



Legislative Coordinating Commission
Subcommittee on Minnesota Water Policy

Legislative Issues: Water Governance

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Water Governance

G1: Governance and Funding - SWCDs and Watershed Districts

Issue

Soil and Water Conservation Districts (SWCDs) need stable sources of funding that does not depend on the Clean Water Fund of the Clean Water Council's funding recommendations. SWCDs are special-purpose units of government, established under state law, to carry out conservation programs at the local level. SWCDs work with landowners to provide technical expertise and financial assistance to maintain and improve the quality, quantity, distribution and sustainability of natural resources, including surface water, groundwater, soil, and ecological resources. Each SWCD has a five-member, locally elected, Board of Supervisors to set policy, provide local input, and ensure oversight and accountability for the district.

SWCDs receive local (county), general fund (state), and state capacity funding. In FY16-17 and FY18-19, SWCDs received an additional \$11 million per year from a Clean Water Fund for capacity funding. During the 2019 legislative session, SWCDs were appropriated \$12 million per year from the Clean Water Fund for FY20-21 for capacity funding. Clean Water Funding has enabled SWCDs to hire resource professionals who work with landowners to design and install conservation practices in prioritized and targeted areas to achieve measurable water quality results. However, funds from the Clean Water Fund alter the planning effort of the Clean Water Council and are not a sustainable use of the Clean Water Fund. Even with Clean water funding, current funding falls short of meeting current needs by about \$16 million dollars per year.

Similar to other locally elected units of government who get state aid, SWCDs need an adequate, committed, and ongoing investment from the state. Without it, SWCDs will not be able to fully deliver on statutory obligations. In 2017, \$11 million was half of an estimated \$22 million annual shortfall. Revised estimates in 2018, showed SWCD funding shortfalls totaling \$28 million per year. The FY20-21 appropriation of \$12 million per year in Clean Water Funds brought the shortfall to just under \$16 million per year. This does not include project funding needs.

Path Forward

The subcommittee should conduct hearings to discuss how best to provide the governance and financial support for SWCDs as well as governance issue that involve SWCDs and Watershed Districts. Options could include combinations or cooperative efforts among SWCDs and Watershed Districts. Other options to be considered should include funding options from the tax bill, local fees, optional SWCD levy authority, new dedicated sales tax, and fees on property.

SWCDs generally have strong support from the Legislature. However, increases to local taxes have not been supported. One suggested proposal could involve a phased-out reduction in funding provided by the Clean Water Fund. This reduction could be balanced by a 4-year increased support from other sources, at 1.5 times the reduction in support from the Clean Water Fund. This formula would, over time, reduce the burden on the Clean Water Fund while gradually increasing overall total funding to SWCDs. Funding increases could be comprised of three components. One-third could be provided equally to each of the SWCDs. The final third could be allocated, based on measures of performance, as well as merit-based proposals for environmental outcomes.

G2: Reactivation of Water Supply Systems and Wastewater Treatment Facilities Advisory Council (council)

Issue and Path Forward

Re-activation of the council (statutory reference for this council is M.S. 115.741) is needed to address water supply systems, impacts of climate change, waste-water treatment facilities and operator certification. Reactivation would ensure that water and wastewater professionals can provide input into agency rules and guidelines. The council would advise commissioners of the Department of Health and the Pollution Control Agency regarding classification of water-supply systems and wastewater treatment facilities, qualifications and competency evaluation of water supply system operators and wastewater treatment facility operators, and additional laws, rules and procedures that may be desirable for regulating the operation of water supply systems and of wastewater treatment facilities. The council would be an advisory council to the Minnesota Department of Health and the Minnesota Pollution Control Agency and does not have rule making authority.

Background

The original Water and Wastewater Operators Certification Council was created in 1971. It had rule making authority regarding the classification of water supply systems, wastewater treatment facilities, and the certification of operators of the systems and facilities. The original council was sunsetted in 1995 when the Water Supply Systems and Wastewater Treatment Facilities Advisory Council was formed. The Water Supply Systems and Wastewater Treatment Facilities Advisory Council was reviewed by the [Legislative Commission on Planning and Fiscal Policy](#) (LCPFP) in 2013 as part of their biennial duty required by [Minn. Stat. 3.885 Subd. 11](#). The LCPFP's 2013 [recommendations](#) called for keeping the council and [2014 Minn. Laws Chap. 286 Art. 7 Sec. 1](#) extended the council's expiration date to June 30, 2019 when it was sunsetted.

G3: Reactivation of the Legislative Water Commission

Issue and Path Forward

Issues surrounding water are wide-ranging and highly varied across many landscapes and interest groups. Because water is important, complex, controversial, and costly, the development of water policy must be undertaken thoughtfully. This 12-member, bi-cameral and bipartisan commission, created by the 1989 Groundwater Protection Act, brought value so the Legislature by:

- Having dedicated staff to disseminate pertinent information from a large array of stakeholders so members can develop a broad and independent understanding of current and emerging water issues
- Providing a venue for members to equitably receive and discuss detailed technical information
- Creating a public forum for regular, in-depth interactions between legislators that can then inform legislative work on this subject
- Developing water expertise within a larger cadre of Legislators so they can become leaders on water policy

Background

The Legislative Water Commission (LWC) was created by the 1989 Groundwater Protection Act and was established in 1994. At that time, the LWC consisted of ten members. Five member were from the Senate and five members from the House of Representatives. Two subcommittees were established, one on groundwater and one on surface water. The LWC was originally charged with the review water policy reports and recommendations of the Environmental Quality Board, the biennial report of the

Board of Water and Resources and other water-related reports as required by law or by the Legislature. The LWC was given authority to oversee activities of the Pollution Control Agency relating to water-pollution control. It also was charged with conducting public hearings as well as securing data and comments. The LWC held annual hearings on groundwater, including a hearing on the groundwater policy. It was charged with making recommendations to assist legislature. Data or information compiled by the LWC was to be made available to the Legislative Commission on Minnesota Resources and standing and interim committees of the legislature on request of the chair of the respective commission or committee. Members were to study the implementation and effects of sustainable agriculture, including current and potential practices and their effect on water and groundwater. The LWC was abolished in date.

The Legislative Water Commission was re-established in 2014. The LWC then consisted of twelve members. Six members were from the Senate and six members are from the House of Representatives. Members from the Senate included three majority party members, appointed by the majority leader, and three minority party members appointed by the minority leader. The six members from the House of Representatives include three majority party members appointed by the Speaker of the House and three minority party members appointed by the minority leader. Members served at the pleasure of the appointing authorities and served until their successors are appointed or until a member was no longer a member of the legislative body that appointed the member to the commission. Members elected a chair and vice-chair. The chair convened meetings as necessary to conduct the duties prescribed by this section.

The LWC employed staff and contracted with consultants, as necessary, to enable the LWC to carry out its duties and functions. The LWC reviewed water policy reports and recommendations of the Environmental Quality Board, the Board of Water and Soil Resources, the Pollution Control Agency, the Department of Natural Resources, the Metropolitan Council, and other water-related reports as required by law or the legislature. The commission conducted public hearings and otherwise secured data and comments to make recommendations to the legislature. Data or information compiled by the LWC was made available to the Legislative-Citizen Commission on Minnesota Resources, the Clean Water Council, and standing and interim committees of the legislature at the request of the respective commission, council, or committee. The committee coordinated with the Clean Water Council.

The Commission expired on July 1, 2019 and was replaced by the Legislative Coordinating Committee's Subcommittee on Water Policy. The duties and functions of the Subcommittee are in parallel with the former Commission.

G4: Creating a Department of Water Resources

Issue

A bill has been introduced that would combine water responsibilities and abolish some agencies. There may be benefits to reorganization, as well as unintended consequences. A One Water Agency has been proposed and studied in the past. These reviews have suggested recommendations for efficiency. There may be interest in moving forward with some of the existing recommendation for better inter-agency coordination or consolidation of agency roles and responsibilities

Path Forward

Discuss benefits and consequences of agency consolidation and formulate a plan for action.

Background

Water regulation and management is coordinated by several state, regional and local agencies. The many local water-management organizations may not be as effective as they might be. Minnesota's waters also are governed by hundreds of laws, regulations, rules, and ordinances involving more than twenty federal agencies, more than six state agencies, and many local units of government. These agencies have individual and specific missions and are sometimes bound by individual federal and state laws. These constraints create silos, overlaps, conflicts and contradictions in implementation.

Water governance in Minnesota is not very adaptive. The complex system may be standing in the way of achieving the clean water goals that our citizen's expectations. Several reports have suggested that Minnesota's water governance is in need of better coordination and have explored the need for reform. Each review offers options for improving water governance and suggests improvements. Those recommendations are summarized as follows:

There generally are two schools of thought on our current system of water governance. One suggests that state and local water governance is too complicated and involves too many state, local and regional agencies that do not cooperate and are not well integrated. An important argument is that the current system does not encourage state-wide or long-term water planning and policy. It has been suggested that these shortcomings could be addressed by combining state-level governance and management into a single "Department of Water". This scale of reform would be significant and would involve major changes to organizational structure and resources. A consolidated Water Department might be more efficient with improved and simplified services to the citizens of the state. However, because each of the existing agencies have specific mission and agreements with federal agencies, it is possible that there would be unintended consequences that might affect federal funding. A further complication is that each of the agencies have specific objectives related to water resources. For example, the water focus at the MDH is on safe drinking water and the focus at the MDA is on water and agriculture. Some of these specific objectives may be diluted and constituencies' less-well served, given new priorities of an all-encompassing Water Department. The restructuring of a large government agencies often involves significant realignment of personnel, each having unique program expertise and institutional memory. A change of this magnitude should involve considerable study and evaluation.

A second school of thought recognizes the strengths of the current system of cooperation among individual agencies. The Clean Water Land and Legacy Act has resulted in more and better coordination among staff across agencies. Advocates argue that the current system of strong, competing agencies, with specific duties and specific goals, promotes coordination as well as healthy competition among agencies. It focuses on the importance of specific agency missions and goals and allows for legislative, rather than administrative, resolutions of priorities, tradeoffs and conflicts

G5: Streamlining Water Governance and Management

Issue

Minnesota is a recognized leader in managing water, including safe drinking water. However, the state may want to consider revising water policy and governance to address new challenges. With as many as eight agencies involved in managing water, there is a general perception of silos, turf protection, and non-cooperation. To be truly effective, greater governance and water management is needed to integrate and to coordinate activities and programs. The issues and concerns are similar to Issue G4 and Issues G4 and G5 should be discussed together. However, some opportunities for greater communication are described below.

Path Forward

The UM report (University of Minnesota, 2020) recommends creation of a coordinating entity. It was suggested that this be accomplished with an interagency team that could coordinate activities across agencies. The report suggests that this be completed with an existing entity such as the Clean Water Council Interagency Coordinating Team. This existing team understands the collective work of the agencies and stakeholders. This effort would provide the foundation for a coordinated water management, including drinking water. Others have suggested the creation of a consolidated Department of Water. Hearings on these issues are needed and to consider possible legislation.

Background

Minnesota's water policy has shaped by the state's early dependence on agriculture and has evolved over time. This evolution involved transition from draining excess water to improving agriculture to the protection and restoration of our waters; from farming practices that did not recognize adverse impacts on natural resources and natural systems to statewide adoption of soil and water conservation practices; and from discharge of raw sewage and pollutants into water bodies to increased implementation of water quality standards. Water policy changes also reflect decisions and actions made in other areas that include energy, land use, transportation, public health, and economic development.

In Minnesota, water is a public resource and the state reserves the right to regulate the use of water within its boundaries and to determine the scope of private water rights. The state holds title to public waters and the lands beneath them in trust for the general public. Private rights to water are governed by "riparian doctrine" where traditional common law doctrine of riparian rights apply. This doctrine implies that owners of the adjacent land and the groundwater beneath it and have use rights over water bodies touching that land. However, in Minnesota, riparian doctrine has been modified through legislatively enacted regulations and riparian rights to water are not absolute. Rather, they give adjacent landowners the right to reasonable use and enjoyment of a water body as long as that use does not interfere with the public's rights or the rights of other riparian owners.

A fundamental question is whether the governance structure for water should be changed. Existing recommendations provide a framework for thinking about an inter-agency approach to protect and preserve water for future generations. Several reports have evaluated water governance and reform. This body of information can be summarized as follows:

There generally seem to be two schools of thought on our current system of water governance. One school of thought suggests that state and local water governance is too complicated and involves too many agencies that do not cooperate and are not well integrated. An important argument is that the current system does not encourage statewide or long-term water planning and policy. The restructuring of a large governmental agency would involve significant realignment of personnel, each having unique program expertise and institutional memory. That change is considered in Issue G4.

A second school of thought recognizes strengths of the current system of cooperation among individual agencies. The Clean Water Land and Legacy Act has resulted in more and better coordination among staff across agencies. Advocates argue that the current system of strong, competing agencies, with specific duties and specific goals, promotes coordination as well as healthy competition among agencies. It focuses on the importance of specific agency missions and goals and allows for legislative, rather than administrative, resolutions of priorities, tradeoffs and conflicts.

Four papers are fundamental that suggest options for greater interagency cooperation:

Brand and others, 1990, suggested that the numerous state and local water-management organizations in Minnesota are not as effective as they might be because the state's waters are governed by hundreds of laws, regulations, rules, and ordinances involving more than twenty federal agencies, more than six state agencies, and many local units of government. These agencies each have individual and specific missions and are bound by individual federal and state laws. These constraints create silos, overlaps, conflicts and contradictions in implementation. Water governance is not as adaptive, flexible or resilient as it could be. Over time, a multiplicity of state, regional and local water-management organizations have been created that contribute to challenging patchwork of entities.

Helland (2000) pointed out a disconnection between groundwater, surface water, and land use in water management. He stated that there were many state agencies involved in water management while there is no single entity in charge. Helland also suggested that there should be a process to ensure that agencies focus on the resource as a whole rather than on individual programs. He argued that scales of decision-making for land and water issues were mismatched. Land use decisions are often local while water is regulated and enforced at state and federal scale. This results in an inability to coordinate surface water, groundwater, and land-use with respect to water management.

In 2011, the University of Minnesota published a report on water sustainability (University of Minnesota, 2011). This report, which included many of the state's water experts, was conducted at the request of the Minnesota Legislature in response to the passage of the Clean Water, Land and Legacy Amendment. The Legislature directed the University to construct a framework to describe what was needed to accomplish the goals and needs that drove the passage of the amendment. The result was the publication of the Minnesota Water Sustainability Framework that laid out pressing issues needed to ensure sustainable water, strategies, and recommendations for how to meet these challenges. Several suggestions for revised water governance were included.

More recently, the Minnesota Pollution Control Agency (MPCA, 2013), in cooperation with other state water management agencies, developed recommendations for improving Minnesota's system of water governance. This evaluation was authorized by the Minnesota Legislature in 2011 (Laws 2011) Session, Chapter 2, Article 4, and Section 33). The Legislature asked the MPCA to evaluate water-related statutes, rules, and governing structures to streamline, strengthen, and improve sustainable water management.

A more recent report drinking water report (UM, 2021) further recommends minor changes to the statutory framework that clarifies connections among agencies and reinforces common goals to both public health and the environment. The report suggests a need for greater coordination across different scales of governance from the local level to the statewide level. Because policy and governance have evolved over time, and in response to specific issues, Minnesota's governance structure remains complicated, fragmented and diffuse. Certain aspects of Minnesota's water management system continue to confuse and frustrate many local units of government and citizens, resulting in continued calls for reform. There are long-standing concerns that Minnesota's water governance is inefficient and in need have better coordination.

Most of these reports suggest that water management has improved as the result of the Clean Water Land and Legacy Act. Most of these reviews do not recommend consolidation of the authority for managing water into a single agency because there are good reasons for the delegation of authority

across the agencies. These reports make the following recommendations for improved water governance:

- Synchronize water management programs into a water management system
- Clarify the roles, responsibilities and authority of local governmental
- Improve the delivery of water-permitting services at the regional level
- Clarify the role of the Clean Water Council
- Increase emphasis on the responsibilities of local watershed authorities involved in the one-watershed/one-plan process
- Implement a comprehensive statewide conservation priority process
- Strengthen land use planning focusing on water:
- Increase legislative support capacity for water issues
- Require that state-owned lands be examples of conservation
- Increase interagency water management on long-term sustainability:
- Increase support for the voluntary Minnesota agricultural water quality certification program
- Revise water policy to include principles of equity
- Examine alternatives for wastewater and storm water conservation and reuse
- Ensure that statutes regarding water policy is integrated across agencies and scales of governance and encourage integration.
- Ensure that state environmental and natural resource policies aligned with water sustainability goals that efficiently direct on-the- ground actions.
- Support and strengthen landowner and land occupied efforts to stem nonpoint source pollution and soil loss, using voluntary best management practices and by strengthening existing statutes relating to soil loss and soil health. While the quality of Minnesota's water resources has improved significantly over the decades since the federal clean water act, most of this improvement has come from control of point sources, while non-point sources largely go unregulated.
- Update existing laws and rules
- Create flexibility in water laws across landscapes
- Analyze the efficiency and effectiveness of possible changes to wetland regulations
- Provide consistency of enforcement authority among state agencies