready to start construction
  - FY13 applications will be accepted in July 2012
- FY14-15 request: \$28 million
  - 2013 legislative initiative (PFA/MPCA): Expand program eligibility beyond just TMDL implementation to include other projects needed to meet more stringent water quality based effluent limits, including phosphorus and other permit required limits that are more stringent than secondary treatment limits.

#### Phosphorus Reduction Grant Program

- Provides 50% grants up to \$500,000 to help municipalities implement wastewater projects to reduce discharge of total phosphorus to 1 milligram per liter or less.
- FY10-11 awards: 10 projects, \$3.9 million
- FY12-13 biennial appropriation: \$8.55 million
  - FY12 awards: 3 projects, \$632,000
  - FY13 applications will be accepted in July 2012
- FY14-15 request: \$0
  - 2013 legislative initiative (PFA/MPCA): Eliminate program, to be replaced by expanded eligibilities under the TMDL grant program.

## **Small Community Wastewater Treatment Program**

- Provides loans and grants to assist small communities to replace non-complying septic systems with new individual and cluster subsurface sewage treatment systems (SSTS) that will be publicly owned and operated.
  - Technical assistance grants up to \$40,000 to contract with consultants and licensed SSTS professionals for feasibility studies and technical assistance.
  - Construction financing up to \$500,000 per year through 1% loans, with 50% grants if below average MHI.
- FY10-11 awards:
  - 16 technical assistance grants, \$398,450
  - 3 construction projects, \$481,023
- FY12-13 biennial appropriation: \$2.5 million
  - FY12 awards and active applications
    - 5 technical assistance grants, \$129,000
    - 3 construction projects, \$1.5 million (construction funds are not awarded until projects are bid and ready to start construction)
  - New applications accepted at any time from eligible applicants.
- FY14-15 request: \$4.5 million
  - 2013 legislative initiatives (PFA/MPCA)
    - Technical Assistance grants:
      - Modify TA grant limits. Currently \$10,000 plus \$500 per household to a maximum of \$40,000. Change to \$20,000 plus \$1000 per non-complying ISTS to a maximum of \$60,000.
      - Allow county applicants to use funds for time spent by qualified staff.
    - Construction grants/loans:
      - Modify grant limits. Currently 50% grant for communities with below average median household income. Increase to 80% grant for communities with below average MHI, and 50% for all others, provided at least half of the non-complying systems are classified as imminent health threat or failure to protect groundwater.
      - Increase construction grant/loan cap to \$2 million and eliminate multi-year awards capped at \$500,000/yr.





## Clean Water Fund – DNR Activities and Staffing

Activity	FTEs FY 10 (actual)	FTEs FY11 (actual)	FTEs FY12-13 (estimated)	Location	Description
Stream Flow Monitoring	5.4	5.6	10.7	St. Paul, Grand Rapids (1.5), Bemidji (1.6), Marshall (1.6)	MPCA uses DNR's stream flow information to calculate pollution loads for TMDL studies and pollution reduction plans, and to calibrate watershed models. This data is crucial for developing Watershed Restoration and Protection Strategies.
Lake IBI Assessment	1.5	18.8	21	Area fisheries offices (statewide), St. Paul (0.5)	DNR and MPCA scientists are working together to develop an Index of Biotic Integrity which requires data on aquatic plant and fish communities (especially nearshore nongame fish) across the state. This information will allow for a more holistic assessment of lake health, similar to the approach MPCA is now using for streams.
Fish Contamination Assessment	0	0	0	N/A	DNR works with MPCA and MDH to determine levels of contamination from mercury and other harmful chemicals in fish from Minnesota's lakes and rivers. This information is used for identifying impairments and fish consumption advisories.
Regional Technical Assistance and Statewide Coordination for Clean Water	5.7	6.9	15.8	St. Paul (3), Grand Rapids (1), Mankato (3), Detroit Lakes (1), Lake City (1), Area hydrologist offices (statewide; 5.84), Area fisheries offices (0.75)	DNR's field staff work with interagency teams to provide expertise data, analysis, and support for MPCA's major watershed studies. DNR has a wealth of information about stream flows, water levels, climatology, fisheries, habitats, rare species, watershed boundaries, and more, which is used in planning watershed assessments, identifying pollution types and sources, and developing watershed protection and restoration strategies that provide clean water and other ecological benefits. DNR's expertise in geomorphology adds tremendous value to MPCA's watershed models and identification of restoration and protection strategies. A statewide coordinator works with DNR and external partners to ensure funds are spent in the most effective and efficient manner to meet the state's clean water goals.
Watershed Assessment Tool					A web-based tool delivers information in a comprehensive systems framework for understanding watersheds. Eighteen indices derived from 45 statewide data sets describe similarities and differences between watersheds in 5- component framework (hydrology, connectivity, biology, geomorphology, and water quality).
Water Supply Planning	2.6	3.5	11.1	St. Paul (8), Sauk Rapids (0.75), Rochester (0.75), Bemidji (0.7), Marshall (0.85)	DNR is working with an interagency team and local communities to define, prioritize, and establish groundwater management areas in Minnesota. Groundwater management areas will have increased data collection and monitoring that allow the state and local communities to understand water supplies, uses, limitations, and threats to natural resources.

Metro Area Groundwater Monitoring	--	1.7	5.7	St Paul	A network of groundwater observation wells in the 11-county Twin Cities Metropolitan Area will help hydrologists and groundwater managers to understand movement of water in aquifers. Automated data collection and a groundwater level database will enable us to link groundwater quality, rate and direction of movement, as well as cumulative pumping impacts from all permitted users.
Online Permitting System	--	--	1.4	St. Paul	An electronic permitting system will increase efficiency of tracking water appropriations and substantially reduce workload for staff that currently process individual "paper" permits. The system will screen permit applications, automatically issue permits as appropriate, and send permits that require additional review to hydrologists for processing.
Miss. River Corridor Critical Area Rulemaking	0.9	1.7	--	St. Paul	DNR engaged the public and key stakeholders in a comprehensive process to develop draft rule language. (FY10-11)
Shoreland Stewardship	1.1	1.1	6.7	St. Paul, Area hydrologists offices (statewide)	DNR staff bring expertise in a variety of areas that help local communities restore and manage landscapes for clean water and long-term ecosystem health. We provide support with targeting conservation efforts, designing and implementing projects, and building community capacity to manage for healthy watersheds.
Watershed Modeling	1.3	1.2	2	St. Paul	DNR participates in the Drainage Work Group and Drainage Management Team to help identify research needs and shortcomings in outdated State Drainage Code language. DNR's hydrologists are applying the "Gridded Subsurface Surface Hydrologic Analysis" (GSSHA) model to evaluate BMP alternatives for clean water restoration and protection studies. This work is in partnership with MPCA and local communities.
Watershed Delineation	1	1	2	Cambridge	DNR creates official watershed maps for the state of Minnesota in coordination with state and federal partners. DNR's hydrographer supports and maintains the data for clean water planning and implementation efforts, as well as providing training and support for the new LiDAR data.
Biomonitoring Database	--	--	0	N/A	DNR will begin building a multi-agency database to support storage and sharing of biological monitoring data that parallels the existing multi-agency database for water flow and water quality data. The biomonitoring database will be accessible through the watershed data portal currently being developed by MPCA.
Minnesota Elevation Mapping Project (LiDAR)	0	0	0	N/A	DNR is managing the collection and distribution of LiDAR data statewide to provide publicly accessible, highly accurate elevation data for planning and implementing a wide array of clean water and other projects.
County Geologic Atlases (Part B – Groundwater; FY10-14)	0	0	1	St. Paul	DNR works with the Minnesota Geological Survey to complete or update County Geologic Atlases that provide critical groundwater and geology information to local governments.
Total	19.5	41.3	77.4		

# Clean Water Council

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

## Council funding priorities: background

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.

The Budget and Outcomes Committee suggests the following priorities for the 2014-15 biennium, assuming a \$175M biennial budget.

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

- **Monitoring and assessment:** *The Council endorsed the 10-year watershed approach framework to monitor and assess ongoing flow, chemical, and load data at 81 outlets of the watershed; intensively monitor biological, chemical and physical data at strategic points throughout the watershed on a 10 year cycle. After the first 10-year cycle is completed in 2017, the Council will reassess this priority. Until that time, the Council anticipates funding will remain steady. For the 2014-15 biennium, the Council recommends funding these activities in the range of 11-15% of total Clean Water Funds available.*
- **Watershed restoration and protection strategies:** *On-the-ground activities are essential to a successful 10-year watershed approach. These strategies will target the most serious water quality and groundwater issues. Once all 81 watershed strategies have been written, the Council will reassess this priority. Until that time, the Council anticipates funding will remain steady. For the 2014-15 biennium, the Council recommends funding these activities in the range of 11-14% of total Clean Water Funds available.*
- **Groundwater/drinking water protection and implementation:** *The Clean Water, Land and Legacy Amendment requires at least five percent of the Clean Water Fund must be spent to protect drinking water sources. The Council supports funding a variety of activities, including groundwater monitoring, implementing best management practices, modeling and aquifer protection activities. The Council anticipates funding for these activities has and will increase over time. 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:** *The Council endorsed the 10-year watershed approach framework to include implementation activities and agrees with the public's desire to see successful on-the-ground activities. The Council recognizes there are vast needs for non point source protection, restoration and preservation activities, and sees a need for point source activities to improve infrastructure to meet wastewater and stormwater treatment requirements for preventing and restoring impaired waters. The Council recognizes Clean Water Fund dollars provide opportunities to leverage funding from other local and federal entities and anticipates*

# Clean Water Council

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- *that funding for on-the-ground implementation activities to target water quality issues will increase over time. 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: *To have a successful education and civic engagement program, a framework to actively engage local organizations, and strengthen rather than duplicate or displace local watershed and land use planning must be established. Even though the Council's recommendation to include funding for these activities was not included in the FY12-13 biennial appropriation, the Council will continue to endorse education and civic engagement activities. These efforts focus on stakeholders whose behavior can have the most significant impact on improving water quality. The Council anticipates funding for these activities will increase over time. For the 2014-15 biennium, the Council recommends funding these activities up to 1-5% of total Clean Water Funds available.*
- Applied research and tool development: *The council recommended funds in the FY 12-13 biennium to develop tools and applied research that will better target critical areas ensuring implementation efforts are effective. The Council anticipates funding for these activities will remain steady over time. For the 2014-15 biennium, the Council recommends funding these activities in the range of 6-8% of total Clean Water Funds available.*

## BOC worksheet for proposed FY14-15 budget development

	<b>Clean Water Fund Activity</b>	<b>Approp. FY10-11</b>	<b>Approp. FY12-13</b>	<b>Proposed FY14-15</b>	<b>% range rec.</b>
<b>MPCA</b>	Continue monitoring & assessment efforts to meet the 10-year cycle.	\$15.000M	\$14.800M	\$ 15,000,000	
<b>MPCA</b>	Red River Watch Program	\$0.346M	\$0.200M	\$ -	
<b>MPCA</b>	St. Croix Watershed Monitoring	\$0.500M	--	\$ -	
<b>MPCA</b>	Wastewater Treatment Monitoring – EDCs	\$0.896M	--	\$ -	
<b>MPCA</b>	Wild Rice study	--	\$1.500M	\$ -	
<b>MDA</b>	Pesticide monitoring	\$0.675M	\$0.700M	\$ 700,000	
<b>MDA</b>	Root River Demonstration Project	\$0.395M	--	\$ -	
<b>DNR</b>	Water quality assessment	\$3.7M		\$ -	
<b>DNR</b>	Continuation and expansion of stream flow monitoring.		\$3.65M	\$ 4,250,000	
<b>DNR</b>	Lake IBI assessment		\$2.3M	\$ 2,900,000	
<b>DNR</b>	Fish Mercury assessment		\$0.260M	\$ 270,000	
	<b>Monitoring and assessment total</b>	<b>\$21.512M</b>	<b>\$23.410M</b>	<b>\$ 23,120,000</b>	<b>\$20.35M-\$27.75M</b>
<b>MPCA</b>	TMDL development: Fund TMDL projects and staff.	\$18.000M	\$18.800M	\$ 18,800,000	
<b>DNR</b>	TMDL development and implementation	\$2.100M	\$3.460M	\$ 3,935,000	
	<b>Watershed restoration / protection strategies total</b>	<b>\$20.100M</b>	<b>\$22.260M</b>	<b>\$ 22,735,000</b>	<b>\$20.35M-\$25.9M</b>
<b>MPCA</b>	Groundwater assessment	\$2.250M	\$2.250M	\$ 2,250,000	
<b>MPCA</b>	Groundwater protection: (\$4M reapprop. to DNR)	\$--	--	\$ -	
<b>MPCA</b>	EQB I94 study (transfer)	--	\$0.450M	\$ -	
<b>MPCA</b>	Enhanced county inspections / SSTS corrective actions	--	\$1.570M	\$ 5,400,000	
<b>MDA</b>	Protect / restore groundwater from nitrates	\$1.125M	\$1.700M	\$ 4,000,000	
<b>MDA</b>	Irrigation Water Quality Protection	--	--	\$ 220,000	
<b>DNR</b>	Drinking water planning and protection activities.	\$1.125M		\$ -	
<b>DNR</b>	Water supply planning, aquifer protection and monitoring		\$3.000M	\$ 5,600,000	
<b>DNR</b>	Metropolitan groundwater monitoring and protection.	\$4.000M	\$1.000M	\$ -	
<b>DNR</b>	Water appropriation electronic permitting development.		\$0.900M	\$ 200,000	
<b>BWSR</b>	Permanent conservation easements: wellhead protection		\$2.6M	\$ 3,600,000	
<b>MC</b>	Twin Cities metro water supply plan implementation	\$0.800M	\$1.000M	\$ 1,400,000	
<b>MC</b>	Regional groundwater recharge areas – identification and classification			\$ 166,000	
<b>MDH</b>	Contaminants of emerging concern program	\$1.335M	\$2.040M	\$ 2,500,000	
<b>MDH</b>	Source water protection	\$2.415M	\$2.830M	\$ 3,500,000	
<b>MDH</b>	County Well Index enhancement	--	\$0.668M	\$ 1,000,000	
<b>MDH</b>	Well Sealing Cost Share	--	\$0.500M	\$ 1,000,000	
<b>MDH</b>	Private Well Water Supply Protection			\$ 1,000,000	
<b>MDH</b>	Lake Superior Beach Monitoring			\$ 250,000	
	<b>Groundwater / drinking water total</b>	<b>\$13.050M</b>	<b>\$17.908M</b>	<b>\$ 32,086,000</b>	<b>\$12.95M-\$16.65M</b>
<b>MPCA</b>	Great Lakes restoration project	\$0.950M	\$1.500M	\$ 1,500,000	

<b>MPCA</b>	Wastewater Beneficial Reuse Grant	\$4.669M	--	\$ -	
<b>MPCA</b>	Clean Water Partnership	\$2.500M	\$2.000M	\$ 2,000,000	
<b>MDA</b>	AgBMP loan program	\$4.500M	\$9.000M	\$ 3,000,000	
<b>MDA</b>	Technical Assistance/Research	\$2.265M	\$1.550M	\$ 7,500,000	
<b>DNR</b>	Nonpoint source restoration and protection activities	\$0.500M		\$ -	
<b>DNR</b>	Mississippi River Critical Area	\$0.500M	--	\$ -	
<b>BWSR</b>	Surface and drinking water protection / restoration grants	\$39.324M	\$27.5M	\$ 36,000,000	
<b>BWSR</b>	Targeted local resource protection and enhancement grants		\$6.0M	\$ 7,000,000	
<b>BWSR</b>	Measures, results and accountability		\$1.8M	\$ 1,800,000	
<b>BWSR</b>	Conservation drainage management and assistance		\$2.0M	\$ 3,400,000	
<b>BWSR</b>	Permanent conservation easements: riparian buffers		\$12.0M	\$ 16,000,000	
<b>BWSR</b>	Technical evaluation		\$168k	\$ 168,000	
<b>BWSR</b>	Community Partners Clean Water Program		\$3.00M	\$ 5,000,000	
<b>Nonpoint source implementation total</b>		<b>\$54.708M</b>	<b>\$69.118M</b>	<b>\$ 83,368,000</b>	<b>Total implementation range (PS and NPS): \$105.45M - \$111M</b>
<b>MPCA</b>	Incorporate civic engagement into new and current Clean Water Fund watershed projects.	\$0.250M	--		
<b>MDA</b>	Manure Applicator Education	--	--	\$ 410,000	
<b>Education and civic engagement total</b>		<b>\$0.250M</b>	<b>--</b>	<b>\$ 410,000</b>	<b>\$1.85M-\$9.25M</b>
<b>MPCA</b>	Coal tar stormwater research BMP	\$0.500M	--	\$ -	
<b>MPCA</b>	TMDL research and database development: Incrementally connect data management systems, and eventually develop a Watershed Portal that will interface with existing systems to provide staff with a central location for reporting, analysis, and data management of the watershed data.	\$0.500M	\$2.300M	\$ 2,300,000	
<b>MPCA</b>	Interagency water database and portal development			\$ 3,000,000	
<b>MPCA</b>	FY11 Legislative Priority: Nitrate-Nitrogen rule	\$0.600M	--	\$ -	
<b>MPCA</b>	Application of Water Standards			\$ 1,500,000	
<b>MPCA</b>	Stormwater research and guidance.	\$0.145M	\$0.800M	\$ 550,000	
<b>MDA</b>	Academic Research/Evaluation	--	\$2.100M	\$ 2,100,000	
<b>MDA</b>	Research Inventory Database	--	\$0.350M	\$ 250,000	
<b>DNR</b>	Shoreland stewardship, Biomonitoring database	--	\$3.450M	\$ 3,919,000	
<b>DNR</b>	High resolution elevation data	\$5.600M	\$2.700M	\$ -	
<b>DNR</b>	County geologic atlases	\$1.000M	--	\$ 850,000	
<b>Applied research and tool development total</b>		<b>\$9.755M</b>	<b>\$11.700M</b>	<b>\$ 14,469,000</b>	<b>\$11.1M-\$14.8M</b>
<b>MPCA</b>	NPDES wastewater/stormwater TMDL implementation: Staffing costs for implementation efforts.		\$1.600M	\$ 2,000,000	
<b>PFA</b>	TMDL grants (WWTP and stormwater)	\$21.650M	\$22.370M	\$ 28,000,000	
<b>PFA</b>	Phosphorus reduction grants	\$8.550M	\$8.550M	\$ -	
<b>PFA</b>	Small community WWT	\$2.500M	\$2.500M	\$ 4,500,000	

Point source implementation total		\$32.700M	\$35.020M	\$ 34,500,000	Total implementation range (PS and NPS): \$105.45M-\$111M
MPCA	Clean Water Council budget	-	-	\$ 410,000	
Total		\$151.200M	\$179.429M	\$ 210,688,000	





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## Budget and Outcomes Committee discussion items for June Council meeting: 6-18-2012

As the BOC has reviewed the agencies' proposals and carried out the interview process, several items surfaced for full-Council discussion.

### 1. Supplement vs. substitute (please see Office of Legislative Auditor's handout on "Supplement vs. Substitute")

The Legacy Amendment states, "The dedicated money under this section must supplement traditional sources of funding for these purposes and may not be used as a substitute."

This requirement has caused confusion and uncertainty for policy makers and state agencies since the language is not clear. This is especially true in a time of diminishing budgets.

The OLA found the "constitutional language cannot be ignored and that recipients of Legacy money should make good faith efforts to comply as fully as possible."

As the BOC considers agency proposals, there are concerns about substitute issues. Questions for discussion (raised in the 2011 OLA Legacy report):

- When does a funding source become traditional?
- Does frequency alone define "traditional?"
- What happens when a "traditional" source is no longer available?
- Does the provision allow the Legislature to reduce but not eliminate a traditional funding source?

### 2. Activity category recommendations

Earlier this year, the BOC developed funding priorities for fiscal years 2014-15. They included a percentage range recommendation for Clean Water Fund activity categories (also see handout):

- Monitoring and assessment: 11-15%
- Watershed restoration and protection strategies: 11-14%
- Groundwater/drinking water protection and implementation: 7-9%
- Restoration and protection implementation: 57 – 60%
- Education and civic engagement: 1-5%
- Applied research and tool development: 6-8%

Item for discussion: Given the agency proposals, does the Council still feel these percentage range recommendations are appropriate?

### 3. Education and civic engagement\* as a Clean Water Funding activity category

The 2011 Special Session Legacy bill, sec. 25 addresses education and civic engagement and states, "a recipient of funds appropriated in this article shall incorporate civic engagement and public education when implementing projects and programs funded under this article".

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Past Council efforts to include line-item budgets for education and civic engagement have not been successful. In the FY14-15 proposals, there is only one line-item under this category (though the BOC would argue that some proposed activities better fit under education and civic engagement).

**Item for discussion:** The BOC understands the importance of education and civic engagement and suggested that 1-5% of the Clean Water Fund be spent on these activities. However, rather than including a line item budget for these activities, is it appropriate to embed funding within the other funding categories and eliminate this Clean Water Fund activity category?

\* The Council will spend its July meeting learning about current Clean Water Fund education and civic engagement activities underway.

## 4. Clean Water Council line-item budget

The Clean Water Legacy Act states, "The Pollution Control Agency shall provide administrative support for the council with the support of other member agencies." From the Council's inception, the MPCA has provided staffing and funding for the Council's operations. Funding for the Council's operations comes out of the MPCA's Clean Water Fund Watershed Restoration and Protection Strategy Development line item.

The chart below provides actual expenses for Clean Water Council non-salary items since state fiscal year 2010. State fiscal year 2012 is through March 29, 2012. MPCA expects the final cost will be approximately \$20,000- \$25,000 for the current fiscal year and approximately the same for state fiscal year 2013. This doesn't include attorney costs as the current billing system with the Attorney General's office doesn't provide that level of detail.

	FY10	FY11	FY12
Per diem	2,915.00	5,830.00	4,450.34
Mileage	6,751.88	9,154.26	7,189.24
Meals for meeting	4,883.08	5,642.14	3,415.34
Parking	1,200.00	1,170.00	0.00
Lodging	0.00	792.27	2,427.36
Other	100.00	1,740.73	0.00
<b>TOTAL</b>	<b>15,849.96</b>	<b>24,329.40</b>	<b>17,482.28</b>

**Item for discussion:** For transparency purposes, the BOC would like to create a line-item budget of \$410k for the Council's operating and salary expenses, which would include 1.75 FTEs.

## 5. Pass-through funding / earmarks

Some of the agency proposals include direct pass-through funding to other organizations for staffing (ex: University of Minnesota Extension staffing). Past legislation has provided earmarks to non-state agencies for specific projects (ex: Red River Watch Program).

**Item for discussion:** While the BOC is aware the Legislature and Governor control final legislation, is it appropriate for the Council to offer policy guidance on pass-through funding and/or earmarks for Clean Water Funds?

## CWC Steering Committee Agenda

Monday, June 18, 2012; 2:00 p.m.

MPCA Board Room

520 Lafayette Road North, St. Paul

1. Follow-up from June meeting
2. BOC – next steps (seeking input from represented organizations)
3. Council field tour – August
4. July 16, 2012 meeting agenda – *(meeting will be held in the MPCA Board Room)*

9:00-9:15      **Convene Full Council & Steering Team Report**

- Comments/additions to the agenda
- Approve 6/19/12 meeting minutes
- Council introductions, updates and conflict of interest notifications
- BOC update

9:15-9:45      **Interagency data portal proposal**  
Glenn Skuta (MPCA)

9:45-10:15    **Water Governance Project preliminary findings**  
Suzanne Rhees, John Linc Stine (MPCA)

10:15-10:30    **Break**

10:30-11:45    **Civic engagement activities underway**

11:45-12:00    **Council Photo**

12:00-12:30    **Lunch**

12:30-2:15     **Civic engagement discussion (more presentation?)**

2:15             **August field tour announcement / adjournment**

*2:30~3:00 Council Steering Team*

*Next Meeting: August 19-20, 2012*