



Clean Water Fund Outcomes

Minnesota cannot yet measure many outcomes of Clean Water Fund spending.

Key Facts and Findings:

- Minnesota has abundant water resources, but changes to Minnesota’s landscape over the past 150 years have severely degraded the quality of the state’s waters.
- In 2008, Minnesota voters approved the Legacy Amendment (which created the Clean Water Fund) to restore, protect, and enhance water quality.
- Since 2009, the Legislature has appropriated nearly \$761 million from the Clean Water Fund to nine state agencies.
- Minnesota cannot yet report many outcomes of the Clean Water Fund. However, the state has developed a framework that will allow it to better measure outcomes in the future.
- The Board of Water and Soil Resources has spent most of its Clean Water Fund dollars on grants to local governments to implement water quality improvement projects (\$107 million) and to purchase and restore conservation easements (\$31 million).
- The Minnesota Pollution Control Agency has spent the largest share (\$54 million) of its Clean Water Fund dollars on contracts for activities such as testing water quality samples.
- State agencies have not submitted all statutorily required information about Clean Water Fund activities.
- The Minnesota Water Management Framework is useful, but the state has fallen behind its planned pace.
- The Clean Water Council—which makes recommendations to the

Legislature and the Governor about Clean Water Fund spending—has used transparent processes to develop its Clean Water Fund spending recommendations.

- Stakeholders continue to debate whether Clean Water Fund dollars have substituted for traditional sources of funding. In the cases we examined, we were unable to conclude definitively that Clean Water Fund dollars have been used to substitute.
- Despite confusion around the language, the requirement that Clean Water Fund money be spent on activities directly related to and necessary for specific appropriations does not preclude the use of funds for “indirect” costs.
- All Clean Water Fund appropriations for the 2016-2017 biennium appear to have supported the constitutional requirements to spend money only to protect, enhance, and restore water quality.

Key Recommendations:

- State agencies should report all Clean Water Fund project information required by law.
- The Legislature should consider requiring entities requesting Clean Water Fund appropriations to report past funding sources when submitting proposals for funding.
- The Legislature should clarify in future appropriations laws that certain “administrative” (rather than “indirect”) costs are eligible Clean Water Fund expenses.

Report Summary

Minnesota has abundant water resources, but the quality of the state's water has degraded over the past 150 years. The state struggled to comply with federal water quality regulations before the passage of the 2006 Clean Water Legacy Act and the 2008 Legacy Amendment to the Minnesota Constitution.¹

The voter-approved Legacy Amendment authorized a 25-year sales-use tax increase of three-eighths of 1 percent. The tax revenues are deposited in four funds, with one-third going to the Clean Water Fund.²

Since the Clean Water Fund's inception, the Legislature has appropriated more than \$760 million to the Board of Water and Soil Resources (BWSR); the departments of Agriculture, Health, and Natural Resources; the Legislative Coordinating Commission; the Metropolitan Council; the Minnesota Pollution Control Agency (MPCA); the Public Facilities Authority; and the University of Minnesota.

While Clean Water Fund outcomes are difficult to measure, the state has developed a framework that will provide better information about outcomes in the future.

Before the Clean Water Fund, Minnesota collected only a small amount of water quality data, and not on a systematic basis. Therefore, the state lacks the data required to show changes in water quality and cannot yet measure many Clean Water Fund outcomes.

The Clean Water Fund has allowed state agencies to dramatically accelerate the collection of water quality data. To further coordinate water quality improvement efforts, state agencies created the Minnesota Water Management

Framework. The framework (1) establishes a repeating ten-year cycle for managing water quality activities within each of Minnesota's 80 watersheds, and (2) defines state agency water management responsibilities. While the framework is useful, Minnesota has fallen behind on the implementation of the first ten-year cycle.

Minnesota's Water Management Framework involves checking waterbodies in each watershed for water quality impairments, investigating the causes of those impairments, and developing watershed-wide strategies to address them. Local governments then develop local plans and implement targeted water quality improvement projects.

As the cycle repeats, the state plans to revisit watersheds to compare new water quality data with the baselines established during the first cycle. At that point, Minnesota will begin to see the impact of the projects supported by the Clean Water Fund. However, it will always be difficult to attribute water quality improvements to the Clean Water Fund because improvement projects are funded from multiple sources. Additionally, there are many external factors, such as land use and population growth, that also impact water quality.

While it is too early to report statewide outcomes, our report discusses the activities that the Clean Water Fund has supported. For example, 70 percent of BWSR's Clean Water Fund dollars were used to award grants to local governments. Recipients used these grants to implement more than 2,900 water quality best management practices, such as installing rain gardens and improving septic systems.

Local governments have estimated reductions in levels of certain pollutants from projects funded through BWSR grants. For example, from fiscal years 2010 through 2016, BWSR's Clean Water Fund grants annually reduced an estimated 177,000 pounds of nitrogen and 76,000 pounds of phosphorus. These estimated reductions, however, were very small compared with Minnesota's pollution-reduction goals.

The state has created a framework that will allow it to better measure outcomes in the future

¹ *Laws of Minnesota* 2006, Chapter 251, secs. 2-9; and *Minnesota Constitution*, art. XI, sec. 15.

² *Minnesota Constitution*, art. XI, sec. 15. The remaining sales-tax proceeds are deposited in the Outdoor Heritage Fund (33 percent), the Arts and Cultural Heritage Fund (19.75 percent), and the Parks and Trails Fund (14.25 percent).

Substitution of Clean Water Fund money for traditional funds continues to be difficult to define.

The state's efforts to report on Clean Water Fund activities and outcomes are insufficient.

All recipients of Clean Water Fund dollars are statutorily required to report project information for inclusion on the *Minnesota's Legacy* website.³ This site can be useful for learning about specific projects and for comparing individual project goals to actual results. However, the website is not well suited for statewide analysis of outcomes. Further, state agencies have failed to report some required information. We recommend that state agencies improve their reporting practices.

The Clean Water Council's process for developing Clean Water Fund spending recommendations is transparent.

Statutes require the Clean Water Council to make recommendations for Clean Water Fund spending to the Legislature and the Governor.⁴ The council consists of 17 voting members—representing interests such as environmental organizations and local governments—appointed by the Governor. Nonvoting members include seven state agency representatives and four legislators.

The council dedicates considerable resources to developing its spending recommendations. The council relies heavily on information from state agencies to develop its spending recommendations. All Clean Water Council meetings are open to the public and the stakeholders we surveyed said that the council clearly communicated its priorities and processes. Stakeholders also reported that the council did a good job soliciting stakeholder feedback on proposed programs.

In recent years, the Legislature has adopted a large majority of the Clean Water Council's spending recommendations. However, it has also funded some activities

that the council did not recommend or review.

Based on our review, Clean Water Fund dollars do not appear to have been used to substitute for traditional sources of funding.

The Minnesota Constitution requires that the Clean Water Fund be used to supplement, rather than substitute for, traditional sources of funding.⁵ This provision has been the topic of much debate since the amendment passed in 2008.

Although the Legislature, state agencies, the Clean Water Council, and other stakeholders continue to discuss the “supplement not substitute” provision, the state has not provided guidance on how to define or identify substitution. We examined a number of examples of alleged substitution, but we were unable to conclude definitively in these cases that the Clean Water Fund had been used to substitute for traditional sources of funding.

In an effort to prevent substitution, the 2016 Legislature imposed a new requirement that organizations seeking funding from two of the Legacy funds (the Parks and Trails and Arts and Cultural Heritage funds) inform legislators about past funding sources.⁶ The Legislature did not require this of organizations seeking Clean Water Fund dollars, largely because the Clean Water Council reviews those programs and considers possible substitution before making its recommendations.

Given that the Legislature has appropriated funding for some projects that the council *did not* review or recommend, we suggest that the Legislature treat the Clean Water Fund like the other Legacy funds and require organizations seeking funding to inform the Legislature of past funding sources. This will allow the Legislature to make

⁵ *Minnesota Constitution*, art. XI, sec. 15.

⁶ *Laws of Minnesota* 2016, chapter 172, art. 3, sec. 1; and art. 4, sec. 1, codified as *Minnesota Statutes* 2016, 85.53, subd. 2(h); and 129D.17, subd. 2(i).

³ See <http://www.legacy.leg.mn/>, accessed January 9, 2017.

⁴ *Minnesota Statutes* 2016, 114D.30, subd. 6.

Clean Water Fund money has been spent for the purposes specified in the Minnesota Constitution.

informed decisions about those projects not vetted by the Clean Water Council.

The “direct and necessary” requirement does not preclude the use of Clean Water Fund dollars for “indirect” costs.

The requirement that Clean Water Fund money be spent only on those activities that are “directly related to and necessary for” a specific appropriation has also generated considerable discussion. There is confusion regarding whether administrative costs, also known as “indirect costs,” should be considered “direct and necessary.”

This confusion may stem from the difference between the colloquial definition of “indirect”—the opposite of direct—and the accounting definition, which describes a way of billing expenses. “Administrative” costs can be billed either directly or indirectly. Activities *billed* indirectly may still be directly related to the purpose of a program.

Recent appropriations laws require that Clean Water Fund spending aligns with guidance provided by Minnesota Management and Budget.⁷ This guidance

⁷ *Laws of Minnesota*, 2015, chapter 2, art. 2, sec. 2, subd. 2 (for example); and Minnesota Management and Budget, *MMB Guidance to Agencies on Legacy Fund Expenditure* (St. Paul, 2012).

asserts that every organization incurs administrative expenses, and that such expenses may be paid from Legacy funds, as long as they are directly related to and necessary for the appropriation.

To alleviate confusion, we recommend that future appropriations laws make it clear that Clean Water Fund dollars may be used for “administrative” (rather than “indirect”) costs that are directly related to and necessary for a specific appropriation.

All Clean Water Fund appropriations appear to have met constitutional requirements.

The vast majority of the appropriations for the 2016-2017 biennium clearly met the constitutional requirement that Clean Water Fund dollars be spent only to protect, restore, and enhance water quality. A small handful were less obviously related—such as efforts to manage water supplies—but we believe they were justifiable. In addition, Minnesota has met, and even exceeded, the constitutional requirement that at least 5 percent of Clean Water Fund spending be used to protect drinking water sources.

Summary of Agencies’ Responses

In a letter dated March 15, 2017, MPCA’s Commissioner said the report “does an excellent job describing how the advent of the constitutional amendment and Clean Water Fund...has significantly enhanced the pace, efficiency and effectiveness of Minnesota’s efforts to protect and restore water quality.” He confirmed that MPCA supports OLA’s recommendations and will work to implement them. While largely supportive of the findings in the report, in a letter dated March 15, 2017, BWSR’s Executive Director expressed concern regarding the use of the Conservation Reserve Enhancement Program as an example of perceived substitution. He explained that “this and every CREP is a one-of-a-kind, limited-term, federal-state agreement that is not tied to agreements of the past....” In a letter dated March 15, 2017, the Clean Water Council’s chair said the report “captured the Council’s concerns about substitution, administrative costs, and staffing,” despite the fact that the council was hoping for stronger recommendations in some areas. In a letter dated March 15, 2017, the Legislative Coordinating Commission’s Director expressed support for OLA’s two recommendations to the agency: (1) to collect data for the Minnesota’s Legacy website on the extent to which projects achieved their proposed outcomes, and (2) to report to the Legislature agencies that do not fulfill their statutory reporting obligations.

The full evaluation report, *Clean Water Fund Outcomes*, is available at 651-296-4708 or:
www.auditor.leg.state.mn.us/ped/2017/cleanwater.htm