



## **If It Looks Like a Duck....**

**Analysis of  
Minnesota's Budget for Conservation & Environment  
and  
Allocation of Funds from the Clean Water, Land, & Legacy  
Amendment**

**After the 2011 Legislative Session**

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## **EXECUTIVE SUMMARY**

In 2008, Minnesota voters overwhelmingly approved an historic constitutional amendment to increase the state's investment in cleaning up lakes and rivers, protecting wildlife habitat, and improving parks and trails. The Legacy Amendment spells out that the newly dedicated funds "must supplement traditional sources of funding for these purposes and may not be used as a substitute." Today, the legal meaning of this prohibition against substitution is at the center of ongoing debate at the Capitol. While our analysis does not seek to answer this legal question, common sense tells us that Minnesotans who voted to tax themselves expect to see more money spent in these important areas.

Three years after passage of the Legacy Amendment, repeated state budget deficits have tested the Legislature's ability to stick to the voters' intent. There are increasingly frequent instances where the Legislature has used Legacy funds to backfill budget cuts, raising concerns that the intended benefits of Legacy funds may erode over time. While politicians may continue to argue over whether these budget practices violate the legal standard, voters recognize this backfilling as exactly the kind of substitution prohibited by the Amendment. As the old saying goes, if it looks like a duck, swims like a duck, and quacks like a duck, then it probably is a duck.

In the 2011 Legislative session, the Governor and Legislature faced a \$5 billion general fund deficit. After a budget stalemate led to a three-week state government shutdown, the Governor and Legislature reached an agreement that relied on a mix of borrowing, one-time fixes, and cuts. As part of this agreement, conservation agencies suffered deep and disproportionate general fund cuts. Where most state agencies were cut by five to ten percent, the five primary conservation agencies were cut by 16.5%, and the Pollution Control Agency saw general fund reductions of nearly 40%.

Water programs suffered some of the deepest cuts. The Clean Water Partnership program was cut by 81% and the Pollution Control Agency's programs for cleaning up failing septic systems saw a 100% general fund cut.

These programs have now lost all or virtually all of their general funds and are significantly dependent on Legacy funds. This pattern of funding – shifting programs away from general funds towards reliance on Legacy funds, with no additional conservation benefit - is what voters understood would be prevented by the prohibition on substitution, and raises warning flags for the future of Legacy funding.

Drastic and disproportionate cuts to Minnesota's beloved state parks also seem to be too closely correlated to the availability of Legacy funds. Further, in the 2011 session, the Legislature also raided lottery funds, which also have a prohibition against substitution, to backfill cuts to state parks as well as other programs.

In November 2011, the Office of the Legislative Auditor (OLA) released two reports analyzing Legacy funds. The OLA found that the Legislature must work harder to ensure that Legacy funds are used to supplement not substitute, and should implement a process for obtaining and documenting information on prior sources of funding for projects receiving Legacy funds in order to prevent substitution.

The OLA also found that, while the internal financial controls for spending Legacy funds are generally adequate, there have been some instances where agency employees have failed to allocate

their leave hours (including vacation, sick and holiday leave) to Legacy funds consistent with the hours actually worked. For instance, one employee allocated 43 percent of his working hours to the Clean Water Fund, but 100 percent of his leave hours to Legacy funds. These irregularities highlight the need for greater attention by agencies in their use of Legacy funds and for more caution against comingling Legacy and traditional funds.

The 2011 Legislature missed important opportunities to enact fee increases to make programs sustainable. For example, the Legislature rejected a plan to raise user fees to pay for the cost of fighting aquatic invasive species. Instead, the Legislature relied on one-time lottery funds, leaving the state without a sustainable source of funding for this critical work. This reliance on short term fixes leaves budget holes that will need to be addressed by future Legislatures, and ultimately adds to the continued pressure on conservation budgets.

Despite the paramount need to focus on solving the severe budget shortfall, the Legislature found time to enact policy changes that favor corporate interests over conserving state resources. The final Environment Finance bill included numerous policy provisions, including provisions that limit the state's ability to regulate large feedlots, that restrict Minnesota's ability to control phosphorus pollution in Lake Pepin, and that require the Pollution Control Agency to review its standards on the amount of sulfate pollution that can be released into state waters, a provision sought by the sulfide mining industry.

On a positive note, Legacy funds have been allocated to a wide variety of activities in every part of the state. And, contrary to the perception of some, habitat acquisition has not generated substantial additional liability for payment in lieu of taxes (PILT.)

In the 2011 Legislative session, a bonding bill was also passed as part of the overall budget agreement. The bill appropriately included important funding for on-the-ground conservation projects, including \$20 million for the construction of wastewater treatment facilities, \$7 million for closed landfill cleanup, and \$20 million for wetland conservation easements.

Looking ahead, the primary focus of the 2012 Legislative session will be passage of the state's regular bonding package, which occurs in even-numbered Legislative years. Because bonding is a traditional and critical source of funding for conservation in Minnesota, the Governor and 2012 Legislature must ensure that the bonding bill funds conservation projects at levels consistent with past practice.

Because the state's November 2011 economic forecast showed a slight surplus in the current budget cycle, it appears that there will not be a need for a supplemental budget in 2012. However, a shortfall is still expected for the 2014-2015 budget cycle and there will be continued pressure on conservation budgets from a variety of angles. For example, there are early indications that Legacy Funds may be eyed to help fund a new football stadium, an idea that lawmakers must quickly reject.

Policy makers should carefully consider attempts to allow risky new forms of sulfide mining that may lead to substantial cleanup costs on an already stressed state conservation budget. And finally, as the Legislature approves the next annual allocation from the Outdoor Heritage component of the Legacy funds, it should implement the recommendations of the OLA and carefully ensure that it respects the voters' intent that these funds are used for the long-term benefit of the state's natural resources and not to solve short-term budget problems.