Clean Water Fund Outcomes

2017
EVALUATION REPORT

Program Evaluation Division

OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

Program Evaluation Division

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OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA • James Nobles, Legislative Auditor

March 2017

Members of the Legislative Audit Commission:

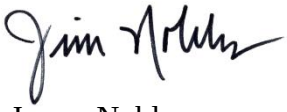
Since 2009, the Legislature has appropriated more than $760 million from the Clean Water Fund to several state agencies; almost two-thirds has been appropriated to the Board of Water and Soil Resources and the Minnesota Pollution Control Agency.

Our evaluation confirmed that Clean Water Fund outcomes are difficult to measure. The state has developed a framework that should result in better outcome measures in the future, and we recommend changes to improve statewide reporting of Clean Water Fund spending. However, even with these improvements, agencies may never be able to clearly isolate the impact of Clean Water Fund money from other revenues that support clear water programs and projects.

We also found that Clean Water Fund recipients and others continue to struggle with the constitutional requirement that this money be used to supplement and not substitute for traditional funds. There is also confusion regarding the use of this money for administrative expenses. We make recommendations to the Legislature to help clarify understanding around these issues.

Our evaluation was conducted by Sarah Delacueva (project manager), Will Harrison, and Laura Schwartz. The Board of Water and Soil Resources, the Clean Water Council, the Legislative Coordinating Commission, and the Minnesota Pollution Control Agency cooperated fully with our evaluation, and we thank them for their assistance.

Sincerely,



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THE GREAT SEAL OF THE STATE OF MINNESOTA
L'ETOILE DU NORD
1858

Summary

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. (pp. 3-6)

- In 2008, Minnesota voters approved the Legacy Amendment (which created the Clean Water Fund) to restore, protect, and enhance water quality. (p. 13)

- Since 2009, the Legislature has appropriated nearly $761 million from the Clean Water Fund to nine state agencies. (p. 15)

- 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. (pp. 19-20)

- 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). (p. 22)

- 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. (p. 26)

- State agencies have not submitted all statutorily required information about Clean Water Fund activities. (p. 35)

- The Minnesota Water Management Framework is useful, but the state has fallen behind its planned pace. (p. 37)

- 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. (p. 60)

- 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. (pp. 70-72)

- 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. (pp. 80-81)

- 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. (p. 83)

Key Recommendations:

- State agencies should report all Clean Water Fund project information required by law. (p. 36)

- The Legislature should consider requiring entities requesting Clean Water Fund appropriations to report past funding sources when submitting proposals for funding. (p. 80)

- The Legislature should clarify in future appropriations laws that certain "administrative" (rather than "indirect") costs are eligible Clean Water Fund expenses. (p. 82)

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

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

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

[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).

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'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.

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

[3] See http://www.legacy.leg.mn/, accessed January 9, 2017.

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

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

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

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 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 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.

[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).

[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).

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1858

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Chapter 5: Legal Concerns

Introduction

On November 4, 2008, Minnesota voters approved the Clean Water, Land, and Legacy Amendment to the Minnesota Constitution. The so-called Legacy Amendment authorized a 25-year, statewide sales-use tax increase of three-eighths of 1 percent, beginning July 1, 2009, and ending on June 30, 2034. Thirty-three percent of the new revenue is placed in the Clean Water Fund, which must be used "to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater sources."[1] Since 2009, the Legislature has appropriated nearly $761 million from the Clean Water Fund to numerous recipients: the Board of Water and Soil Resources; the departments of Agriculture, Health, and Natural Resources; the Legislative Coordinating Commission; the Metropolitan Council; the Minnesota Pollution Control Agency; the Public Facilities Authority; and the University of Minnesota.

Since the passage of the Legacy Amendment, legislators have shown considerable interest in the Clean Water Fund and what Minnesota has received in exchange for its sizable investment. In March 2016, the Legislative Audit Commission directed the Office of the Legislative Auditor to evaluate Clean Water Fund outcomes. In our evaluation, we addressed the following questions:

- **Are systems in place to adequately measure outcomes of Clean Water Fund spending? What are the outcomes of this spending?**
- **How do the Legislature, the Clean Water Council, and state agencies distribute Clean Water Fund dollars?**
- **How transparent are the processes used to distribute Clean Water Fund dollars?**
- **To what extent does the distribution of Clean Water Fund dollars align with constitutional and other legal requirements?**

We focused our evaluation on the Board of Water and Soil Resources (BWSR), the Minnesota Pollution Control Agency (MPCA), and the Clean Water Council. BWSR and MPCA are the two state agencies that have received the largest shares of Clean Water Fund dollars. The Clean Water Council is an advisory body that makes Clean Water Fund spending recommendations to the Legislature and the Governor. Even with this limited focus, we lacked the time and resources to fully explore every aspect of the selected agencies' Clean Water Fund activities.

To conduct this evaluation, we observed meetings of the Clean Water Council and its committees from April through November 2016. We also conducted interviews with Clean Water Council members, BWSR and MPCA staff, and other interested stakeholders. We solicited the opinions of broader groups of stakeholders through surveys of: (1) Clean Water Council members; (2) representatives of local governments that applied for Clean Water Fund dollars through BWSR grant programs during Fiscal Year 2015;

[1] *Minnesota Constitution*, art. XI, sec. 15. The remaining sales-use 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).

(3) representatives of all counties, soil and water conservation districts, watershed districts, and watershed management organizations; and (4) representatives of nonprofit and other organizations identified as engaged Clean Water Fund stakeholders.[2]

We collected and analyzed various datasets from BWSR and MPCA, including data on Clean Water Fund-supported grant programs administered by both agencies. We also examined a framework that state agencies developed to help coordinate and manage water-related activities. Additionally, we analyzed Clean Water Council spending recommendations and the extent to which they have been adopted by the Legislature.

Finally, we examined a number of legal issues related to the Clean Water Fund. For example, we reviewed the constitutional requirement that Clean Water Fund money be used to supplement, rather than substitute for, traditional sources of funding. To examine this issue, we reviewed laws, literature, media articles, and legislative hearings; interviewed and surveyed stakeholders; and observed numerous Clean Water Council discussions. Additionally, we studied the requirement that money from the fund be spent only on activities that are directly related to and necessary for a given appropriation. Finally, we examined Clean Water Fund appropriations to determine the extent to which the state has spent funds only to enhance, protect, and restore water quality, as required by the Minnesota Constitution.

[2] We received responses from 27 of 28 Clean Water Council members (96 percent); 97 of 114 applicants for BWSR Clean Water Fund grants (85 percent); 181 of 220 local governments (82 percent); and 15 of 51 nonprofit and other organizations (29 percent). Given the small number of responses we received from this final group, their responses are not generalizable statewide and are not used widely in this report.

Chapter 1: Background

Minnesota, the "land of 10,000 lakes," has vast water resources. It contains such iconic places as the headwaters of the Mississippi River and the Boundary Waters Canoe Area Wilderness. However, changes in the landscape over the past 150 years have severely degraded the condition of the state's waters. On November 4, 2008, through a constitutional amendment, Minnesotans voted to raise the state's sales-use tax to "protect, enhance, and restore" the state's water quality.[1] The Clean Water, Land, and Legacy Amendment, as it is called, also established a new state fund, called the Clean Water Fund, to receive a portion of the increased tax receipts.

In this chapter, we provide background information about Minnesota's water resources and sources of water pollution. We also discuss the history of water quality legislation in the state and key legal requirements in place today. Finally, we provide an overview of Clean Water Fund spending to date.

Minnesota's Water Resources and Pollution

To fully appreciate the work supported by the Clean Water Fund, it helps to understand the nature and extent of the state's water resources. In this section, we describe Minnesota's water resources and the major sources of pollution that threaten them.

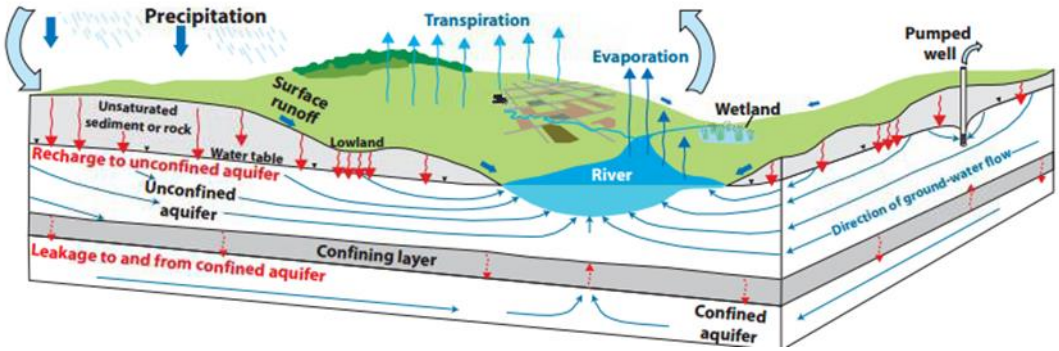
Minnesota has abundant water resources.

Minnesota contains more than 12,000 lakes and 100,000 miles of streams.[2] Lakes and streams are examples of "surface waters." About 25 percent of the state's drinking water comes from surface waters, especially in the Twin Cities metropolitan area. Minnesota is considered to have an abundance of groundwater, although it is difficult to determine an exact quantity. Groundwater is stored below the earth's surface in soil or rock crevasses, called aquifers. About 75 percent of Minnesota's drinking water—and about 90 percent of the water used for agricultural irrigation in the state—comes from groundwater reserves. Surface waters and groundwater can, and frequently do, interact; as a result, contamination in one may lead to contamination in the other. Minnesota also contains around 9 million acres of wetlands. Wetlands are areas of saturated land that are fully or partially submerged under water. Exhibit 1.1 illustrates how Minnesota's water flows between surface waters, groundwater reserves, and wetlands.

[1] *Minnesota Constitution*, art. XI, sec. 15.

[2] Throughout this report, we use the term "stream" to refer to rivers, creeks, tributaries, and other watercourses.

Exhibit 1.1: Minnesota has extensive surface water, groundwater reserves, and wetlands.



SOURCE: U.S. Geological Survey, *Groundwater Recharge in Minnesota* (2007), 1.

In Minnesota, precipitation falls into one of the ten "drainage basins" shown in Exhibit 1.2. The precipitation that falls in the Mississippi River basin, for example, eventually drains into the Mississippi River or is stored in aquifers. The state's ten drainage basins can further be broken into smaller drainage areas called watersheds. Minnesota has 80 major watersheds, as the exhibit shows.[3]

Under ideal conditions, water is cleaned in nature. For example, when precipitation soaks into the soil (a process called "infiltration"), the soil itself and microorganisms living within it filter out many pollutants. When precipitation flows across land as runoff, vegetation helps to filter it. Vegetation captures and stores sediment, nutrients, and other contaminants before they can drain into surface waters. Wetlands also play a key role in filtering water because the plants and microorganisms living within them slowly break down and absorb contaminants.

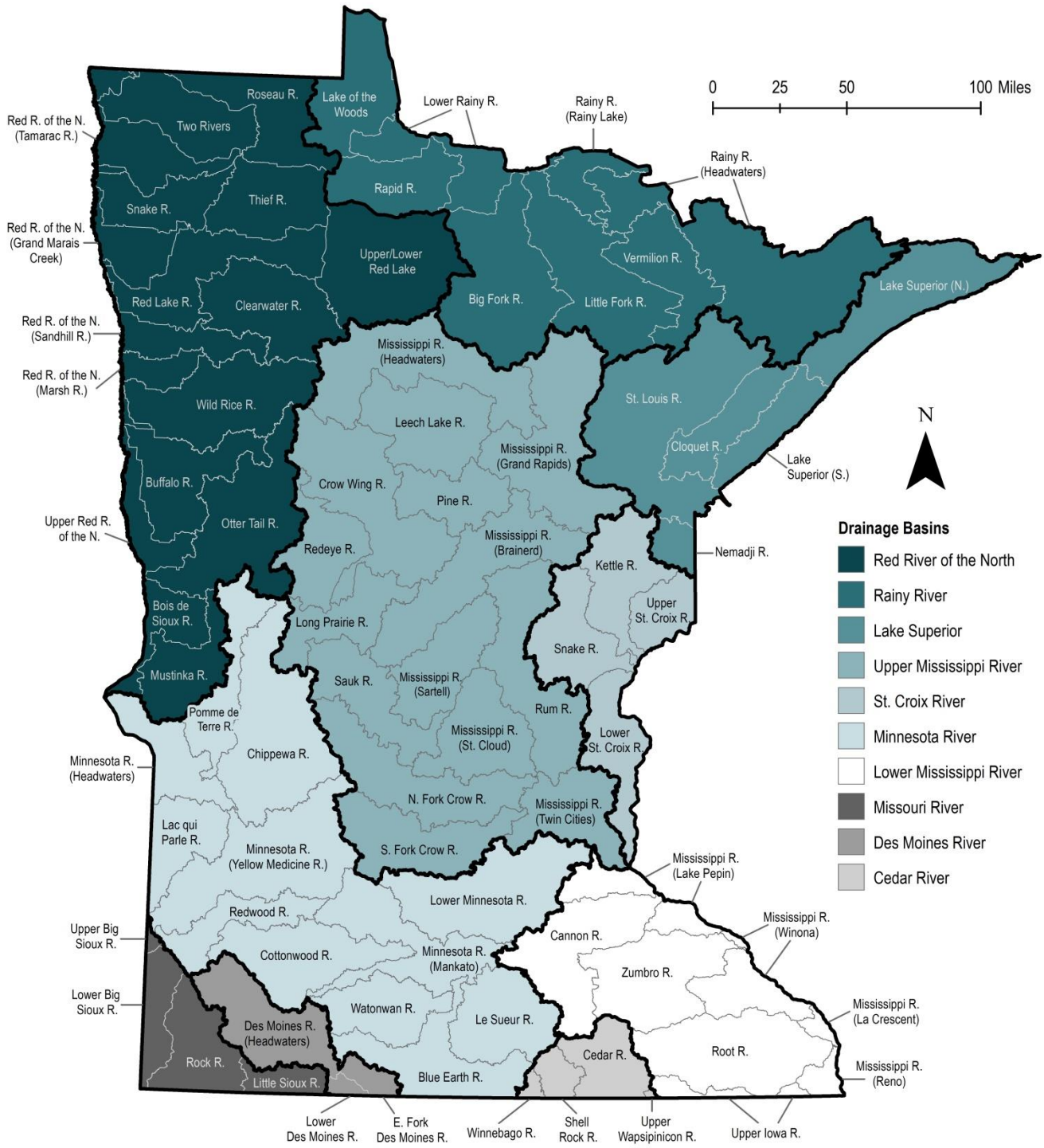
Changes to Minnesota's landscape over the last 150 years have severely degraded the quality of the state's waters.

The Minnesota Pollution Control Agency (MPCA) estimates that 40 percent of the state's surface waters are so polluted that they fail to meet water quality standards.[4] Minnesota's water quality changed as its population grew, its agricultural and industrial sectors developed, and as it urbanized. For example, in Minnesota's early state history, settlers began draining the state's wetlands and prairies to make them suitable for agriculture. In 1858, the same year Minnesota gained statehood, the new state passed a law that actually

[3] As a result of a recent consolidation of two watersheds, some agencies report that Minnesota has 80 major watersheds while others report that it has 81. Throughout this report, we refer to 80 major watersheds.

[4] Minnesota Pollution Control Agency, *Minnesota's Impaired Waters List*, https://www.pca.state.mn.us/water/minnesotas-impaired-waters-list, accessed December 12, 2016.

Exhibit 1.2: Minnesota has 10 drainage basins and 80 major watersheds.



SOURCE: Office of the Legislative Auditor, based on spatial data provided by the Minnesota Pollution Control Agency.

encouraged farmers to drain their lands.[5] As a result, landowners installed miles of underground perforated pipes (called drain tile), dug ditches, and altered the course and shape of natural streams to draw water away from their fields. Although these changes nurtured the state's economy, they had detrimental effects on water quality. Rather than slowly soaking into the soil and groundwater, rainwater now rapidly rushes out of drained fields and into surface waters, carrying with it pollutants such as nitrates and phosphorus. The construction of roads, buildings, and other impervious surfaces also prevents precipitation from soaking into the soil where it would otherwise be treated. As a result, precipitation rapidly runs across nonvegetated land and into surface waters, carrying with it pollutants such as road salts, oil, and lawn fertilizers. Increased volumes of this runoff (called stormwater runoff) can erode streambanks, which release sediment into the streams. Industrial facilities and mining operations also discharge pollution into water. For example, taconite production and coal power plants release mercury into the air, which is then deposited into waterbodies.

Water pollution is divided into two categories: (1) "point source pollution" and (2) "nonpoint source pollution." Point source pollution originates from a single source, such as a wastewater pipe from a factory or municipal sewage treatment plant. Nonpoint source pollution comes from diffuse sources, such as fertilizer runoff from fields or livestock pastures or discharge from failing septic systems. According to the U.S. Environmental Protection Agency (EPA), many more lakes and streams in the country are impaired because of pollution from nonpoint sources than from point sources. Exhibit 1.3 provides examples of some common pollutants that may come from either category. For example, as the exhibit explains, nitrogen and phosphorus are nutrients that are necessary for plant growth. However, in excessive amounts, they can cause toxic levels of algae to grow.

Legal Requirements

Water quality in Minnesota is governed by a number of state and federal laws. In this report, we focus on those that heavily influence Clean Water Fund spending—the federal Clean Water Act, Minnesota's Clean Water Legacy Act, and Minnesota's Legacy Amendment. The federal Clean Water Act of 1972 established a framework for water quality management across the country. Minnesota struggled to meet those requirements and, in 2006, passed the Clean Water Legacy Act to affirm the state's intent to comply with those requirements.[6] Minnesotans then approved the 2008 Legacy Amendment to provide a significant and consistent source of funding for those efforts.[7]

[5] An Act to Regulate and Encourage the Drainage of Lands, *Laws of Minnesota* 1858, Chapter 73, codified as *Minnesota Statutes* 1858, Chapter 128. A version of this law still exists as *Minnesota Statutes* 2016, Chapter 103E.

[6] Clean Water Legacy Act, *Laws of Minnesota* 2006, chapter 251, secs. 2-9, codified as *Minnesota Statutes* 2016, Chapter 114D.

[7] *Minnesota Constitution*, art. XI, sec. 15.

Exhibit 1.3: Various pollutants impact Minnesota's waters.

Examples of Pollutants	Description	Examples of Sources
Nutrients	Nutrients, such as phosphorus and nitrogen, occur naturally in aquatic ecosystems; they become pollutants when their concentrations are too high. Nutrient pollution causes increased algae growth, which harms other aquatic life by reducing oxygen levels.	Discharges from wastewater treatment plants, agricultural runoff carrying crop fertilizer, and urban storm runoff carrying lawn fertilizers
Sediment	Sediments are loose particles of sand, clay, or silt. Sediment suspended in water limits how much light penetrates water, which can harm plants that need light for photosynthesis and fish that depend on these plants for survival. Sediment can also fill in waterbodies over time.	Natural erosion and erosion resulting from human land use, such as construction activities and the alteration of the natural courses of streams
Bacteria	While not all bacteria are harmful to humans, some can lead to illness if consumed. Examples of bacteria found in water include *E. coli.*	Human, pet, livestock, and wildlife waste
Salt	Salts, such as chlorides and sulfates, harm fish and plant life at high concentrations.	Road de-icing salt, wastewater treatment plants, mining operations, and factories
Lead	Lead is a poisonous metal.	Corroding pipes that carry water into houses and other buildings
Contaminants of emerging concern	Minnesota continues to identify new threats to water quality. Unregulated chemicals, such as pharmaceuticals, fragrances, fire retardants, and insecticides, have been found in Minnesota's lakes and rivers. There is limited knowledge about the effects of these chemicals.	Wastewater discharges, runoff from animal agriculture, and air pollution

SOURCE: Office of the Legislative Auditor.

Federal Clean Water Act

In 1972, Congress passed sweeping amendments to the nation's primary water pollution law—the Federal Water Pollution Control Act of 1948.[8] The amendments became known as the federal Clean Water Act. The act came on the heels of a major fire on Ohio's Cuyahoga River in 1969, which drew national attention. *Time* magazine reported that the river, which had caught fire more than a dozen times over the previous century, "ooze[d] rather than flow[ed]."[9]

The federal Clean Water Act brought about significant changes to water quality regulation.

The federal Clean Water Act focused primarily on regulating point sources of pollution. The act prohibited industries, municipalities, and any other person from dumping untreated

[8] Clean Water Act, Public Law 92-500 (1972), codified as 33 *U.S. Code*, secs. 1251-1372 (2016).

[9] "The Cities: The Price of Optimism," *Time*, August 1969, 51.

sewage or other pollutants from a point source into a waterbody without a permit.[10] It also gave the EPA the authority to set industry standards for wastewater treatment and to provide grants and loans to public entities to build wastewater treatment plants.[11]

The Clean Water Act also established a point source permit program.[12] The permit program regulates industrial facilities, municipal wastewater treatment plants, and certain construction sites, mining operations, and animal feedlots. Certain municipalities with storm sewer systems are also subject to point source permits.[13] These municipalities must develop and implement plans to reduce the amount of untreated stormwater that flows into surface waters via storm sewers. For example, under such a permit, a city might install rain gardens to capture polluted stormwater runoff and divert it from its streets.

The 1972 Clean Water Act did not directly regulate nonpoint source pollution like it did with point sources. However, 1987 amendments to the act allow the EPA to provide grants to states with programs that address nonpoint source pollution.[14] The Clean Water Act also requires states to report to the EPA their most common sources of nonpoint source pollution.[15] In addition, states must establish water quality standards and assess which of their waterbodies fail to meet those standards. Every two years, states must identify the waterbodies that fail to meet standards in an EPA report called the Impaired Waters List, or the "303(d) List," which refers to the section of federal law that requires it.[16] We discuss the identification of impaired waters further in Chapter 3.

The Clean Water Act also requires states to prioritize which of their impaired waterbodies they plan to restore first and to develop pollutant limits, known as total maximum daily loads (TMDLs), for those waterbodies.[17] A TMDL is the maximum amount of a particular pollutant that can be discharged into an impaired waterbody to allow the waterbody to meet water quality standards. The box on the opposite page illustrates a hypothetical TMDL for an impaired lake. In this example, MPCA has established that a maximum of 95 pounds of Pollutant X may be discharged daily into the lake—an amount that should allow the lake to meet water quality standards with an appropriate margin of safety. As the box shows, the lake takes in 45 pounds of Pollutant X from unregulated nonpoint source pollutant runoff.

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[10] Clean Water Act, Public Law 92-500, sec. 301(a) (1972), codified as 33 *U.S. Code*, sec. 1311(a) (2016).

[11] 33 *U.S. Code*, secs. 1281(g), 1311(b), 1312, 1314(b), 1316, and 1381-1383 (2016).

[12] The Clean Water Act allows states to administer their own permit programs under the National Pollutant Discharge Elimination System (NPDES). Clean Water Act, Public Law 92-500, sec. 402 (1972), codified as 33 *U.S. Code*, sec. 1342 (2016).

[13] Clean Water Act, Public Law 100-4, sec. 405 (1987), codified as 33 *U.S. Code*, sec. 1342(p) (2016).

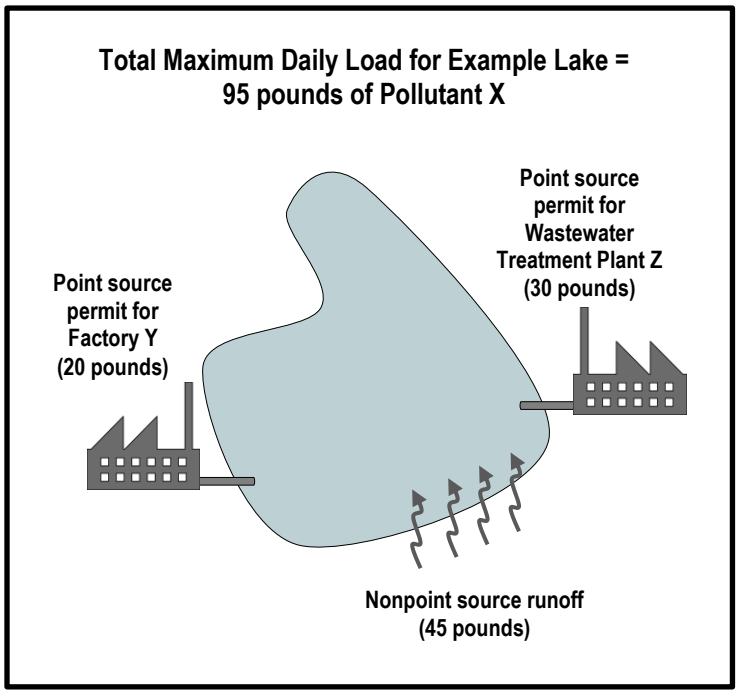
[14] Clean Water Act, Public Law 100-4, sec. 319(h) (1987), codified as 33 *U.S. Code*, sec. 1329(h) (2016).

[15] Clean Water Act, Public Law 92-500, sec. 305(b)(1)(E) (1972), codified as 33 *U.S. Code*, sec. 1315(b)(1)(E) (2016).

[16] Clean Water Act, Public Law 92-500, sec. 303(d) (1972), codified as 33 *U.S. Code*, sec. 1313(d) (2016).

[17] Clean Water Act, Public Law 92-500, sec. 303(d) (1972), codified as 33 *U.S. Code*, sec. 1313(d)(1) (2016).

This leaves 50 pounds that the agency may allocate to one or more point source dischargers through permits. In the example, the regulatory agency issues two permits—one allowing Factory Y to discharge 20 pounds of the pollutant, and another allowing Wastewater Treatment Facility Z to discharge 30 pounds. Once the necessary load reductions have been calculated and allocated for a particular waterbody, MPCA publishes them in a draft TMDL report for public feedback; it then submits the report to EPA for approval.



Minnesota's Clean Water Legacy Act

Although Minnesota worked to implement the requirements established by the 1972 Clean Water Act, progress was slow. By the 1990s, 20 years after passage of the act, Minnesota had assessed only a small number of waterbodies against its standards and had developed only one TMDL.[18] In 1995, the Governor and Legislature commissioned a Blue Ribbon Task Force to address "a severe funding shortfall" in MPCA's permitting program.[19] In 2002, the Office of the Legislative Auditor found that MPCA was still not achieving federal requirements and was underfunded.[20] In response to those reports and others, the 2003 Legislature required MPCA to convene a group of stakeholders to develop strategies for addressing the state's water quality problems.[21] The following year, the stakeholder group, which was composed of representatives from agriculture, business, environmental organizations, local governments, and state agencies, recommended that the Legislature establish a dedicated funding source for water quality efforts.[22]

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[18] That "TMDL case study" predated the state's current approach to TMDLs. It was later expanded into a full TMDL report and approved by the EPA in 2004.

[19] Blue Ribbon Task Force on Funding Minnesota's Water-Quality Programs, *Report of the Blue-Ribbon Task Force on Finding Minnesota's Water Quality Programs: Findings and Recommendations* (St. Paul, 1995), 1.

[20] Office of the Legislative Auditor, Program Evaluation Division, *Water Quality: Permitting and Compliance Monitoring* (St. Paul, 2002), 15-16. Office of the Legislative Auditor, Program Evaluation Division, *Minnesota Pollution Control Agency Funding* (St. Paul, 2002), ix-x.

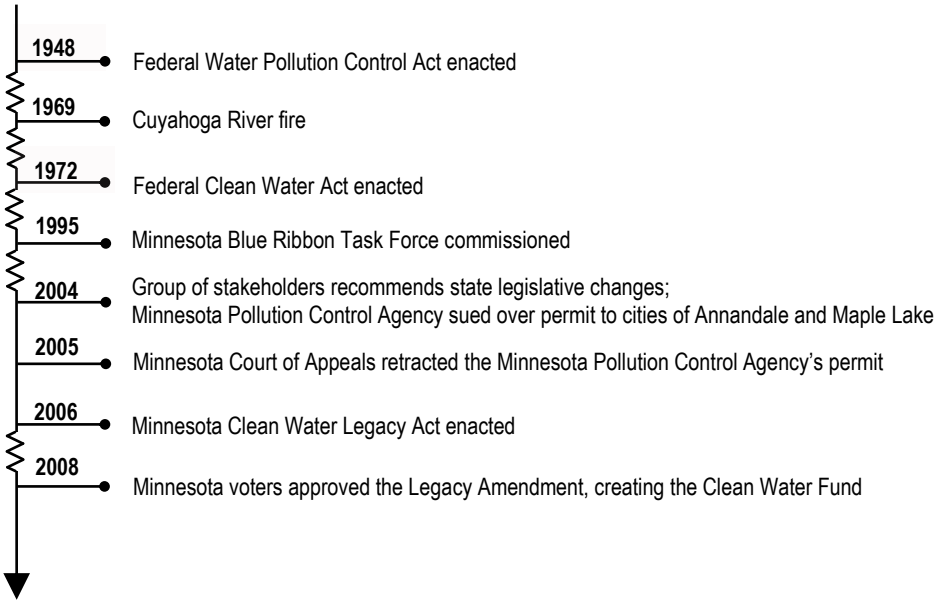
[21] *Laws of Minnesota* 2003, chapter 128, art. 1, sec. 2, subd. 2.

[22] The stakeholder group is often referred to as the "G16" or the "G40," referring to the number of members that made up the policy work group (that developed recommendations) and a broader group of stakeholders (that offered feedback on those recommendations), respectively. For their recommendations, see Impaired Waters Stakeholder Process, *Policy Framework* (St. Paul, 2014).

Later in 2004, a Minnesota environmental organization brought a legal challenge against MPCA on grounds that it violated federal regulations of the Clean Water Act.[23] That year, MPCA had issued a permit to the cities of Annandale and Maple Lake for a new wastewater treatment facility to accommodate their expanding populations. Under federal regulations, states may not issue a new point source permit if that permit would "cause or contribute to a violation of water quality standards."[24] The cities' proposed facility would have discharged pollutants into two waterbodies that MPCA had deemed impaired, and for which the agency had not yet developed TMDLs. In 2005, the Minnesota Court of Appeals found in favor of the environmental organization and reversed MPCA's decision, retracting the cities' permit.[25] The Minnesota Supreme Court eventually reversed the lower court's ruling, but not until 2007.[26] MPCA staff said the lower court's 2005 ruling "sent a shockwave" through the community and demonstrated the importance of performing TMDL studies.

The stakeholders' 2004 legislative recommendations, combined with the lawsuit and initial 2005 lower court ruling, as well as other reports and events, ultimately led to the development and passage of Minnesota's Clean Water Legacy Act of 2006.[27] Exhibit 1.4 highlights some of these key events.

Exhibit 1.4: Numerous events at the state and federal levels led to the passage of Minnesota's recent water quality laws.



SOURCE: Office of the Legislative Auditor.

[23] On October 27, 2004, the organization petitioned for and obtained a Writ of Certiorari for review of the MPCA's decision in the Minnesota Court of Appeals.

[24] 40 *CFR*, sec. 122.4(i) (2000).

[25] *In re City of Annandale*, 702 N.W.2d 768, 776 (Minn. Ct. App. 2005), *rev'd*, 731 N.W.2d 502 (Minn. 2007).

[26] *In re City of Annandale*, 731 N.W.2d 502 (Minn. 2007).

[27] Clean Water Legacy Act, *Laws of Minnesota* 2006, chapter 251, secs. 2-9, codified as *Minnesota Statutes* 2016, Chapter 114D.

Minnesota's Clean Water Legacy Act affirms the state's intent to comply with the federal Clean Water Act; it also reaches beyond federal requirements.

Numerous provisions in Minnesota's Clean Water Legacy Act simply direct the state to comply with federal requirements. The stated purpose of the act, shown in the box at right, even references requirements of the federal act.[28] Similarly, the Clean Water Legacy Act's eight "goals for implementation" point to the state's historical struggles to achieve federal compliance, such as identifying impaired waters and developing TMDLs in a timely manner.[29]

Statutory Purpose of the Clean Water Legacy Act

"The purpose of the Clean Water Legacy Act is to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation, by providing authority, direction, and resources to achieve and maintain water quality standards for groundwater and surface waters, including the standards required by section 303(d) of the federal Clean Water Act…."

–*Minnesota Statutes* 2016, 114D.10, subd. 1.

The Clean Water Legacy Act also includes provisions that extend beyond the federal law. For example, the act established a state policy to develop TMDLs for multiple pollutants at one time, and on a watershed or regional scale, rather than for one waterbody at a time.[30] MPCA staff told us that, historically, the agency did not collect data or develop TMDLs systematically; rather, it focused its efforts where local partners were available to help stretch the agency's limited budget. During this era, staff might have identified that a waterbody was impaired by a particular pollutant. Then, while developing a TMDL for that pollutant, they might have uncovered impairments from other pollutants and would have to start the TMDL process all over again. The new policy, established by the Clean Water Legacy Act, was meant to increase efficiency and provide a more comprehensive set of water quality data.

The Clean Water Legacy Act also requires MPCA to develop water quality strategies at the watershed scale, called Watershed Restoration and Protection Strategies (WRAPS).[31] In addition to identifying impaired waters that need restoration, this provision requires MPCA to identify waters that meet standards but need protection. Within each WRAPS report, the agency must include a table of strategies and actions for the watershed that, cumulatively, should achieve the necessary pollutant reductions from permitted point sources *and* unregulated nonpoint sources. The agency also must identify priority areas within the watershed to target these actions.

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[28] The section of the federal Clean Water Act cited in the purpose of Minnesota's Clean Water Legacy Act pertains to identifying impaired waters and developing TMDLs. See Public Law 92-500, sec. 303(d) (1972), codified as 33 *U.S. Code*, sec. 1313(d) (2016).

[29] Clean Water Legacy Act, codified as *Minnesota Statutes* 2016, 114D.20, subd. (2).

[30] Clean Water Legacy Act, codified as *Minnesota Statutes* 2016, 114D.20, subd. 3(1).

[31] Clean Water Legacy Act, *Laws of Minnesota* 2013, chapter 137, art. 2, sec. 13, codified as *Minnesota Statutes* 2016, 114D.26.

The Clean Water Legacy Act established a Clean Water Council to "advise on the administration and implementation" of the act.[32]

The Clean Water Council is composed of many of the same stakeholder interests that made recommendations to the Legislature in 2004 and helped develop and pass the 2006 act. As Exhibit 1.5 shows, the council includes 17 voting members as well as 7 nonvoting state-agency members and 4 nonvoting members of the Legislature.[33] The act requires MPCA to provide administrative support for the council.[34] In 2016, MPCA provided two part-time staff members for the council, which accounted for 1.4 full-time-equivalent staff.

Exhibit 1.5: Clean Water Council members represent diverse interests.

17 Voting Members Representing:

- Statewide farm organizations (2)
- Business organizations (2)
- Environmental organizations (2)
- Soil and water conservation districts (1)
- Watershed districts (1)
- Nonprofit organizations focused on improvement of Minnesota lakes or streams (1)
- Organizations of county governments, representing the interests of rural counties (1)
- Organizations of county governments, representing the interests of counties in the seven-county metropolitan area (1)[a]
- Organizations of city governments (2)
- Township officers (1)
- Interests of tribal governments (1)
- Statewide hunting organizations (1)
- Statewide fishing organizations (1)

7 Nonvoting Members Representing:

- Board of Water and Soil Resources
- Department of Agriculture
- Department of Health
- Department of Natural Resources
- Metropolitan Council
- Pollution Control Agency
- University of Minnesota

4 Nonvoting Legislative Members:

- Majority member of the House
- Minority member of the House
- Majority member of the Senate
- Minority member of the Senate

NOTES: The Governor appoints the voting members of the Clean Water Council. Appointments are subject to the advice and consent of the Senate. Voting members serve four-year terms. The commissioner or head of each agency appoints the member that represents that agency. Agency representatives also serve four-year terms, which are coterminous with the Governor. The Legislature appoints its members. Originally, the Clean Water Legacy Act did not include Clean Water Council seats for the Minnesota Department of Health or for legislative members. The Legislature added these seats in 2011; see *Laws of Minnesota* 2006, chapter 251, sec. 7; and *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 2, sec. 19.

[a] The seven-county metropolitan area is made up of all or portions of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties.

SOURCE: *Minnesota Statutes* 2016, 15.059, subd. 2; and 114D.30, subds. 2 and 4.

[32] Clean Water Legacy Act, *Laws of Minnesota* 2006, chapter 251, sec. 7, codified as *Minnesota Statutes* 2016, 114D.30, subd. 1.

[33] Originally, the Clean Water Legacy Act did not include council seats for the Minnesota Department of Health or for legislative members; the Legislature added these seats in 2011. *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 2, sec. 19, codified as *Minnesota Statutes* 2016, 114D.30, subd. 2(a). Also, representatives from the Metropolitan Council and the University of Minnesota (or a Minnesota state university) originally were *voting* members of the council; however, in 2015, the Legislature removed their voting power because the entities they represent receive appropriations from the Clean Water Fund. *Laws of Minnesota* 2015, First Special Session, chapter 2, art. 2, sec. 16, codified as *Minnesota Statutes* 2016, 114D.30, subd. 2.

[34] *Minnesota Statutes* 2016, 114D.30, subd. 1. The other agencies with seats on the Clean Water Council must also provide administrative support to the council.

Legacy Amendment

In the initial years after the Minnesota Legislature passed the 2006 Clean Water Legacy Act, it appropriated some General Fund dollars to help state agencies begin implementing the act's new requirements.[35] Then, in 2008, Minnesotans passed the Clean Water, Land, and Legacy Amendment, which created a source of ongoing funding to support the purposes of the act.[36]

The Legacy Amendment raised the state's sales-use tax by three-eighths of 1 percent for 25 years (through the year 2034), and dedicated 33 percent of the revenues to a new state fund, the Clean Water Fund.

The Legacy Amendment imposes a number of restrictions on how money deposited into the Clean Water Fund may be spent.[37] First, it requires that the money be used only to "protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation."[38] Second, it requires that at least 5 percent of the funds be spent "only to protect drinking water sources."[39] Third, it requires that the funds "must supplement traditional sources of funding…and may not be used as a substitute."[40] We examine the extent to which the state has adhered to these constitutional requirements in Chapter 5.

In 2010, the first year the tax increase began generating revenue for the Clean Water Fund, the Legislature adopted principles to govern the administration of the new funds.[41] One of the principles stated that:

> As much as possible existing systems and agencies should be used to distribute the funds rather than creating new or outsourced administrative systems. Agencies should be appropriated sufficient funds to carry out administrative responsibilities.[42]

Indeed, today the Clean Water Fund primarily supports the agency programs and responsibilities outlined in the Clean Water Legacy Act, rather than one-time projects. MPCA officials told us that they believe the key contribution of the Clean Water Legacy Act and the Legacy Amendment is they allow the state to tackle its water quality problems

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[35] *Laws of Minnesota* 2006, chapter 282, art. 10, secs. 1-6; and chapter 258, sec. 21, subd. 10; *Laws of Minnesota* 2007, chapter 57, art. 1, sec. 3, subd 2; sec. 4, subds. 3 and 8; and sec. 5; and *Laws of Minnesota* 2008, chapter 179, sec. 9, subd. 4.

[36] The Legacy Amendment dedicated tax receipts to three other funds in addition to the Clean Water Fund, including the Arts and Cultural Heritage Fund, the Parks and Trails Fund, and the Outdoor Heritage Fund. *Minnesota Constitution*, art. XI, sec. 15.

[37] *Minnesota Constitution*, art. XI, sec. 15.

[38] *Ibid*.

[39] *Ibid*.

[40] *Ibid*.

[41] Minnesota House of Representatives, Cultural and Outdoor Resources Division, *Legislative Guide: Principles for Use and Expected Outcomes of Funds from Dedicated Sales Taxes* (St. Paul, 2010). This guide was commissioned by *Laws of Minnesota* 2009, chapter 172, art. 5, sec. 8.

[42] Minnesota House of Representatives, *Legislative Guide: Principles for Use and Expected Outcomes of Funds from Dedicated Sales Taxes* (St. Paul, 2010).

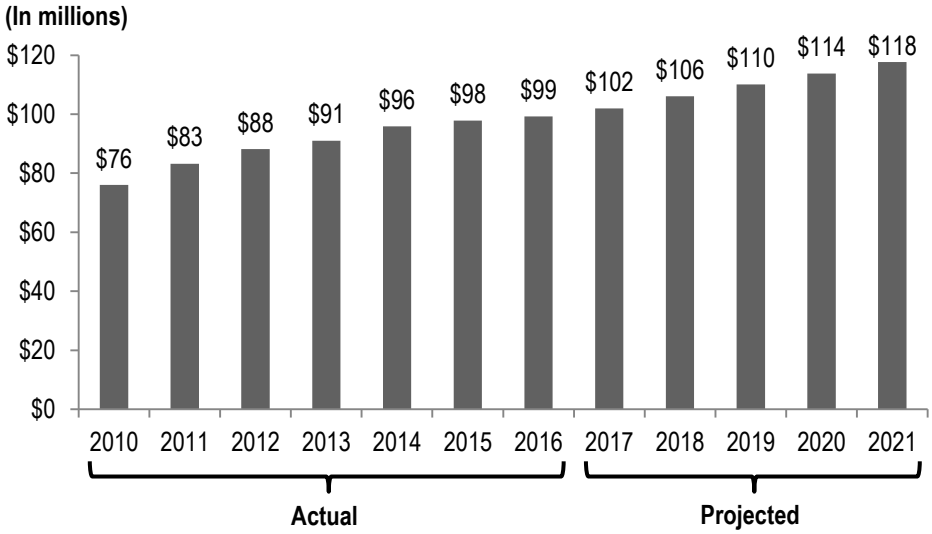
on a strategic, long-term basis, as opposed to merely implementing a scattered selection of short-term projects, as they did in the past.

After the Legacy Amendment passed, the Legislature amended aspects of the Clean Water Legacy Act, such as the Clean Water Council's duties.[43] Originally, one of the council's duties was to make recommendations to the Governor about how General Fund money should be appropriated to support the act. In 2011, the Legislature began requiring the council to recommend to the Governor and the Legislature how they should spend Clean Water Fund dollars each biennium. Today, this is perhaps the council's most prominent and time-consuming responsibility, which we discuss more in Chapter 4.

Clean Water Fund

The Clean Water Fund represents a major investment by Minnesotans in water quality. From Fiscal Year 2010—the first year it began receiving tax receipts—through Fiscal Year 2016, the Clean Water Fund received $631 million, including some investment and other income in addition to sales-use tax revenues.[44] As Exhibit 1.6 shows, the fund earned $76 million in its first year. The state's budget office expects that in 2021, Clean Water Fund annual revenues will reach $118 million, a projected 55 percent increase over the 11-year period.

Exhibit 1.6: The Clean Water Fund began receiving sales-use tax receipts in Fiscal Year 2010.



NOTES: This exhibit shows actual revenue earned (including sales-use tax receipts and other minor earnings, such as interest) for fiscal years 2010 through 2016, and projected revenue for fiscal years 2017 through 2021.

SOURCES: Minnesota Management and Budget, *Consolidated Fund Statement: Budgetary Basis, February 2012 Forecast* (St. Paul, 2012), 40; Minnesota Management and Budget, *Consolidated Fund Statement: Budgetary Basis, June 2016 End of Session* (St. Paul, 2016), 34; and Minnesota Management and Budget, *Consolidated Fund Statement: Budgetary Basis, January 2017 Governor's Recommendations* (St. Paul, 2016), 38.

[43] *Laws of Minnesota* 2006, chapter 251, sec. 7; and *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 2, sec. 19, codified as *Minnesota Statutes* 2016, 114D.30, subd. 6.

[44] Because the Legislature appropriates funds for future years, at any given time, the amount the Clean Water Fund has earned over its lifetime will likely be less than the amount that has been appropriated from the fund.

For fiscal years 2010 through 2017, the Legislature has appropriated nearly $761 million dollars from the Clean Water Fund to nine state agencies.

The Board of Water and Soil Resources (BWSR) and MPCA have received the largest shares of Clean Water Fund dollars, at 36 percent and 27 percent, respectively.[45] Because of their sizeable shares, we focused our evaluation of Clean Water Fund outcomes on these two agencies. As Exhibit 1.7 shows, the Legislative Coordinating Commission received the smallest share of appropriations from the fund. This small legislative office does not have water management responsibilities, but state law requires it to maintain a website, *Minnesota's Legacy*, which reports Clean Water Fund outcomes.[46] We discuss the commission and the *Minnesota's Legacy* website in greater depth in Chapter 2.

Exhibit 1.7: The Board of Water and Soil Resources and the Minnesota Pollution Control Agency received the majority of Clean Water Fund appropriations from fiscal years 2010 through 2017.

	Fiscal Years					
Agency	2010-2011 (in millions)	2012-2013 (in millions)	2014-2015 (in millions)	2016-2017 (in millions)	Agency Total (in millions)	Percentage of All Clean Water Fund Appropriations
Board of Water and Soil Resources	$ 39.3	$ 58.2	$ 65.7	$112.7	$275.9	36%
Pollution Control Agency	47.1	47.6	56.6	55.3	206.6	27
Public Facilities Authority	32.7	33.4	22.0	18.5	106.6	14
Department of Natural Resources	18.5	20.7	19.9	18.2	77.3	10
Department of Agriculture	9.0	14.8	14.7	16.2	54.6	7
Department of Health	3.8	6.0	9.5	7.8	27.1	4
Metropolitan Council	0.8	1.0	4.1	2.5	8.3	1
University of Minnesota	1.1	1.8	1.2	–	4.1	1
Legislative Coordinating Commission	<0.1	<0.1	<0.1	–	0.1	<1
Grand Total	$152.2	$183.6	$193.7	$231.1	$760.6	100%

SOURCE: Office of the Legislative Auditor, analysis of *Laws of Minnesota* 2009, chapter 172, art. 2, secs. 1-10; *Laws of Minnesota* 2010, chapter 361, art. 2, secs. 2-6; *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 2, secs. 1-11 and 23-24; *Laws of Minnesota* 2012, chapter 264, art. 2, secs. 2-5; *Laws of Minnesota* 2013, chapter 137, art. 2, secs. 1-11; *Laws of Minnesota* 2014, chapter 312, art. 14, secs. 1-8; *Laws of Minnesota* 2015, First Special Session, chapter 2, art. 2, secs. 1-9 and 17-19; and *Laws of Minnesota* 2016, chapter 172, art. 2.

The Legislature has appropriated Clean Water Fund dollars for a variety of purposes, as Exhibit 1.8 shows. For example, it appropriated the majority of MPCA's Clean Water Fund dollars to help the agency assess water quality, develop strategies and plans for addressing impaired waters, and set pollutant limits for specific waterbodies. In contrast, the

[45] The Legislature has also appropriated Clean Water Fund dollars to the departments of Agriculture, Health, and Natural Resources; the Legislative Coordinating Commission; the Metropolitan Council; and the University of Minnesota. For simplicity's sake, we refer to direct recipients of Clean Water Fund dollars as "state agencies" throughout this report.

[46] *Minnesota Statutes* 2016, 3.303, subd. 10.

Legislature appropriated the majority of BWSR's Clean Water Fund dollars for grants to local governments for water quality projects. Such local governments include counties, soil and water conservation districts, watershed districts, and watershed management organizations.[47]

Exhibit 1.8: Nine state agencies spend Clean Water Fund dollars on a wide variety of activities.

State Agency	Clean Water Fund Appropriations, Fiscal Years 2010-2017 (in millions)	Major Clean Water Fund Activities
Board of Water and Soil Resources	$275.9	Providing grants to local governments for projects that protect, enhance, and restore surface and protect groundwater Purchasing permanent conservation easements to protect water quality Providing funding to increase local government capacity
Pollution Control Agency	206.6	Monitoring and assessing water quality Developing watershed restoration and protection strategies Setting pollutant limits for specific waterbodies Supporting county regulation of septic systems Conducting applied research Coordinating permit requirements with total maximum daily load requirements
Public Facilities Authority	106.6	Providing grants to municipalities to implement wastewater and stormwater projects meant to help meet water quality goals Providing loans and grants to help small communities replace failing septic systems
Department of Natural Resources	77.3	Measuring stream flow Monitoring aquatic life in lakes Supporting watershed restoration and protection strategy development Monitoring fish for mercury contamination Developing county geologic atlases Conducting applied research
Department of Agriculture	54.6	Providing loans and technical assistance to help farmers reduce water pollution Conducting research to quantify agricultural contributions to water pollution Helping to identify potential sources of drinking water contamination
Department of Health	27.1	Sealing unused wells to protect groundwater used for drinking Evaluating water quality in private wells Developing outreach and education activities for private well owners Monitoring viruses in groundwater Evaluating contaminants of emerging concern Monitoring water quality at public beaches
Metropolitan Council	8.3	Conducting studies of water resources Providing grants to support communities in the Metropolitan Council's service area to improve water supply management
University of Minnesota	4.1	Conducting research Developing county geologic atlases
Legislative Coordinating Commission	<1.0	Maintaining the *Minnesota's Legacy* website

SOURCE: Office of the Legislative Auditor, analysis of Minnesota laws from 2009 through 2016; and Minnesota Pollution Control Agency, Department of Natural Resources, Minnesota Department of Agriculture, et. al., *Appropriated FY14-15 Clean Water Funding for Minnesota's Water Agencies* (St. Paul, 2013).

[47] Soil and water conservation districts provide financial and technical assistance to help landowners implement conservation practices within service areas that usually match county boundaries. In contrast, watershed districts manage water resources in areas that are generally based on watershed boundaries. Watershed districts have authority to levy. Watershed management organizations are responsible for surface water planning within the seven-county metropolitan area, which includes all or parts of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties.

The Clean Water Council has divided Clean Water Fund activities into eight categories, as Exhibit 1.9 shows.[48] This method of categorization has allowed the council and other stakeholders to track how the fund has been used over time. For example, the categorization has allowed the council to analyze whether at least 5 percent of the Clean Water Fund has gone toward activities that protect drinking water sources, as the constitution requires.[49] It has also demonstrated how much of the fund has been used to implement local water quality projects, compared to how much has been spent on planning and data collection. As the exhibit shows, for fiscal years 2010 through 2017, more than half of Clean Water Fund appropriations supported implementation of local nonpoint source and point source pollution projects.

Exhibit 1.9: The Legislature appropriated the majority of Clean Water Fund dollars to implement local water quality projects.

Activity Category	Percentage of Clean Water Fund Appropriations, Fiscal Years 2010-2017	Description
Nonpoint source implementation	42%	Implementing local projects that address nonpoint source pollution, such as pollution caused by agriculture
Point source implementation	15	Implementing local projects that address point source pollution, such as upgrading wastewater treatment plants
Drinking water and groundwater protection	15	Implementing projects that protect drinking water sources, monitor groundwater, and address failing septic systems
Monitoring and assessment	12	Collecting water quality data and assessing them against water quality standards
Watershed Restoration and Protection Strategies	11	Developing plans that identify pollution reductions and actions needed to restore impaired waters and protect healthy waters
Applied research and tool development	6	Providing resources and tools related to hydrology, best management practices, groundwater, geology, and water re-use to local governments and landowners
Clean Water Council	<1	Supporting the activities of the Clean Water Council (for example, travel expenses and printing costs)
Legislative Coordinating Commission	<1	Maintaining the *Minnesota's Legacy* website for reporting Legacy fund expenditures

NOTE: The activity categories have changed over time.

SOURCE: Office of the Legislative Auditor, analysis of Clean Water Council data; and Clean Water Council, *FY16-17 Clean Water Fund Recommendations Report* (St. Paul, 2014), 9-12.

[48] There is some overlap between categories. For example, a given activity could be categorized as either a "nonpoint source implementation" activity or a "drinking water and groundwater protection" activity. The "drinking water and groundwater protection" category usually supersedes any other category. These categories have changed somewhat over time.

[49] *Minnesota Constitution*, art. XI, sec. 15.


THE GREAT SEAL OF THE STATE OF MINNESOTA
L'ETOILE DU NORD
1858

Chapter 2: Outcomes and Activities

Central to legislators' interest in the Clean Water Fund is the question of what the state of Minnesota has received in exchange for its sizeable investment. In large part, it is too early to judge whether the fund has achieved its intended outcomes. We can, however, report some preliminary results. In this chapter, we discuss some of the challenges inherent in determining the outcomes of the Clean Water Fund. Then we report how the two agencies that have received the most Clean Water Fund dollars—the Board of Water and Soil Resources (BWSR) and the Minnesota Pollution Control Agency (MPCA)—have used their funds. Finally, we discuss the state's efforts to measure and report Clean Water Fund outcomes and activities.

Challenges of Determining Clean Water Fund Outcomes

When asked what outcomes should result from Clean Water Fund spending, many stakeholders say they expect Minnesota's water to become cleaner. The Legacy Amendment and the Clean Water Legacy Act each suggest that the long-term outcomes from the state's investments should be "protect[ed], enhance[d], and restore[d]" surface waters and "protect[ed] groundwater."[1] However, demonstrating the extent to which the state has achieved these outcomes is no easy task.

Minnesota cannot yet report many outcomes of the Clean Water Fund, and future methods to measure outcomes will be imperfect.

Before the creation of the Clean Water Fund, the state had not established baseline water quality measurements for most Minnesota waterbodies. An MPCA representative told us that the agency's efforts to collect data about waterbodies' conditions were not systematic, but rather "scattershot" and "opportunistic" due to the agency's resource limitations. Without these baseline measurements, it is difficult to determine whether conditions have improved since the state started spending Clean Water Fund dollars in Fiscal Year 2010.

Even in cases where the state does have baseline measurements for certain lakes and streams, it can take time to determine whether multiyear water quality improvement activities have had any effect. Many of the projects financed by the Clean Water Fund are implemented over a three-year timeframe. Therefore, they may not start showing measurable results for four years, or likely more, from the time the project started. Given that the Legislature appropriated the first Clean Water Fund dollars for Fiscal Year 2010, only the projects implemented during those first few years have been in place long enough to begin showing results. Further, even if water quality indicators show an improvement in a given waterbody over a short period of time, it may take multiple years of monitoring to establish that the improvement represents a legitimate trend.

[1] *Minnesota Constitution*, art. XI, sec. 15; and Clean Water Legacy Act of 2006, codified in *Minnesota Statutes* 2016, 114D.10, subd. 1.

Depending on the severity of the water quality issue and the lag time in natural systems responding to land-use changes, it can take many years for lakes and streams to show measurable improvements after a project takes place. To put water quality improvements in context, in 2014, state agencies developed a set of "ambitious, yet achievable" water quality goals for the state.[2] If Minnesota achieves these goals, the percentage of lakes with good water quality will increase by 8 percentage points and the percentage of streams with healthy biological communities will increase by 7 percentage points over the life of the Clean Water Fund.[3]

It may be difficult to determine what share of the state's water quality improvement is directly attributable to the Clean Water Fund. The Clean Water Fund is one of several sources of financial support for water quality improvement activities, including other state and federal funds, bond proceeds, local government assessments, and private investment, among others. When projects are funded by a combination of sources, it is difficult to attribute results to a particular source of funding.

Finally, it may be challenging to separate the effects of Clean Water Fund activities from other factors that can affect local water quality, such as changes in land use, population, and climate. For example, actions taken by local farmers, such as the installation of drain tile in previously undrained fields, can have negative impacts on water quality and may affect Clean Water Fund outcomes. Similarly, fluctuations in precipitation patterns may change the amount of or the efficiency with which the ground can soak up and filter that precipitation.

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

While we cannot currently report many water quality outcomes, the state has laid the foundation for improved outcomes reporting. Several state agencies collaborated to develop the Minnesota Water Management Framework, a strategy that addresses and measures water quality in each of the state's 80 watersheds on a ten-year, repeating cycle. The Minnesota Water Management Framework consists of five stages:

1. Collecting water quality data (referred to as "monitoring") and determining whether waterbodies meet state water quality standards (referred to as "assessment")
2. Investigating why waterbodies are impaired
3. Developing strategies for restoring and protecting waterbodies
4. Developing water management plans for local governments
5. Implementing water quality projects

Once the initial round of monitoring has concluded (currently scheduled for 2018), the state should have a complete and comprehensive set of baseline data for all 80 watersheds. During the second round of monitoring (and all subsequent rounds), the state should be able

[2] Clean Water Fund Interagency Coordination Team, *Minnesota's Clean Water Roadmap* (St. Paul, 2014), 2.

[3] *Ibid.*

to begin to evaluate whether water quality in a given watershed has improved and whether improvement strategies have had their intended impacts.

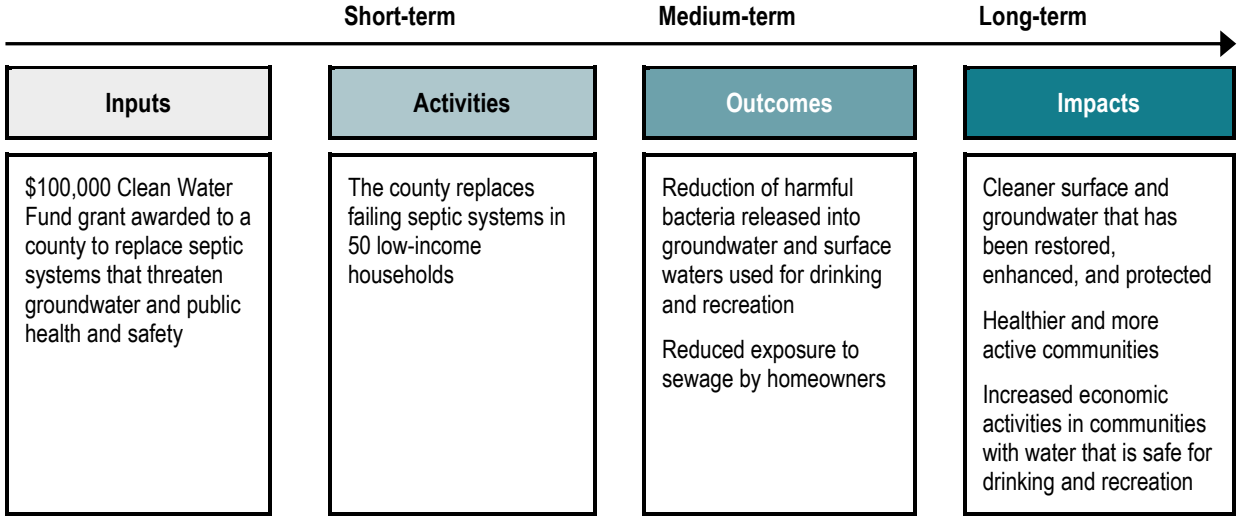
Each state agency is responsible for implementing certain activities in the framework. MPCA, for example, has lead responsibility over the activities that make up the first three stages of the cycle. BWSR, meanwhile, is heavily involved with the final two stages. We explore some of MPCA's and BWSR's Clean Water Fund responsibilities when we discuss the framework in detail in Chapter 3.

While it is difficult to measure whether the ultimate, long-term goals of the Clean Water Fund have been achieved, we can measure some of the fund's short- and medium-term results.

It is often much easier to measure concrete, short-term results, such as the number of lead-leaching water pipes replaced in homes across the state, than to measure whether less tangible, long-term outcomes, such as "clean water" have been achieved. Exhibit 2.1 illustrates a continuum of short-, medium-, and long-term measures for a hypothetical Clean Water Fund program. As the exhibit shows, a county might receive a $100,000 Clean Water Fund grant. This grant represents an "**input**," which we can easily measure. The grant allows the county to replace failing septic systems in 50 low-income households; this "**activity**" is also easy to measure. The replaced septic systems reduce the amount of harmful bacteria leaking into surface waters and groundwater, which represents a medium-term "**outcome**." Such outcomes can be somewhat more difficult to measure.

Finally, the pollutant reductions contribute to the state's ultimate goal of clean surface and groundwater that has been restored, enhanced, and protected. These long-term "**impacts**"

Exhibit 2.1: It is easier to measure short-term activities than medium-term outcomes or long-term impacts.



NOTE: This exhibit depicts how a hypothetical Clean Water Fund program, a grant program to replace failing septic systems, produces measurable activities over the short-term, which should lead to medium-term outcomes, followed by longer-term impacts.

SOURCE: Office of the Legislative Auditor.

are much harder to measure. Given the challenges Minnesota faces in measuring the Clean Water Fund's medium-term outcomes and long-term impacts, the state has primarily measured activities so far.

Clean Water Fund Activities

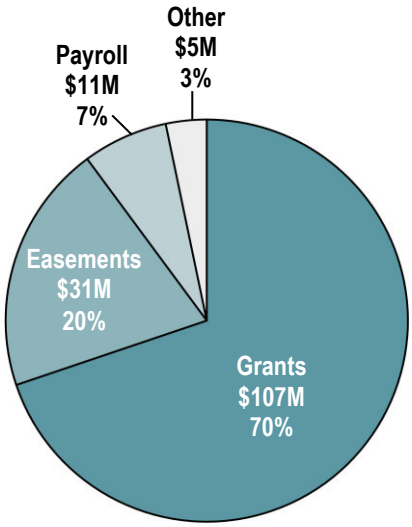
We reviewed the activities that the Clean Water Fund has supported in the two agencies that have received the largest share of funds—BWSR and MPCA. In this section, we report the major activities these agencies have performed with their funds and, where possible, the medium-term outcomes they have produced.

Board of Water and Soil Resources Activities

BWSR has received 36 percent of all Clean Water Fund appropriations since the fund was established, more than any other state agency. From fiscal years 2010 through 2016, the agency spent $153 million of its appropriations.

The Board of Water and Soil Resources spent most of its Clean Water Fund dollars on grants to local governments and on conservation easements.

As shown in the chart at right, BWSR spent the majority of its Clean Water Fund appropriations (70 percent) on grants to local governments for water quality improvement projects.[4] It spent another large share (20 percent) on conservation easements, and smaller shares on payroll (7 percent)—for staff activities such as providing technical support to local governments and administering and evaluating grant programs—and other activities (3 percent).[5]



Board of Water and Soil Resources Clean Water Fund Expenditures Fiscal Years 2010-2016

Grant Activities

BWSR's Clean Water Fund grants supported a wide variety of local government water quality activities.[6] For example, some of the agency's grants helped local governments reduce agricultural runoff from fields. Others allowed local governments to educate the public about water quality issues or to develop local ordinances regarding water pollution.

[4] From fiscal years 2010 through 2016, BWSR spent about $107 million in grants, as reflected in the chart; however, it has awarded more grant funds that have not actually been released to grantees yet. Grantees typically receive a portion of their awards at the start of their projects; they receive the remainder after achieving certain benchmarks.

[5] State agencies, such as BWSR, have significant flexibility in how they categorize their expenditures in the state's accounting system. Here, we combined the major expenditure categories used by BWSR. For this report, we did not evaluate the extent to which BWSR appropriately categorized its Clean Water Fund expenditures.

[6] BWSR awarded the majority of its Clean Water Fund grant funds to soil and water conservation districts (47 percent) and watershed districts (23 percent). It awarded smaller shares to other types of local governments, such as counties, cities, and watershed management organizations.

Between fiscal years 2010 and 2016, the Board of Water and Soil Resources issued about 900 Clean Water Fund grants to local governments, totaling nearly $136 million.

During this seven-year period, BWSR issued its Clean Water Fund grants through numerous grant programs.[7] The largest number of grants (about 250) and the most grant funds awarded ($54 million) were from BWSR's Projects and Practices grant program.[8] This program funded activities related to nonpoint source pollution, ranging widely from livestock waste management to septic system upgrades.[9] In Fiscal Year 2010, for example, BWSR awarded the Stearns County Soil and Watershed Conservation District a $400,000 Projects and Practices grant to, among other things, install rain gardens along lakes and streams in the county. The rain gardens diverted and collected stormwater runoff from buildings and roads, preventing it from flowing untreated into storm sewers or directly into the county's surface waters. We discuss BWSR's numerous grant programs further in Chapter 4.

BWSR's Clean Water Fund grants funded many activities that, in the field of conservation, are called "best management practices." These activities encompass a wide range of accepted methods for reducing pollution, which are sometimes officially sanctioned by governmental regulatory bodies. Installing a rain garden, as we just described, is one example of a best management practice.

We analyzed BWSR's grant records to examine the best management practices that the agency's Clean Water Fund grants have funded and to determine how much pollution has been reduced as a result of those practices. Between fiscal years 2010 and 2016, BWSR's Clean Water Fund grants supported more than 2,900 best management practices.[10] More than half of these practices fell into one of the six categories shown in Exhibit 2.2. The most common best management practices were related to improving septic systems. For example, in Fiscal Year 2011, BWSR issued a grant to Mille Lacs County to help a low-income homeowner replace a septic system that had been failing for more than four years.

[7] These figures in this section represent our best estimates, given limitations in BWSR's grant records.

[8] From fiscal years 2010 through 2013, BWSR used the name "Clean Water Assistance" for its Projects and Practices grant program.

[9] As discussed in Chapter 1, nonpoint source pollution comes from diffuse sources as opposed to specific "point sources," such as wastewater treatment plants.

[10] Completed best management practices are identifiable in BWSR's grants database only for those grants that have been completed. As such, we analyzed best management practices funded by the 41 percent of BWSR Clean Water Fund grants that were completed from fiscal year 2010 through 2016.

Exhibit 2.2: Board of Water and Soil Resources Clean Water Fund grants supported a variety of activities.

Activity (or "Best Management Practice")	Description
Septic system improvements	Repair or replacement of septic systems to prevent harmful bacteria from contaminating groundwater or surface waters
Water and sediment control basins	Installation of structures that trap water or sediment to reduce runoff
Bioretention basins	Installation of basins that collect stormwater runoff and allow it to be taken up and filtered by vegetation
Streambank and shoreline protection	Installation of vegetation, rocks, or other structures that reduce erosion of streambanks or shorelines
Well decommissioning	Prevention of potential groundwater contamination by sealing inactive, abandoned, or unusable wells
Nutrient management	Management of the amount, source, method, and timing of fertilizer application to fields to minimize pollutant runoff

NOTES: We analyzed best management practice data only for grants that had been completed. The activities listed above represent the most common best management practices; they do not necessarily represent the best management practices for which the most Clean Water Fund money was spent.

SOURCE: Office of the Legislative Auditor, analysis of Board of Water and Soil Resources eLINK data, fiscal years 2010 to 2016 and Board of Water and Soil Resources, *eLINK Guidance Document: Practices* (St. Paul, 2016).

The Board of Water and Soil Resources estimates the pollution reductions that should occur as a result of its grant activities.

It can take a significant amount of time, money, and technical expertise to measure the amount of pollution that has been reduced in a given waterbody. And, as we described above, it may not be possible to attribute pollution reductions in a waterbody to a specific activity, such as one funded by a Clean Water Fund grant. Therefore, instead of measuring the amount of pollution that has actually been reduced because of its grant activities, BWSR tracks the amount of pollution *estimated* to be reduced by those activities. BWSR's grant recipients prepare these estimates using modeling tools provided or approved by the agency. Grantees prepare the estimates for pollutants such as nitrogen, phosphorus, sediment, and *E. coli*—depending on the purpose of their grant-funded activities.

Ideally, BWSR's grants support pollution reduction goals for specific waterbodies, such as goals established through a total maximum daily load (TMDL).[11] In an attempt to understand the impact of BWSR's grants at the state level, we tried to compare the agency's pollutant-reduction estimates with related statewide goals. However, we found that the state has not adopted many statewide pollution-reduction goals. We were able to evaluate BWSR's pollutant-reduction estimates against statewide goals for only two pollutants—nitrogen and phosphorus. These goals were established in the state's nutrient reduction

[11] As discussed in Chapter 1, TMDLs establish the maximum amount of a particular pollutant that can be discharged into a waterbody without violating water quality standards.

strategy.[12] We found that from fiscal years 2010 through 2016, BWSR's Clean Water Fund grants reduced an estimated 177,000 pounds of nitrogen and 76,000 pounds of phosphorus in Minnesota's waterbodies per year.[13] Assuming these estimated pollutant reductions actually occurred, they represented about 5 percent of the annual reduction needed to meet the statewide phosphorus goal, and less than 1 percent of the annual reduction needed to meet the statewide nitrogen goal.[14]

Conservation Easements

BWSR's Clean Water Fund appropriations also supported conservation easements. A conservation easement is a contract between an entity (such as BWSR) and a landowner that protects a property's natural characteristics (such as its lakes, streams, or groundwater reserves) by limiting how the landowner can use the property. Landowners voluntarily agree to such contracts, typically in exchange for financial compensation.[15]

Between fiscal years 2010 and 2016, the Board of Water and Soil Resources spent $31 million to purchase, protect, or restore conservation easements.

BWSR's conservation easements play a role in a state program to reduce erosion and protect water quality by converting marginal agricultural land into native prairies or wetlands.[16] BWSR purchased easements on two types of agricultural lands: (1) lands adjacent to wells, known as "wellhead protection areas;" and (2) lands adjacent to surface waters, known as "riparian lands." From fiscal years 2010 through 2016, BWSR purchased 450 permanent easements on riparian lands, covering 5,318 acres. When vegetated, these areas are called "riparian buffers." This vegetation intercepts agricultural runoff (which carries sediment and other pollutants) before it reaches streams. During this period, BWSR also purchased 28 permanent conservation easements on wellhead protection areas covering 1,764 acres. These easements help trap chemicals before they leach into vulnerable aquifers used for drinking water.[17]

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[12] *The Minnesota Nutrient Reduction Strategy* contains goals for each of the state's regions. We combined these regional goals to come up with a single statewide goal; see *The Minnesota Nutrient Reduction Strategy* (St. Paul, 2014), Chapter 2, pp. 1-6 and Chapter 5, pp. 37-40.

[13] These nitrogen and phosphorus reductions resulted from 1,597 and 1,539 best management practices, respectively.

[14] Some Clean Water Fund projects may have been completed prior to the publication of *The Minnesota Nutrient Reduction Strategy*. Thus, some portion of their estimated pollutant reductions may already have been accounted for when the goals were established. Therefore, we cannot definitively say that the statewide pollution reductions targets have been reduced by these percentages. We provide these numbers simply to provide the best available context for understanding the relative size of these estimated reductions.

[15] For more information on conservation easements, see Office of the Legislative Auditor, Program Evaluation Division, *Conservation Easements* (St. Paul, 2013).

[16] The Reinvest in Minnesota Reserve program is codified in *Minnesota Statutes* 2016, 103F.515.

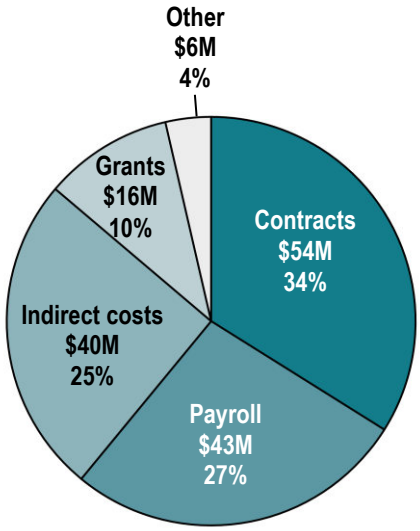
[17] In 2015, the Legislature appropriated an additional $18 million from the Clean Water Fund to BWSR for conservation easements and related activities; see *Laws of Minnesota* 2015, First Special Session, chapter 2, art. 2, sec. 7(l). These funds are being used as a match for the state's application for funding from the U.S. Department of Agriculture's Conservation Reserve Enhancement Program (CREP) and have not yet been spent. We discuss CREP in greater detail in Chapter 5.

Minnesota Pollution Control Agency Activities

MPCA has received 27 percent of all Clean Water Fund appropriations since the fund was established, the second largest share next to BWSR. From fiscal years 2010 through 2016, MPCA spent $158 million from these appropriations.

The Minnesota Pollution Control Agency spent the largest share of its Clean Water Fund dollars on contracts with partners.

Most of MPCA's expenditures supported the first three stages of the Minnesota Water Management Framework: (1) monitoring and assessment, (2) investigating why waterbodies are impaired, and (3) developing watershed restoration and protection strategies. The agency's employees performed some of this work, but MPCA also relied on contractors and grantees to perform a large share. As the chart at right shows, MPCA spent 34 percent of its funds on contracts with partners, 27 percent on payroll, and 10 percent on grants.[18] In this section, we describe the activities that MPCA staff performed directly and those which its partners performed.



Minnesota Pollution Control Agency Clean Water Fund Expenditures Fiscal Years 2010-2016

Activities Performed by Minnesota Pollution Control Agency Staff

MPCA staff told us that since the agency began receiving Clean Water Fund dollars in Fiscal Year 2010, it has been able to perform new activities and accelerate or expand existing ones. For example, MPCA has used the funds to hire a staff person to coordinate development of the agency's stormwater manual, an online repository of information about stormwater requirements used by municipal officials.[19] The agency also hired a staff person to identify "unsewered areas" across the state. Properties in unsewered areas are neither connected to a municipal wastewater treatment plant nor to a septic system. Such properties discharge untreated sewage directly into surface waters, which violates both state and federal laws.[20] MPCA has also used its Clean Water Fund dollars to accelerate the amount of water-quality samples staff have been able to collect in a single year. This data collection is one component of the Minnesota Water Management Framework, which we review in much more depth in Chapter 3. Other components of the framework that MPCA

[18] MPCA also spent 25 percent of its Clean Water Fund dollars on indirect costs, such as leases for office space, agency vehicles, information technology services, and use of the state's accounting and payroll systems. State agencies, such as MPCA, have significant flexibility in how they categorize their expenditures in the state's accounting system. Here, we combined the major expenditure categories used by MPCA (which may differ from how BWSR categorized its expenditures). For this report, we did not evaluate the extent to which either agency appropriately categorized its Clean Water Fund expenditures.

[19] Minnesota Pollution Control Agency, *Minnesota Stormwater Manual*, https://stormwater.pca.state.mn.us /index.php/Main_Page, accessed January 24, 2017.

[20] *Minnesota Statutes* 2016, 115.55, subd. 11; and 33 *U.S. Code*, sec. 1311(a) (2016).

staff perform using Clean Water Fund dollars include: investigating the sources of water quality impairments, developing computer models of the flow of water and pollutants in watersheds, developing TMDLs, and writing watershed restoration and protection strategies (WRAPS) reports.

Activities Performed by Minnesota Pollution Control Agency Partners

MPCA staff said that, whenever possible, the agency encourages local partners to take the lead in performing the agency's water quality activities in a given local area. The agency issued contracts to local governments, nonprofit organizations, private firms, educational institutions, and other entities and individuals to: collect water samples, process water samples, investigate the sources of water quality impairments, develop computer models, develop TMDLs, write WRAPS reports, engage the public, and conduct research. In 2013, for example, MPCA contracted with Beltrami County for $30,000 to develop a WRAPS report for the Mississippi River Headwaters watershed.

In addition to these contracts, MPCA also issued some grants using Clean Water Fund dollars. These grants programs supported local water sample collection efforts, nonpoint source pollution projects, and county septic system programs. We describe these programs further below.

Water Quality Monitoring Grants

MPCA's partners collect a large portion of the state's water samples. The agency uses its Clean Water Fund appropriations to fund water quality monitoring grants for two reasons. First, it does not have sufficient staff to collect all of the samples it needs to assess the state's 80 watersheds over a ten-year period. Second, engaging stakeholders in collecting water quality data is an important part of the state's strategy to protect, restore, and enhance its waters.[21] MPCA has issued two kinds of water quality monitoring grants from its Clean Water Fund appropriations: (1) surface water assessment grants (SWAG) and (2) load monitoring grants. For both programs, grantees collect water chemistry samples at sites selected by MPCA.[22] From fiscal years 2010 through 2016, MPCA spent $4.6 million on SWAG grants. From fiscal years 2012 through 2016, it spent $5 million on load monitoring grants.[23]

Surface Water Assessment Grants
• $4.6 million awarded from 2010-2016 • 105 grant awards • 61 recipients
Load Monitoring Grants
• $5 million awarded from 2012-2016 • 42 grant awards • 19 recipients

[21] Minnesota Pollution Control Agency, *Minnesota's Water Quality Monitoring Strategy 2011 to 2021* (St. Paul, 2011), 19.

[22] The two types of monitoring grants correspond to MPCA's two different monitoring efforts: intensive watershed monitoring and pollutant load monitoring. We describe these efforts further in Chapter 3.

[23] MPCA awarded monitoring grants to soil and water conservation districts, watershed districts, counties, a tribal government, joint powers organizations, colleges and universities, and nonprofit organizations.

Clean Water Partnership Grants

Between fiscal years 2010 and 2015, MPCA issued 41 grants totaling $5.9 million through its Clean Water Partnership grant program. The Legislature established this program in 1987 to provide financial and technical assistance to local governments to prevent nonpoint source pollution.[24] In 2015, for example, MPCA issued a $38,650 grant to Todd County Soil and Water Conservation District to reduce the amount of nutrient runoff flowing into local streams and lakes, including one lake considered to be an important habitat. The project is scheduled for completion in 2018. We discuss the Clean Water Partnership grant program further in chapters 4 and 5.

Clean Water Partnership Grants

Fiscal Year	Total Number of Awards	Total Awarded (in millions)
2010	4	$0.6
2011	8	1.2
2012	4	0.8
2013	7	0.8
2014	5	1.1
2015	13	1.4

Septic System Grants

Finally, MPCA has issued Clean Water Fund grants to help counties regulate septic systems in their jurisdictions.[25] Septic systems treat wastewater from houses and other buildings that are not connected to municipal wastewater systems, as Exhibit 2.3 illustrates. State rules require that septic systems: (1) protect public health and safety and (2) protect groundwater.[26] When septic systems fail, bacteria and other pollutants in sewage can contaminate surface water or groundwater. In 2015, MPCA estimated that more than 20 percent of the state's 543,000 septic systems were not in compliance with state standards.

[24] *Laws of Minnesota* 1987, Chapter 392, codified as *Minnesota Statutes* 2016, 103F.701-755.

[25] Septic systems are also called "subsurface sewage treatment systems," often solely referred to by the abbreviation "SSTS."

[26] *Minnesota Rules*, 7080.1500, subp. 4A-B, published electronically October 10, 2013. State law establishes some requirements for septic systems, but counties—which administer and enforce state regulations—must establish their own local requirements. For example, state law requires counties to adopt enforceable ordinances that flesh out state requirements, such as licensing requirements for septic system professionals, technical requirements for septic systems, and permitting and inspection requirements. See *Minnesota Statutes* 2016, 115.55, subd. 2; and *Minnesota Rules*, Chapter 7082, published electronically March 11, 2011.

Exhibit 2.3: When designed and operating properly, septic systems distribute wastewater into the soil, where it can be treated before draining into groundwater reserves.

NOTES: Septic systems are also called "subsurface sewage treatment systems" and are often referred to solely by the abbreviation "SSTS." They manage wastewater from dwellings that are not connected to municipal wastewater systems. Wastewater exits these dwellings through a main drainage pipe and empties into a holding tank (septic tank). Solids settle at the bottom of the tank and oil (scum) floats to the top. The liquid wastewater flows out of the tank via a perforated pipe and drains into the surrounding soil, which treats the wastewater before it seeps down into groundwater. Property owners must regularly pump out the waste that builds up in their septic systems.

SOURCE: Image from Minnesota's McLeod County septic system program's Web page: http://www.co.mcleod.mn.us/government/departments/environmental_services/homeowner_information.php, accessed February 7, 2017.

Between fiscal years 2013 and 2016, MPCA issued four types of grants to support counties' septic system programs, including: (1) base grants, (2) incentive grants, (3) low-income fix-up grants, and (4) advanced inspector grants, totaling $9.3 million (shown in Exhibit 2.4). The agency issued base grants to make it possible for counties to administer local septic system programs and ensure that they submitted to the state annual reports about the condition of septic systems in their jurisdictions, among other things. It issued incentive grants to counties with more active septic-system programs, such as those that have conducted an inventory of septic systems in their jurisdictions or counties with ordinances requiring that septic systems be inspected upon property transfer. It issued low-income fix-up grants to counties to help low-income property owners fix failing systems that pose an imminent threat to public health or safety. MPCA also set aside some funds to help outstate counties pay for septic system inspectors; however, few counties have applied for these funds.[27]

[27] For fiscal years 2010 and 2011, MPCA also awarded some Clean Water Fund grants to counties to help them inventory the number of septic systems in their jurisdictions that were failing or posing an imminent threat. BWSR administered these grants on MPCA's behalf.

Exhibit 2.4: The Minnesota Pollution Control Agency granted $9.3 million from the Clean Water Fund to support county oversight of septic systems from fiscal years 2013 through 2016.

Grant Type	Average Amount Awarded	Total Number of Awards	Total Amount Awarded
Base[a]	$17,100	258	$4,412,000
Incentive	7,900	119	934,000
Low-income fix-up	25,500	154	3,927,000
Advanced inspector	1,100	6	7,000
		537	$9,280,000

NOTE: Septic systems are also called "subsurface sewage treatment systems" and are often referred to by the abbreviation "SSTS."

[a] The Minnesota Pollution Control Agency (MPCA) issued Clean Water Fund base grants starting in Fiscal Year 2014. The agency has issued base grants to all counties except Ramsey because the entire county is served by municipal septic-system programs.

SOURCE: Office of the Legislative Auditor, analysis of data provided by the Minnesota Pollution Control Agency.

Reporting Clean Water Fund Activities

While the first half of this chapter focused on the activities of two specific agencies—BWSR and MPCA—we turn now to the state's efforts to evaluate Clean Water Fund accomplishments as a whole. The *Clean Water Fund Performance Report* and the *Minnesota's Legacy* website represent two state efforts to report on the Clean Water Fund's impact.[28] These sources incorporate the activities of all of the agencies that use Clean Water Fund dollars for water quality activities, including BWSR; the departments of Agriculture, Health, and Natural Resources; the Metropolitan Council, MPCA, and the Public Facilities Authority.

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

Both the report and the website have shortcomings that make reported results difficult to interpret. Specifically, the *Clean Water Fund Performance Report* often lacks sufficient context to determine whether the reported results are meaningful. The *Minnesota's Legacy* website provides better context for reported activities and outcomes, but its organization is not conducive for analysis of statewide Clean Water Fund results, and not all state agencies have reported into the system consistently.

[28] Clean Water Fund Interagency Coordination Team, *Clean Water Fund Performance Report* (St. Paul, 2016); and *Minnesota's Legacy*, http://www.legacy.leg.mn/, accessed January 9, 2017.

Clean Water Fund Performance Report

The *Clean Water Fund Performance Report* presents a suite of 27 measures—inputs, activities, and outcomes—to demonstrate the results that the Clean Water Fund has achieved on a statewide basis.[29] The biennial report is produced by the Clean Water Fund Interagency Coordination Team, a group of representatives from the state agencies that receive Clean Water Fund appropriations.[30] A staff member involved in developing the report's measures explained that while it might take a long time for the state to be able to measure outcomes, inputs and activities serve as interim measures to show how Clean Water Fund dollars have been used and what the state has accomplished.

While the *Clean Water Fund Performance Report* contains appropriate measures, it does not always provide enough context to make the reported results meaningful.

The *Clean Water Fund Performance Report* is detailed and provides helpful information about Clean Water Fund activities. We surveyed representatives of local governments and asked their opinion of a selection of the outcome measures and activities featured in the *Clean Water Fund Performance Report.*[31] On the whole, as shown in Exhibit 2.5, respondents said that many of the measures used in the report are important.

On the other hand, the *Clean Water Fund Performance Report* does not always provide the context, such as annual or long-term goals, that would help the reader understand the significance of the reported results. The report discusses, for example, both activities and outcomes related to efforts to address nonpoint source pollution. The report estimates that, from fiscal years 2010 to 2015, Clean Water Fund grants and loans resulted in the implementation of more than 4,600 best management practices addressing nonpoint sources of pollution.[32] According to the report, these activities resulted in estimated reductions of 79,000 pounds of phosphorus and 120,000 tons of sediment deposited in waterbodies across the state. However, the report does not explain how many practices or how great a pollution reduction the state needs to improve water quality. Without information about the state's goals in these areas, it is not clear whether these activities and outcomes represent significant progress.

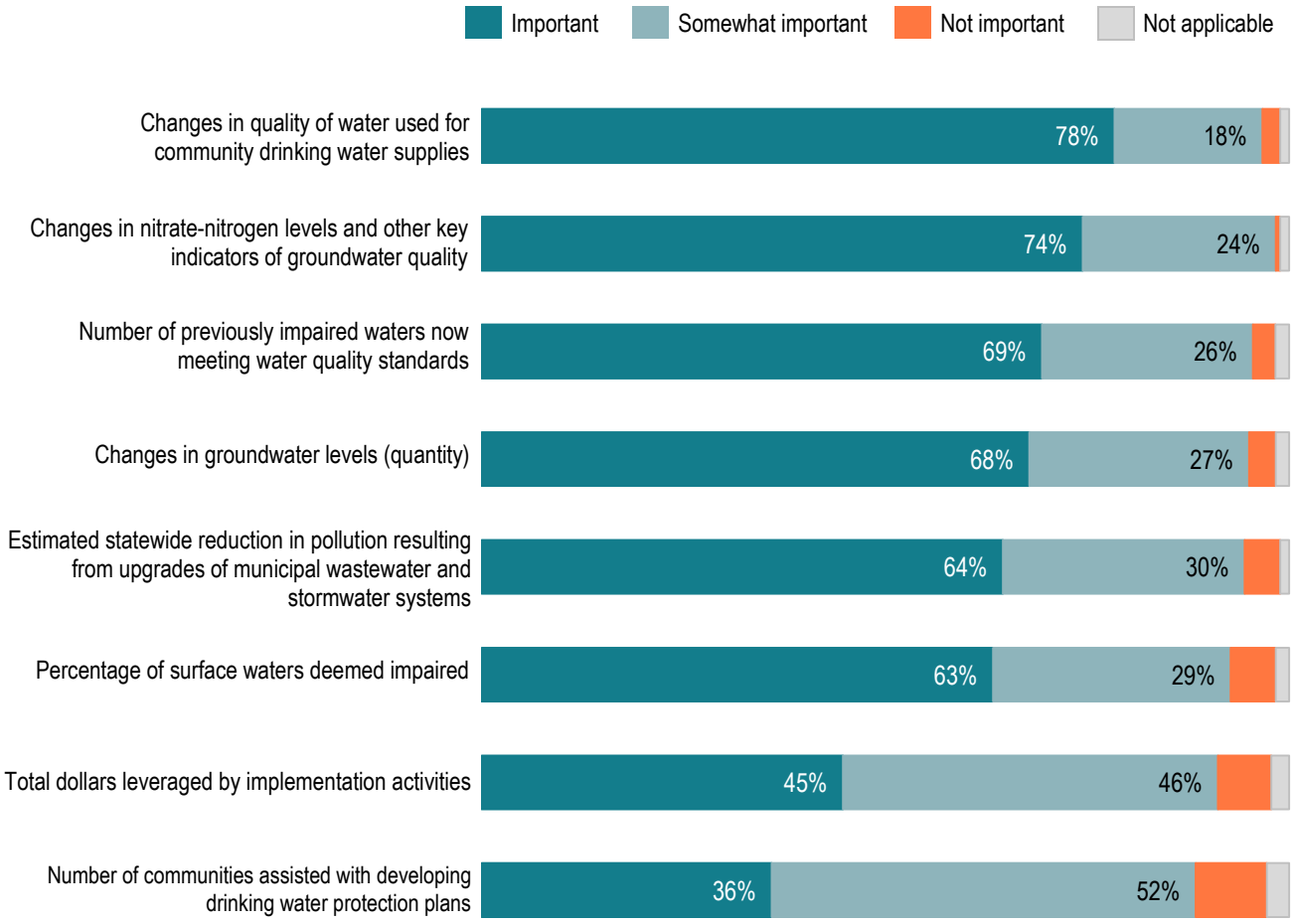
[29] The measures in the performance report were originally developed in response to a requirement of the 2006 Clean Water Legacy Act to "establish and report outcome-based performance measures that monitor the progress and effectiveness of protection and restoration measures." When the Legacy Amendment passed, the state agencies enhanced the suite of measures to track Clean Water Fund activities. *Laws of Minnesota* 2006, chapter 251, sec. 5, codified as *Minnesota Statutes* 2016, 114D.20, subd. 3(7).

[30] Member agencies include BWSR; the departments of Agriculture, Health, and Natural Resources; the Metropolitan Council; MPCA; and the Public Facilities Authority.

[31] We surveyed representatives of all Minnesota counties, soil and water conservation districts, watershed districts, and watershed management organizations. We received responses from 180 of 220 local governments, which represents an 82 percent response rate.

[32] Clean Water Fund Interagency Coordination Team, *Clean Water Fund Performance Report*, 22.

Exhibit 2.5: Local government representatives believe that many Clean Water Fund reporting measures are important.



NOTES: We surveyed representatives of all Minnesota counties, soil and water conservation districts, watershed districts, and watershed management organizations. We received 180 responses (representing 82 percent of the 220 local governments surveyed). The "not applicable" category includes both respondents who did not answer the question and those who selected the option "not familiar with measure." The introductory language to these survey questions read: "There are numerous outcome measures that the state could use to evaluate and report on the Clean Water Fund and its impact on water quality. Please indicate how important you consider each of the measures on the following pages." The exhibit presents some, but not all, measures featured in the Clean Water Fund Performance Report.

SOURCE: Office of the Legislative Auditor, survey of local government stakeholders, 2016.

RECOMMENDATION

The Clean Water Fund Interagency Coordination Team should provide context for the measures included in the *Clean Water Fund Performance Report*.

The *Clean Water Fund Performance Report* should either include goals for each of the measures it reports, or explain why it is not possible to do so. These goals should give the reader a sense of what needs to happen to make significant strides towards clean water. The Clean Water Fund Interagency Coordination Team may also choose to present more measures as the percentage of a goal that has been achieved, which effectively builds context into the measure.[33] Placing activity and outcome measures in the context of the state's clean-water goals will help the reader understand the extent to which the Clean Water Fund is moving towards the desired long-term impact of clean water.

Minnesota's Legacy Website

In contrast with the *Clean Water Fund Performance Report*—which aggregates data to present statewide activities and outcomes—the *Minnesota's Legacy* website contains project-level data. The Legislative Coordinating Commission maintains this website, as required by statute.[34] State agencies that receive appropriations from the Clean Water Fund must electronically report to the commission for inclusion on the website all projects supported by the fund.[35] The *Minnesota's Legacy* website allows users to (1) view narrative descriptions of individual projects, and (2) download a spreadsheet containing data on all reported projects. State agencies have reported almost 2,200 Clean Water Fund projects to the commission.

Reporting Outcomes and Activities

By law, the Legislative Coordinating Commission's *Minnesota's Legacy* website must include certain information for every Clean Water Fund project, including the amount and source of funding (from all sources), duration of project, proposed measurable outcomes, and actual outcomes of the project, among other things.[36] Exhibit 2.6 shows a list of the statutorily required information that agencies must report.

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[33] For example, the report currently presents the rate of impairment of surface waters statewide, in which the number of impaired waterbodies across the state is divided by the total number of waterbodies assessed. (The report also shows impairment rates on a watershed basis.) These are useful measures because it is easy to interpret the results: the lower the impairment rate the better. See Clean Water Fund Interagency Coordination Team, *Clean Water Fund Performance Report*, 25.

[34] *Minnesota Statutes* 2016, 3.303, subd. 10(a). The Legislative Coordinating Commission serves as an umbrella organization for legislative commissions and other boards in the legislative branch.

[35] In addition to the Clean Water Fund, the website provides information on the other funds created by the Legacy Amendment: the Arts and Cultural Heritage Fund, the Parks and Trails Fund, and the Outdoor Heritage Fund. It also includes the Environment and Natural Resources Trust Fund, which is funded with state lottery proceeds.

[36] *Minnesota Statutes* 2016, 3.303, subd. 10(a).

Exhibit 2.6: Statutes require state agencies to submit various types of information for the *Minnesota's Legacy* website.

For All Projects:

- Name of project
- Project description
- Funding recipient's name, telephone number, and e-mail address
- Funding recipient's website (when applicable)
- Members of the funding recipient's board or equivalent governing body
- Amount and source of funding
- Fiscal year of funding appropriation
- Amount and source of any additional funding or leverage
- Number of full-time-equivalent staff positions funded under project
- Direct expenses and administrative costs of the project
- Duration of project
- Proposed measurable outcomes and plan for measuring and evaluating results
- Actual measurable outcomes and evaluations of projects
- Information about project location, including maps when feasible

For Noncompetitive Grants:

- Entity acting as fiscal agent and a point of contact

For Competitive Grants:

- Name and qualifications of all members of the board or equivalent governing body responsible for awarding grants
- Name and qualifications of all members of any grant-making advisory group
- Whether any conflict of interest exists for any member of grant-making or advisory body
- Contact information for a person who can provide additional information regarding reported conflicts of interest

SOURCE: *Minnesota Statutes* 2016, 3.303, subd. 10(a)(2)-(4).

While the Legislative Coordinating Commission's website meets statutory requirements, it does not collect outcomes data in a manner that is useful for statewide analysis.

The commission requests that state agencies provide the information required by statute. However, it collects insufficient information to measure project outcomes at the statewide level. "Proposed measurable outcomes" and "actual measurable outcomes" of Clean Water Fund projects are each reported in a single text field. While comparing these two text fields might help someone evaluate whether an individual project accomplished its goals, it does not allow for convenient analysis of a large number of projects (as would be required for a statewide analysis or analysis of all projects funded through a given agency, for example). Further, agencies have not reported outcomes information in a consistent manner. Rather, they have completed these fields with a wide variety of measures and degrees of

Example proposed and actual measurable outcomes for a Clean Water Fund project

Proposed: Stopping the erosion at this site will eliminate about 300 tons of sediment from entering the river each year.

Actual: Available funding was used to accomplish an additional streambank stabilization for a total of 340 linear feet. The estimated annual sediment reduction to the Clearwater River from the two sites is 600 tons per year.

detail. The box on the previous page shows a good example of proposed and actual outcomes for a sample project. The proposed and actual outcomes of some projects are less detailed or fail to capture quantifiable measures of project impacts.

RECOMMENDATION

The Legislative Coordinating Commission should request that agencies report on the extent to which projects have achieved their proposed measurable outcomes.

Legislative Coordinating Commission staff told us that the *Minnesota's Legacy* website was not developed to conduct program evaluations. We believe, however, that with one addition, the data found on the website could become more useful for statewide analysis of Clean Water Fund outcomes.

Clean Water Fund projects can result in a broad range of activities and outcomes, and no single outcome measure would apply to every type of Clean Water Fund project. Therefore, we do not suggest replacing the existing text fields with an exhaustive list of possible outcomes and activities. Instead, we recommend that the Legislative Coordinating Commission add a data field that would indicate the extent to which a project achieved its proposed objectives.[37] This would allow a user interested in statewide analysis of Clean Water Fund projects to quickly determine which projects achieved their proposed outcomes. Such a field would also be useful for analyzing information about the other constitutionally dedicated funds featured on the *Minnesota's Legacy* website. We recognize that this new data field would be useful only to the extent that reported data are accurate. As discussed in the next section, the commission does not have the resources to evaluate the quality of the data that agencies provide.

State Agency Data Reporting

State agencies must submit required information to the Legislative Coordinating Commission by January 15 of the applicable fiscal year.[38] We reviewed the commission's Clean Water Fund project data to determine whether state agencies submitted all required information.[39]

Some state agencies have not submitted all information required by statute.

[37] The Legislative Coordinating Commission should provide a limited range of responses for this field. Possible responses might include "fully achieved proposed outcomes," "mostly achieved proposed outcomes," "achieved some or none of the proposed outcomes," and "outcomes data not yet available." The commission should continue to require state agencies to describe proposed and actual measurable outcomes.

[38] *Minnesota Statutes* 2016, 3.303, subd. 10(b).

[39] Many of the required data elements codified in *Minnesota Statutes* 2016, 3.303, subd. 10(a)(2)-(4), were first required during the 2011 session. See *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 5, sec. 1. A Legislative Coordinating Commission staff member said state agencies first reported all data elements for projects with funding appropriated for Fiscal Year 2012. Thus, our analysis focused on projects with funding appropriated for Fiscal Year 2012 or later.

We found large amounts of statutorily required data to be missing from the *Minnesota's Legacy* website.[40] For example, a handful of state agencies systematically failed to report at least one required piece of information, most notably how much Clean Water Fund money was spent directly on project expenses as opposed to on administrative costs.

The Legislative Coordinating Commission has no mechanism to penalize agencies that fail to report complete project data.[41] We asked commission staff to what extent they validate the data they receive from state agencies. A staff person told us that she reviews the data for completeness and asks agencies to submit missing data. The staff person pointed out, however, that the Legislative Coordinating Commission has no power to require that agencies submit complete data and that the project information on *Minnesota's Legacy* website is only as good as the data the agencies provide.

RECOMMENDATIONS

State agencies should report to the Legislative Coordinating Commission all Clean Water Fund project information required by law.

The Legislative Coordinating Commission should report to the Legislature which agencies have failed to satisfy their reporting obligations related to the Clean Water Fund.

State law currently does not provide the Legislative Coordinating Commission with any mechanisms to enforce Clean Water Fund reporting requirements. Barring a statutory change strengthening its authority, the commission should report to the Legislature whether agencies submit incomplete information.[42] The prospect of such reporting might encourage state agencies to improve their Clean Water Fund reporting practices. It also may be helpful for the Legislature to understand which data fields have been consistently under reported (such as the direct and administrative costs fields). This could help the Legislature evaluate whether the *Minnesota's Legacy* website is truly serving its intended purpose.

[40] Because not every data category is applicable for every project, some missing data may be acceptable. For example, agencies are supposed to report on any additional funds "leveraged" by the Legacy fund expenditure. However, not all projects are designed for the purpose of leveraging additional funds.

[41] While *Minnesota Statutes* 2016, 3.303, subd. 10, requires the Legislative Coordinating Commission to collect data and requires agencies to report information to the commission, it does not outline any enforcement mechanisms for the commission or consequences should agencies fail to report.

[42] The commission has reported to the Legislature about Clean Water Fund activities using the data it collects for the website. It could add information about noncompliant agencies to this reporting effort.

Chapter 3: Minnesota Water Management Framework

As we discuss in Chapter 2, Minnesota does not yet have enough information to determine the long-term impacts of the Clean Water Fund. However, some Clean Water Fund investments have focused on developing and implementing a system—the Minnesota Water Management Framework—to help identify and measure Clean Water Fund outcomes. Because the framework will be instrumental in measuring the impact of the Clean Water Fund, we discuss it in detail in this chapter.

Overview

The goals of the Minnesota Water Management Framework are to achieve "cleaner water via comprehensive watershed management [and to] ensure that groundwater is protected and managed sustainably."[1] State agencies designed the approach to take place in every watershed in the state on a repeating, ten-year cycle. As shown in Exhibit 3.1, this ten-year cycle includes five stages: (1) monitoring and assessing waterbodies throughout the watershed to identify water quality impairments, (2) identifying "stressors" leading to water impairments, (3) developing strategies to address water quality on a watershed basis, (4) developing local water management plans in accordance with watershed strategies, and (5) implementing local water-improvement projects designed to target impaired waters and known sources of pollution.

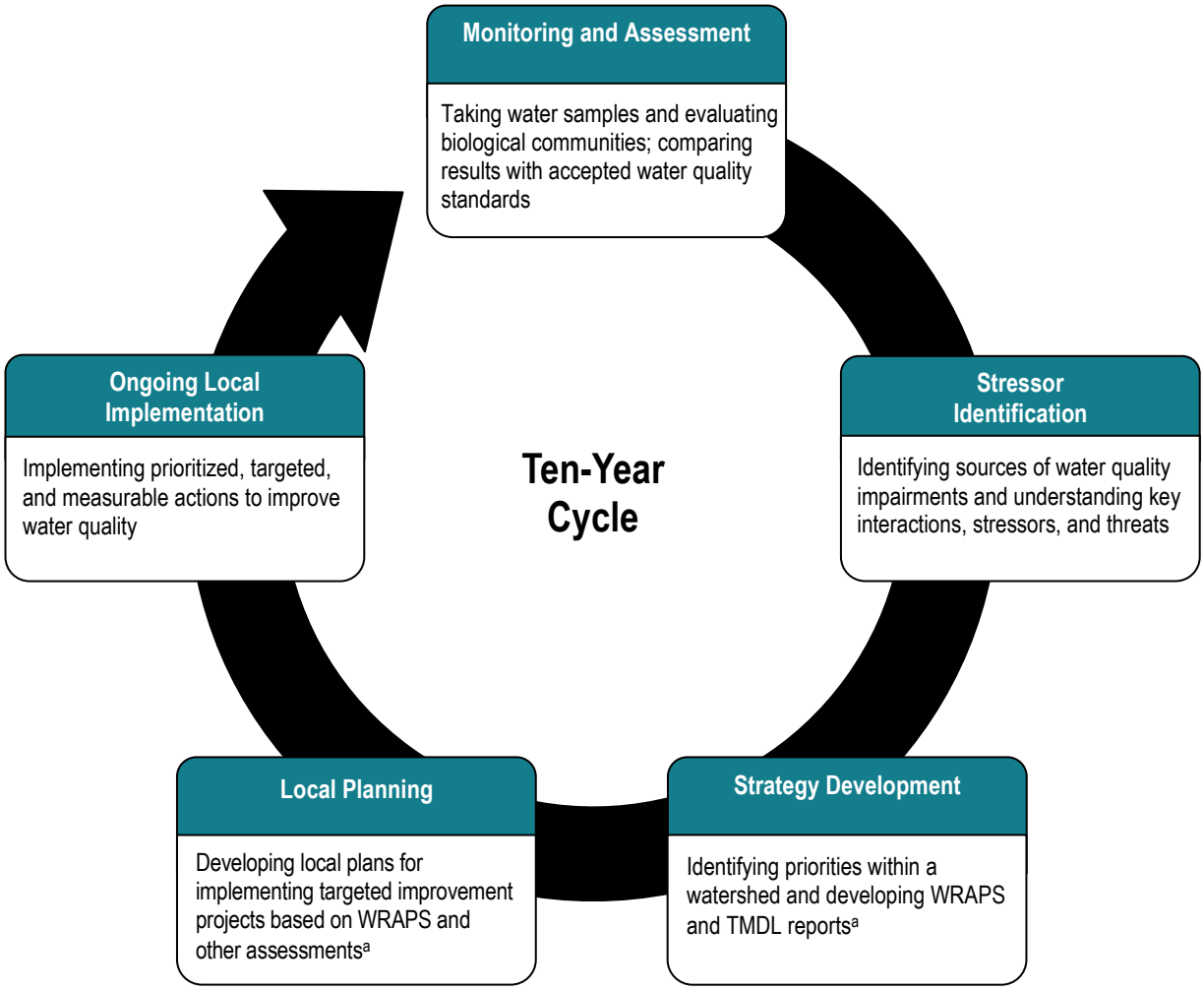
The Minnesota Water Management Framework is useful, but the state has taken longer than ten years to complete the first cycle.

In the sections that follow, we present each of the five stages of the Minnesota Water Management Framework. We highlight the information each stage of the framework produces, and we identify where the timeline is lagging. We use one example watershed—the Sauk River watershed—to help illustrate what occurs at each stage.[2] For each stage in the ten-year cycle, we also share any statewide results that are currently available. For the status of each of Minnesota's 80 watersheds within the ten-year cycle, see the Appendix.

[1] Department of Natural Resources, Minnesota Department of Health, Minnesota Pollution Control Agency, et. al., *The Minnesota Water Management Framework* (St. Paul, 2014), 1.

[2] Note that the "Sauk River watershed," the area of land that drains to the Sauk River, is distinct from the "Sauk River Watershed District," a unit of local government in the region.

Exhibit 3.1: State agencies developed a repeating, ten-year cycle for managing water resources at the watershed level.



NOTE: The above steps take place at the watershed level and are designed to repeat in each Minnesota watershed every ten years.

[a] "WRAPS" are Watershed Restoration and Protection Strategies. "TMDL" is total maximum daily load, a calculation of how much pollution a waterbody can receive and still meet water quality standards.

SOURCE: Office of the Legislative Auditor, adapted from Department of Natural Resources, Minnesota Department of Health, Minnesota Pollution Control Agency, et. al., *The Minnesota Water Management Framework* (St. Paul, 2014), 1.

We selected the Sauk River watershed for our analysis for a number of reasons. First, it was one of the first watersheds to begin the "intensive watershed monitoring" process, which we discuss below. Further, the watershed is located in the transition zone between the southern agricultural lands and the northern forested region of the state. Finally, we selected it because the waterbodies in the Sauk River watershed suffer many impairments, and local governments in the region have implemented a wide variety of water quality projects, including those related to stormwater, feedlots, septic systems, and erosion control.

Sauk River Watershed

The Sauk River watershed is part of the Upper Mississippi River Basin and encompasses more than 667,000 acres in central Minnesota. The Sauk River originates at Lake Osakis and travels 90 miles to its confluence with the Mississippi River near the city of St. Cloud. The Minnesota Pollution Control Agency reports that the watershed contains 371 lakes and 568 streams. The Sauk River watershed has a total estimated stream length of almost 1,700 miles. In addition, there are numerous "ephemeral" streams that appear only after snow melt or storm events, but that add additional miles of watercourses that flow into the Sauk River.

More than three-quarters of the land in the Sauk River watershed is farmland, with 65 percent of agricultural producers earning their living entirely from the land. Nine percent of the land is forested and 6 percent is developed, with the remaining area consisting mostly of open water or wetlands.

The Sauk River watershed encompasses parts of five counties. Nearly two-thirds of the watershed lies in Stearns County. Douglas, Meeker, Pope, and Todd counties each make up smaller portions of the watershed. Each of those county governments, as well as each of the soil and water conservation districts serving those counties, plays a role in water management within the watershed. The Sauk River Watershed District provides services to the watershed as a whole.

Stage 1: Monitoring and Assessment

The first stage of the ten-year watershed cycle is monitoring and assessment. "Monitoring" is the collection of chemical water quality data and biological data in a particular body or bodies of water. "Assessment" is the process of comparing the data collected against state water quality standards. When assessment reveals that a waterbody does not meet the prescribed legal standards, it is considered "impaired." The Minnesota Pollution Control Agency (MPCA) has primary responsibility for monitoring activities and produces a comprehensive monitoring and assessment report for each watershed.[3] Other state agencies, however, also have monitoring responsibilities; they either facilitate MPCA's work or contribute data for MPCA to consider in its assessment of the watershed.[4]

The monitoring and assessment stage of the Minnesota Water Management Framework contributes valuable information on which the remainder of the framework depends.

[3] See, for example, Minnesota Pollution Control Agency, *Sauk River Watershed Monitoring and Assessment Report* (St. Paul, 2011).

[4] For example, the Department of Natural Resources installs and maintains permanent monitoring equipment across the state that measures stream-flow. Similarly, the Minnesota Department of Agriculture monitors for nitrate in groundwater and pesticides in both groundwater and surface water.

As MPCA explains in its *Sauk River Watershed Monitoring and Assessment Report*:

> To successfully prevent and address problems, decision makers need good information regarding the status of the resources, potential and actual threats, options for addressing the threats and data on the effectiveness of management actions.[5]

MPCA's monitoring and assessment efforts provide this critical information. In the following sections, we discuss the monitoring and assessment processes and the standards used to determine water quality.

Water Quality Standards

The federal regulations resulting from the Clean Water Act require states to establish water quality standards, which the U.S. Environmental Protection Agency (EPA) must approve or disapprove.[6] According to the federal regulations, state water quality standards must include two parts. First, they must define the *designated use* for waterbodies that the state intends to achieve and protect.[7] For example, some waterbodies are used as a drinking water supply; others are used for swimming or industrial purposes. Second, standards must establish *criteria* that protect those designated uses.[8] States can set criteria in a variety of ways, but they must be based on "sound scientific rationale." States can set numeric criteria, such as maximum levels for a concentration of a particular pollutant. Alternatively, they can establish narrative criteria about how a waterbody should look, smell, or taste. For example, narrative criteria in Minnesota rules dictate that stream beds designated for certain uses should not experience increases in "undesirable slime growths," including algae growth.[9]

Minnesota rules define seven classes of designated uses, as Exhibit 3.2 shows.[10] For example, Class 1 waters are designated for domestic consumption. All groundwater, as well as some surface waters in Minnesota, are protected as a source of drinking water. Class 2 waters are designated for aquatic life and recreation. This means that Class 2 waters either currently support or should be able to support fish and other aquatic life, bathing, boating, and other recreation. A given waterbody can be protected for multiple purposes. The bulk of the waterbodies in the state are protected for aquatic life or recreation, in addition to other purposes, such as industrial consumption or navigation. MPCA classifies waterbodies that are not fit for other uses as Class 7, or waters of "limited resource value."[11]

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[5] Minnesota Pollution Control Agency, *Sauk River Watershed Monitoring and Assessment Report*, 2.

[6] 40 *CFR*, secs. 131.3(b), (f), (i); 131.5(a); and 131.10(a) (2016).

[7] 40 *CFR*, sec. 131.10(a) (2016).

[8] 40 *CFR*, sec. 131.11(a) (2016).

[9] *Minnesota Rules*, 7050.0150, subp. 3, published electronically March 24, 2015.

[10] *Minnesota Rules*, 7050.0140, published electronically April 1, 2008.

[11] For example, a stretch of stream that has been lined with concrete and no longer has natural sides or bottom would be considered of limited resource value. Another example of a limited resource value water is a stream that only has water intermittently and therefore does not support a diverse aquatic community.

Exhibit 3.2: Minnesota waters are protected for many different uses.

Class	Use	Description
1	Domestic consumption	Supply for drinking, culinary, or food processing use, or other domestic purpose
2	Aquatic life and recreation	Support fish, other aquatic life, bathing, boating, or other recreational purposes
3	Industrial consumption	Supply for industrial processes or cooling water, or other industrial or commercial purposes
4	Agricultural and wildlife	Supply for agricultural purposes, including stock watering and irrigation; waterfowl or other wildlife
5	Aesthetic enjoyment and navigation	Water transportation or navigation
6	Other uses	Any unnamed uses, including uses by other jurisdictions of waters flowing through or originating in Minnesota
7	Limited resource value	Waters deemed to be of "limited value as a water resource" are typically intermittent or of such low volume as to not support aquatic communities

NOTES: Minnesota rules further subdivide some of these classes. For example, surface waters in class 1A meet drinking water standards without treatment, while those in class 1B meet the standards after receiving simple treatment, such as chlorination. *Minnesota Rules,* 7050.0221, subps. 2-4, published electronically August 14, 2014. All groundwater is designated as Class 1; surface waters may be protected for multiple uses.

SOURCE: *Minnesota Rules*, 7050.0140, published electronically April 1, 2008.

Monitoring and Assessment Efforts

MPCA conducts two types of monitoring to collect data for its assessment efforts: intensive watershed monitoring, and pollutant load monitoring. Data from both efforts are used to determine whether waterbodies are impaired.[12]

MPCA conducts *intensive watershed monitoring* in each watershed during the first two years of each ten-year cycle. During intensive watershed monitoring, MPCA collects water chemistry samples, fish and macroinvertebrate biology samples, and "fish contaminant" samples in select stream reaches.[13] MPCA uses these data to assess streams for the

[12] MPCA also operates two volunteer monitoring programs: the Citizen Lake Monitoring Program and the Citizen Stream Monitoring Program. These programs equip citizens with simple monitoring tools to provide additional data for MPCA to use when assessing waterbodies.

[13] For the biology samples, MPCA staff gather a representative sample of fish; count, measure, and weigh them; and return them to the stream. Staff also collect samples of macroinvertebrates—such as insect larvae, crayfish, snails, small clams, and leeches—which they send to a laboratory for identification. At the outlets of major watersheds, MPCA collects fish contaminant samples to be tested for mercury and other pollutants to assess whether the fish in the stream are fit for consumption. Rather than monitoring the entire length of a river or stream, MPCA monitors the condition of individual stream "reaches." A reach is a section of river or stream that extends from one tributary to another (or to a dam or other feature).

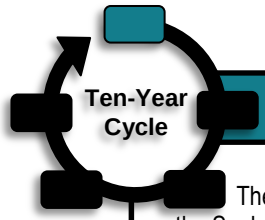
designated uses of aquatic life, aquatic recreation, and aquatic consumption. In lakes, MPCA limits its collection to chemistry samples, which it uses to assess whether lakes support the designated use of aquatic recreation.

MPCA conducts *pollutant load monitoring* through an interagency partnership with the Department of Natural Resources and others.[14] The agencies have established a network of fixed sites for monitoring stream flow and water chemistry statewide. This monitoring network comprises fewer sites per watershed than the intensive watershed monitoring effort. However, the network produces continuous year-round data on an ongoing basis (not just at the beginning of the ten-year cycle). Like the data from intensive watershed monitoring, MPCA uses load monitoring data to inform impairment decisions about particular waterbodies. The agency also uses these data to identify areas of the state with the greatest pollution and assess long-term trends.

In addition to the data collected through its own monitoring activities, MPCA gathers other data relevant to a specific watershed, collected either by local organizations or other state agencies. For example, MPCA receives data from the Minnesota Department of Health's testing of drinking water, and the Minnesota Department of Agriculture's pesticide monitoring.

Once MPCA has assembled from various sources all data relevant to a watershed, the agency compares the data with the criteria in state water quality standards—a process known as assessment. MPCA staff then determine (preliminarily) whether specific waterbodies are impaired for their designated uses and meet with local watershed stakeholders to review those impairment determinations. The results of this meeting become the agency's draft determinations of whether the assessed waterbodies are impaired. MPCA places these draft impairment determinations on public notice and accepts comments. Once the public comment period has closed, MPCA revises its draft impairment determinations as necessary and sends the list to the EPA for review and approval.

[14] The U.S. Geological Survey and the Metropolitan Council also are partners in this effort.



Monitoring and Assessment in the Sauk River Watershed

The Minnesota Pollution Control Agency (MPCA) began intensive watershed monitoring in the Sauk River watershed in 2008.

Stream Sampling Results

MPCA assessed the quality of 39 stream sites for aquatic recreation, aquatic life, or both. The agency found that:

- 10 streams supported aquatic recreation and 15 did not (14 lacked sufficient data).
- 8 streams supported aquatic life and 23 did not (8 lacked sufficient data).
- Aquatic consumption impairments "span[ned] the entire length" of the Sauk River.

Lake Sampling Results

MPCA did not include lakes in its intensive watershed monitoring in 2008 or 2009. Thus, the agency assessed lakes using data previously collected by MPCA and local partners, which allowed for the assessment of 44 lakes in the watershed. The agency found that:

- 13 lakes supported aquatic recreation and 31 did not.
- 9 lakes did not support aquatic consumption (it is unclear how many lakes were assessed for aquatic consumption).
- The overall quality of lakes in the watershed was modest to poor.

Impact of Clean Water Fund Dollars on Monitoring and Assessment

As discussed in Chapter 1, MPCA's monitoring efforts prior to Minnesota's Clean Water Legacy Act of 2006 were fairly limited and the state was not fully meeting its obligation to identify impaired waters. A key purpose of the Clean Water Legacy Act is to ensure compliance with the federal Clean Water Act requirements to identify and prioritize impaired waters and develop total maximum daily load studies (TMDLs) for them.[15] The act also established a goal that the state would identify impairments within ten years (by 2016).

Clean Water Fund dollars have allowed the Minnesota Pollution Control Agency to accelerate its monitoring and assessment pace, but the agency did not meet the goal to identify impaired waters throughout the state by 2016.

As of the end of 2016, MPCA had completed the assessment of 58 of Minnesota's 80 watersheds (73 percent) and had at least begun intensive watershed monitoring in 74 of the state's 80 watersheds (93 percent).[16] MPCA has not yet initiated monitoring in the remaining six Minnesota watersheds. Thus far, it has taken MPCA an average of two years to complete the assessment of a watershed once intensive watershed monitoring has begun.

[15] *Minnesota Statutes* 2016, 114D.10, subd. 1; 114D.20; and 114D.25; and 33 *U.S. Code*, sec. 1313(d) (2016).

[16] See the Appendix for a complete list of the years in which each watershed was monitored and assessed.

The agency plans to begin monitoring in the remaining six watersheds during the summer of 2017. On this schedule, the assessment—and thus determination of impairments—of those watersheds would likely not be completed until 2019—short of the 2016 goal established in law.

While somewhat behind schedule, Clean Water Fund dollars have allowed MPCA to advance its monitoring and assessment efforts further and faster than it could have without such an investment. The agency estimated that, in the early 2000s, it conducted about 150 to 300 monitoring activities a year, mostly in response to concerns.[17] These activities were scattered across the state. Since it started receiving Clean Water Fund dollars in 2010, MPCA has completed an average of about 820 monitoring activities per year—typically double or triple the annual number of activities conducted in the early 2000s. The agency focuses these activities in specific watersheds each year and may visit each monitoring site multiple times.

Stage 2: Stressor Identification

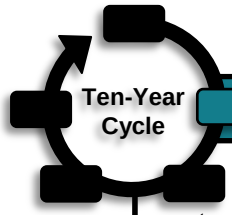
The next stage of the Minnesota Water Management Framework—stressor identification—consists of identifying the problems that caused impairments in the watershed. Stressor identification is necessary to develop TMDLs and watershed-wide implementation strategies.[18] Taking restorative actions without knowledge of stressors could be ineffective or even counterproductive. Examples of stressors include altered hydrology, such as straightening a stream, or increasing water volume through the use of agricultural drain tile, both of which increase the amount of runoff into the stream system.[19]

Stressor identification is a rigorous and complex process, particularly when there are multiple stressors at work in a particular waterbody or watershed (as is often the case). MPCA begins by reviewing existing monitoring data, along with any other information relevant to the watershed and impaired waterbodies, such as land use and hydrology. Through this review, several possible reasons for impairment (stressors) may emerge. Staff then determine the additional data needed to validate or eliminate these possibilities. This may necessitate further biological sampling or water quality testing, among other things. In more complex cases, staff must continue to iteratively collect more data and test more theories until they identify the stressors.

[17] "Monitoring activities" include chemistry monitoring activities and biological monitoring activities conducted by MPCA staff or by the agency's local partners. A given monitoring site may be monitored for chemistry, biology, or both, and thus may account for up to two monitoring activities in a given year. Repeat visits to a site within the same year do not count as additional monitoring activities; biological monitoring, for example, typically requires two visits and pollutant load monitoring sites may be visited 25 to 30 times per year.

[18] As discussed in Chapter 1, TMDLs establish the maximum amount of a particular pollutant a waterbody can receive without violating water quality standards. Because TMDLs assign pollutant load allocations to different point sources, it is important to have as much information as possible about the source of the pollution in a watershed.

[19] Note that stressors, while referred to as causes, are still a step removed from *sources*. Stressor identification may identify altered hydrology as a stressor, but not which specific farmers, for example, channelized streams or installed drain tile, increasing polluted runoff.



Stressor Identification in the Sauk River Watershed

When the Minnesota Pollution Control Agency identified stressors in the Sauk River watershed, it investigated eleven potential options before finally identifying these likely stressors:

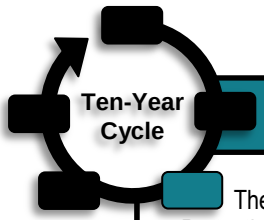
- **Low dissolved oxygen concentrations,** which can result in stunted growth or death in all but the most tolerant fish species.
- **Loss of habitat due to excess bedded sediment,** which fills in crevices and the space between gravel, both of which serve as homes for fish and macroinvertebrate species.
- **Increased nutrients,** such as phosphorus and nitrogen, which can cause increased plant and algae growth in streams to the point of being detrimental for biological communities.
- **Channelization and ditching,** which increase runoff, allowing pollutants to travel quickly to other lakes and streams rather than seeping into—and being filtered by—the land.
- **Loss of woody habitat,** which destroys the preferred homes of various macroinvertebrates.
- **Loss of connectivity,** caused by culverts and dams, which interrupts the normal flow of water from one body of water to another and compromises fish health.
- **Elevated concentration of total suspended solids,** which affect the gills of fish and macroinvertebrates, reducing their uptake of dissolved oxygen from the water.

The Minnesota Pollution Control Agency has improved its pace for the production of stressor identification reports.

Unlike identifying impairments, Minnesota law does not explicitly establish required timelines for identifying stressors. However, to avoid delaying subsequent stages of the Minnesota Water Management Framework, MPCA should complete stressor identification for 10 percent (8) of the watersheds each year. By the end of 2016, MPCA had completed stressor identification reports for 37 of 80 watersheds (46 percent). While stressor identification in some of the earliest watersheds monitored took much longer than anticipated, MPCA has become more efficient in recent years. Since 2014, the agency has completed between 8 and 12 stressor identification reports per year and it is close to achieving an overall average of 8 reports per year.

Stage 3: Strategy Development

The third stage of the Minnesota Water Management Framework is developing strategies to address the problems identified in the previous stages. The Clean Water Legacy Act requires MPCA to develop Watershed Restoration and Protection Strategies (WRAPS) for each watershed.[20] The WRAPS report serves as a watershed-wide summary of the data and findings generated through the previous two stages of the framework, as well as the TMDLs resulting from that work.[21] WRAPS serves as a way to package the highlights of TMDL reports and protection strategies at the watershed level. The strategy development stage of the framework goes beyond TMDLs, which focus only on *restoring* impaired waterbodies. WRAPS reports, on the other hand, address restoration as well as *protection* strategies.



Strategy Development in the Sauk River Watershed

The Sauk River Watershed District prepared *Sauk River Watershed Restoration and Protection Strategies* with the help of a technical contractor.

The WRAPS report lists a number of restoration and protection strategies and assigns responsibility for implementing them. For example, the report suggests that the Minnesota Pollution Control Agency, the Sauk River Watershed District, and counties in the watershed conduct septic system inventories and work with residents to address noncompliant or substandard septic systems. Another strategy calls for the watershed district, the Department of Natural Resources, and lake associations to develop plans to assess the density of aquatic invasive species in the watershed and to prevent their spread to other waters.

The Minnesota Pollution Control Agency has fallen behind its statutorily prescribed timeline for completing Watershed Restoration and Protection Strategies reports.

State law requires that MPCA complete WRAPS reports for at least 10 percent (8) of the state's major watersheds each year.[22] The agency completed its first WRAPS report in 2013. By the end of 2016, MPCA had completed 16 WRAPS reports—4 reports per year. While its goal is to complete WRAPS reports four years after the start of intensive watershed monitoring, MPCA is currently doing so about 6.5 years, on average, after the start of monitoring. Some watersheds have taken much longer; for example, three watersheds that were monitored in 2008 still do not have completed WRAPS reports. An MPCA staff person acknowledged that WRAPS completion has been slow as the agency has worked to "smooth the bumps" out of its processes. Our analysis, however, showed that MPCA's production of WRAPS reports increased dramatically in the last two years.

[20] *Minnesota Statutes* 2016, 114D.26, subd. 1.

[21] Prior to the 2000s, MPCA had completed just one TMDL. Since 2002, the agency has developed, and the EPA has approved, TMDLs addressing 676 of more than 3,000 known impairments. MPCA has submitted additional TMDL reports (addressing more than 250 impairments), for which it is still awaiting final approval. In addition, the agency has developed a statewide TMDL specifically addressing mercury impairments, which are not reflected in the foregoing impairment numbers.

[22] *Minnesota Statutes* 2016, 114D.26, subd. 3.

Stage 4: Local Planning

The fourth stage of the Minnesota Water Management Framework integrates the results of the previous stages into local planning efforts. Such efforts are complex, because in many parts of the state, multiple local governments have jurisdiction over a single watershed. For example, in the Sauk River watershed, five counties, five soil and water conservation districts, and one watershed district have jurisdiction over some or all of the watershed.

Although statutes "encourage" each county and soil and water conservation district to develop a comprehensive local water management plan, they do not require such plans.[23] Counties that choose to develop plans must make them consistent with the plans of other counties or watershed management organizations that reside within the same watershed or groundwater system.[24] If a soil and water conservation district chooses to develop such a plan, it must also be consistent with certain state-prepared plans.[25] Counties must submit their draft plans to the Board of Water and Soil Resources (BWSR) for approval; soil and water conservation districts must do so only if their plans use state funds administered by BWSR.[26] Unlike counties and soil and water conservation districts, statutes require watershed districts to develop "watershed management plans" and to update them at least every ten years.[27] Watershed districts must send their proposed plans to a number of other governing bodies for review, before submitting them to BWSR for final approval.[28]

In recent years, the state has used Clean Water Fund appropriations to better coordinate planning efforts within watersheds. The 2012 Legislature passed, and the Governor signed into law, legislation authorizing BWSR to adopt policies that allow local governments' plans to serve as substitutes for one another.[29] In 2015, additional legislation established the "Comprehensive Watershed Management Planning Program," which BWSR calls "One Watershed, One Plan."[30] This law further defines the purpose of the state's watershed-based planning initiative. The Legislature has appropriated Clean Water Fund dollars to BWSR to help watersheds and local governments transition to One Watershed, One Plan.[31]

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[23] *Minnesota Statutes* 2016, 103B.311, subd. 1; and 103C.331, subd. 11(a). While technically optional, counties must have approved plans in place to access certain state funds.

[24] *Minnesota Statutes* 2016, 103B.311, subd. 4(4).

[25] *Minnesota Statutes* 2016, 103C.331, subd. 11(d).

[26] *Minnesota Statutes* 2016, 103B.315, subd. 5; and 103C.401, subd. 1(4).

[27] *Minnesota Statutes* 2016, 103D.401, subd. 1(a); and 103D.405, subd. 1(a).

[28] *Minnesota Statutes* 2016, 103D.401, subds. 2 and 5. Watershed districts must send their plans to BWSR, the Department of Natural Resources, and local governments affected by the district. Watershed districts within the metropolitan area must also submit their plans to the Metropolitan Council.

[29] *Laws of Minnesota* 2012, chapter 272, sec. 32, codified as *Minnesota Statutes* 2016, 103B.101, subd. 14.

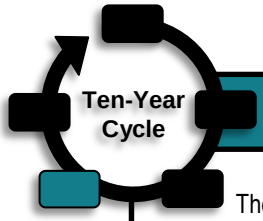
[30] *Laws of Minnesota* 2015, First Special Session, chapter 2, art. 2, sec. 12, codified as *Minnesota Statutes* 2016, 103B.801.

[31] *Laws of Minnesota* 2013, chapter 137, art. 2, sec. 7(j); and *Laws of Minnesota* 2015, First Special Session, chapter 2, art. 2, sec. 7(j). For a list of watersheds that have begun transitioning to One Watershed, One Plan, see the Appendix.

Local planning serves as the culmination of the previous stages of the Minnesota Water Management Framework.

Local governments have been submitting local water management plans to BWSR for decades. However, the plans have recently become an integral component of the Minnesota Water Management Framework. In theory, local officials should be able to use the findings of impairments and stressors, as well as the strategies in the WRAPS report, to target and prioritize implementation projects within the watershed. For example, a WRAPS report might recommend feedlot or manure management as a strategy for restoring impaired waterbodies in a particular part of the watershed. A local plan, however, should be more specific about what actions will be taken and in which geographic areas. For example, the Sauk River Watershed District's local plan lays out priorities for multiple distinct parts of the Sauk River watersheds. Many of these descriptions name specific waterbodies and reference specific geographic areas. For example, one activity named in the plan is to:

> Develop and implement *targeted site specific and regional nutrient management*, including targeted fertilizer application and manure management…. Target 6,400 acres with the highest potential to deliver nutrients to Ashley Creek.[32]



Local Planning in the Sauk River Watershed

The Sauk River watershed has not yet received funding to transition to One Watershed, One Plan. Currently there are at least six comprehensive water management plans in place in the watershed: one prepared by the Sauk River Watershed District and one prepared by each of the five counties that are part of the watershed. Each county plan was created by a large team, which included at least one representative of both the county government and the county's soil and water conservation district. The Sauk River Watershed District was listed as a contributor to all but one of the county plans.

Stage 5: Ongoing Local Project Implementation

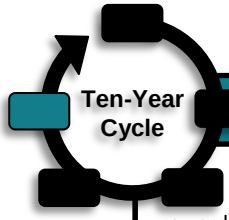
According to state agencies, ongoing local implementation is "the heart" of Minnesota's strategy to achieve cleaner water.[33] Local governments, nongovernmental organizations, and landowners undertake projects to restore, protect, or enhance their local waterbodies. The Minnesota Water Management Framework suggests that local projects should be prioritized and targeted according to the goals in a comprehensive local water management plan. To ensure that limited resources are being spent effectively, projects must also be measurable.

[32] Sauk River Watershed District, *Sauk River Watershed District Comprehensive Watershed Management Plan 2014-2023* (Sauk Centre, 2014), 4-4.

[33] Department of Natural Resources, Minnesota Department of Health, Minnesota Pollution Control Agency, et. al., *The Minnesota Water Management Framework*, 1.

More than half of all Clean Water Fund dollars have been spent on implementing water quality improvement projects.

Local governments and others implement water quality improvement projects using funding from a wide range of sources, including grants and loans of Clean Water Fund dollars from several different state agencies. Each of the seven agencies tasked with water management have spent at least some of their Clean Water Fund dollars on implementation of local projects.[34] However, the two agencies that fund the most local implementation are BWSR (which accounts for 59 percent of implementation spending) and the Public Facilities Authority (23 percent). As we discussed in Chapter 2, BWSR spent the bulk of its Clean Water Fund dollars—more than two-thirds—on the distribution of grants to local governments. The Public Facilities Authority awards grants and loans to municipalities to help them with projects such as wastewater treatment facility upgrades or replacing noncompliant septic systems.



Ongoing Local Implementation in the Sauk River Watershed

During fiscal years 2010 through 2016, the Board of Water and Soil Resources (BWSR) awarded 67 Clean Water Fund grants to local governments whose service areas include part of the Sauk River watershed; we estimate that almost half of those took place within the Sauk River Watershed.

For example, for Fiscal Year 2012, BWSR awarded approximately $164,000 to Stearns County Soil and Water Conservation District. The district used the grant to eliminate the livestock waste runoff from seven dairy and beef feedlots that had been draining into wetlands and streams, some of which were impaired.

The district used these grant funds to implement practices to store manure and allow it to drain more slowly. These included installing vegetated buffers and stacking slabs that could store 14-months-worth of manure. The improvements resulted in estimated reductions in the amounts of nitrogen, phosphorus, and fecal coliform in nearby wetlands and streams.

The district's project supported Stearns County's local water management plan. Stearns County Soil and Water Conservation District used its Clean Water Fund feedlot grant to leverage funds from a U.S. Department of Agriculture program. As a result, the district was able to cover 75 percent of landowners' costs to implement the improvements.

Discussion

As outlined in this chapter, the state has fallen behind in implementing the ten-year cycle of the Minnesota Water Management Framework. Some stages of the framework—most notably strategy development—have sometimes taken several years longer than anticipated. Nevertheless, the Clean Water Fund has allowed the state to significantly accelerate the pace of its water quality monitoring and assessment activities and make progress toward

[34] The seven agencies with water management responsibilities are: BWSR; the departments of Agriculture, Health, and Natural Resources; the Metropolitan Council, MPCA, and the Public Facilities Authority. The Legislative Coordinating Commission and the University of Minnesota have also received some Clean Water Fund dollars, but they have not spent their shares on implementing local water improvement projects.

state and federal goals that would not have been possible before the Legacy Amendment. Further, the state's progress has improved in recent years, as its processes have become more established. The Minnesota Water Management Framework has established a system and a schedule whereby MPCA will monitor, assess, investigate stressors in, and develop strategies for every watershed on an ongoing basis. BWSR and local governments will use the information generated by MPCA to develop local water management plans and implement targeted water quality improvement projects. We believe the knowledge the framework creates will help the state to use Clean Water Fund dollars more efficiently going forward.

In this report, we have discussed the fact that Minnesota cannot yet identify many Clean Water Fund outcomes. Instead, we know mostly what activities—such as water quality monitoring and local water improvement projects—the Clean Water Fund has supported. Eventually, through repeated cycles of the Minnesota Water Management Framework, the state will be able to quantify changes in water quality across the state. In effect, the framework will serve as a bridge between the state's current water-quality activities and the long-term outcomes of the Clean Water Fund.

Chapter 4: Process for Distributing Clean Water Fund Dollars

Each biennium, the Legislature must decide how to distribute Clean Water Fund dollars. The Clean Water Council makes recommendations to the Legislature and Governor about how much Clean Water Fund money each state agency should receive, and for what purposes. We found that the council has used transparent processes to develop its Clean Water Fund spending recommendations and that the Legislature has adopted a majority of them. In this chapter, we describe how the council develops its recommendations and examine some of the key factors that have influenced its decisions.[1] We also review the extent to which the Legislature and Governor have taken the council's advice. Finally, we briefly describe the processes that the two agencies that have received the most Clean Water Fund dollars—the Minnesota Pollution Control Agency (MPCA) and the Board of Water and Soil Resources (BWSR)—have used to distribute their funds to partners.

Appropriations Overview

The Legislature appropriates Clean Water Fund dollars to state agencies to support ongoing state-agency-administered programs and to fund grants and contracts with local governments and other entities. The Legislature bases its appropriations, in part, on recommendations made by the Clean Water Council and on the Governor's budget.

In addition to the Clean Water Council, another group called the Clean Water Fund Interagency Coordination Team also makes Clean Water Fund spending recommendations for the Governor's budget. Like the council, the Interagency Coordination Team is composed of state agencies with water management responsibilities. The box at right compares the 2016 membership of the two organizations. Member agencies formed the Interagency Coordination Team in 2008 in response to passage of the Clean Water, Land, and Legacy

The two Clean Water Fund advisory groups have overlapping membership.

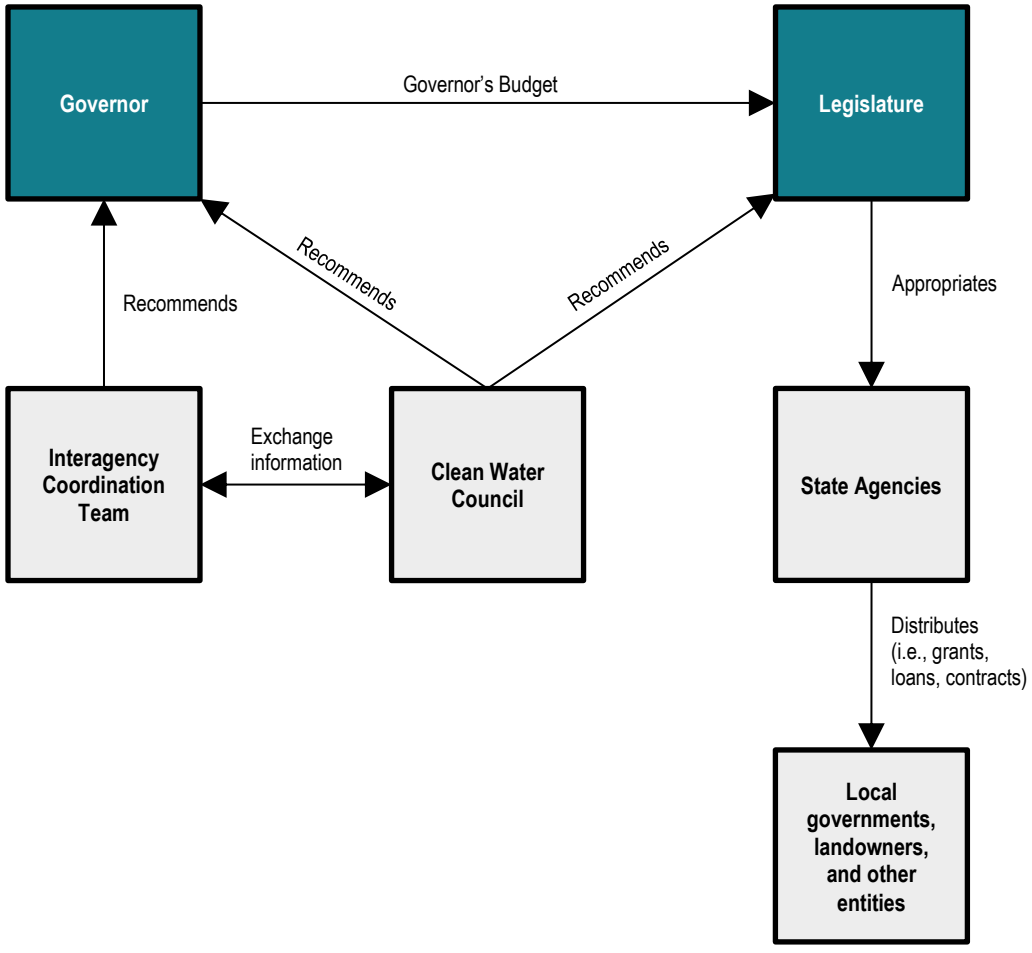
Clean Water Council	Interagency Coordination Team
11 nonvoting members: • Board of Water and Soil Resources • Department of Agriculture • Department of Health • Department of Natural Resources • Metropolitan Council • Pollution Control Agency • University of Minnesota • Legislators	• Board of Water and Soil Resources • Department of Agriculture • Department of Health • Department of Natural Resources • Environmental Quality Board • Metropolitan Council • Pollution Control Agency • Public Facilities Authority
17 voting members appointed by the Governor: • Local and tribal governments • Environmental, farm, sportsman, local government, and business organizations	

[1] We did not evaluate the processes that state agencies used to develop their own budget recommendations.

Amendment.[2] Ahead of each budget year, team members have coordinated their state agency Clean Water Fund budget requests before submitting them to the Governor.

Exhibit 4.1 provides an overview of the appropriations process for the Clean Water Fund. As they develop their two sets of recommendations each biennium, the Clean Water Council and the Interagency Coordination Team exchange information. Because the Clean Water Fund primarily supports agency programs, the council has relied heavily on information from the Interagency Coordination Team to develop its recommendations. We further describe the interactions between these two groups later in this chapter.

Exhibit 4.1: The Clean Water Council makes Clean Water Fund spending recommendations to the Governor and Legislature.



NOTE: State agencies use a portion of their appropriations to perform certain Clean Water Fund activities; they distribute the rest to local governments, landowners, and other entities.

SOURCE: Office of the Legislative Auditor.

[2] *Minnesota Constitution*, art. XI, sec. 15.

Once the Legislature has passed and the Governor has signed a Clean Water Fund appropriations bill, state agencies use a portion of the funds they receive to operate their Clean Water Fund programs. As Exhibit 4.1 shows, agencies have also distributed some funds through grants and other contracts to local governments, landowners, and other organizations. Only a small number of the nonstate entities that have received Clean Water Fund dollars have been named specifically in appropriations laws.[3]

Clean Water Council Recommendations

We reviewed the processes the Clean Water Council used to develop its Clean Water Fund spending recommendations for the two most recent biennia (fiscal years 2016-2017 and 2018-2019). We examined: (1) the key factors that have shaped the council's recommendations, (2) the extent to which the council's processes were transparent, and (3) the degree to which the Legislature has adopted the council's recommendations.

Overview of the Council's Process

For the two biennia that we reviewed, the Clean Water Council structured its spending recommendations around "activities." An activity could represent an agency program or project, a group of programs or projects, or a broad purpose. For example, one activity for which the council recommended funding was an individual BWSR program that purchased conservation easements near wells to protect drinking water from contamination. The council also recommended funding for MPCA's monitoring and assessment efforts, which encompassed a variety of activities, as well as two grant programs. The council intended for each of the "activities" it recommended to become line items in appropriations laws. In 2014, the council recommended funding for 54 different activities; in 2016, it recommended funding for 62 activities.

For both of the biennia that we reviewed, the Clean Water Council used roughly the same process. The council delegated responsibility for developing its draft recommendations to its Budget and Outcomes Committee, which met at least once per month over the year leading up to a legislative budget session.[4] We observed that, to develop its draft recommendations, the committee: reviewed prior biennium funding levels, gathered information about proposed activities from the state agencies that make up the Interagency Coordination Team, evaluated proposed activities against criteria established in law, and solicited input from stakeholders. The full council then discussed the committee's draft recommendations and voted to approve them. The council published its recommendations in a report for the Governor, Legislature, and public.[5] During the legislative session, council members or staff presented their recommendations to legislators and testified at legislative committee hearings.

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[3] For example, the 2015 Legislature appropriated Clean Water Fund money to the Red River Watershed Management Board for expanded water quality monitoring, to Washington County for a specific water quality improvement project, and for projects approved by the Voyageurs National Park Clean Water Joint Powers Board. *Laws of Minnesota* 2015, First Special Session, chapter 2, art. 2, secs. 5(a), 5(k), and 7(p).

[4] According to the Clean Water Council's bylaws, the council's Budget and Outcomes Committee must include at least four voting council members and fewer than half of the council's current voting membership. The committee had nine members in 2014 and seven in 2016.

[5] Clean Water Council, *FY16-17 Clean Water Fund Recommendations Report: Biennial Report to the Legislature* (St. Paul, 2014); and Clean Water Council, *FY18-19 Clean Water Fund and Policy Recommendations Report: Biennial Report to the Legislature* (St. Paul, 2016).

Key Factors

Four key factors heavily influenced the council's process and, ultimately, its recommendations:

1. Whether, and at what level, an activity was funded the previous biennium
2. State agency participation in the council's process
3. Legal criteria
4. Stakeholder input

In this section, we explore each of these four factors.

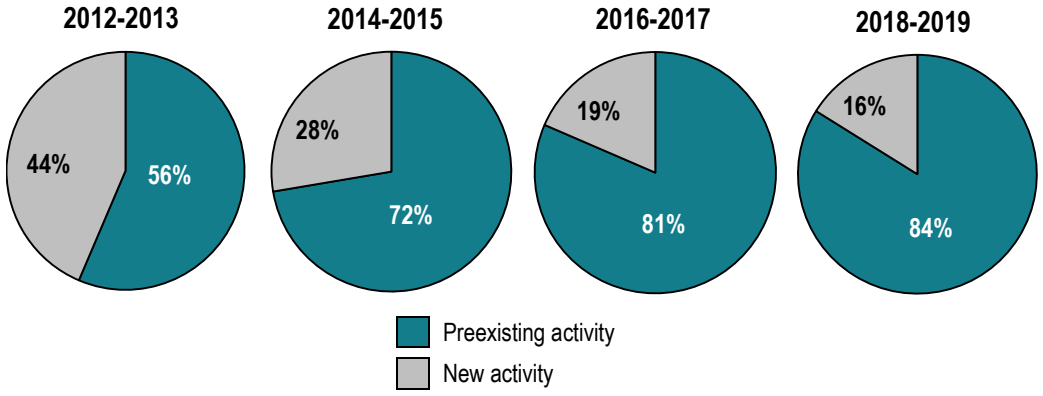
Previous Funding

Each biennium, the council's Budget and Outcomes Committee began its process for developing Clean Water Fund spending recommendations by reviewing a list of the activities the Legislature funded the previous biennium. Committee members made their preliminary funding decisions in relation to those previous levels.

Over the last three biennia, the council has recommended that an increasingly larger share of Clean Water Fund dollars go toward preexisting activities over new ones.

We compared the spending recommendation the Clean Water Council has made for each activity against the amount the Legislature appropriated for that activity in the previous biennium. For the 2012-2013 biennium, 56 percent of the council's recommendations were for preexisting activities that received funding the previous biennium; the other 44 percent were for new activities, as Exhibit 4.2 shows. In the following years, the council recommended that a larger share of its recommendations support activities funded the previous biennium: 72 percent of its recommendations for the 2014-2015 biennium, 81 percent for the 2016-2017 biennium, and 84 percent for the upcoming 2018-2019 biennium. Council representatives said that the Clean Water Council's preference for preexisting activities reflects the fact that the Clean Water Fund primarily supports ongoing state agency programs that have demonstrated their effectiveness over the short life of the fund.

Exhibit 4.2: The majority of the Clean Water Council's spending recommendations have supported activities that were funded in the past.



SOURCE: Office of the Legislative Auditor, analysis of Legislative appropriations for the 2012-2013, 2014-2015, and 2016-2017 biennia and the Clean Water Council's Clean Water Fund spending recommendations for those biennia in 2010, 2012, 2014, and 2016.

State Agencies

As the Clean Water Council's Budget and Outcomes Committee developed its spending recommendations, it spent a significant amount of time interacting with the state agencies represented on the Interagency Coordination Team. Member agencies presented information to the committee and answered questions about the programs and activities they intended to operate over the coming biennium. After the agencies drafted and coordinated their Clean Water Fund preliminary budgets, they shared various iterations with the council.

Typically, the Clean Water Council's recommendations have not differed drastically from the recommendations made by the agencies that compose the Interagency Coordination Team. For the 2016-2017 biennium, for example, 93.2 percent of the dollars that the two groups recommended were the same. This similarity is likely due in part to the fact that the two groups contain many of the same state agency members.[6] Although state agency members do not have voting powers on the Clean Water Council, they can help shape the council's decisions through discussions.

The two sets of recommendations may also be similar because the council's recommendations could be overlooked by the Governor if they diverge greatly from the agencies'. We observed in 2016 that the council gave extra consideration before finalizing any recommendations that differed from the Interagency Coordination Team. We compared how the council's recommendations fared in Governor Dayton's 2016-2017 budget against the recommendations made by the Interagency Coordination Team and found that the Governor adopted nearly all (99.6 percent) of the Interagency Coordination Team's recommendations. Although the Governor also adopted a large portion of the council's recommendations (93.2 percent), he adopted the Interagency Coordination Team's

[6] In 2016, the Environmental Quality Board and the Public Facilities Authority were the only state agencies that were members of the Interagency Coordination Team, but not members of the Clean Water Council. In addition, that year, the University of Minnesota was a member of the Clean Water Council but not a member of the Interagency Coordination Team. Membership on the Interagency Coordination Team is voluntary and has changed over time.

spending recommendations whenever they differed from the council's.[7] This suggests that, although both groups are charged with advising the Governor, the Governor gives the Interagency Coordination Team's advice more weight.

The Clean Water Council relies on information from state agencies.

Because state agencies implement or oversee most Clean Water Fund activities, the council relies on them to provide the information it needs to develop its recommendations. For example, the council needs information about the purposes, outcomes, previous funding sources, and budgets of the activities that the agencies plan to implement over the coming biennium. However, accessing information about agencies' Clean Water Fund proposals has been challenging for the council, at times. This is in part because the council and Interagency Coordination Team have different timelines for developing their recommendations. In 2014, for example, the Interagency Coordination Team did not immediately provide the council with information about how much it planned to request in Clean Water Funding for its proposed activities, citing the fact that the Governor's budget is classified by law as nonpublic.[8] Although both council and Interagency Coordination Team members said their interactions greatly improved in 2016, we still observed tension between the two groups.

MPCA also has some control over Clean Water Council staff activities. The Clean Water Legacy Act requires MPCA to "provide administrative support for the council with the support of other member agencies" with nonvoting seats on the council.[9] MPCA provides the council with its staff, which gives the agency additional influence over council operations.[10] MPCA, not the council, has the authority to hire, supervise, and set compensation for the council's staff, and evaluate staff performance. In 2016, council members expressed concern about whether their staff could truly serve the interests of the council when serving in this dual role.

In 2017, MPCA prohibited the council's full-time staff person from (1) testifying at or attending any legislative hearings and (2) briefing legislators on behalf of the council. An MPCA official said they think that these activities exceed the scope of the employee's role as "administrative support." They further explained that allowing the staff person to represent the council before the Legislature might put her in the awkward position of having to defend council recommendations that her employer (MPCA) does not support. However, council members told us that because the council is composed of volunteers, this staff restriction hampers the council's ability to convey its recommendations to the Legislature.

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[7] We compared the level of funding for each activity that the Clean Water Council and the Interagency Coordination Team recommended, as opposed to the number of activities they each recommended. The two groups recommended mostly the same activities, and often at the same funding levels. They recommended different levels of funding for 26 activities. The Governor adopted the Interagency Coordination Team's recommendations for 24 of those 26 activities. For the remaining two activities, the Governor budgeted funding levels that neither group recommended.

[8] *Minnesota Statutes* 2016, 13.605, subd. 1.

[9] *Minnesota Statutes* 2016, 114D.30, subd. 1.

[10] In Fiscal Year 2016, MPCA provided two part-time staff members for the council, which accounted for 1.4 full-time-equivalent staff. Starting in mid-2016, one of these staff members served the council on a full-time basis.

Legal Criteria

Prior to making its recommendations, the Clean Water Council evaluated proposed Clean Water Fund activities against criteria established through the Legacy Amendment and the Clean Water Legacy Act. The amendment and act contain a long list of criteria related to Clean Water Fund spending. For example, the Legacy Amendment says that:

- The Clean Water Fund must be used only 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 used to protect drinking water sources.
- Money from the Clean Water Fund "must supplement traditional sources of funding…and may not be used as a substitute."[11]

The Clean Water Legacy Act imposes many more requirements that the Clean Water Council must follow when making its spending recommendations.[12] For example, the act requires the council to prioritize funding for activities that most effectively leverage other funding.[13] It also requires the council to recommend funding for activities required by the federal Clean Water Act, such as identifying impaired waters and developing total maximum daily loads (TMDL).[14] In addition, it requires the council's recommendations to be consistent with the "purposes, policies, goals, and priorities" outlined within the act—of which there are many.[15]

The council has attempted to systematically evaluate proposed Clean Water Fund activities but, given the large number and broad nature of the criteria established in law, this has been challenging.

In both 2014 and 2016, the council's Budget and Outcomes Committee collected uniform information from each agency about each of their proposed activities. This included information related to some (but not all) of the criteria established in law. For example, the committee required information about whether agencies' proposed activities had previously been funded by "traditional" sources. This information relates to the Legacy Amendment's requirement that the Clean Water Fund supplement, and not substitute for, traditional funding sources.

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[11] *Minnesota Constitution*, article XI, sec. 15.

[12] *Minnesota Statutes* 2016, 114D.25, subds. 6-7; and 114D.30, subd. 6, contain the requirements the Clean Water Council must follow when developing its Clean Water Fund spending recommendations. Per *Minnesota Statutes* 2016, 114D.30, subd. 6(b)(2), the council's recommendation also must be consistent with the purposes, goals, and priorities listed in *Minnesota Statutes* 2016, 114D.10, subd. 1; 114D.20, subds. 2-7; and 114D.50, subd. 3.

[13] *Minnesota Statutes* 2016, 114D.20, subd. 6(3).

[14] *Minnesota Statutes* 2016, 114D.30, subd. 6(b)(3). As discussed in Chapter 1, a TMDL establishes the maximum amount of a particular pollutant that a waterbody can receive without violating water quality standards.

[15] *Minnesota Statutes* 2016, 114D.30, subd. 6(b)(2); 114D.10, subd. 1; 114D.20, subds. 2-7; and 114D.50, subds. 3 and 3a.

During the committee's 2016 deliberations, we observed members discussing at length whether proposed activities met various legal criteria. However, in our observations, the committee did not uniformly apply all of the criteria across all proposed activities. Given the range and nature of both the proposed activities and the criteria, we think this would be difficult to do.

To help form its Clean Water Fund spending recommendations, the council established its own set of criteria, some of which reaffirmed requirements set forth in law. The council's 2016 criteria included 9 "guiding principles" and 12 "funding priorities."[16] For example, one of the 2016 guiding principles was to: "Keep water where it falls by promoting water storage, retention, and infiltration where appropriate." One of its 2016 funding priorities was to: "Restore impaired waters and protect high quality waters."

Council staff told us that, in 2014, committee members carefully judged each proposed activity against its guiding principles and funding priorities. However, staff felt that because these criteria were so broad, members could justify funding nearly every proposed activity. Therefore, with much greater requests for funding than dollars available, these criteria provided little help for most members in narrowing its recommendations. To set the stage at the start of its deliberations in 2016, the committee again established guiding principles and funding priorities; but, it determined that reviewing each proposal individually against these criteria was not an effective use of its time.

Stakeholder Input

Input from stakeholders, such as nonprofit environmental groups and local governments, has also influenced the Clean Water Council's process and recommendations. We surveyed stakeholders to learn about their experience with the Clean Water Council.[17] Of 31 respondents who said they were familiar with the council's work, about 75 percent said they thought the council has effectively sought stakeholder feedback on its funding recommendations. Somewhat fewer respondents (65 percent) said they thought the council has effectively incorporated that feedback into its recommendations.

In 2014, the council's Budget and Outcomes Committee solicited feedback from stakeholders after it developed its draft recommendations (in August of that year). That year, stakeholders told the council that, in the future, they wanted to be involved earlier in the council's process for developing its recommendations. As a result, the following biennium, the council began soliciting ideas for new Clean Water Fund activities even before the committee began meeting in 2016. Like the previous cycle, the committee also asked stakeholders to provide feedback on its draft recommendations in late summer of 2016.

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[16] Clean Water Council, *FY18-19 Clean Water Fund and Policy Recommendations Report* (St. Paul, 2016), 6-7.

[17] We surveyed representatives of all Minnesota counties, soil and water conservation districts, watershed districts, and watershed management organizations. We received responses from 180 of the 220 local governments we surveyed, which represents an 82 percent response rate. We also surveyed representatives from nonprofit or other organizations that we identified as engaged stakeholders. We received responses from only 15 of the 51 organizations we surveyed, which represents a 29 percent response rate. Given the small number of responses we received from these organizations, their responses are not generalizable statewide. Thus, we primarily report results from the survey of local government stakeholders.

Stakeholders reported that the state should increase the share of Clean Water Fund dollars supporting local water quality improvement projects. However, they have also underestimated the amount currently spent on local projects.

In our survey of local government stakeholders, some respondents commented that more Clean Water Fund dollars should be spent implementing water quality improvement projects and less should be spent on activities such as water quality monitoring and planning. For example, one respondent wrote:

> So much of the money stays with State agencies that should be going to local implementation. The State does not build projects but relies on watershed districts, soil and water conservation districts, counties and cities and other local organizations to build, own and maintain projects.

Another respondent wrote, "The implementation of the plans should be the focus, not the planning part itself." A third said, "We have to stop studying, and start implementing." Some Clean Water Council members expressed similar sentiments in the meetings we observed.

In our survey, we asked stakeholders how they would divide a hypothetical pot of Clean Water Fund dollars, given the following six categories: (1) water quality monitoring and assessment, (2) planning, (3) research, (4) evaluation, (5) implementation of local water quality projects, and (6) education.[18] On average, respondents allocated 50 percent of the funds for local project implementation.

Our survey results revealed a possible misperception among stakeholders about how much of the fund actually has gone toward implementation of local projects. Despite some stakeholders' conviction that the state should increase the amount of Clean Water Fund dollars spent on local water quality projects, the Clean Water Council's recommendations and Legislative appropriations for local project implementation have generally matched or exceeded the 50 percent threshold that stakeholders set in the survey.[19] From fiscal years 2010 through 2017, the Legislature dedicated more than half of all Clean Water Fund appropriations for local project implementation. For the most recent biennium (2016-2017), the Legislature appropriated 61 percent of Clean Water Fund dollars for local project implementation.

Transparency

To determine whether the Clean Water Council used transparent processes when developing its Clean Water Fund spending recommendations, we surveyed stakeholders, reviewed the council's conflict of interest policy, and attended council meetings.

[18] "Monitoring" refers to the collection of water quality data and "assessment" refers to the process of determining whether a waterbody meets water quality standards.

[19] Council staff told us that some "implementation" activities may be better described as technical assistance or planning activities. In 2016, the council revised the categories in order to be more transparent about how funds are used.

The Clean Water Council has used transparent processes to develop its Clean Water Fund spending recommendations.

We observed that all Clean Water Council meetings, including those held by its committees, were open to the public, as required by law.[20] The council allowed members of the public to either attend council meetings or to listen to them live via teleconference. It also posted audio recordings of the meetings, as well as its meeting minutes and supplemental meeting materials, on its website.

The Clean Water Council stakeholders we surveyed also thought the council has used transparent processes. Of the respondents who were familiar with the council's work, 74 percent said the council has clearly communicated how it developed its Clean Water Fund spending recommendations. Similarly, 77 percent of respondents said the council has clearly communicated its funding priorities.

In addition, we found that the Clean Water Council had a sufficient conflict of interest policy, which represents an improvement from a 2011 Office of the Legislative Auditor evaluation report that found the council's policy lacking.[21] In 2012, in response to OLA's 2011 finding, the council adopted a new policy which was still in place in 2017. Among other things, the council's conflict of interest policy requires members to abstain from voting on (or otherwise participating in the discussion of) issues that may "substantially affect the member's financial interests or those of an associated business or family member…."[22] In addition, it requires members to disclose, at the beginning of each council meeting, whether they had any actual or perceived conflicts of interest with respect to any item on the agenda. We attended most council and committee meetings from April to November 2016 and observed council members disclosing whether they had actual or perceived conflicts and abstaining from related votes.

Adoption of the Council's Recommendations

The Clean Water Council is required by law to make Clean Water Fund spending recommendations to the Legislature and Governor—recommendations that must reflect numerous state priorities outlined in law. The Legislature, however, ultimately decides how to appropriate money from the fund; thus, we reviewed the extent to which the Legislature has adopted the council's recommendations.

The Legislature has adopted most of the Clean Water Council's spending recommendations; it has also funded some activities that the council did not recommend or review.

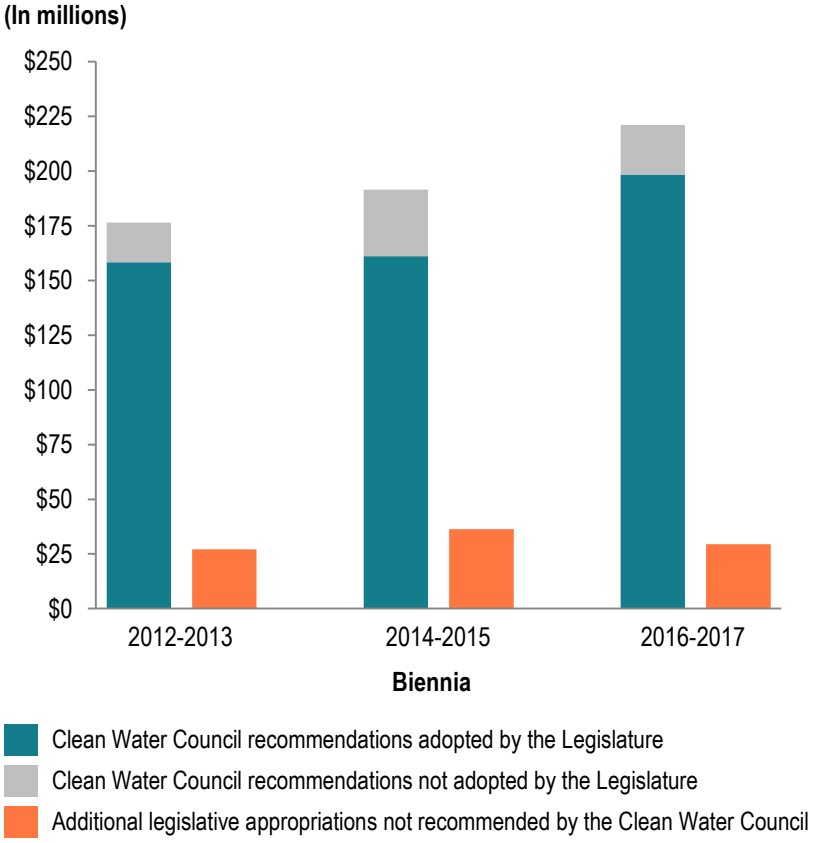
The Legislature adopted 90 percent of the Clean Water Council's recommendations for the 2012-2013 biennium, 84 percent for the 2014-2015 biennium, and 90 percent for the 2016-2017 biennium, as Exhibit 4.3 shows. As the exhibit also shows, the Legislature funded some activities that the council did not recommend, accounting for more than $22 million of Clean Water Fund appropriations in each of the three biennia. State law did not require the

[20] *Minnesota Statutes* 2016, 13D.01, subd. 1.

[21] Office of the Legislative Auditor, Program Evaluation Division, *The Legacy Amendment* (St. Paul, 2011), 65.

[22] Clean Water Council, *Conflict of Interest Policy* (St. Paul, 2012).

Exhibit 4.3: The Legislature has adopted the majority of the Clean Water Council's recommendations for Clean Water Fund spending.



NOTES: In this exhibit, we compare the Clean Water Council's spending recommendations with the Legislature's Clean Water Fund line-item appropriations. These data represent the Clean Water Council's interpretation of whether the Legislature adopted its recommendations for individual activities. We did not analyze the council's spending recommendations for the 2010-2011 biennium because they were relatively broad in nature. The council made recommendations to the Governor and Legislature in 2008 and 2010 for fiscal years 2010-2011 and 2012-2013, respectively, even though it was not required by law to do so. The council was not required by law to make Clean Water Fund spending recommendations until 2011. *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 2, sec. 19.

SOURCE: Office of the Legislative Auditor, analysis of data from the Clean Water Council and from appropriations laws, 2009 to 2016: *Laws of Minnesota* 2009, chapter 172, art. 2, secs. 1-10; *Laws of Minnesota* 2010, chapter 361, art. 2; *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 2, secs. 1-11; *Laws of Minnesota* 2012, chapter 264, art. 2, secs. 2-5; *Laws of Minnesota* 2013, chapter 137, art. 2, secs. 1-11; *Laws of Minnesota* 2014, chapter 312, art. 14, secs. 1-8; *Laws of Minnesota* 2015, First Special Session, chapter 2, art. 2, secs. 1-9 and 17-19; and *Laws of Minnesota* 2016, chapter 172, art. 2.

Clean Water Council to make spending recommendations to the Legislature during the first two biennia of the fund's existence (2010-2011 and 2012-2013), but the council did so anyway.

As mentioned previously, the Legislature has also appropriated money from the Clean Water Fund for activities that the council has not recommended. For example, each biennium, the Legislature has appropriated Clean Water Fund dollars to the same joint powers organization (consisting of a group of neighboring watershed districts) for water

quality monitoring activities in that area's schools.[23] Activities such as this one did not go through the council's review process, which means the council did not have the opportunity to evaluate them in relation to other proposed activities or against legal criteria.

The council has attempted to retroactively evaluate some of these activities. For example, in 2016, when the council's Budget and Outcomes Committee was working to develop its 2018-2019 spending recommendations, it invited some recipients that had bypassed the council's process to present their activities to the council and answer members' questions.

In 2016, the council also discussed strategies to reduce the number of organizations circumventing its process. From these discussions, the council decided to recommend funding for a new Clean Water Fund grant program for non-state-agency organizations. The council hoped that, rather than bypass the council's process, organizations would instead directly apply for funding under the new program.[24]

Distribution of Funds by State Agencies

Most state agencies that have received Clean Water Fund appropriations have allocated some of their funds to local governments and other entities through grants and other contracts. In this section, we briefly describe the processes that MPCA and BWSR have used to distribute their Clean Water Funds; however, an in-depth review of these processes was out of the scope of this evaluation.

Minnesota Pollution Control Agency

From fiscal years 2010 through 2016, MPCA distributed almost $70 million from the Clean Water Fund through contracts to local governments and other entities, including more than $16 million for grant contracts. As we described in Chapter 2, MPCA awarded many of those contracts to increase its capacity to fulfill its responsibilities, such as developing Watershed Restoration and Protection Strategies (WRAPS) and TMDLs. It also issued grant contracts to fulfill purposes outlined in appropriations laws, such as grants for county septic systems programs.

The Minnesota Pollution Control Agency issued most of its Clean Water Fund contracts through noncompetitive processes.

MPCA contracted with local governments and other entities to perform activities like the development of WRAPS and TMDL reports. Agency staff told us that they contracted with local entities to capitalize on local knowledge, build local capacity, and engage stakeholders. They explained that when local entities, such as watershed districts, expressed an interest coordinating WRAPS for their local watershed, the agency typically contracted with them or the most logical local entity available. State law allows agencies to

[23] The Legislature appropriated $346,000 total to the Red River Watershed Management Board for the 2010-2011 biennium; $200,000 total for the 2012-2013 biennium; $200,000 total for the 2014-2015 biennium; and $200,000 total for the 2016-2017 biennium.

[24] BWSR would administer grants awarded under the proposed new program.

contract with entities to perform certain activities without using a competitive bidding process.[25]

MPCA also used noncompetitive processes to issue its septic system grants.[26] As we discussed in Chapter 2, the agency offered several types of these grants, including: (1) base grants, (2) low-income fix-up grants, and (3) incentive grants.[27] Agency staff told us that, for base grants, they allocated the funds available each year equally among all of the counties that applied for them. Each county received a $17,100 base grant each year. For the most part, MPCA also divided its low-income fix-up grants equally among all applicants in a given year. However, it awarded less money to counties that had funds left over from the previous year. Finally, although the agency awarded its incentive grants only to counties with more active septic system programs, it also awarded these grants on a noncompetitive basis. In Fiscal Year 2016, the agency offered incentive funds to any county that met one of four criteria. Under the first criterion, for example, MPCA offered a total of $200,000 in incentive grants to counties with ordinances that required septic system inspections upon property transfer. MPCA divided the $200,000 available evenly among each qualified applicant.

MPCA has used a competitive process to issue its Clean Water Fund water quality monitoring grants, but its grant recipients have faced almost no competition. As we described in Chapter 2, MPCA issued two kinds of water quality monitoring grants—surface water assessment grants (SWAG) and load monitoring grants. From fiscal years 2010 through 2016, the agency rejected only 2 percent of SWAG applications (a total of two applications) because they scored below competing proposals. Similarly, from fiscal years 2012 through 2016, MPCA rejected only 14 percent of load monitoring proposals (a total of six proposals). Staff said the agency has rarely received multiple proposals to monitor the same site.

MPCA has typically used a competitive process to issue Clean Water Fund grants from its Clean Water Partnership program. However, in the most recent year of the program (Fiscal Year 2015), MPCA's available funds exceeded those requested by applicants; as a result, all of the program's 13 applicants received funding that year. For fiscal years 2011 through 2014, MPCA only awarded grants to the top applicants and turned away others that were qualified. In Fiscal Year 2010, the first year that MPCA offered Clean Water Partnership grants using Clean Water Fund dollars, it awarded grants to each of the program's four applicants.

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[25] *Minnesota Statutes* 2016, 16C.08.

[26] As authorized by law, the Minnesota Department of Administration Office of Grants Management allows state agencies to issue grants through noncompetitive processes under certain conditions. See *Minnesota Statutes* 2016, 16B.97, subd. 4(a)(1); and Minnesota Department of Administration, Office of Grants Management, *Policy on Single and Sole Source Grants* (St. Paul, 2012).

[27] MPCA also set aside some funds to help outstate counties pay for septic system inspectors; however, few counties have applied for these funds. MPCA offered Clean Water Fund base and incentive grants for fiscal years 2014 through 2017, and low-income fix-up grants for fiscal years 2013 through 2017.

Board of Water and Soil Resources

From fiscal years 2010 through 2016, BWSR awarded nearly $136 million from the Clean Water Fund through grants to local governments.[28] As we explained in Chapter 2, the agency's grant programs have supported a range of activities, such as implementing local governments' water quality projects and helping counties to inventory septic systems in their jurisdictions.

Overall, local governments have been satisfied with how the Board of Water and Soil Resources has administered its Clean Water Fund grant programs.

We surveyed local governments that applied for BWSR Clean Water Fund grants for Fiscal Year 2015.[29] When asked about their experience applying for grants, most respondents generally found the application process to be transparent. Large majorities (more than 70 percent each) of survey respondents thought that the application process was clear, as were the criteria BWSR used to evaluate the applications. Eighty-three percent thought that BWSR staff were helpful in answering their questions.

Although local governments who applied for BWSR's grants reported that they were satisfied with the agency's grant-applicant process, other stakeholders, including our office, found the agency's extensive slate of grant programs confusing to navigate. Over the course of this evaluation, we struggled to identify: (1) a list of the grant programs that have existed since the agency began receiving money from the Clean Water Fund in Fiscal Year 2010, (2) the purpose of those grant programs, (3) a list of the entities that have received those grants each year, and (4) whether those grants were awarded on a competitive basis, among other things. We were able to piece together information about BWSR's Clean Water Fund grant programs only after interviewing agency staff and spending a significant amount of time reviewing the agency's grant database, annual reports, requests for proposals, the *Minnesota's Legacy* website, and Clean Water Fund appropriation laws. Exhibit 4.4 shows an exhaustive list of BWSR's Clean Water Fund grant programs.

We think the confusion surrounding BWSR's Clean Water Fund grant programs primarily stems from two issues. First, BWSR does a poor job displaying information about its Clean Water Fund grant programs on its website, which makes it difficult for members of the public to learn about and understand potential grant opportunities. We found that webpages related to BWSR Clean Water Fund grant programs were poorly linked and organized and contained outdated, incomplete, and missing information. Second, the Legislature's appropriations for BWSR's grant programs, in a given year, have contained numerous line-items with broad purposes that are similar with one another—making the programs that they fund difficult to distinguish. These broadly worded appropriations have also changed over time, leading to program changes and compounding the confusion.

[28] Although BWSR has awarded nearly $136 million in Clean Water Fund grants, through Fiscal Year 2016, it had only released $107 million to its grantees. BWSR typically releases a portion of grantees' awards at the start of their projects; it releases the remainder after the grantee achieves certain benchmarks.

[29] We surveyed 114 grant applicants and received responses from 96, representing a response rate of 84 percent.

Exhibit 4.4: The Board of Water and Soil Resources offered many different Clean Water Fund grants from fiscal years 2010 through 2016.

Grant Program	Fiscal Years Offered	Description	Number of Grants Awarded	Amount Awarded (in millions)
Projects and Practices[a]	2010-2016	Funding to implement projects and practices that will protect or restore water quality	249	$ 54.3
Targeted Watershed Demonstration[a]	2014-2016	Funding to implement groups of projects across a watershed to demonstrate a measurable change in the area's water quality	13	19.5
Accelerated Implementation[a]	2012-2016	Funding for local governments to plan and design local projects so they can be implemented faster	104	11.3
Local Capacity[c]	2016	Funding for soil and water conservation districts to increase their capacity (for example, to address soil erosion)	90	9.0
Feedlot Water Quality Management[a]	2010-2013	Financial and technical assistance to reduce water contamination from animal feeding operations	52	7.3
Runoff Reduction[a]	2010-2011	Funding to install projects that reduce stormwater runoff or retain water on the land	25	5.6
Septic System Imminent Health Threat Abatement[a]	2010-2013	Funding for counties to help low-income property owners fix failing septic systems	54	5.3
Community Partners[a]	2012-2016	Funding for local governments to partner with community organizations in implementing projects	50	4.9
Enhanced Shared Technical Services[b]	2014, 2016	Funding to help soil and water conservation districts work together to increase efficiency in providing technical and engineering assistance to landowners	24	3.9
Conservation Drainage[b]	2010-2013, 2016	Funding for projects that improve agricultural drainage systems	32	3.0
Shoreland Improvement[a]	2010-2011	Funding to install projects that protect or restore streambanks, stream channels, or shorelines	22	2.7
Buffer Law[c]	2016	Funding for local governments to become compliant with new laws requiring riparian buffers on designated waters	90	2.0
Soil Erosion and Drainage Law Compliance[a]	2014-2015	Funding to help local government units increase compliance with existing soil erosion and drainage laws to improve the quality of impaired waterbodies	32	1.6
Restoration Technical Assistance[a]	2011	Technical assistance or engineering to restore impaired waters	12	1.3
Septic System Program Enhancement[a]	2010-2011	Funding to counties to operate local septic system programs, including taking inventories and enforcing requirements	21	1.2
One Watershed, One Plan[b]	2014-2016	Funding to help multiple local governments consolidate their plans into a single, watershed-wide plan	6	1.1
319 Technical Assistance[c]	2010	Match funding for federal grants that fund nonpoint source activities resulting from total maximum daily load (TMDL) studies	8	0.8
Multipurpose Drainage Management[a]	2016	Funding to reduce pollution in priority agricultural drainage systems while maintaining their efficiency	6	0.7
Mississippi River Basin Initiative[c]	2011	Additional funding for projects with federal Mississippi River Basin Initiative funding, which helps landowners implement conservation practices	8	0.3
Total Awarded			898	$135.8

NOTES: We combined some grant programs that represented different iterations over time or that served very similar purposes. Due to limitations with BWSR's data, the numbers we present in this exhibit represent only our best estimates; they represent numbers and dollar amounts of grants awarded through June 24, 2016. In addition to the grants shown here, BWSR administered some Clean Water Fund grants on behalf of the Minnesota Pollution Control Agency and the departments of Agriculture and Health.

[a] The Board of Water and Soil Resources (BWSR) awarded these grants on a competitive basis.

[b] The Board of Water and Soil Resources (BWSR) awarded these grants on both a competitive and noncompetitive basis. BWSR awarded an additional seven One Watershed, One Plan grants during fall of 2016.

[c] BWSR awarded these grants on a noncompetitive basis; the 319 Technical Assistance and Mississippi River Basin Initiative grants were awarded to local governments that won competitive federal grants.

SOURCE: Office of the Legislative Auditor, analysis of Board of Water and Soil Resources Clean Water Fund grants data from its eLINK database.


THE GREAT SEAL OF THE STATE OF MINNESOTA
L'ETOILE DU NORD
1858

Chapter 5: Legal Concerns

Minnesota's constitution establishes certain limitations on Clean Water Fund spending.[1] The Legislature has added others through appropriations laws. Some of these legal requirements—such as the requirement that Clean Water Fund dollars not be used to substitute for traditional funding sources—are the subject of perennial debate. In this chapter, we discuss whether the distribution of Clean Water Fund dollars aligns with constitutional and other legal requirements. We begin with a discussion of the constitutional requirement that the Clean Water Fund not substitute for traditional sources of funding. Next we address the requirement that Clean Water Fund dollars be spent only on activities "directly related to and necessary for" a specific appropriation. Finally, we review the constitutional purposes for which the state is allowed to spend Clean Water Fund dollars.

Overall, we did not find that the state has substituted Clean Water Fund dollars for traditional sources of funding. However, the lack of clarity around the issue remains. There also continues to be confusion regarding the requirement that Clean Water Fund expenditures be directly related to and necessary for a specific appropriation. For both of these issues we make recommendations for improvement to the Legislature.

"Supplement Not Substitute"

The Minnesota Constitution establishes the purposes for which each of the four Legacy funds (including the Clean Water Fund) may be spent and specifies that the money in those funds must be appropriated by law.[2] It further specifies that Legacy funding "must supplement traditional sources of funding for these purposes and may not be used as a substitute."[3]

Varying Interpretations

Since the passage of the Clean Water, Land, and Legacy Amendment, stakeholders have debated the meaning of the "supplement not substitute" provision of the constitution and how it should be applied.

Substitution of Legacy funds for other revenue sources has always been difficult to define.

Even before Minnesota voters passed the Legacy Amendment in November 2008, stakeholders disagreed about the meaning of the proposed "supplement not substitute" language. In February 2008, the Office of the Legislative Auditor (OLA) conducted a roundtable discussion with legislative staff, executive agency representatives, and interest-group representatives to obtain their insights regarding the intent of the provision. The

[1] *Minnesota Constitution*, art. XI, sec. 15.

[2] *Ibid.* The four funds established as a result of the Legacy Amendment are the Arts and Cultural Heritage Fund, the Clean Water Fund, the Outdoor Heritage Fund, and the Parks and Trails Fund.

[3] *Minnesota Constitution*, art. XI, sec. 15.

attendees were divided among those who thought the language should be seen as a policy or political statement, and those who thought it should be viewed as a legal requirement.

Those who considered the language a policy or political statement believed that policymakers should use the language as a reminder of the intent of the funds to supplement, rather than substitute for, traditional funding sources, but that the requirement should only be enforced through the politics of budget making and the legislative process. These participants argued that policymakers, agency officials, and stakeholders should work out "supplement not substitute" issues on an ad hoc basis.

Other roundtable participants thought that the "supplement not substitute" language must be considered a legally enforceable requirement. They thought that the Legislature should set up formal tracking, monitoring, and enforcement mechanisms in order to avoid a potential lawsuit. While debating the proposed amendment before its passage, legislators also expressed different opinions regarding how the "supplement not substitute" provision would apply in the legislative arena.

Since the passage of the Legacy Amendment, no state office or agency has provided definitive guidance on how to apply the "supplement not substitute" provision. In early 2009, the Minnesota House of Representatives Research Department (House Research) issued a memorandum analyzing the issue. It determined that while "[t]he 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…[t]he exact scope and impact of this language is not clear, either on its face, or based on the legislative history."[4] In its 2011 evaluation report, *The Legacy Amendment,* OLA found that the requirement had caused confusion and uncertainty. Further, it said that given the many unresolved issues, OLA found "no basis from which" to offer guidance on the application of the requirement.[5]

"Traditional" Funding

Chief among the issues identified in these early analyses is the fact that the Minnesota Constitution defines neither "traditional sources of funding" nor how to determine what amount of traditional funding the state must maintain. The constitution does not explicitly name traditional sources. Potential funding sources include the state's General Fund, Environment and Natural Resources Trust Fund, capital investment (bonding), other state funds, federal funding, local government funding, and private funding. Prior to the Legacy Amendment, the state used each of these funding sources to some degree to fund water quality activities. Federal and private funding are somewhat problematic to consider as traditional sources because the Minnesota Legislature cannot control whether those funding sources continue over time.[6]

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[4] Mark Shepard, Legislative Analyst, Minnesota House of Representatives, Research Department, memorandum to interested legislators, *Constitutional Issue: Supplement/Substitute*, February 18, 2009, 2.

[5] Office of the Legislative Auditor, Program Evaluation Division, *The Legacy Amendment* (St. Paul, 2011), 49-50.

[6] House Research found valid arguments both for and against including private funds among traditional funds. On the one hand, "because the prohibition on substitution is contained in a section of the constitution dealing with public funds, the constitutional language is not intended to deal with substitution for traditional private sources of funding." The counterargument is that the intent of the Legacy funds is to dedicate new money and the state should avoid any substitution. Shepard, *Constitutional Issue: Supplement/Substitute*, 8.

Another funding source that has generated debate is revenue from bonding. In a 2011 report, the nonprofit organization Conservation Minnesota asserted that "conservation budgets have long relied on bonding as a traditional source of funding."[7] However, bonding is one-time funding; thus, one might argue that it cannot be considered "traditional." For example, in its 2011 evaluation report, OLA pointed out that the Legislature may appropriate bond funds for a particular project for several years without the intention of it becoming a permanent or extended funding source.[8]

Beyond defining traditional funding sources is the problem of determining what *level* of funding should be considered traditional. Possible interpretations of a traditional funding level include:

1. The amount of funding the activity received in the prior biennium.

2. The average amount of funding over some period of time.

3. The amount of funding that would have existed from traditional sources if the Legacy funds were not available.

While the sparse language in the constitution does not explicitly support any of these interpretations, a House Research analyst testified seemingly in support of the third option: that "traditional funding" should be defined as *the level of funding that would have existed from traditional sources in the absence of Legacy funds*. In a February 23, 2009, hearing of the House Cultural and Outdoor Resources Finance Division, the analyst explained using a hypothetical example. He said that if budget cuts are necessary, and the Legislature would have reduced the General Fund appropriation for an activity by 10 percent, notwithstanding available Legacy funds, then use of the Legacy funds should not be considered substitution. The analyst noted, both in the hearing and his memorandum, that this argument would "seem to be strongest" if an equal General Fund reduction were applied "across the board" to all state services.[9] As he explained in the hearing, the purpose of the amendment was to provide additional money to certain areas. He said it would fail to "advance the purposes of this constitutional amendment if you said, 'if you're losing your current source of funding, you can't get any of this source.'"[10]

Responsibility to Avoid Substitution

Another question regarding the "supplement not substitute" provision is who—the Legislature, funding recipients, or both—is responsible for avoiding substitution of Clean Water Fund money for traditional funding sources. The 2009 House Research memorandum stated that the requirement to not substitute for traditional funds "clearly applies" to legislative appropriations, as it comes immediately after a sentence requiring that the constitutionally dedicated funding be appropriated by law. The memorandum went on to say that there is "a good argument" that the provision also applies to state agencies

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[7] Conservation Minnesota, *Building a Legacy: Minnesota's Budget for Conservation and the Arts and Allocations of Clean Water, Land, & Legacy Amendment Funds After the 2010 Legislative Session* (Minneapolis, 2011), 19.

[8] Office of the Legislative Auditor, *The Legacy Amendment*, 48.

[9] Shepard, *Constitutional Issue: Supplement/Substitute*, 9.

[10] Minnesota House Cultural and Outdoor Resources Finance Division, February 23, 2009. For audio recording, see http://www.house.leg.state.mn.us/cmte/archiveAV/cmtearchives.aspx?comm=86121&ls_year=86, starting at minute 37.

receiving Legacy funds. Furthermore, it said "it seems likely" that the language similarly applies to other entities, such as nonstate entities that receive grants from an appropriation of Legacy funds. The memorandum concluded that the constitution does not specify responsibility for avoiding substitution: "Arguably, the constitution requires each recipient to use dedicated money to supplement and not substitute for the recipient's traditional source of funding for an activity."[11]

In our view, both the Legislature and funding recipients bear responsibility for avoiding funding substitution. This means that a funding decision could seem supplemental at the legislative level, while in fact representing substitution at the implementation level. For example, the Legislature could appropriate funding to be granted to an organization it had never funded before (which would likely be supplementing); however, if that organization accepted Legacy funds and chose to no longer use its previous sources of local funding, for example, that could constitute substitution on the part of the recipient. In a 2011 law, the Legislature affirmed that "a recipient" of Legacy money must comply with the constitutional provision not to substitute for traditional funds.[12]

Current Dialogue on Substitution

We found that the questions discussed above persist to this day. We attended meetings of the Clean Water Council and its committees between April and November 2016, and observed that council members frequently discussed substitution. The council's Budget and Outcomes Committee, for example, spent considerable time grappling with issues of substitution as it developed the Clean Water Council's spending recommendations for the 2018-2019 biennium. In addition to observing these meetings, we interviewed and surveyed council members to gain their insights on substitution.[13]

The Clean Water Council and its members have struggled to define and identify instances of Clean Water Fund spending that substitutes for traditional funding sources.

In our survey of Clean Water Council members, we asked respondents to explain how the "supplement not substitute" provision of the constitution should be interpreted and applied. The responses to this question, and our observations of council meetings, showed that council members do not have a consistent strategy for determining whether substitution is occurring. One member responded that substitution should be evaluated at both (1) the level of overall legislative appropriations for clean water and (2) at the individual activity level.[14] A few council members expressed support for a benchmarking approach at the legislative level. This would entail the Legislature ensuring that environmental spending

[11] Shepard, *Constitutional Issue: Supplement/Substitute*, 6-7.

[12] *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 5, sec. 7. While this language seems to imply a legislative interpretation that recipients must not substitute, the requirement was not codified in statute. This language applied only to appropriations made in fiscal years 2012 and 2013, per section 6 of the same article.

[13] We surveyed all members of the Clean Water Council and received responses from 27 of 28 members, for a response rate of 96 percent.

[14] The Clean Water Council uses the term "activity" to describe a single program or project, a group of programs or projects, or a general purpose for which it recommends a single appropriation.

(including water quality spending) made up a consistent share of General Fund spending, equal or greater to the share that it enjoyed prior to the Legacy Amendment.[15]

Council members, particularly those on the Budget and Outcomes Committee, spent considerable time discussing whether recommending individual programs or activities for Clean Water Fund dollars would constitute substitution for traditional sources of funding. During the two most recent recommendation processes, the Clean Water Council asked agencies seeking funding to submit an information form for each proposed program. On the most recent version of the form, agencies described various aspects of the proposal including other historical funding sources and whether any Clean Water Fund dollars the program receives would supplement or substitute for traditional sources of funding. In the meetings we observed during 2016, council members did not systematically evaluate every proposal for possible substitution.[16] However, when the issue of substitution arose, members spent considerable time wrestling with it. Some members thought that the possible use of Clean Water Fund money for one program, the Conservation Reserve Enhancement Program (CREP), created a potential substitution issue. This program was the subject of much debate over the course of several meetings.[17]

In our survey of council members, several expressed frustration with the "supplement not substitute" provision, noting that the council has struggled with and devoted a lot of time to it. Some members indicated that the issue appeared to be unresolvable. According to one member:

> Depending on your viewpoint, an argument can be made for either supplement or substitution on virtually any activity related to clean water. Clean water is not a new goal—Minnesota has worked on it for years, and the funding streams have varied greatly over the years as well.

Several Clean Water Council members have expressed the desire for more guidance. A few suggested that the council or the Budget and Outcomes Committee develop its own guidelines for identifying substitution in an effort to make the next recommendation process run more smoothly. We think that the creation of such guidelines would be challenging; however, it could be a reasonable approach if it would streamline Clean Water Council decision-making in the future.

Perceived Substitution

In an effort to find specific examples of Clean Water Fund spending that substituted for traditional funding, we reviewed articles and reports related to Legacy funding, observed Clean Water Council meetings, and asked for examples as part of our surveys of local

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[15] OLA came out against the benchmarking approach in its 2011 evaluation, arguing that nothing in the constitutional language or legislative history suggests that the intent of the amendment was to freeze state budget proportions for 25 years regardless of changing needs or priorities. Office of the Legislative Auditor, *The Legacy Amendment*, 50-51.

[16] Members did, however, frequently ask questions about funding sources and staffing levels. Increased staffing for a program would indicate that the activities had been expanded or enhanced and may justify the use of Clean Water Fund dollars.

[17] We discuss the Conservation Reserve Enhancement Program in depth in a subsequent section. While we did not observe council meetings in 2014, members reported that the council's Budget and Outcomes Committee discussed the issue of potential substitution relative to many other programs while developing its spending recommendations for fiscal years 2016 and 2017.

government and nonprofit stakeholders.[18] We encountered a few examples of specific programs or situations that stakeholders considered substitution, which we examine further below.

We could not confidently determine that Clean Water Fund dollars have been used to substitute for traditional sources of funding.

As suggested above, arguments can be made either for or against substitution in nearly any scenario. We examined three programs in which there is an argument that Clean Water Fund dollars may have substituted for traditional sources of funding: the Clean Water Partnership program, the Conservation Reserve Enhancement Program, and the state's surface water quality monitoring and assessment program. We also considered instances of perceived substitution in legislative appropriations. We will demonstrate, however, that these situations are not clear cut.

Clean Water Partnership

The strongest case for potential substitution of traditional funding is the Clean Water Partnership program administered by the Minnesota Pollution Control Agency (MPCA). The 1987 Legislature created the program to provide matching grants and technical assistance to local governments for pollution control projects.[19] The Legislature appropriated $2.3 million to the program from the General Fund each year from fiscal years 2000 to 2011. For the 2010-2011 biennium, the Legislature supplemented the program's General Fund appropriation with an additional $2.5 million from the Clean Water Fund. After that, however, General Fund support for the Clean Water Partnership program dwindled (as shown in Exhibit 5.1) and the share of Clean Water Fund dollars relative to the "traditional" General Fund dollars increased. The Legislature did not fund the Clean Water Partnership program for the 2016-2017 biennium, from either the General Fund or the Clean Water Fund.

During House floor debate, one representative said that the Legislature would be using Clean Water Fund dollars to replace the Clean Water Partnership money that had been eliminated from another bill—a situation that he called "a constitutional problem."[20] While the funding trends above seem to indicate that the Legislature may have substituted Clean Water Fund dollars for an existing General Fund appropriation, one could argue that the Legislature was on the verge of phasing out the program, and that without the Clean Water Fund, its demise would have been even more abrupt. We asked one legislative staff person familiar with the Clean Water Partnership program why the program's General Fund dollars were cut, and we were told that "it just became an expendable program." This staff person's assessment was that the Clean Water Partnership funding might represent

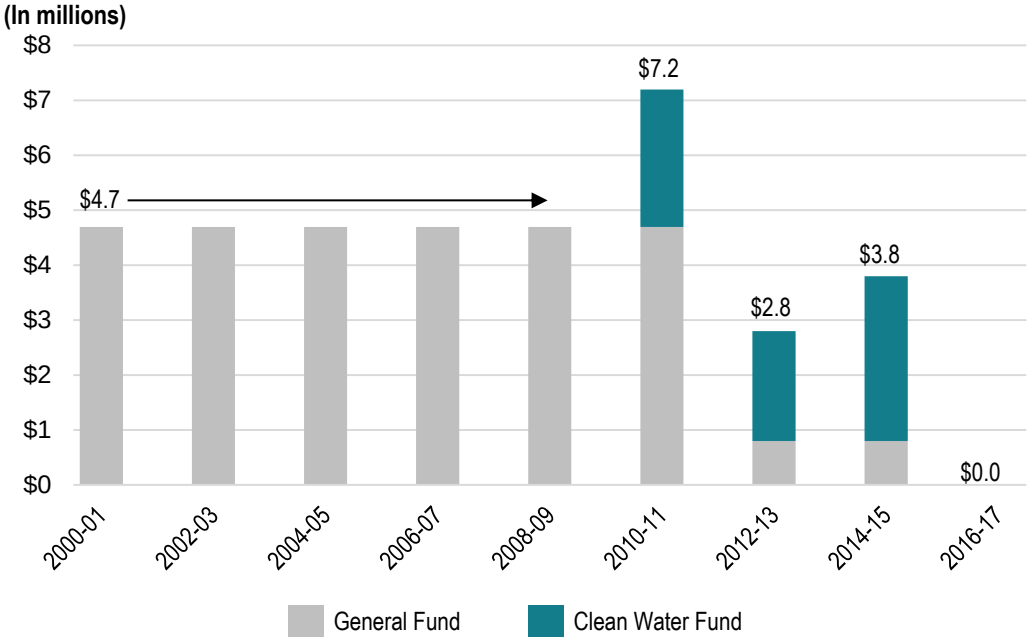
[18] We surveyed representatives of all Minnesota counties, soil and water conservation districts, watershed districts, and watershed management organizations. We received responses from 180 of 220 local governments, which represents an 82 percent response rate. We also surveyed representatives from nonprofit or other organizations that we identified as engaged stakeholders. We received responses from 15 of 51 organizations, which represents a 29 percent response rate. Given the small number of responses we received from these organizations, their responses are not generalizable statewide. Thus, we primarily report results from the survey of local government stakeholders.

[19] *Laws of Minnesota* 1987, Chapter 392.

[20] Minnesota House of Representatives Floor Session, July 19, 2011 (Part 3). For video recording, see http://www.house.leg.state.mn.us/htv/programa.asp?ls_year=87&session_year=2011&session_number=1&event_id=3907, starting at 1 hour, 14 minutes.

substitution at the legislative-appropriation level, but it is a "marginal, gray area." While it is easy to see why some stakeholders believe that the Legislature substituted Clean Water Fund dollars for the Clean Water Partnership's traditional sources of funding, we are not comfortable making that claim.

Exhibit 5.1: General Fund appropriations for Clean Water Partnership program dropped with the introduction of Clean Water Fund dollars.



NOTE: The Legislature did not appropriate money for the Clean Water Partnership program for fiscal years 2016 and 2017.

SOURCES: *Laws of Minnesota* 1999, chapter 231, sec. 2, subd. 2; *Laws of Minnesota* 2001, First Special Session, chapter 2, sec. 2, subd. 2; *Laws of Minnesota* 2003, chapter 128, art. 1, sec. 2, subd. 2; *Laws of Minnesota* 2005, First Special Session, chapter 1, art. 2, sec. 2, subd. 2; *Laws of Minnesota* 2007, chapter 57, art. 1, sec. 3, subd. 2; *Laws of Minnesota* 2009, chapter 37, art. 1, sec. 3, subd. 2; and chapter 172, art. 2, sec. 4; *Laws of Minnesota* 2011, First Special Session, chapter 2, art. 1, sec. 3, subd. 2; and chapter 6, art. 2, sec. 5; and *Laws of Minnesota* 2013, chapter 114, art. 3, sec. 3, subd. 2; and chapter 137, art. 2, sec. 5.

Conservation Reserve Enhancement Program

The Conservation Reserve Enhancement Program (CREP) is a federal program of the U.S. Department of Agriculture (USDA) Farm Services Agency, which requires a partial match of nonfederal funds. This program allows states to purchase and restore permanent conservation easements for water quality improvement purposes. Multiple state agencies began developing goals for a CREP proposal in 2014.[21] The Governor approved the agencies' application proposal and submitted it to the USDA in December 2015. In January 2017, Minnesota reached an agreement with USDA regarding CREP terms, which involved a state contribution of $150 million (30 percent). If Minnesota successfully secures a match, it will leverage $350 million in federal dollars, for a total investment of

[21] The Board of Water and Soil Resources; the departments of Agriculture, Health, and Natural Resources, and MPCA were involved in planning and developing Minnesota's CREP proposal.

$500 million. As of the publication of this report, however, the state had not yet raised its full matching contribution.[22]

The 2017 CREP agreement was Minnesota's third such agreement with the USDA. For the previous agreements, which were smaller in scale, Minnesota raised its share primarily using bonding funds. During the Clean Water Council recommendation process, the Board of Water and Soil Resources (BWSR) presented the CREP program to the council and requested $18 million from the Clean Water Fund. Clean Water Council members, however, were concerned that to continue Clean Water Fund support of CREP without the substantial bonding commitment that the previous CREP agreements received would constitute substitution of traditional sources of funding.[23] As a result, the council decided to recommend a much smaller amount of funding ($3 million) for the 2018-2019 biennium.

Whether using the Clean Water Fund to provide a substantial portion of the state's CREP match constitutes substitution depends on two factors: (1) whether the proposed CREP agreement is an expansion of BWSR's work or a continuation of the previous CREP projects, and (2) the definition of a "traditional" source of funding. Regarding the first point, BWSR's executive director wrote in a letter to the Clean Water Council that the current CREP proposal is "a custom-tailored unique agreement where past agreements do not have any connection to future ones, and therefore the use of Legacy Funds would not constitute a substitution."[24] If the proposed CREP project is in fact not a continuation of previous BWSR activity, then we believe Clean Water Fund money could be used to support it, even in the absence of bonding support. On the other hand, if the proposed CREP agreement is simply phase three of an ongoing BWSR program, then we must review how the state has "traditionally" funded it.

As mentioned previously, the prior CREP agreements were funded in part with state bonding money. Some argue that bonding, by nature, should not be considered a traditional funding source because it is one-time funding. As discussed earlier, the Legislature may appropriate bond funds for a particular project for several years without the intention of it becoming a permanent or extended funding source.[25] If bonding is not considered a traditional source of funding, then it could be appropriate to use Clean Water Fund money to support the CREP agreement, whether or not the Legislature also appropriated bond funds. Ultimately, the Clean Water Council, BWSR, and others need clarification from either the Legislature or judicial branch regarding whether bonding money should be considered a "traditional" source of funding.

Surface Water Quality Monitoring and Assessment

Some stakeholders believe that Clean Water Fund dollars have substituted for traditional funding of MPCA's water quality monitoring. In our survey of local governments, some

[22] As of the publication of this report, Minnesota had secured almost $55 million of its required $150 million commitment. Several activities funded through the Clean Water Fund and Outdoor Heritage Fund for the 2016-2017 biennium count toward Minnesota's match.

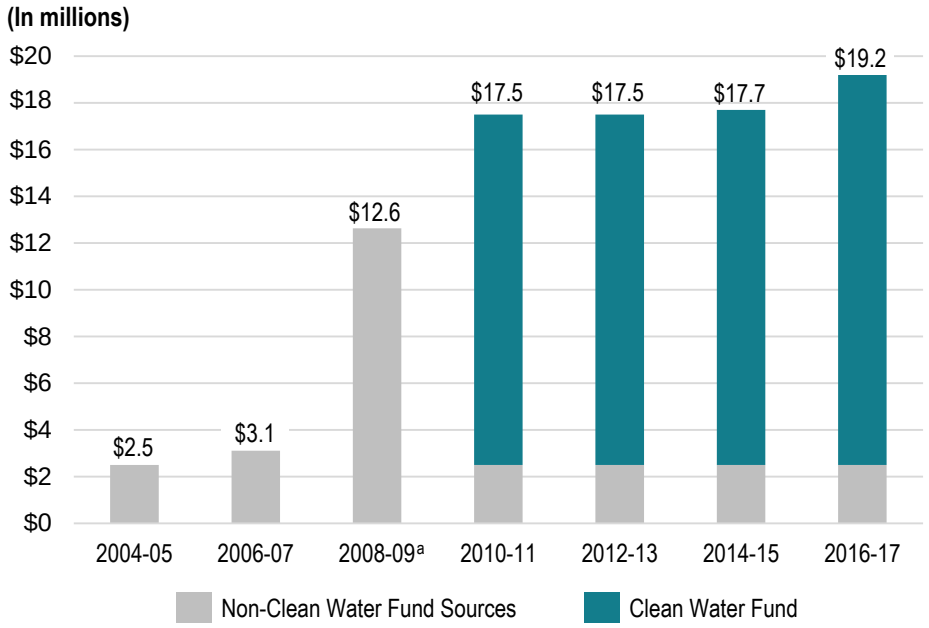
[23] During the 2016 legislative session, Governor Dayton proposed a bonding bill that included $30 million for conservation easements that would have contributed to the state's required CREP match. This amount was reduced to $10 million in the final bonding bill, which ultimately failed to pass before the end of the legislative session.

[24] John Jaschke, Executive Director, Board of Water and Soil Resources, letter to Clean Water Council members, October 12, 2016.

[25] Office of the Legislative Auditor, *The Legacy Amendment*, 48.

respondents pointed out that MPCA has always monitored surface waters and that funding the program with Clean Water Fund dollars appears to be substitution of traditional funding sources. It is true that MPCA's monitoring activities predate the Legacy Amendment. However, prior to the 2006 Clean Water Legacy Act, MPCA did not receive a legislative appropriation specifically for monitoring and assessment. MPCA estimated that it spent an average of $1.25 million per year—from federal funds and the agency's general budget—on these activities. Since Fiscal Year 2010, the Legislature has appropriated at least $7.5 million per year from the Clean Water Fund for monitoring and assessment.[26] The agency reported, however, that it has continued to support monitoring with other state and federal funds, so as not to substitute Clean Water Fund dollars for the estimated $1.25 million per year it spent before the Legacy Amendment passed. Exhibit 5.2 shows the funding for surface water monitoring activities over time.

Exhibit 5.2: Spending on surface water monitoring increased with an influx of Clean Water Fund dollars.



NOTES: "Non-Clean Water Fund sources" includes federal funds, other state funds, and money from the Minnesota Pollution Control Agency's (MPCA) operating budget. For fiscal years 2007 through 2011, the Legislature appropriated General Fund dollars specifically for monitoring and assessment. Prior to Fiscal Year 2007, MPCA did not receive a General Fund appropriation for monitoring and instead conducted necessary monitoring using federal funds and money from its general operating budget. MPCA estimated that it spent an average of $1.25 million per year on monitoring and assessment before Clean Water Fund dollars became available, and it has maintained that level of traditional funding even with the additional Legacy funding.

[a] The Legislature made a large, one-time General Fund appropriation for monitoring and assessment for the 2008-2009 biennium to help MPCA begin meeting the requirements of the 2006 Clean Water Legacy Act.

SOURCES: *Laws of Minnesota* 2006, chapter 282, art. 10, sec. 2(a); *Laws of Minnesota* 2007, chapter 57, art. 1, sec. 3, subd. 2; *Laws of Minnesota* 2009, chapter 37, art. 1, sec. 3, subd. 2; and chapter 172, art. 2, sec. 4(k); *Laws of Minnesota* 2011, chapter 6, art. 2, sec. 5(a); *Laws of Minnesota* 2013, chapter 137, art. 2, sec. 5(a); and *Laws of Minnesota* 2015, chapter 2, art. 2, sec. 5(a).

[26] Before the Clean Water Fund dollars became available, the Legislature gave MPCA a large, one-time General Fund appropriation to help it meet the requirements of the 2006 Clean Water Legacy Act. This amounted to $12.6 million for the 2008-2009 biennium. See *Laws of Minnesota* 2007, chapter 57, art. 1, sec. 3, subd. 2.

While the stakeholders we surveyed were correct to say that MPCA has historically monitored surface waters, we are of the opinion that an enhancement or acceleration of a program is a valid use of Clean Water Fund dollars. Clean Water Fund dollars have allowed the agency to dramatically increase its monitoring efforts such that it can monitor and assess all watersheds roughly within its statutorily prescribed ten-year timeframe.

The three programs discussed above are also shown in Exhibit 5.3. The exhibit summarizes these examples, as well as examples that we consider the more clear-cut end points of the substitute-supplement continuum. A clear example of substitution would be the use of Clean Water Funds to pay for a staff person that an agency employed previously in exactly the same capacity. At the other end of the continuum, if the Legislature appropriates Clean Water Fund dollars for a program that the state has never funded before, those funds would clearly supplement traditional sources of funding.

Legislative Actions Perceived as Substitution

Some stakeholders believe that the Legislature has substituted Clean Water Fund dollars for traditional sources of funding. Our survey of Clean Water Council members revealed that some members believe that the Legislature has allowed base funding for clean water activities to erode. Further, 15 percent of the respondents in our survey of local governments said they believed the Legislature had substituted Clean Water Fund dollars for traditional funding sources by way of its appropriations.

A 2012 report by the nonprofit organization Conservation Minnesota asserted that the Legislature had made disproportionate cuts to environmental spending.[27] The organization reported that when the Legislature passed its budget for fiscal years 2012 and 2013 during the 2011 special session, it reduced the budgets of most state agencies by 5 to 10 percent. The report noted, however, that the budgets of the "five primary conservation agencies" (BWSR, the Minnesota Department of Agriculture, the Department of Natural Resources, the Metropolitan Council (parks funding in particular), and MPCA) were cut by 16.5 percent. The single greatest cut was to MPCA's budget, which was reportedly reduced by more than 40 percent. Conservation Minnesota's illustration of disproportionate cuts to agencies that receive Legacy funding is compelling evidence of substitution if one accepts that the "supplement not substitute" requirement should be enforced through benchmarking. However, the benchmarking approach inappropriately limits the ability of future legislatures to adjust the state's budget to reflect changing needs or priorities. Therefore, we do not agree that the actions of the 2011 Legislature necessarily resulted in substitution of Legacy funds for traditional sources of funding.

[27] Conservation Minnesota, *If It Looks Like a Duck…. Analysis of Minnesota's Budget for Conservation and Environment and Allocation of Funds from the Clean Water, Land, and Legacy Amendment After the 2011 Legislative Session* (Minneapolis, 2012), 8.

Exhibit 5.3: Substitute-Supplement Continuum

	Type of Funded Activity	Example Use of Clean Water Fund Dollars
Substitute	Program originally supported by General Fund, still operating in its original form	An agency staff position formerly paid for with General Fund dollars is now paid for with Clean Water Fund dollars (no change in position duties).[a]
	Program at risk for discontinuation, temporarily sustained by Clean Water Fund	The Minnesota Pollution Control Agency's (MPCA) Clean Water Partnership program was originally supported by the General Fund. Its funding was gradually shifted to the Clean Water Fund before the program was eliminated completely.
Unclear	Occasional program with some history of bonding support	The Conservation Reserve Enhancement Program (CREP) requires a nonfederal match to leverage federal funds for permanent conservation easements. Previous CREP agreements were paid for primarily with bond proceeds; however, no bonding bill supporting the CREP agreement was passed during the 2016 session. It is unclear (1) whether the proposed 2016 CREP agreement should be evaluated in the context of previous CREP agreements, and (2) whether bond proceeds should be considered traditional sources of funding.
	Acceleration or enhancement of program supported by other sources	MPCA monitored lakes and streams before the passage of the Legacy Amendment. An influx of Clean Water Fund dollars allowed MPCA to establish an accelerated, rotating schedule by which each watershed is monitored once every ten years.
Supplement	New program, no traditional funding source	The Minnesota Department of Health received Clean Water Fund dollars for a groundwater virus study. Work of this sort had not previously taken place in Minnesota.

NOTES: The exhibit represents types of activities funded by the Clean Water Fund and whether the Office of the Legislative Auditor believes those Clean Water Fund expenditures substitute for or supplement traditional sources of funding. Unless otherwise noted, the "Example Use of Clean Water Fund Dollars" field reflects actual uses of Clean Water Fund dollars.

[a] To our knowledge, this has not occurred. We use it here as a hypothetical example of what substitution might look like.

SOURCE: Office of the Legislative Auditor.

State Agency Attempts to Avoid Substitution

State agencies take seriously the issue of substituting Clean Water Fund dollars for traditional funding. We surveyed representatives of state agencies about whether any of their Clean Water Fund activities were similar to activities they performed before Clean Water Fund dollars were available.[28] If agency representatives reported that they performed similar activities, we asked them to explain how the agency satisfied itself that it used Clean

[28] This was part of our survey of Clean Water Council members, which includes representatives from state agencies. We received responses from all state agency representatives surveyed. The Public Facilities Authority does not have a representative on the Clean Water Council; we spoke to a Public Facilities Authority representative separately to discuss the questions that the other agencies answered through our survey of council members.

Water Fund dollars to supplement rather than substitute for traditional funding sources. Six of the eight agencies said that at least some of their Clean Water Fund activities were similar to activities that predated the fund.[29]

Each of the six state agencies that performed similar work before the Clean Water Fund existed said that Clean Water Fund dollars had allowed them to expand or accelerate their work. For example, prior to the Legacy Amendment, BWSR had a grant program supporting local government efforts to implement soil and water conservation projects. Clean Water Fund dollars have allowed BWSR to enhance its grant programs, greatly increasing the number of local projects implemented.[30]

State agencies first consider the issue of substitution when developing the budget requests they submit to the Governor. Beyond that, we heard one state agency representative state during a Clean Water Council meeting that his agency has conversations "every week" about whether they are using their Clean Water Fund dollars appropriately. On our survey, some agencies reported that they purposefully examine every new appropriation with an eye toward substitution issues. For example, a representative from the Minnesota Department of Health said that internal audit and program staff complete a risk assessment for every new Clean Water Fund appropriation. The department also requires that all managers and leaders of relevant programs receive orientation related to the "unique requirements and expectations" of Clean Water Fund work. In one Clean Water Council meeting we observed, an agency representative said that when budget cuts are necessary, the agency will probably choose to cut a program without Clean Water Fund dollars in order to protect the traditional funding sources associated with Clean Water Fund programs.

Legislative Action

In its 2011 evaluation, OLA recommended that "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."[31] In response to the 2011 OLA evaluation report, the 2016 Legislature added language to the Parks and Trails Fund statute stating that:

> Any state agency or organization requesting a direct appropriation from the parks and trails fund must inform the house of representatives and senate committees having jurisdiction over the parks and trails fund, at the time the request for funding is made, whether the request is supplanting or is a substitution for any previous funding that was not from a legacy fund and was used for the same purpose.[32]

The Legislature inserted parallel language for the Arts and Cultural Heritage Fund the same year.[33] During the conference committee that finalized the above language, a legislator read

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[29] The two remaining entities, the University of Minnesota and the Metropolitan Council reported that they have received appropriations only for programs that were new under the Clean Water Fund.

[30] BWSR staff said that prior to the Legacy Amendment, the agency spent less than $5 million per biennium on "state cost share" grants to local governments. Clean Water Fund dollars increased BWSR's spending on grants of this type by more than $27 million per biennium, on average.

[31] Office of the Legislative Auditor, *The Legacy Amendment*, 51.

[32] *Laws of Minnesota* 2016, chapter 172, art. 3, sec. 1, codified as *Minnesota Statutes* 2016, 85.53, subd. 2(h).

[33] *Laws of Minnesota* 2016, chapter 172, art. 4, sec. 1, codified as *Minnesota Statutes* 2016, 129D.17, subd. 2(i).

a statement of intent, explaining that the new requirement was not meant to be "overly burdensome for groups looking for appropriations." Rather, it was intended to provide the Legislature with better information about the backgrounds and funding of programs. The legislator went on to say that this would not necessarily require those seeking funding to submit detailed funding histories.[34]

The 2016 Legislature did not require that organizations seeking funding from the Clean Water Fund inform legislators about past funding sources.

While the Legislature implemented the new substitution-reporting requirement for two of the four Legacy funds, it did not add similar requirements for the Clean Water and Outdoor Heritage funds. Legislators considered such a measure unnecessary because these funds have advisory bodies (the Clean Water Council and the Lessard-Sams Outdoor Heritage Council, respectively) that they thought should be taking into account substitution issues when making their recommendations.[35]

As illustrated earlier in this chapter, the Clean Water Council *does* grapple with the question of substitution while developing its funding recommendations, and it makes a sincere effort to submit to the Legislature spending recommendations that it believes to be free of substitution. However, the Legislature has not strictly followed the council's recommendations. For each of the past four biennia, the Legislature has appropriated some revenue from the Clean Water Fund for activities that the Clean Water Council did not recommend funding.

The fact that some funded activities did not undergo Clean Water Council scrutiny indicates that the existence of the council alone is not enough to ensure that all Clean Water Fund activities have been properly vetted with respect to substitution. As discussed in Chapter 4, the Legislature's appropriations for the 2016-2017 biennium aligned fairly closely—but not completely—with the Clean Water Council spending recommendations. The 2015 and 2016 legislatures appropriated Clean Water Fund revenues for four specific activities not recommended by the council.[36] These appropriations, totaling almost $25 million, accounted for about 11 percent of all Clean Water Fund dollars appropriated for the 2016-2017 biennium.[37] The Legislature has previously strayed even further from the council's recommendations; during each of the three previous biennia, the Legislature funded between 10 and 39 activities not recommended by the council.

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[34] Conference Committee on S.F. 2527, May 20, 2016. For audio recording, see http://mnsenate.granicus.com /MediaPlayer.php?view_id=2&clip_id=696, starting at minute 20.

[35] Minnesota House Legacy Funding Finance Committee, April 11, 2016. For audio recording, see http://www.house.leg.state.mn.us/cmte/minutes/minutes.aspx?comm=89017&id=46480&ls_year=89, starting at minute 13. See also Conference Committee on S.F. 2527, May 20, 2016. For audio recording, see http://mnsenate.granicus.com/MediaPlayer.php?view_id=2&clip_id=696, starting at minute 20.

[36] The four activities are Voyageur's National Park Clean Water Projects, Grants to Soil and Water Conservation Districts, Washington County Grey Cloud Slough Habitat Improvement, and White Bear Lake Augmentation Design Build. *Laws of Minnesota* 2015, First Special Session, chapter 2, art. 2, secs. 5(k), 7(o), and 7(p); and *Laws of Minnesota* 2016, chapter 172, art. 2, sec. 12. We determined that none of these particular activities substituted Clean Water Fund dollars for traditional sources of funding.

[37] The dollar amount of these four programs was particularly large because they included a $22 million appropriation for Grants to Soil and Water Conservation Districts, which was partially intended to help implement the 2015 law requiring that landowners maintain vegetative buffers of a certain width along designated waters.

RECOMMENDATION

The Legislature should consider requiring entities requesting Clean Water Fund appropriations to report past funding sources when submitting proposals for funding.

The Legislature should provide consistent and transparent oversight of the four Legacy funds. The requirement to report to the Legislature on past funding sources took effect—for the Parks and Trails and Arts and Cultural Heritage funds—during the 2017 legislative session. If the Legislature finds this approach to be useful, it should expand the requirement to the Clean Water Fund. Doing so would allow the Legislature to ensure that all Clean Water Fund projects and programs are systematically evaluated for possible substitution issues, including those that are recommended by organizations other than the Clean Water Council. This would require adding language similar to that quoted earlier in this section—regarding informing the Legislature whether the requested funding is supplementing or substituting for any previous funding—to *Minnesota Statutes* 2016, 114D.50, subd. 4.

"Direct and Necessary" Requirement

Since 2011, laws appropriating money from the Clean Water Fund have specified that "money appropriated in this article may not be spent on activities unless they are directly related to and necessary for a specific appropriation."[38] This language, however, has caused some confusion regarding whether "indirect costs," also known as "overhead" or "administrative" costs, are an appropriate use of Clean Water Fund dollars.

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.

Since the Legislature began incorporating the "direct and necessary" language into appropriations laws, it has also included language making it clear that some indirect costs are permissible. For example, the 2011 Clean Water Fund appropriations law clarified that "money appropriated under this article must not be spent on indirect costs or other institutional overhead charges *that are not directly related to and necessary for a specific appropriation*" [emphasis added].[39] The implication of the italicized language is that indirect costs and institutional overhead *are permissible* if the expenditures are directly related to and necessary for the appropriation. In 2013, the Legislature replaced that language with "money appropriated in this article must be spent in accordance with Minnesota Management and Budget's Guidance to Agencies on Legacy Fund

[38] *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 2, sec. 2, subd. 2; *Laws of Minnesota* 2013, chapter 137, art. 2, sec. 2, subd. 2; *Laws of Minnesota* 2014, chapter 312, art. 14, sec. 2, subd. 2; and *Laws of Minnesota* 2015, First Special Session, chapter 2, art. 2, sec. 2, subd. 2. While 2012 Clean Water Fund appropriations laws did not repeat the language, they specified that the appropriations were subject to the requirements under the 2011 laws. See *Laws of Minnesota* 2012, chapter 264, art. 2, secs. 4-5.

[39] *Laws of Minnesota* 2011, First Special Session, chapter 6, art. 2, sec. 2, subd. 2.

Expenditure."[40] Minnesota Management and Budget (MMB) guidance states as "key points" that "state law and policy require all state funds pay their fair share of administrative costs" and "the 'direct and necessary' requirement *does not prohibit the use of indirect cost billing* for necessary administrative costs when that is the most efficient mechanism" [emphasis added].[41]

Despite the fact that indirect costs are an allowable use of Clean Water Fund spending, some question how costs can be both "indirect" and "direct and necessary." Part of the confusion regarding the eligibility of indirect costs for Clean Water Fund spending may result from the difference between the colloquial and accounting definitions of the words "direct" and "indirect." In common usage, the word "direct" means closely related to something (in this case the Clean Water Fund program). "Indirect," in common usage, may imply the opposite—not closely related to the given program. The terms, however, have more specific meanings in accounting: a "direct expenditure" is an expenditure that can be identified specifically and easily with a particular program, rather than with all programs. An "indirect expenditure," on the other hand, is a general support cost that cannot be reasonably charged to one specific program (such as human resource expenditures). MMB's guidance explains that, in accounting, "direct" and "indirect" describe "how [an] expenditure is treated and tracked," rather than "the nature of the expense."[42]

Rather than focusing on the term "indirect costs," it is better to think in terms of "administrative costs." Administrative costs can technically be allocated to different programs either as direct or indirect expenditures; however, it is often more efficient to allocate them indirectly. For example, an agency could track photocopies as a direct expense—by installing tracking hardware on all copiers and requiring staff to enter a program code when they make copies. Such a system would show a clear tie between the copies made and the programs they supported. According to MMB, however, such a system would require time and money to implement, maintain, and report, and may end up being a less efficient alternative than including copying in the agency's indirect-cost-allocation plan. If copies are included as part of an indirect-cost allocation, the agency financial staff would allocate the total cost of copies to each program in a way that they believe to be fair and equitable.

To use a Clean Water Fund example, MPCA's monitoring program requires specialized boats outfitted with electroshocking equipment. The costs of these boats, and of the staff that perform the monitoring, are clearly related to the monitoring program and can be easily billed as direct expenditures. MPCA's monitoring program also requires administrative support, such as from the agency's human resources staff. This is necessary for the monitoring program to function, but it would not make sense to allocate the cost of human resources exclusively to that program; thus, human resources expenses might reasonably be included in MPCA's indirect-cost-allocation plan.

Clean Water Council members have expressed frustration regarding the use of Clean Water Fund dollars for administrative costs, beyond the confusing language. At council meetings,

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[40] *Laws of Minnesota* 2013, chapter 137, art. 2, sec. 2, subd. 2. This language has remained in place since 2013. *Laws of Minnesota* 2014, chapter 312, art. 14, sec. 2, subd. 2; and *Laws of Minnesota* 2015, First Special Session, chapter 2, art. 2, sec. 2, subd. 2.

[41] Minnesota Management and Budget, *MMB Guidance to Agencies on Legacy Fund Expenditure* (St. Paul, 2012), 1.

[42] Minnesota Management and Budget, *MMB Guidance to Agencies on Legacy Fund Expenditure*, 7.

we observed numerous discussions about the topic, revealing a lack of understanding of what types of activities agencies consider administrative, the methods each agency uses to charge administrative costs to the Clean Water Fund, and why there is such large variation among agencies in the percentage of Clean Water Fund dollars used for administrative costs. Council leaders have suggested that agencies receiving Clean Water Fund dollars be required to submit to the council and the Legislature information on (1) the percentage of administrative costs that agencies charge for each Clean Water Fund program, and (2) the methods that agencies use to calculate administrative costs. We did not examine these issues in depth during the course of this evaluation.[43]

RECOMMENDATION

To reduce confusion, the Legislature should change the language in future appropriations laws to clarify that certain "administrative," rather than "indirect," costs are eligible Clean Water Fund expenses.

In its *MMB Guidance to Agencies on Legacy Fund Expenditures*, MMB states that "administrative costs are part of the cost of doing business for all organizations, whether they are in the public, non-profit, [or] private sectors."[44] We believe that the Legislature has recognized this in its appropriations language, but that the use of the term "directly related to" appears to some to be in conflict with the accounting term "indirect costs." To avoid further confusion, the Legislature should make clear that "administrative costs" are allowable, as long as they are directly related to and necessary for a Legacy-funded activity. We suggest the following revision of language in future appropriations laws (proposed changes are underlined and proposed deletions are struck through):

> Money appropriated in this article may not be spent on activities unless they are directly related to and necessary for a specific appropriation. Money appropriated in this article ~~must~~ may be spent on administrative costs only to the extent that they are in accordance with Minnesota Management and Budget's Guidance to Agencies on Legacy Fund Expenditure.

It should be noted that in 2016, the Clean Water Council recommended in its *FY18-19 Clean Water Fund and Policy Recommendations Report* that the Legislature consider imposing a cap on administrative expenditures from the Clean Water Fund.[45] The Legislature, however, has implemented caps on administrative expenses from Legacy funds in the past. The 2009 Legislature placed percentage caps on administrative spending for specific appropriations, examples of which can be found across all four Legacy funds.[46] The Legislature abandoned those caps in favor of the "direct and necessary" language in 2011.

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[43] For more discussion of administrative costs, see the recently released OLA report on findings of noncompliance among Legacy fund recipients. As this report indicates, the Legislature may wish to have a broader discussion regarding the requirement that Legacy expenses be directly related to and necessary for a given appropriation. Office of the Legislative Auditor, Financial Audit Division, *Legacy Fund Recipients: Annual Report on Noncompliance* (St. Paul, 2017), 7-9.

[44] Minnesota Management and Budget, *MMB Guidance to Agencies on Legacy Fund Expenditure*, 3.

[45] Clean Water Council, *FY18-19 Clean Water Fund and Policy Recommendations Report* (St. Paul, 2016), 11.

[46] For example, the 2009 Legislature appropriated $6.5 million to BWSR to purchase and restore conservation easements on riparian buffers. The appropriation language specified that up to 5 percent of the appropriation could be used for administration of the program. *Laws of Minnesota* 2009, chapter 172, art. 2, sec. 6(a).

Allowable Uses for Clean Water Fund Dollars

The Minnesota Constitution states that Clean Water Fund dollars:

> …may be spent only to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation, and at least five percent of the clean water fund must be spent only to protect drinking water sources.[47]

In this section, we discuss these constitutional requirements. First we analyze the extent to which agencies have used Clean Water Fund dollars only to protect, enhance, and restore water quality. We conclude with a discussion about the amount of funding that has been used to protect drinking water sources.

Water Quality

To determine the extent to which Clean Water Fund dollars have been used to improve water quality, we evaluated descriptions of all activities that received Clean Water Fund dollars for the 2016-2017 biennium.

All Clean Water Fund appropriations for the 2016-2017 biennium supported the constitutional requirements to spend money only to protect, enhance, and restore water quality.

The requirement in the Minnesota Constitution to protect, enhance, and restore water quality is very broad, and we found that all of the appropriations from the Clean Water Fund were justifiable.[48] Initially, we were uncertain whether programs related to water conservation or *quantity* (rather than water *quality*) met the constitutional requirement. However, we ultimately decided that water quantity programs were an appropriate use of Clean Water Fund dollars. One state agency official explained to us that these programs are justified because of the constitutional requirement that "at least five percent of the clean water fund must be spent only to protect drinking water sources."[49] According to state agency and Clean Water Council representatives, protecting drinking water sources involves ensuring drinking water quality, *as well as* sufficient drinking water supply. They argue that if Minnesotans do not have an adequate supply of water to drink, the state has not protected its "drinking water sources," regardless of the quality of the available drinking water. Further, water quantity can affect water quality. When water supply in a particular system is too low, the flow of water slows and the concentration of pollutants may increase, which negatively impacts biological communities. Programs related exclusively to water supply made up a very small portion of Clean Water Fund spending. The 2015 Legislature appropriated almost $6 million for five such programs, accounting for 2.5 percent of all Clean Water Fund dollars appropriated for the 2016-2017 biennium.

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[47] *Minnesota Constitution*, art. XI, sec. 15.

[48] The only program that does not clearly contribute to the protection, restoration, and enhancement of water quality is the Clean Water Council's operating budget ($100,000). One can make the case that this appropriation meets constitutional requirements because council recommendations guide the Legislature to select a slate of programs that meet the water quality requirement.

[49] *Minnesota Constitution*, art. XI, sec. 15.

The remainder of the Clean Water Fund appropriations more obviously supported activities that affected water quality. We determined that about 55 percent of the dollars appropriated for the 2016-2017 biennium went to programs with a clear intent to impact water quality, while 42 percent of funding went to programs that supported those activities. The former category includes grant funding to local governments for implementation projects, technical assistance to help local governments and landowners implement water quality improvement practices, and the purchase of conservation easements to protect water from pollution, among other things.

The latter category includes programs that are less directly related, but are clearly intended to *support* the aforementioned water quality activities. These include monitoring water quality, developing restoration and protection strategies, and evaluating programs. Without the knowledge acquired through monitoring and the strategies developed using that knowledge, the state would not know how to most effectively spend its implementation dollars. Evaluation helps determine whether restoration and protection strategies that have already been implemented are having the intended effect; evaluation results can help direct and improve future implementation.

Drinking Water

As stated previously, the Minnesota Constitution requires that 5 percent of Clean Water Fund dollars be used to "protect drinking water sources."[50]

Minnesota has met the constitutional requirement to spend at least 5 percent of Clean Water Fund dollars to protect drinking water sources.

While appropriation language occasionally makes specific mention of drinking water, it does not do so for every appropriation that has the potential to impact drinking water sources; thus, we relied on the Clean Water Council's categorization of Clean Water Fund activities to determine what percentage of Clean Water Fund dollars were spent to protect drinking water sources. For the 2016-2017 biennium, the Clean Water Council determined that 15 of the activities funded by the Legislature were fully or partially related to drinking water protection.[51] The 2015 Legislature appropriated $25.5 million from the Clean Water Fund to these activities for the 2016-2017 biennium, which accounted for 11 percent of the dollars appropriated from the fund.

In its 2014 recommendations report, the Clean Water Council stated that the Clean Water Fund dollars spent on drinking water and groundwater protection ranged from 9 to 19 percent between fiscal years 2010 and 2015.[52] For example, the Source Water Protection Planning and Implementation program administered by the Minnesota Department of Health provides grants and technical assistance to communities with vulnerable public water supplies and small public water systems.

[50] *Minnesota Constitution*, art. XI, sec. 15.

[51] We reviewed descriptions of these programs and agreed that the intent of all 15 programs fit within the constitutional charge to "protect drinking water sources."

[52] Clean Water Council, *FY16-17 Clean Water Fund Recommendations Report* (St. Paul, 2014), 17. Note that the council does not categorize *all* groundwater programs as drinking water protection programs, so the percentage of drinking water protection programs is likely somewhat lower.

In the Clean Water Council's analysis of activities that address the protection of drinking water sources, it categorizes most groundwater projects, as well as certain other projects that specifically focus on drinking water, as drinking water protection. In addition, the council has attempted to identify implementation programs for which at least some of the spending protects drinking water. For example, the BWSR Projects and Practices grant program distributes Clean Water Fund dollars to local governments implementing on-the-ground projects to restore or protect their local lakes and streams. The Clean Water Council has estimated that a certain percentage of funding from this program impacts drinking water sources.

The council's calculations may still *underestimate* the amount of Clean Water Fund dollars spent on drinking water protection. In Chapter 1, we explained that drinking water can come from either groundwater or surface water, and that there are interactions between groundwater and surface water.[53] Even if a particular lake, river, or stream does not serve as a drinking water source, its quality could affect nearby groundwater. Given the interconnectedness of all of the water in the state, it is likely that many other Clean Water Fund programs or activities impact drinking water sources.

[53] In Minnesota, roughly three-quarters of drinking water comes from groundwater, while the remaining one-quarter comes from surface water.


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List of Recommendations

- The Clean Water Fund Interagency Coordination Team should provide context for the measures included in the *Clean Water Fund Performance Report*. (p. 33)

- The Legislative Coordinating Commission should request that agencies report on the extent to which projects have achieved their proposed measurable outcomes. (p. 35)

- State agencies should report to the Legislative Coordinating Commission all Clean Water Fund project information required by law. (p. 36)

- The Legislative Coordinating Commission should report to the Legislature which agencies have failed to satisfy their reporting obligations related to the Clean Water Fund. (p. 36)

- The Legislature should consider requiring entities requesting Clean Water Fund appropriations to report past funding sources when submitting proposals for funding. (p. 80)

- To reduce confusion, the Legislature should change the language in future appropriations laws to clarify that certain "administrative," rather than "indirect," costs are eligible Clean Water Fund expenses. (p. 82)


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Appendix

The table on the following pages shows the years in which each of Minnesota's 80 watersheds completed the various stages of the Minnesota Water Management Framework. As we discussed in Chapter 3, the framework represents Minnesota's approach to addressing the state's water quality on a watershed basis via a repeating, ten-year cycle.

The cycle has five stages:

1. Monitoring (collecting data) and assessing (analyzing data against standards) waterbodies throughout the watershed to identify water quality impairments.

2. Identifying "stressors" leading to water quality impairments.

3. Developing strategies to address impaired waters on a watershed basis.

4. Developing local water management plans in accordance with watershed strategies.

5. Implementing local water quality improvement projects designed to target impaired waters and known sources of pollution.

Minnesota Watersheds and the Water Management Framework

Watershed Number	Name	Monitoring Started	Assessment Completed	Stressor Identification Report Released	WRAPS Report Released[a]	One Watershed, One Plan[b]
Red River of the North Basin						
09020314	Roseau River	2015	–	–	–	–
09020312	Two Rivers	2013	2015	–	–	–
09020309	Snake River (Red River Basin)	2013	2015	–	–	–
09020304	Thief River	2011	2013	2014	–	2016 grant
09020302	Upper/Lower Red Lake	2014	2016	–	–	–
09020305	Clearwater River	2014	2016	–	–	–
09020311	Red River of the North (Tamarac River)	2008	2011	2015	–	–
09020306	Red River of the North (Grand Marais Creek)	2012	2014	2015	–	Pilot[c]
09020303	Red Lake River	2012	2014	2015	–	Pilot[c]
09020301	Red River of the North (Sandhill River)	2011	2013	2014	–	–
09020107	Red River of the North (Marsh River)	2014	2016	–	–	–
09020104	Upper Red River of the North	2008	2011	2016	–	–
09020108	Wild Rice River	2014	2016	–	–	–
09020106	Buffalo River	2009	2011	2014	2016	–
09020103	Otter Tail River	2016	–	–	–	–
09020101	Bois De Sioux River	2010	2012	2016	–	–
09020102	Mustinka River	2010	2012	2015	2016	–
Rainy River Basin						
09030001	Rainy River (Headwaters)	2014	2016	–	–	–
09030003	Rainy River (Rainy Lake)	–	–	–	–	–
09030008	Lower Rainy River	–	–	–	–	–
09030009	Lake of the Woods	2012	2014	–	–	2016 grant
09030007	Rapid River	–	–	–	–	–
09030006	Big Fork River	2010	2012	–	–	–
09030005	Little Fork River	2008	2010	–	–	–
09030002	Vermilion River	2015	–	–	–	–
Lake Superior Basin						
04010101	Lake Superior (North)	2013	2015	–	–	Pilot, plan approved[d]
04010102	Lake Superior (South)	2011	2013	–	–	Pilot, plan approved[d]
04010201	St. Louis River	2009	2011	2016	–	–
04010202	Cloquet River	2015	–	–	–	–
04010301	Nemadji River	2011	2013	2014	–	–

Minnesota Watersheds and the Water Management Framework (continued)

Watershed Number	Name	Monitoring Started	Assessment Completed	Stressor Identification Report Released	WRAPS Report Released[a]	One Watershed, One Plan[b]
Upper Mississippi River Basin						
07010101	Mississippi River (Headwaters)	2013	2015	–	–	–
07010103	Mississippi River (Grand Rapids)	2015	–	–	–	–
07010104	Mississippi River (Brainerd)	2016	–	–	–	–
07010201	Mississippi River (Sartell)	2016	–	–	–	–
07010203	Mississippi River (St. Cloud)	2009	2011	2013	2015	–
07010206	Mississippi River (Twin Cities)	2010	2012	–	–	–
07010102	Leech Lake River	2012	2014	2016	–	2016 grant
07010106	Crow Wing River	2010	2012	2014	2015	–
07010105	Pine River	2012	2014	2015	–	–
07010107	Redeye River	2011	2013	2014	2016	–
07010108	Long Prairie River	2011	2013	2014	–	–
07010207	Rum River	2013	2015	2016	–	–
07010202	Sauk River	2008	2010	2012	2015	–
07010204	North Fork Crow River	2007	2010	2014	2015	Pilot
07010205	South Fork Crow River	2012	2014	–	–	–
St. Croix River						
07030003	Kettle River	2016	–	–	–	–
07030001	Upper St. Croix River	2016	–	–	–	–
07030005	Lower St. Croix River	2009	2011	2016	2016	–
07030004	Snake River (St. Croix Basin)	2006	2008	2013	2014	–
Minnesota River Basin						
07020001	Minnesota River (Headwaters)	2015	–	–	–	–
07020004	Minnesota River (Yellow Medicine River)	2010	2012	2013	2016	Pilot, plan approved
07020007	Minnesota River (Mankato)	2013	2015	–	–	–
07020012	Lower Minnesota River	2014	2016	–	–	–
07020002	Pomme de Terre River	2007	2010	2012	2013	2016 grant
07020005	Chippewa River	2009	2011	2015	–	–
07020003	Lac qui Parle River	2015	–	–	–	–
07020006	Redwood River	–	–	–	–	–
07020008	Cottonwood River	–	–	–	–	–
07020010	Watonwan River	2013	2015	–	–	–
07020011	Le Sueur River	2008	2010	2014	2015	–
07020009	Blue Earth River	–	–	–	–	–

Minnesota Watersheds and the Water Management Framework (continued)

Watershed Number	Name	Monitoring Started	Assessment Completed	Stressor Identification Report Released	WRAPS Report Released[a]	One Watershed, One Plan[b]
Lower Mississippi River Basin						
07040001	Mississippi River (Lake Pepin)	2008	2011	2013	2015	–
07040003	Mississippi River (Winona)	2010	2012	2015	2016	–
07040006	Mississippi River (La Crescent)	2015	–	–	–	–
07060001	Mississippi River (Reno)	2015	–	–	–	Pilot, plan approved[e]
07040008	Root River	2008	2011	2015	2016	Pilot, plan approved[e]
07060002	Upper Iowa River	2015	–	–	–	Pilot, plan approved[e]
07040002	Cannon River	2011	2013	2015	2016	2016 grant
07040004	Zumbro River	2012	2014	2016	–	–
Missouri River Basin						
10170202	Upper Big Sioux River	2011	2013	2015	–	2016 grant[f]
10170203	Lower Big Sioux River	2011	2013	2014	–	2016 grant[f]
10170204	Rock River	2011	2013	2015	–	2016 grant[f]
10230003	Little Sioux River	2011	2013	2015	–	2016 grant[f]
Des Moines River Basin						
07100001	Des Moines River (Headwaters)	2014	2016	–	–	–
07100002	Lower Des Moines River	2014	2016	–	–	–
07100003	East Fork Des Moines River	2014	2016	–	–	–
Cedar River Basin						
07080203	Winnebago River	2015	–	–	–	–
07080202	Shell Rock River	2009	2011	2014	–	–
07080201	Cedar River	2009	2011	2016	–	2016 grant
07080102	Upper Wapsipinicon River	2015	–	–	–	–

NOTES: Monitoring and assessment (both part of the first stage of the Minnesota Water Management Framework) are shown in separate columns in this table. We do not represent the local implementation stage above, as the framework intends implementation activities to be ongoing; as such, there is no completion date.

[a] "WRAPS" is Watershed Restoration and Protection Strategies, the product of the third stage of the Minnesota Water Management Framework.

[b] One Watershed, One Plan (which is one way to fulfill the fourth stage of the Minnesota Water Management Framework) is not yet an established process. During its 2014 pilot program, the Board of Water and Soil Resources (BWSR) awarded grants to five watersheds or groups of watersheds to transition to a single plan; BWSR has since approved three of the resulting plans. BWSR announced the grant recipients for the next round of One Watershed, One Plan transitions in fall of 2016.

[c] BWSR has combined certain watersheds for the purposes of One Watershed, One Plan. As such, it awarded a single grant for the transition of the Red Lake River and most of the Grand Marais Creek watersheds.

[d] BWSR awarded a single One Watershed, One Plan grant for the transition of the Lake Superior (North) and much of Lake Superior (South) watersheds.

[e] BWSR awarded a single One Watershed, One Plan grant for the transition of the Root River, Mississippi River (Reno), and Upper Iowa River watersheds.

[f] BWSR awarded a single One Watershed, One Plan grant for the transition of the Upper Big Sioux River, Lower Big Sioux River, Rock River, and Little Sioux River watersheds.

SOURCES: Minnesota Pollution Control Agency and Board of Water and Soil Resources.

Minnesota Board of Water & Soil Resources

March 15, 2017

James R. Nobles, Legislative Auditor
Room 140 Centennial Building
658 Cedar Street
Saint Paul, Minnesota 55155

Dear Mr. Nobles:

Thank you for the opportunity to respond to the Office of the Legislative Auditor's (OLA) "Clean Water Fund Outcomes" program evaluation report on behalf of the Board of Water and Soil Resources (BWSR).

We are pleased that the report affirms a high level of satisfaction among our local government partners and with how BWSR has administered its Clean Water Fund grant programs, noting the transparency of the application process and the helpfulness of our staff. As the report states, 90 percent of the Clean Water Fund appropriations to BWSR are sent directly to local governments to provide water quality benefits primarily via on-the-ground best management practices and conservation easements.

Chapter 2: Outcomes and Activities

The report admirably explains the challenges of measuring water pollution reduction outcomes; the constraints of lag time in seeing results, acknowledgement of the significant investment of resources (time, money, technical expertise) for measurement of nonpoint source pollution, and the many related factors beyond the scope of the Clean Water Fund that impact results. To be efficient and practical in assuring outcomes, we and our local government partners use estimators that are empirical extrapolations of real world data to measure pollution reductions. These measurements are used to quantify and compare potential public benefits before a project is funded and afterwards based on the final design and location of on-the-ground components.

As required, BWSR reports to the Legislative Coordinating Commission all outcomes and activity information requested.

Chapter 4: Process for Distributing Clean Water Fund Dollars

We underscore the statement in the report that the variety of competitive grant programs that BWSR offers is based on appropriation language. We continuously work with our grantees to clarify the requirements and application process and are pleased to know that they reported the application process was clear. The effort to be clear, equitable and transparent is critical to assure program integrity as the amount available has been only enough to fund about 25% of the eligible proposals each year. We have begun revamping the agency website to make it easier to use for potential

applicants and those interested in outcomes.

Chapter 5: Legal Concerns

The report includes the Conservation Reserve Enhancement Program (CREP) as one of three examples to explore perceived substitution.

We agree with the overall analysis that "Clean Water Fund dollars do not appear to have been used to substitute for traditional sources of funding." We would also note that legislature appropriated $18M of Clean Water Funds for CREP in FY16-17 (which was recommended by both the Clean Water Council and the Interagency Coordinating Team) indicating broad concurrence that it is not a substitution circumstance.

We have expressed concerns with the premise and the very limited scope of this part of the analysis. As noted in the report, and restated here, the Minnesota CREP agreement is a new and unique undertaking, not a continuation of or tied to past agreements, the most recent of which was submitted in 2004.

Agencies and stakeholders initiated the process of developing goals and ideas for a new and unique CREP proposal in 2014. In December 2015 the Governor approved and submitted a proposal application developed by his executive agencies to the United States Department of Agriculture (USDA). The CREP agreement was signed by the Governor and the Acting USDA Secretary in January 2017. This and every CREP is a one-of-a-kind, limited-term, federal-state agreement that is not tied to agreements of the past or those established in other states.

The agency continues to assess Clean Water Fund programs and activities to avoid potential substitution and only recommends funding for items which supplement existing work. We maintain that use of Clean Water Funds to partially support a new and unique CREP agreement does not constitute substitution.

Finally, we value the work by the OLA staff to evaluate our programs and processes, and appreciated the professionalism and respect they accorded our staff and local partners in carrying out this evaluation.

Sincerely,

John Jaschke
Executive Director

cc: Gerald Van Amburg, Acting BWSR Board Chair

Clean Water Council

Advising the Legislature and Governor on the implementation of the Clean Water Legacy Act and Clean Water Fund appropriations

March 15, 2017

Mr. James Nobles
Legislative Auditor
Office of the Legislative Auditor
140 Centennial Building
St. Paul, MN 55155

Dear Mr. Nobles:

Thank you for the opportunity to review and discuss your findings in the *Clean Water Fund Outcomes Program Evaluation Report*. The Clean Water Council members thought your report provided an accurate summary of the process the Council uses to make Clean Water Fund recommendations to the Legislature and Governor. The report also captured the Council's concerns about substitution, administrative costs, and staffing. We appreciated the process your staff used to survey both Clean Water Council members and stakeholders to evaluate both the Council's process and outcomes of some agency programs funded with Clean Water Fund dollars.

The Council also appreciates the ability to provide context on several of your recommendations.

- Chapter 5 – As your report states, the Legislature previously placed percentage caps on administrative costs for Legacy funds but now uses the "direct and necessary" language. However, the Council recommends strongly that the Legislature revisit the use of funding caps for administrative costs for Clean Water Fund allocations. The Council believes this action would improve the transparency of how Clean Water Fund dollars are used. The Council remains very concerned that the rate agencies applied to administrative costs for Clean Water Fund programs ranged from 0-24%.

- Chapter 5 – The Council recommends that the Office of the Legislative Auditor should require that Minnesota Management and Budget update their "*Guidance to Agencies on Legacy Fund Expenditure*" so it is clear what administrative expenses are actually not allowed to be charged to Legacy funds.

- Chapter 5 – As part of the Council's decision process for recommending FY18-19 Clean Water Fund dollars for the Conservation Enhancement Reserve Program (CREP), we want to provide a clarification. Although your report text is accurate that the Council recommended $3M of FY18-19 Clean Water Fund dollars for a line item related specifically to CREP, the Council wants to note that their decision-making process also took into consideration the $31.25 million of FY16-17 Clean Water Fund dollars that have been appropriated and $15.5 million of FY18-19 Clean Water Fund dollars that have been recommended by the Council for other programs that can also be used to match federal CREP III dollars.

- Chapter 4 – The Council wants to note that there is not a clear process or opportunity for the Council to discuss their budget process and recommendations with the Governor.

- Chapter 4 – Although the Council was disappointed that the report did not recommend potential solutions to remedy the tensions between the Council and the Interagency Coordination Team because both groups provide Clean Water Fund recommendations to the Governor and both the Council and the Governor provide Clean Water Fund recommendations to the Legislature, we understand that there is not a simple solution.

Thank you again for the opportunity to respond. We would be happy to discuss our comments in further detail.

Sincerely,

Mr. Frank Jewell
Clean Water Council Chair

cc: Ms. Pamela Blixt, Clean Water Council Vice Chair
Mr. Todd Renville, Budget and Outcomes Committee Chair, Clean Water Council
Mr. John Barten, Policy Committee Vice Chair, Clean Water Council

Legislative Coordinating Commission

72 State Office Building St. Paul, MN 55155-1201 Phone: (651) 296-9002 Fax: (651) 297-3697 TDD (651) 296-9896

March 15, 2017

Mr. James Nobles, Legislative Auditor
Office of the Legislative Auditor
Centennial Office Building, Room 140
658 Cedar Street
St. Paul, Minnesota 55155

Re: Office of the Legislative Auditor's Clean Water Fund Outcomes Evaluation

Dear Mr. Nobles,

Thank you for the opportunity to review and respond to recommendations contained in the Clean Water Fund outcomes evaluation specifically related to Minnesota's Legacy website ("Legacy website"). We believe that implementing these recommendations will provide greater transparency to the public on the use and the impact of legacy and environment and natural resources trust fund dollars.

Please find specific comments on the recommendations below.

The Legislative Coordinating Commission should request agencies report on the extent to which projects have achieved their proposed measurable outcomes.

The Legacy website contains project data for all four legacy funds as well as the environment and natural resources trust fund. Due to the differences in the projects funded and the variation in outcomes achieved, developing consistent outcome measures would represent a significant task. We support your recommendation of adding a data field that would indicate the extent to which a project achieved its proposed outcomes. The addition of this information would allow website users to better analyze project outcomes and assess whether a project is achieving its intended objectives.

The Legislative Coordinating Commission should report to the Legislature which agencies have failed to satisfy their reporting obligations related to the Clean Water Fund.

As noted in the evaluation, the LCC has provided reports to the House and Senate Legacy funding committees on agency compliance with reporting; however, those reports have not specifically listed the agencies that fail to report statutorily required information. In future reports we will note

which agencies submit incomplete information in order to encourage improvement in reporting practices.

Thank you again for the opportunity to review and respond to the recommendations related to the Legacy website contained in the Clean Water Fund outcomes evaluation.

Sincerely,

Greg Hubinger,
Director, Legislative Coordinating Commission

Minnesota Pollution Control Agency

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March 15, 2017

Judy Randall
Deputy Legislative Auditor
Program Evaluation Division
Office of the Legislative Auditor
Centennial Office Building, Room 140
658 Cedar Street
St. Paul, Minnesota 55155-1603

Dear Ms. Randall:

Thank you for the opportunity to review and respond to the Office of Legislative Auditor's (OLA) findings and recommendations resulting from a recent audit of the Clean Water Fund for the Minnesota Board of Water and Soil Resources (BWSR), the Minnesota Pollution Control Agency (MPCA) and the Clean Water Council. We are committed to sound program and fiscal management, and the use of the Clean Water Fund to meet the requirements of the Federal Clean Water Act, the State Clean Water Legacy Act, and other legislative directives.

We very much appreciate the time and attention the audit team paid to understanding and documenting both the history of the Clean Water Legacy Act and the Clean Water Fund, and the state's "watershed approach" to achieving clean water. The audit report does an excellent job describing how the advent of the constitutional amendment and Clean Water Fund, and subsequent appropriations to state agencies to supplement clean water programs, has significantly enhanced the pace, efficiency and effectiveness of Minnesota's efforts to protect and restore water quality.

Further, we appreciate the professional review conducted by OLA staff, and have written a response to two recommendations within your report.

OLA Recommendation #1: The Clean Water Fund Interagency Coordination Team should provide context for the measures included in the Clean Water Fund Performance Report.

> **Agency response:** Thank you for this recommendation. The MPCA will ask the Clean Water Fund Interagency Coordination Team to consider the recommendation as the Performance Report is being developed for submittal to the Legislature in January 2018.
>
> **Implementation Date:** March 21, 2017
> **Responsible Manager:** Rebecca Flood, Assistant Commissioner

OLA Recommendation #3: State agencies should report to the Legislative Coordinating Commission all Clean Water Fund project information required by law.

> **Agency response:** We are determined to always comply with our legal obligations. Recognizing that all recipients of constitutionally dedicated funds have the responsibility of providing "information on all projects receiving funding" (M.S. 3.303, Subd. 10), we are very familiar with the manner in which

this information is organized on the Legislative Coordinating Commission's Minnesota Legacy website under "Projects." We have provided detailed reporting information to the designated website for unique grants and contracts to recipients over our years of having received Clean Water Fund monies. However, our agency does not only manage project funds, but uses these funding mechanisms as tools in our broader implementation of on-going environmental programs toward accomplishment of desired outcomes.

You shared that "the Clean Water Fund primarily supports the agency programs and responsibilities outlined in the Clean Water Legacy Act, rather than one-time projects" (p. 13). It is this difference between operations of programs versus projects that make reporting into a website designed solely for receipt and presentation of project information a great challenge for activities and monies that do not function on a project-by-project basis, as do some of the other funds under the constitutional amendment.

We look forward to linking our existing reporting of outcomes and uses of program monies in a manner that more closely aligns with the functionality of the Legislative Coordinating Commission's reporting website.

Implementation Date: September 30, 2017
Responsible Manager: Glenn Skuta, Director, Watershed Division

Thank you again for the opportunity to respond. If you have any questions, please feel free to contact Chief Financial Officer Joshua Bunker at 651-757-2781, Joshua.Bunker@state.mn.us.

Sincerely,

John Linc Stine
Commissioner

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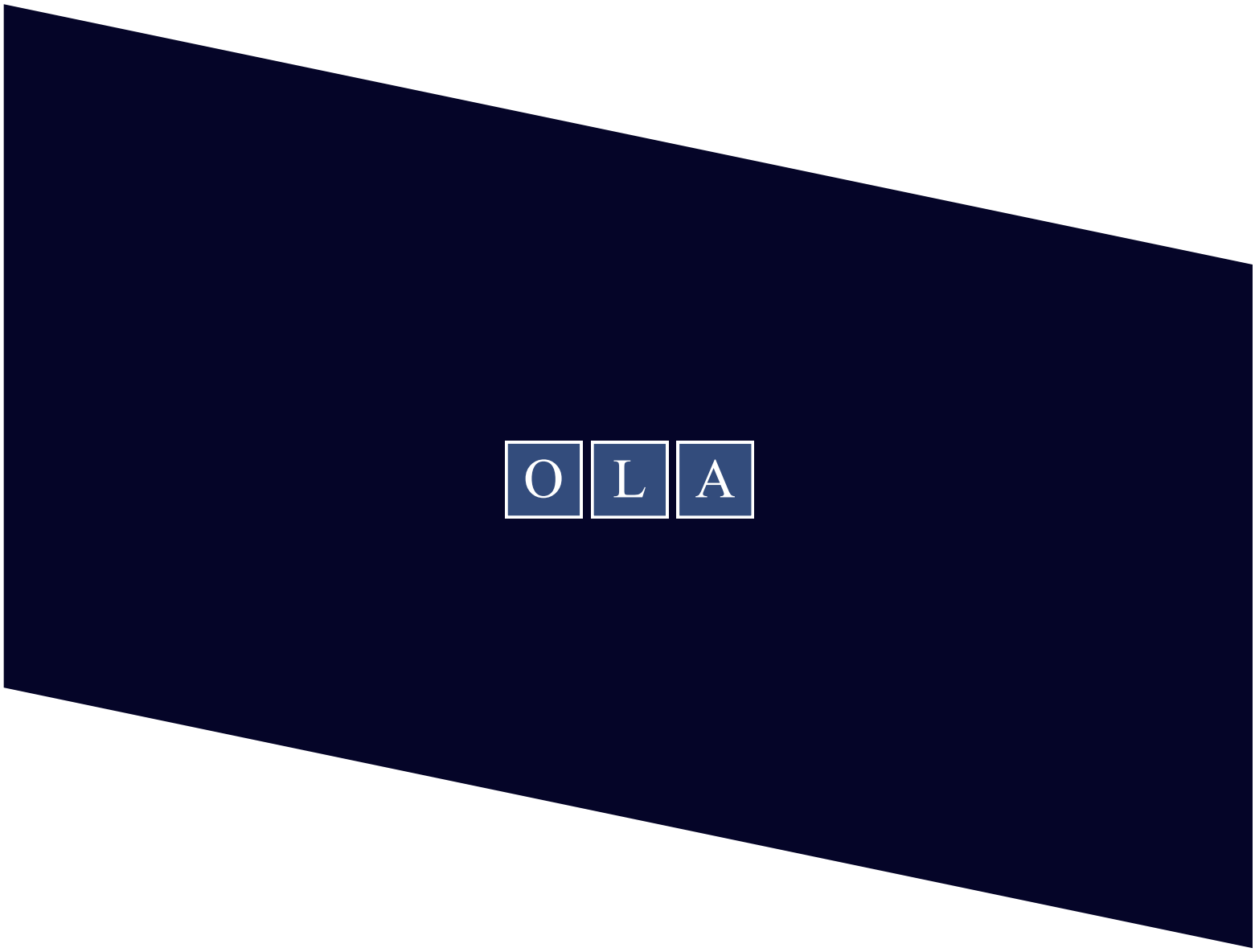

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