

Senate Counsel, Research, and Fiscal Analysis

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Senate

State of Minnesota

TO: Senator Founj Hawj

FROM: Ben Stanley, Senate Counsel (651/296-4793)

DATE: January 12, 2024

RE: Use of Clean Water Fund Money for Nitrates Response in Southeastern Minnesota

This memorandum is in response to your question about whether it would be constitutional to use clean water fund money to take certain measures to address nitrates pollution in the southeastern part of the state.¹ Specifically, you asked whether clean water fund money could be used to pay for four contemplated measures:

- Connecting residents' homes to public water supplies
- Providing bottled water to residents
- Drilling new wells
- Purchasing in-home water treatment systems

For the reasons stated below, I believe that using clean water fund money to pay for these measures would be unconstitutional.

CLEAN WATER FUND MONEY MAY ONLY BE USED TO PROTECT WATER

The constitutional language that creates the clean water fund allows money in the fund to be used:

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;²

There are, in other words, three permissible uses for this money: (1) protecting, enhancing, or restoring water quality in lakes, rivers, and streams; (2) protecting groundwater from degradation; and (3) protecting drinking water sources. An expenditure of clean water fund money must serve at least one of these ends in order to be constitutional.

¹ For background on the nitrates situation see [Southeast Minnesota Groundwater | US EPA](#).

² MN Const. Art. 11 § 15.

THE CONTEMPLATED MEASURES WOULD NOT PROTECT WATER

None of the contemplated measures would do anything to protect, enhance, or restore water quality in lakes, rivers, or streams. Instead, they would just provide residents with clean water obtained from somewhere else or would restore water quality for individual homes in a manner that has no bearing on the water quality of lakes, rivers, or streams.

Nor would any of the contemplated measures do anything to protect groundwater from degradation or to protect drinking water sources. The groundwater in question has already been degraded, and there has already been a failure to protect the drinking water sources in question. If anything, these measures would have the effect not of protecting sources of drinking water but of rendering them *no longer sources of drinking water*.

In conclusion, these measures seem designed to protect the health of *residents*, rather than the health of *water*. This is a laudable policy goal, but it is not a permissible use of clean water fund money.