



February 1, 2024

The Hon. Senator Foug Hawj, Chair
Senate Environment, Climate, and Legacy
Committee
3231 Minnesota Senate Office Building
St. Paul, MN 55155

The Hon. Representative Leon Lillie, Chair
House Legacy Finance Committee
365 State Office Building
St. Paul, MN 55155

Re: Supplemental Recommendations for the Clean Water Fund for FY24-25

Senator Hawj and Representative Lillie:

In accordance with Minn. Stat. 114D.30 Subdivision 7(b), I am submitting supplemental recommendations for the Clean Water Fund (CWF) on behalf of the Clean Water Council.

The November 2023 revenue estimate shows a surplus in the CWF of \$18,056,000. You will find attached to this letter an itemized set of recommendations for this amount. These recommendations meet several timely needs:

- The public health response to private wells in southeast Minnesota with high nitrate levels.
- The long-term effort to reduce nitrate in southeast Minnesota groundwater and surface waters from agriculture.
- The need to increase statewide monitoring and consumption advice for PFAS compounds in fish.
- Reducing the backlog of easement funding requests in priority watersheds in north central Minnesota that protect the drinking water supply of numerous rural municipalities and the Twin Cities, among other benefits.
- Continued support of water quality efforts by tribal governments.
- Supporting improved water quality in the Lake Superior Basin that will attract matching federal funding from the Great Lakes Restoration Initiative.
- Studying the emerging issue of contaminated stormwater ponds.

The Council has received a letter from Chair Hansen requesting that the Council not make recommendations at this time so that the Legislature can look at the nitrate issue and weigh all its options. As always, the Council appreciates legislative input, but at our most recent meeting the Council desired to fulfill its mandate to make recommendations. The Council is advisory, so the Legislature may appropriate the Clean Water Fund as it sees fit.

Constitutionality Question

The Council has received input from nonpartisan Senate Legacy Committee staff regarding the constitutionality of using the CWF for private well mitigation in southeast Minnesota. This strict reading of the Legacy Amendment suggests that eligible activities must support protection of groundwater and of drinking water sources rather than mitigation of polluted groundwater. Council staff and nonpartisan Senate staff recently met for a constructive discussion on this issue.

The Council respectfully offers some additional information to inform the Legacy Committees regarding constitutionality. The Health Department request includes \$3.866 million for mitigation for FY25. Of this figure, 78 percent would support the drilling of new code-compliant wells for families impacted by high nitrate. Nitrate in well water indicates there is a pathway from the land surface to the groundwater. The Minnesota Well Code (adopted in 1974) has multiple safeguards that reduce the ability of contaminants on the land surface to get into groundwater. Most of the private well households with nitrate above 10 mg/L get their drinking water from a well that was constructed before 1974. Pre-code wells, both active wells and those no longer in use, can be a pathway for groundwater contamination. Constructing new, code-compliant wells provides a direct benefit to groundwater protection. The Health Department and its local government partners will use the CWF to identify private wells in the area—both used and unused. Estimates of the number of wells that were constructed before the Well Code and are not in the County Well Index range from 30 percent to 90 percent. In short, code-compliant wells will benefit not just the well user but the groundwater aquifer as well, thus making the request consistent with the Legacy Amendment.

The constitutionality of providing in-house reverse osmosis systems to treat private well water is admittedly, less clear. The amendment language states that the Clean Water Fund is to be used to “protect groundwater from degradation and to protect drinking water sources.” The Council concluded that a well could be considered the drinking water source and thus treatment of well water could be eligible for CWF support. In its deliberations, the Clean Water Council concluded that the emergency public health concerns of the residents in southeast Minnesota outweighed a narrow interpretation of the Legacy Amendment. Lacking an alternate funding source for FY25 and considering that many private wells have nitrate that may have existed before the ratification of the Legacy Amendment, the council determined that use of the CWF in this instance was appropriate.

Future Needs in Southeast Minnesota

The Council wishes to convey that the request for private well mitigation from the Clean Water Fund should be a one-time request based on an emergency public health need. The Health Department indicated to us that a preliminary estimate for addressing nitrate in private wells in eight southeast Minnesota counties could reach \$60 million over time. The Council believes that requests for similar action will come from other parts of the state, including the Central Sands region. A multi-year financial need exceeding \$100 million statewide is not out of the question.

There are only ten years left before the Legacy Amendment expires, and the Council is laser-focused on meeting multiple objectives in that time for surface waters, groundwater, and drinking water sources. To use the CWF beyond this surplus for FY25 would be unrealistic, so additional funds will be necessary to address this long-term problem. The Council will not be recommending funding for well mitigation (other than for select low-income households) in its FY26-27 Clean Water Fund recommendations.

Please contact me at (763) 479-9550 or bbarten79@gmail.com or Paul Gardner at (651) 757-2384 or paul.gardner@state.mn.us if you have any questions or comments.

Sincerely,

John M. Barten

John Barten, Chair
Minnesota Clean Water Council

Cc: Paul Gardner, Clean Water Council Administrator
Rep. Rick Hansen
Kara Josephson, Senate Committee Administrator
Ben Stanley, Minnesota Senate staff
Daniel Mueller, Minnesota Senate staff
Mike Molzahn, House Committee Administrator
Janelle Taylor, Minnesota House staff
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Dana Vanderbosch, Assistant MPCA Commissioner and Chair, Interagency Coordination Team