



## Minnesota Center for Environmental Advocacy

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Attorney General Lori Swanson  
Attorney General's Office  
445 Minnesota Street, Suite 1100  
Saint Paul, MN 55101

October 3, 2018

Commissioner Myron Frans  
Minnesota Management and Budget  
400 Centennial Building  
658 Cedar Street  
Saint Paul, MN 55155

**Re: Environment and Natural Resources Trust Fund Appropriation Bonds  
Constitutional Challenge**

Dear Attorney General Swanson and Commissioner Frans:

Attached is a copy of a Summons and Complaint served today upon the Minnesota Attorney General's Office, as the legal representative of agencies and commissioners of the State of Minnesota. A courtesy copy is hereby provided to Commissioner Frans.

The Minnesota Center for Environmental Advocacy ("MCEA") has filed this lawsuit on behalf of the listed Plaintiffs to challenge the constitutionality of the portion of the 2018 bonding bill which created appropriation bonds based on payments of principal and interest from the Environment and Natural Resources Trust Fund over the next 20 years.

In light of the complexity of the matter, MCEA would be willing to grant the State an extension of the time to serve its Answer. Please have the assigned attorney contact the undersigned if you wish to discuss the extension.

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Ec: Plaintiff Organizations

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

Minnesota Environmental Partnership,  
Minnesota Outdoor Heritage Alliance,  
Friends of the Mississippi River,  
The Izaak Walton League of Minnesota,  
Clean Water Action, Fresh Energy,  
Friends of Minnesota Scientific and Natural  
Areas, and Minnesota Native Plant Society, Inc.,

Court File No.: \_\_\_\_\_  
Case Type: Other Civil (Declaratory  
and Injunctive Relief)

Plaintiffs,

v.

**SUMMONS**

Myron Frans, in his official capacity as  
Commissioner of Minnesota Management and Budget,  
and Minnesota Management and Budget,

Defendants.

**TO THE ABOVE-NAMED DEFENDANTS:**

You are hereby summoned and required to serve upon Plaintiffs' attorneys, Elise Larson and Ann E. Cohen, Minnesota Center for Environmental Advocacy, 1919 University Avenue West, Suite 515, Saint Paul, MN 55104, Daniel Poretti, Nilan Johnson Lewis PA, 120 South Sixth Street, Suite 400, Minneapolis, MN 55402, Answer to the Complaint, which is herewith served upon you, within 20 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Date: October 3, 2018

MINNESOTA CENTER FOR  
ENVIRONMENTAL ADVOCACY

  
\_\_\_\_\_  
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ATTORNEYS FOR PLAINTIFFS

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

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Minnesota Environmental Partnership,  
Minnesota Outdoor Heritage Alliance,  
Friends of the Mississippi River,  
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Court File No.: \_\_\_\_\_

Plaintiffs,

v.

**COMPLAINT FOR  
DECLARATORY &  
INJUNCTIVE RELIEF**

Myron Frans, in his official capacity as  
Commissioner of Minnesota Management and Budget,  
and Minnesota Management and Budget,

Defendants.

Plaintiffs Minnesota Environmental Partnership, Minnesota Outdoor Heritage Alliance, Friends of the Mississippi River, The Izaak Walton League of Minnesota, Clean Water Action, Fresh Energy, Friends of Minnesota Scientific and Natural Areas, and Minnesota Native Plant Society, Inc., (collectively, "Plaintiff Organizations") as and for their Complaint against Defendants, state and allege:

**INTRODUCTION**

1. Minnesota voters ratified the Environment and Natural Resources Trust Fund ("the ENRTF") in the Minnesota Constitution in 1988 for the following public purpose: "protection, conservation, preservation, and enhancement of the state's air, water, land, fish, wildlife, and other natural resources." Minn. Const., art. XI, § 14.

2. At the time the voters ratified the ENRTF in the Minnesota Constitution, the Legislature had adopted implementing legislation explaining to voters how ENRTF funds would be spent, including certain limitations and prohibitions (“Implementing Legislation”). *See* 1988 Minn. Laws 1467, ch. 690 preamble.

3. Among the limitations and prohibitions, the Implementing Legislation provided that the money would not be used as a substitute for traditional sources of funding for environmental and natural resources activities.

4. The Implementing Legislation further provided that money would not be used on certain types of projects. *See* 1988 Minn. Laws 1472-74, art. I, § 12, subd. 2 (codified at Minn. Stat. § 116P.08, subd. 2 (1988)).

5. The Legislature appropriated ENRTF funds consistent with the Implementing Legislation until 2018.

6. At the end of the 2018 Legislative Session, the Legislature passed a law that allows Defendant Department of Minnesota Management and Budget to sell and issue up to \$98 million in special appropriation trust fund bonds (“appropriation bonds”) and to pay annual debt service – principal and interest – on the bonds with money from the ENRTF (hereinafter “the 2018 Act”). 2018 Minn. Laws 100, 116-22, ch. 214, art. 4, § 3, art. 6, §§ 1-4.

7. The ENRTF’s purposes do not include the payment of principal and interest on bonds and the 2018 Act therefore violates the Minnesota Constitution.

8. Appropriation bonds are inherently riskier, and thus more expensive than other kinds of bonds, because future legislatures are not bound to make the debt payments.

9. Consequently, more money will be drained from the ENRTF over time because of the risky financing scheme used by the Legislature.

10. The appropriation bonds raise money to fund certain projects the Legislature set forth in the 2018 Act. *See* 2018 Minn. Laws 119-21, ch. 214, art. 6, § 4.

11. These projects also violate the Constitution because they are inconsistent with Minn. Const., art. XI, § 14 and the Implementing Legislation.

12. The Legislature's misuse of the ENRTF could open the door to future unconstitutional uses of the ENRTF and other constitutional funds. *See, e.g.*, Minn. Const., art. XI, § 15 (the "Legacy Amendment").

13. Plaintiff Organizations bring this action for declaratory relief, seeking to ensure the Legislature does not contravene the public purpose of the ENRTF now and in the future.

14. Plaintiff Organizations ask this Court to declare that the 2018 Act authorizes an unconstitutional use of ENRTF funds under Minn. Const., art. XI, § 14 for the following reasons:

a. The 2018 Act violates Minn. Const., art. XI, § 14 by divesting ENRTF resources to pay principal and interest on appropriation bonds.

b. The 2018 Act violates Minn. Const., art. XI, § 14 by using ENRTF resources for water system improvement grants rather than loans.

c. The 2018 Act violates Minn. Const., art. XI, § 14 by authorizing ENRTF expenditures for certain projects that are inconsistent with the Implementing Legislation.

d. The 2018 Act violates Minn. Const., art. XI, § 14 by substituting ENRTF resources for funding traditionally derived from other sources.

15. In addition, the State of Minnesota, as trustee for the ENRTF, violated its fiduciary duty to its beneficiaries – Minnesota citizens – by permitting expenditures inconsistent with the ENRTF's public purpose.

16. Plaintiff Organizations seek an injunction prohibiting the sale of the appropriation bonds and the distribution of money as provided in the 2018 Act.

17. This action seeks declaratory and injunctive relief, and is brought pursuant to the Minnesota Declaratory Judgment Act, Minn. Stat. ch. 555.

#### **THE PARTIES**

18. Plaintiff Organizations are organizations with members who have applied for and/or benefited from the funds appropriated from the ENRTF for the public purpose of protection, conservation, preservation, and enhancement of the state's air, water, land, fish, wildlife, and other natural resources, and the members of Plaintiff Organizations are users of, and/or benefit from, the state's air, water, land, fish, wildlife, and other natural resources.

19. Plaintiff Organizations face a direct and imminent injury which will result from the unconstitutional allocation of funds from the ENRTF. Plaintiff Organizations and their members will apply for funds from the ENRTF in the future and will benefit from projects funded by the ENRTF.

20. Plaintiff Minnesota Environmental Partnership ("MEP") is a nonprofit organization founded in 1998. MEP's mission is to coordinate the efforts of Minnesota's environmental nonprofits to maximize the effectiveness and power of those nonprofits and achieve the highest quality natural environment possible for all Minnesotans. Today, MEP represents and coordinates the work of seventy member groups, all of which have benefited from past appropriations from the ENRTF and many of which have directly received appropriations from the ENRTF, including ten members which have received over \$5.5 million in grants from the ENRTF in the last five years. Members of MEP will apply for future grants from the ENRTF. MEP functions as a coalition to bring organizations together to network, collaborate, and advocate so that community-wide

resources are used as effectively and efficiently as possible. As part of this work, MEP is deeply invested in the use of public funds, specifically including constitutionally-dedicated funds that protect and enhance Minnesota's environment and natural resources. MEP and all of its members will be harmed by the 2018 Act's illegal use of the ENRTF to issue and service appropriations bonds. First, the 2018 Act sets a dangerous precedent which endangers the long-term survival of the ENRTF and directly threatens MEP's mission of protecting such funds. Second, the 2018 Act leaves the ENRTF with less money to both directly and indirectly support the work of MEP's member organizations. Third, the 2018 Act directly contradicts the intent of Minnesota's voters in establishing the ENRTF in the Constitution and will thus undermine the work of MEP and its member organizations. As a result, MEP's members' capacity to protect and enhance the environment for all Minnesotans will be damaged.

21. Plaintiff Minnesota Outdoor Heritage Alliance ("MOHA") is a nonprofit organization founded in 1994. MOHA is Minnesota's largest coalition of hunting, fishing, trapping, and conservation organizations. MOHA's mission is to involve all concerned outdoor groups in legislative work, citizen education, and public awareness efforts to help protect and enhance Minnesota's hunting, fishing, and trapping heritage and the natural resources that heritage depends on. MOHA was at the forefront in securing the 2008 passage of the Legacy Amendment, Minn. Const. art. XI, § 15, and establishment of the Lessard-Sams Outdoor Heritage Council to recommend how these dedicated funds should be allocated. MOHA is convinced that the 2018 Act's use of the ENRTF to support and service appropriations bonds is a violation of Minn. Const. art. XI, § 14, which sets a gravely-threatening precedent for the illegal use of other dedicated funds. In the past, members of MOHA have received funds from the ENRTF and benefited from other projects supported by the ENRTF. MOHA and its members fully expect to apply for funding from



the ENRTF in the future, and to continue to benefit from ENRTF-funded projects. As a result of the 2018 Act, MOHA and its members will suffer from the ENRTF's diminished capacity to support the important projects of MOHA members and other projects which support and protect the interests of MOHA and all sportspeople.

22. Plaintiff Friends of the Mississippi River ("FMR") is a nonprofit established in 1993 to engage Minnesotans to protect, restore, and enhance the Mississippi River and its watershed in the Twin Cities Metro area. As part of its efforts to protect and preserve a clean Mississippi River, FMR works with 2,500 members, 2,000 advocates, and over 5,000 volunteers yearly. In the course of its work to protect the Mississippi River, FMR has since 2003 received over \$1.3 million in grants from the ENRTF in partnership with the DNR and local governments. These funds have been used to restore and enhance approximately 1,607 acres of critical habitat along the Mississippi River and its watershed within the Twin Cities Metro area. The 2018 Act's use of the ENRTF will directly harm FMR and its members. In the past, FMR and its members have benefitted from ENRTF investments that help protect and restore valuable, high-quality prairies, forests, savannas, and trout streams throughout the Twin Cities Metro area. As a result, the use of the ENRTF for payments of principal and interest on appropriation bonds will cause the ENRTF to have dramatically less capacity to fund FMR's important work, directly harming the organization and its ability to protect the Mississippi River.

23. Plaintiff Organization Izaak Walton League of America-Minnesota Division ("the Ikes") is the state division of Izaak Walton League of America, Inc., a national nonprofit conservation organization founded in 1922. The Ikes' first chapters were founded shortly after the inception of the national organization. Today, sixteen local chapters in Minnesota serve as "Defenders of Soil, Air, Woods, Water, and Wildlife." The Ikes focuses its efforts on fighting for

clean water and clean renewable energy as a means to address global warming and relies on grassroots involvement to solve environmental issues. The Ikes was instrumental in the conception and passage of Minnesota's constitutionally-dedicated environmental funds, including both the ENRTF and the Legacy Amendment. The Ikes will be directly harmed by the 2018 Act's use of the ENRTF to pay debt service on appropriation bonds. The Ikes often partners with other organizations receiving funds from the ENRTF. The Ikes assists those organizations with implementing the grants and providing matching funds for grant activities. In addition, the Ikes will likely apply to receive grant money from the ENRTF in the future. As a result of the unconstitutional use of the ENRTF, the Ikes and its members will be hampered in the accomplishment of their goals by the drastically-diminished resources available to fund innovative environmental projects from the ENRTF.

24. Clean Water Action's mission is to protect our environment, health, economic well-being, and community quality of life. To this end, Clean Water Action organizes strong grassroots groups and coalitions, and campaigns to elect environmental candidates and to solve environmental and community problems. Clean Water Action believes that clean water is the foundation for healthy and prosperous communities. While our nation has made significant progress since the 1970s in cleaning up many of our rivers, lakes, and other vital water resources, Clean Water Action and its members still face significant water quality and quantity challenges. Drinking water sources are threatened by pollution and overconsumption, and some of these threats are made worse by climate change. Clean Water Action's 50,000 Minnesota members benefit from the research and other activities and projects that have been funded by the ENRTF. If money in the ENRTF is diverted to pay for other things and supplants instead of supplements existing environmental funding for cleanups and wastewater treatment, the unique benefits of the

ENRTF and other constitutionally-dedicated environmental funds will be lost, causing injury to Clean Water Action's mission and members.

25. Founded in 1990 and incorporated in 1992, Fresh Energy is a widely-recognized nonprofit leader, with a proven track record for achieving measurable progress toward a strong and prosperous Minnesota energy economy. Fresh Energy's mission is to shape and drive realistic, visionary energy policies that benefit all. Fresh Energy works toward a vision for an economy Minnesotans thrive in and energy that ensures Minnesotans' well-being. Fresh Energy is speeding Minnesota's transition to a clean-energy economy, which will ensure the region enjoys good health, a vibrant economy, and thriving communities today and for generations to come. From putting Minnesota on the pathway to being a national renewable energy leader to promoting clean transportation options for our growing economy, Fresh Energy has been an essential partner in helping the region develop efficient, cost-effective, and inclusive energy programming. Fresh Energy has serious concerns regarding the misuse of the ENRTF and allowing the ENRTF to be used to pay principal and interest on appropriation bonds. The ENRTF has been used to advance innovation in clean energy and efficiency solutions to protect the climate. By indebting the ENRTF over the long term, future ENRTF-funded projects that advance clean energy and efficiency solutions will not occur. The 2018 Act undermines the purpose and integrity of the ENRTF, and reduces the State's commitment to environmental protections that Fresh Energy is passionate about and that are core to its purpose. As a result, Fresh Energy's capacity to pursue an innovative, clean energy economy in Minnesota will be damaged.

26. Plaintiff Friends of Minnesota Scientific and Natural Areas ("FMSNA") is a Minnesota nonprofit, conservation organization dedicated to the establishment and protection of Minnesota's Scientific and Natural Areas, special places that harbor and protect endangered and

threatened plant and animal species. FMSNA is a locally-based, grassroots advocacy group incorporated in 2015 to organize state residents to protect and preserve Minnesota's Scientific and Natural Areas in their undisturbed natural state. FMSNA and its members also advocate for the scientific study and educational use of plant and animal communities and other aspects of ecology, natural history, and conservation within Minnesota's Scientific and Natural Areas. FMSNA and its members will be harmed by the 2018 Act's illegal authorization of appropriations bonds from the ENRTF. First, the 2018 Act's use of appropriation bonds from the ENRTF will leave the ENRTF with less money to acquire and conserve Minnesota's Scientific and Natural Areas. Second, the unconstitutional appropriation will leave the ENRTF with fewer resources to fund the Native Prairie Bank Program. Third, use of appropriation bonds from the ENRTF will reduce the capacity of the ENRTF to fund prospective grantees, including FMSNA, for environmental projects in the future. As a result, FMSNA's members' future enjoyment of and benefits from Minnesota's Scientific and Natural Areas will be irreparably diminished.

27. Plaintiff Minnesota Native Plant Society ("MNPS") is a locally-based, Minnesota nonprofit conservation organization founded in 1983. Its mission is to conserve native plants and their ecosystems, educate Minnesotans about native plant conservation and environmental protection, and protect and establish Scientific and Natural Areas in Minnesota. The 2018 Act harms and will harm MNPS and its members by illegally using the ENRTF to fund appropriation bonds. First, the 2018 Act decreases available ENRTF resources to acquire and conserve Minnesota's Scientific and Natural Areas, which provide desperately needed safe-harbor and protection for endangered and threatened native plants. Second, the 2018 Act leaves the ENRTF with less money to support the Native Prairie Bank Program. This Program helps to protect Minnesota's last remaining native prairies, which occupy less than two percent of their original

range. Third, the 2018 Act reduces the capacity of the ENRTF to make grants to deserving organizations, including MNPS, in the future. As a result, MNPS's members' future enjoyment of the benefits from the state's Scientific and Natural Areas and other native plant habitats will be irreparably diminished.

28. Defendant Department of Minnesota Management and Budget ("MMB") is a governmental department of the State of Minnesota created and empowered by Minn. Stat., ch. 16A and other laws. Defendant is charged with implementing the 2018 Act by creating and marketing the appropriation bonds funded by the ENRTF, distributing the proceeds of those bonds to fund the various projects appropriated money under the 2018 Act, and removing money from the ENRTF to pay for the debt service on those appropriation bonds.

29. Defendant Myron Frans is the Commissioner of Defendant MMB and is responsible for implementing the 2018 Act. Frans is a named Defendant only in his official capacity as Commissioner.

#### **HISTORY OF THE ENRTF**

30. On April 28, 1988, Governor Rudy Perpich signed 1988 Minn. Laws 1467, ch. 690, art. I, §§ 1-23 ("Chapter 690").

31. Chapter 690 proposed two amendments to the Minnesota Constitution: one creating a state lottery and the other creating the ENRTF.

32. With regard to the amendments, the following questions were submitted to voters:

a. "Shall the Minnesota Constitution be amended to establish a Minnesota environment and natural resources trust fund for environmental, natural resource, and wildlife purposes?" 1988 Minn. Laws 1467-68, ch. 690, art. I, § 1, subd. 2.

b. “Shall the Minnesota Constitution be amended to permit the legislature to authorize a lottery operated by the state?” 1988 Minn. Laws 1468, ch. 690, art. I, § 2, subd. 2.

33. Both amendments were ratified.

34. After minor amendments submitted to the voters in 1990 and 1998, Minn. Const., art. XI, § 14 now provides:

A permanent environment and natural resources trust fund is established in the state treasury. Loans may be made of up to five percent of the principal of the fund for water system improvements as provided by law. The assets of the fund shall be appropriated by law for the public purpose of protection, conservation, preservation, and enhancement of the state’s air, water, land, fish, wildlife, and other natural resources. The amount appropriated each year of a biennium, commencing on July 1 in each odd-numbered year and ending on and including June 30 in the next odd-numbered year, may be up to 5-1/2 percent of the market value of the fund on June 30 one year before the start of the biennium. Not less than 40 percent of the net proceeds from any state-operated lottery must be credited to the fund until the year 2025.

35. The commission charged with implementing the ENRTF states that Minn. Const., art. XI, § 14 serves “to provide a long-term, consistent, and stable source of funding for *innovative activities* directed at protecting and enhancing Minnesota’s environment and natural resources for the benefit of current citizens and future generations.” Legislative-Citizen Commission on Minnesota Resources, *Six-Year Strategic Plan for Minnesota’s Environment and Natural Resources Trust Fund 5* (2013) [hereinafter “Strategic Plan”] (emphasis added).

36. In addition to submitting the now ratified amendments to voters, Chapter 690 also provided the Implementing Legislation for the ENRTF. 1988 Minn. Laws 1467, ch. 690 preamble.

37. The Implementing Legislation, 1988 Minn. Laws 1469-78, art. I, §§ 5-16 (codified at Minn. Stat. §§ 116P.01-.12 (1988)), described to voters the proposed ENRTF amendment’s meaning and how the Legislature would use the ENRTF funds. *See* 1988 Minn. Laws 1480,

ch. 690, art. 1, § 23 (describing that the Implementing Legislation would have legal effect “following adoption by the voters of the constitutional amendment”).

38. The Implementing Legislation included provisions limiting how the Legislature would spend ENRTF funds.

39. Minnesota voters understood in 1988 that the ENRTF amendment would be applied and interpreted, and the funds from the ENRTF would be distributed consistent with, the Implementing Legislation.

40. In 1988, Minnesota voters understood the ENRTF constitutional amendment would be used consistent with the following legislative findings:

The legislature finds that all Minnesotans share the responsibility to ensure wise stewardship of the state’s environment and natural resources for the benefit of current citizens and future generations. Proper management of the state’s environment and natural resources includes and requires foresight, planning, and long-term activities that allow the state to preserve its high quality environment and provides for wise use of its natural resources. The legislature also finds that to undertake such activities properly, a long-term, consistent, and stable source of funding must be provided.

1988 Minn. Laws 1469, art. I, § 5 (codified at Minn. Stat. § 116P.01 (1988)).

41. Particularly relevant to this case, the Implementing Legislation provided:

The trust fund may not be used as a substitute for traditional sources of funding environmental and natural resources activities, but the trust fund shall supplement the traditional sources, including those sources used to support the criteria in section 116P.08, subdivision 1. The trust fund must be used primarily to support activities whose benefits become available only over an extended period of time.

1988 Minn. Laws 1469-78, art. I, § 7 (codified at Minn. Stat. § 116P.03 (1988)).

42. The Implementing Legislation further identified and restricted the types of appropriations that would be funded by the ENRTF:

Money in the trust fund may be spent only for:

- (1) the reinvest in Minnesota program as provided in section 84.95, subdivision 2;
- (2) research that contributes to increasing the effectiveness of protecting or managing the state's environment or natural resources;
- (3) collection and analysis of information that assists in developing the state's environmental and natural resources policies;
- (4) enhancement of public education, awareness, and understanding necessary for the protection, conservation, restoration, and enhancement of air, land, water, forests, fish, wildlife, and other natural resources;
- (5) capital projects for the preservation and protection of unique natural resources;
- (6) activities that preserve or enhance fish, wildlife, land, air, water, and other natural resources that otherwise may be substantially impaired or destroyed in any area of the state;
- (7) administrative and investment expenses incurred by the State Board of Investment in investing deposits to the trust fund; and
- (8) administrative expenses subject to the limits in section 116P.09.

1988 Minn. Laws 1472-74, art. I, § 12, subd. 1 (codified at Minn. Stat. § 116P.08, subd. 1 (1988)).

43. The Implementing Legislation also identified specific environmental programs where the ENRTF's assets would not be appropriated:

Money from the trust fund may not be spent for:

- (1) purposes of environmental compensation and liability under chapter 115B and response actions under chapter 115C;
- (2) purposes of municipal water pollution control under the authority of chapters 115 and 116;
- (3) costs associated with the decommissioning of nuclear power plants;
- (4) hazardous waste disposal facilities;
- (5) solid waste disposal facilities; or
- (6) projects or purposes inconsistent with the strategic plan.

1988 Minn. Laws 1472-74, art. I, § 12, subd. 2 (codified at Minn. Stat. § 116P.08, subd. 2 (1988)).

44. Although its name and composition has changed from time to time, the ENRTF has always been administered by a commission, now named the Legislative-Citizen Commission on Minnesota Resources ("LCCMR"), that reviews proposals and makes recommendations to the Legislature for funding from the ENRTF.

45. The Legislature has also charged LCCMR with adopting a Strategic Plan for the use of ENRTF funds. *See* Minn. Stat. § 116P.08, subd. 2(6).



46. LCCMR uses an extensive process to determine which projects to recommend for ENRTF funding. *See* Minn. Stat. § 116P.05 (2018). Proposers submit proposals to LCCMR. LCCMR members evaluate and rank all submitted proposals. And only after extensive review of all proposals do LCCMR members select the proposals to recommend for funding. LCCMR then submits recommendations to the Legislature.

47. Under this multi-step process, LCCMR aims to recommend funding for projects that are consistent with priorities laid out in the Strategic Plan.

48. Minnesota voters understood when ratifying the ENRTF that a commission, now LCCMR, would review expenditures from the ENRTF and that such expenditures would be consistent with a strategic plan.

49. In 1990 and 1998, voters ratified minor modifications to the ENRTF. The modifications related to the amount of lottery proceeds placed in the ENRTF and the amount of the ENRTF that could be appropriated each biennium. Both modifications extended the time period during which funds from the State lottery would be allocated to the ENRTF: in 1990, from 1997 to 2001; in 1998, from 2001 to 2025. The modifications show Minnesota voters continued to support this unique fund.

50. In both 1990 and 1998, the Legislature did not propose modifying the Implementing Legislation and voters continued to understand the ENRTF in the context of the Implementing Legislation.

51. Since 1988, the Legislature has amended the Implementing Legislation to change minor administrative provisions. But, prior to 2018, the Legislature did not amend that part of the Implementing Legislation that established how ENRTF funds would be spent. *See* Minn. Stat. §§ 116P.03, .08 (2017).

52. Because in 1988 Minnesota voters understood how the ENRTF amendment would be applied and interpreted, and that the funds from the ENRTF would be appropriated consistent with the Implementing Legislation, the Implementing Legislation is the best evidence of the meaning of Minn. Const., art. XI, § 14.

**THE 2018 LEGISLATURE MODIFIES THE IMPLEMENTING LEGISLATION AND AUTHORIZES USE OF APPROPRIATION BONDS TO FUND PROJECTS**

53. In the FY2018 to FY2019 biennium, the ENRTF had approximately \$50.8 million in available funds for each year.

54. LCCMR recommended the Legislature fund, either in whole or in part, sixty-six projects totaling approximately \$45.8 million from the ENRTF for FY2019.

55. The Legislature adopted sixty-five of LCCMR’s recommended projects.

56. In addition to funding these projects, the Legislature decided to use ENRTF funds to pay debt service on appropriation bonds for a specified list of projects not reviewed by LCCMR. 2018 Minn. Laws 119-20, ch. 214, art. 6, § 4.

57. Under the 2018 Act, the Legislature directed MMB to sell and issue up to \$98 million in appropriation bonds and to pay annual debt service (principal and interest) on the bonds with money from the ENRTF.

58. The Legislature then made appropriations to specific projects. Those projects include:

Recipient	Appropriation	Project
Minnesota Department of Natural Resources (“DNR”)	\$3,419,000	“[R]enovation of state-owned facilities and recreational assets within units of the outdoor recreation system”
DNR/City of Elk River	\$1,500,000	“[T]o dredge Lake Orono”
DNR/City of South St. Paul	\$781,000.00	“[C]apital improvements to improve the water quality of Seidl’s Lake”
Minnesota Pollution Control Agency	\$6,000,000	“[D]esign and construct remedial systems . . . at the Waste Disposal Engineering site in Anoka County . . . under Minnesota Statutes, [ §§ ] 115B.39 to 115B.42.”

("MPCA")/Anoka County		
MPCA/Redwood-Cottonwood Rivers Control Area	\$7,3000,000	"Predesign, design, construct, and equip . . . [the] Lake Redwood Reservoir"
Board of Water and Soil Resources	\$10,000,000	"Reinvest in Minnesota (RIM) Reserve Program"
Public Facilities Authority ("PFA")	\$6,000,000	"State Match for Federal Grants"
Public Facilities Authority	\$14,652,000	"Water Infrastructure Funding Program"
Public Facilities Authority	\$38,348,000	"Point Source Implementation Grants"
Metropolitan Council	\$10,000,000	"Metropolitan Regional Parks and Trails Capital Improvements"

2018 Minn. Laws 119-21, ch. 214, art. 6, § 4.

59. The Legislature traditionally used general obligation bonds to fund capital projects such as those in paragraph 58.

60. In fact, at one point during the 2018 Legislative Session, all of the projects listed in paragraph 58 were originally included in general obligation bonding bills.

61. The 2018 Act is demonstrably inconsistent with the purpose of the ENRTF as expressed in Minn. Const., art. XI, § 14 because the Legislature, to avoid conflicts with the Implementing Legislation, was forced to make material modifications to the Implementing Legislation, including:

Subdivision 1. Expenditures. (a) Money in the trust fund may be spent only for: . . .  
(9) to pay principal and interest on special appropriation trust fund bonds issued pursuant to section 16A.969 and other law.

. . . .

Subd. 2. Exceptions. Money from the trust fund may not be spent for:  
(1) purposes of environmental compensation and liability under chapter 115B and response actions under chapter 115C;  
(2) purposes of municipal water pollution control in municipalities with a population of 5,000 or more under the authority of chapters 115 and 116;  
(3) costs associated with the decommissioning of nuclear power plants;  
(4) hazardous waste disposal facilities;  
(5) solid waste disposal facilities; or

(6) projects or purposes inconsistent with the strategic plan.

2018 Minn. Laws 100, 119, ch. 214, art. 4, § 3, art. 6, § 2.

62. The Legislature also explicitly stated that its use of appropriation bonds from the ENRTF was “notwithstanding any limitation on use of trust fund money in” the Implementing Legislation. 2018 Minn. Laws 119, ch. 214, art. 6, § 4, subd. 2.

63. The 2018 Act was first posted for public view the same day it was voted on and passed by the Legislature.

64. The 2018 Act did not receive any public hearings at the Legislature.

65. Governor Mark Dayton signed the 2018 Act on May 30, 2018, as part of a larger bonding bill authorizing issuance of approximately \$900 million in general obligation bonds.

66. In doing so, Governor Dayton expressed opposition to this use of the ENRTF funds, stating that the use of appropriation bonds from the ENRTF was “dangerous” and “if continued, would drain the resources from this Fund.”

**THE PLAIN LANGUAGE OF MINN. CONST., ART. XI, § 14 DOES NOT AUTHORIZE  
THE USE OF ENRTF FUNDS FOR DEBT SERVICE**

67. The 2018 Act directed MMB to issue appropriation bonds whose principal and interest would be serviced by funds from the ENRTF. *See* Minn. Stat. § 16A.969.

68. The 2018 Act states: “[t]his authorization meets the public purposes established by the [Minn. Const., art. XI, § 14] and [Minn. Stat., ch. 116P] and shall be a supplement to the traditional sources of funding for environment and natural resources activities.” 2018 Minn. Laws 116, ch. 214, art. 6, § 1.

69. Despite this recitation, the authorization does not meet the public purposes because the plain language of Minn. Const., art. XI, § 14 does not include “paying principal and interest on special appropriation trust fund bonds.”

70. Pursuant to the 2018 Act, \$7.84 million “is appropriated each fiscal year beginning in fiscal year 2020 through fiscal year 2039” from the ENRTF to pay principal and interest on the appropriation bonds. 2018 Minn. Laws. 119, ch. 214, art. 6, § 4, subd. 4.

71. Over the twenty-year life of the bonds, MMB has estimated that about \$66 million will be spent paying interest on the principal of \$98 million.

72. The 2018 Act diverts \$7.84 million from the ENRTF that would otherwise be available each fiscal year for projects that satisfy Minn. Const., art. XI, § 14’s public purpose of protection, conservation, preservation, and enhancement of the state’s air, water, land, fish, wildlife, and other natural resources, or as loans to fund water system improvements.

73. Using the ENRTF to pay interest on the appropriation bonds, which will total approximately \$66 million over the life of the bonds, violates the plain language of Minn. Const., art. XI, § 14.

74. Any expenditure that is not consistent with Minn. Const., art. XI, § 14’s intent is an unlawful disbursement of public money and a breach of fiduciary duty on the part of public officials.

**THE 2018 ACT IS ON ITS FACE INCONSISTENT WITH THE CONSTITUTIONAL PURPOSE OF THE ENRTF BECAUSE IT WAS ENACTED “NOTWITHSTANDING” THE IMPLEMENTING LEGISLATION.**

75. Despite legislative findings to the contrary, the 2018 Act, by its own terms, is not consistent with “the public purposes established by the [Minn. Const., art. XI, § 14] and [Minn. Stat. ch. 116P]” because the Legislature could only make those appropriations by first stating “notwithstanding any limitation on use of trust fund money in [Minn. Stat. ch. 116P].” 2018 Minn. Laws 119, ch. 214, art. 6, § 4, subd. 2.

76. The 2018 Act, therefore, is not consistent with the ENRTF's public purpose as established in the Implementing Legislation, but instead abrogates those purposes for the projects receiving appropriations.

77. The Implementing Legislation, codified in Minn. Stat. ch. 116P (1988), is the best evidence of the voters' intent when Minn. Const., art. XI, § 14 was ratified.

78. The appropriation bonding and the funded projects are inconsistent with the Implementing Legislation and violate the constitutional purpose set forth in Minn. Const., art. XI, § 14.

79. Any expenditure that is not consistent with Minn. Const., art. XI, § 14's intent is an unlawful disbursement of public money and a breach of fiduciary duty on the part of public officials.

#### **THE PROJECTS ARE INCONSISTENT WITH THE MINNESOTA CONSTITUTION**

80. The 2018 Act appropriated funds needed to pay principal and interest on the appropriation bonds each fiscal year from the ENRTF to MMB.

81. MMB was authorized to sell and issue up to \$98 million, net cost of issuance, of the appropriation bonds.

82. The 2018 Act appropriated the proceeds of the bond sale for various projects.

83. Although Minn. Stat. § 116P.05 (2018) establishes an administrative process for the selection of projects, none of the projects receiving appropriated funds had gone through that process.

84. Some of the projects receiving appropriations under the 2018 Act conflict with the plain language in Minn. Const., art. XI, § 14.

85. Some of the projects receiving appropriations under the 2018 Act are inconsistent with the allowed expenditures in, or expressly prohibited by, the Implementing Legislation, Minn. Stat. § 116P.08, subs. 1-2 (1988).

86. Plaintiff Organizations take no position on the merits of the individual projects.

*Waste Water System Improvements*

87. The Legislature appropriated \$59 million for grants to fund waste water system improvements. 2018 Minn. Laws 121-22, ch. 214, art. 6, § 4, subd. 8.

88. The Minnesota Constitution specifically limits expenditures from the ENRTF for water system improvements, stating “[l]oans may be made of up to five percent of the principal of the fund for water system improvements as provided by law.” Minn. Const., art. XI, § 14.

89. The language regarding water system improvements in Minn. Const., art. XI, § 14 constitutes words of limitation.

90. Loans are different from bonds.

91. Loans are different from grants.

92. Using the ENRTF for bonds to finance grants, rather than loans, to fund waste water system improvements violates the words in limitation in Minn. Const., art. XI, § 14.

93. The Implementing Legislation also explicitly excluded using the ENRTF for “municipal water pollution control under the authority of chapter 115 and 116.” Minn. Stat. § 116P.08, subd. 2(2) (1988).

94. In appropriating funding to PFA to pay for waste water system improvements, the Legislature admitted that it was inconsistent with the Implementing Legislation by using a “[n]otwithstanding” clause.

95. The Implementing Legislation is the best evidence of the voters' intent at the time Minn. Const., art. XI, § 14 was ratified.

96. Using the ENRTF to fund wastewater system improvements violates Minn. Const., art. XI, § 14, because it is contrary to voter intent.

97. Further, the Implementing Legislation provides that the "trust fund may not be used as a substitute for traditional sources of funding environmental and natural resources activities, but the trust fund shall supplement the traditional sources . . . ." Minn. Stat. § 116P.03 (1988).

98. The Legislature has traditionally authorized general obligation bonds to be issued to fund grants for water system improvements.

99. Thus, use of the ENRTF to fund waste water system improvements supplants, rather than supplements, traditional sources of funding contrary to the voters' intent.

100. The 2018 Act's appropriation to PFA is inconsistent with the Implementing Legislation and violates Minn. Const., art. XI, § 14, and therefore must be enjoined.

*Anoka County – Waste Disposal Engineering Closed Landfill*

101. The 2018 Act apportions \$6 million in funds from the appropriation bonding to MPCA to "design and construct remedial systems, including cleanup and removal of a leaking hazardous waste pit and protection of groundwater, at the Waste Disposal Engineering site in Anoka County in accordance with the closed landfill program under [Minn. Stat. § 115B.39-.42]." 2018 Minn. Laws 120, ch. 214, art. 6, § 4, subd. 6(1).

102. The Implementing Legislation, Minn. Stat. § 116P.08, subd. 2(1) (1988), specifically prohibits the use of the ENRTF for "purposes of environmental compensation and liability under chapter 115B . . . ."



103. The Implementing Legislation, Minn. Stat. § 116P.08, subd. 2(4) (1988), specifically prohibits the use of the ENRTF for “hazardous waste disposal facilities.”

104. The Implementing Legislation, Minn. Stat. § 116P.08, subd. 2(5) (1988), specifically prohibits the use of the ENRTF for “solid waste disposal facilities.”

105. In making this appropriation, the Legislature admitted that the 2018 Act was inconsistent with the limits established in the Implementing Legislation by using a “[n]otwithstanding” clause.

106. Because the Implementing Legislation, Minn. Stat. § 116P.08 (1988), was enacted when the ENRTF was submitted to the voters for approval, it is the best evidence of the intent of the voters at the time Minn. Const., art. XI, § 14 was ratified.

107. Using the ENRTF to fund cleanup and removal of a leaking hazardous waste pit violates Minn. Const., art. XI, § 14, because it is contrary to voter intent.

108. Further, the Implementing Legislation provides that the “trust fund may not be used as a substitute for traditional sources of funding environmental and natural resources activities, but the trust fund shall supplement the traditional sources . . . .” Minn. Stat. § 116P.03 (1988).

109. Cleanup and removal of leaking hazardous waste pits are projects traditionally funded through means other than the ENRTF.

110. Use of the ENRTF to fund the cleanup and removal of a leaking hazardous waste pit supplants, rather than supplements, traditional sources of funding contrary to the voters’ intent.

111. The appropriation to MCPA to clean up the Waste Disposal Engineering site in Anoka County is inconsistent with the Implementing Legislation, codified at Minn. Stat. §§ 116P.03, 116P.08 (1988), and violates Minn. Const., art. XI, § 14, and therefore must be enjoined.

*All Projects*

112. The Legislature used appropriation bonds funded through the ENRTF to fund the projects listed in paragraph 58.

113. The Implementing Legislation, Minn. Stat. § 116P.08, subd. 2(6) (1988), provides that ENRTF funds “may not be spent for . . . projects or purposes inconsistent with the strategic plan.”

114. LCCMR published the most recent Strategic Plan in December 2013. *See* Strategic Plan, *supra* ¶ 35.

115. The Strategic Plan sets forth tangible goals LCCMR intended to meet with its selection of projects through the normal process.

116. In appropriating money from the ENRTF, the Legislature admitted that it was not consistent with the limits established in the Implementing Legislation by using a “[n]otwithstanding” clause.

117. Because the Implementing Legislation, Minn. Stat. § 116P.08 (1988), was enacted when the ENRTF was submitted to the voters for approval, it is the best evidence of the intent of the voters at the time Minn. Const., art. XI, § 14 was ratified.

118. By circumventing the administrative process in Minn. Stat. § 116P.05 (2018) and failing to do any factfinding regarding whether the projects listed in paragraph 58 receiving funding from ENRTF appropriation bonds serve the goals outlined by the Strategic Plan, the 2018 Act violates Minn. Const., art. XI, § 14, because it is contrary to voter intent.

119. Further, the Implementing Legislation provides that the “trust fund may not be used as a substitute for traditional sources of funding environmental and natural resources activities, but the trust fund shall supplement the traditional sources . . .” Minn. Stat. § 116P.03 (1988).

120. The capital projects funded through use of ENRTF appropriation bonds and set forth in paragraph 58 have traditionally been funded through other means, primarily general obligation bonds.

121. Use of the ENRTF to fund the projects listed in paragraph 58 supplants, rather than supplements, traditional sources of funding contrary to the voters' intent.

122. The use of ENRTF appropriation bonding to fund the projects listed in paragraph 58 is inconsistent with the Implementing Legislation, codified at Minn. Stat. §§ 116P.03, 116P.08 (1988), and violates Minn. Const., art. XI, § 14, and therefore must be enjoined.

**COUNT 1**  
**VIOLATION OF MINNESOTA CONSTITUTION**

**Unconstitutional Use of the ENRTF to Pay Principal and Interest on Bonds**

123. Plaintiff Organizations restate and reallege all preceding paragraphs.

124. Under Minn. Const., art. XI, § 14, the Legislature can appropriate money from the ENRTF for the following purpose: "The assets of the fund shall be appropriated by law for the public purpose of protection, conservation, preservation, and enhancement of the state's air, water, land, fish, wildlife, and other natural resources."

125. The 2018 Act appropriates ENRTF assets for payment of principal and interest on appropriation bonds totaling \$98 million.

126. The appropriation bonds will be repaid over twenty years.

127. Approximately \$66 million will be paid in interest.

128. The payment of principal and interest on appropriation bonds is not authorized by the Minn. Const., art. XI, § 14 and is an unconstitutional diversion of money from the ENRTF.

129. In particular, the payment of interest to bondholders is not authorized by Minn. Const., art. XI, § 14 and is an unconstitutional diversion of money from the ENRTF.

130. The payment of principal and interest on appropriation bonds in the amount over \$98 million will reduce the amount of money in the ENRTF available to fund “innovative activities directed at protecting and enhancing Minnesota’s environment and natural resources for the benefit of current citizens and future generations.” *See Strategic Plan, supra* ¶ 35, at 5.

131. The payment of \$98 million in principal and approximately \$66 million in interest on appropriation bonds will reduce the amount of money available to be spent for constitutionally-permitted purposes.

132. The payment of \$98 million in principal and approximately \$66 million in interest on appropriation bonds causes damage to Plaintiff Organizations and their members who depend on ENRTF funding for innovative projects that protect, conserve, preserve, and enhance natural resources and to fulfill their missions.

133. Even if some of the projects receiving ENRTF appropriations were consistent with ENRTF purposes, the interest payments violate Minn. Const., art. XI, § 14, because such payments benefit only bondholders, not the environment and natural resources of the State of Minnesota.

134. The sale of the appropriation bonds authorized by the 2018 Act and funded through the ENRTF violates Minn. Const., art. XI, § 14, and should be enjoined.

**COUNT 2**  
**VIOLATION OF MINNESOTA CONSTITUTION**

**Unconstitutional Use of the ENRTF to Substitute for Traditional Funding**

135. Plaintiff Organizations restate and reallege all preceding paragraphs.

136. In approving Minn. Const., art. XI, § 14, Minnesota voters understood ENRTF money would not be used to substitute for traditional sources of funding for environmental and natural resources activities.

137. Minnesota voters understood the constitutionally-dedicated funds would supplement traditional funding for the “protection, conservation, preservation, and enhancement of the state’s air, water, land, fish, wildlife, and other natural resources.”

138. Minnesota voters understood ENRTF funds would be spent on “innovative activities directed at protecting and enhancing Minnesota’s environment and natural resources for the benefit of current citizens and future generations.” *See Strategic Plan, supra* ¶ 35, at 5.

139. The Implementing Legislation is the best evidence of voter intent at the time Minnesota voters ratified Minn. Const., art. XI, § 14.

140. The Implementing Legislation included Minn. Stat. § 116P.03 (1988), which provides:

The trust fund may not be used as a substitute for traditional sources of funding environmental and natural resources activities, but the trust fund shall supplement the traditional sources, including those sources used to support the criteria in section 116P.08, subdivision 1. The trust fund must be used primarily to support activities whose benefits become available only over an extended period of time.

141. The projects listed in paragraph 58 are the types of projects the Legislature has traditionally funded in other ways, primarily using general obligation bonds.

142. In fact, at one point during the 2018 Legislative Session all of the projects listed in paragraph 58 were submitted for funding through state general obligation bond proceeds.

143. Even if the appropriation bonds were an allowable use of the ENRTF to fund appropriations, funding the projects set forth in paragraph 58 is still unconstitutional because it authorizes expenditure of ENRTF money to fund projects that were traditionally funded in other ways, primarily using general obligation bonds.

144. Because the 2018 Act allocates use of ENRTF money that substitutes for, rather than supplements, traditional sources of funding, the appropriations under the 2018 Act violate Minn. Const., art. XI, § 14 and should be enjoined.

**COUNT 3**  
**VIOLATION OF MINNESOTA CONSTITUTION**

**Unconstitutional Use of the ENRTF for Municipal Water Pollution Control Grants**

145. Plaintiff Organizations restate and reallege all preceding paragraphs.

146. Under Minn. Const., art. XI, § 14, ENRTF funds can be used for the following purpose: “Loans may be made of up to five percent of the principal of the fund for water system improvements as provided by law.”

147. The clause regarding the use of “[l]oans . . . for water system improvements” limits how ENRTF funds can be spent for water system improvements and, thus, constitutes words of limitation.

148. The plain language of Minn. Const., art. XI, § 14 only allows ENRTF funds to be used on water system improvements by use of loans, not grants.

149. The plain language of Minn. Const., art. XI, § 14 only allows ENRTF funds to be used on water system improvements by use of loans, not bonds.

150. Using the ENRTF to pay for bonds funding grants for water system improvements violates the plain language of the Minn. Const., art. XI, § 14.

151. The Implementing Legislation also explicitly excluded using the ENRTF for “municipal water pollution control under the authority of chapter 115 and 116.” Minn. Stat. § 116P.08, subd. 2(2) (1988).

152. The Implementing Legislation is the best evidence of the voters’ intent at the time Minn. Const., art. XI, § 14 was ratified.

153. The Implementing Legislation provides that ENRTF funds cannot be used for “purposes of municipal waste pollution control under the authority of chapters 115 and 116.” Minn. Stat. § 116P.08, subd. 2(2) (1988).

154. In appropriating funding to PFA to pay for municipal water pollution control, the Legislature admitted that the 2018 Act was inconsistent with the Implementing Legislation by using a “[n]otwithstanding” clause.

155. The Legislature cannot avoid a conflict between the 2018 Act and Minn. Const., art. XI, § 14 by use of this “[n]otwithstanding” clause.

156. Using the ENRTF to fund municipal water pollution control improvements violates Minn. Const., art. XI, § 14, because it is contrary to voter intent.

157. The 2018 Act appropriates money to PFA for the purpose of making grants to pay for municipal water pollution control.

158. The PFA appropriations under the 2018 Act violate Minn. Const., art. XI, § 14’s plain language and the voters’ intent at the time the ENRTF amendment was ratified.

**COUNT 4**  
**VIOLATION OF MINNESOTA CONSTITUTION**

**Unconstitutional Use of the ENRTF to Fund a Pollution Control Project**

159. Plaintiff Organizations restate and reallege all preceding paragraphs.

160. The 2018 Act apportions \$6 million in funds from the appropriation bonding to MPCA to “design and construct remedial systems, including cleanup and removal of a leaking hazardous waste pit and protection of groundwater, at the Waste Disposal Engineering site in Anoka County in accordance with the closed landfill program under [Minn. Stat. § 115B.39-.42]. 2018 Minn. Laws 120, ch. 214, art. 6, § 4, subd. 6(1).

161. The Implementing Legislation, Minn. Stat. § 116P.08, subd. 2 (1988), specifically prohibits the use of the ENRTF for “purposes of environmental compensation and liability under chapter 115B . . . .” ; for “hazardous waste disposal facilities”; and for “solid waste disposal facilities.”

162. Because the Implementing Legislation, Minn. Stat. § 116P.08 (1988), was enacted when the ENRTF was submitted to the voters for approval, it is the best evidence of the intent of the voters at the time Minn. Const., art. XI, § 14 was ratified.

163. In making this appropriation, the Legislature admitted that the 2018 Act was inconsistent with the limits established in the Implementing Legislation by using a “[n]otwithstanding” clause.

164. The Legislature cannot avoid a conflict between the 2018 Act and Minn. Const., art. XI, § 14 by use of this “[n]otwithstanding” clause.

165. The Waste Disposal Engineering site in Anoka County is a closed solid waste landfill.

166. The Waste Disposal Engineering site contains a hazardous waste disposal facility.

167. Using the ENRTF to fund “cleanup and removal of a leaking hazardous waste pit” at the Waste Disposal Engineering site is inconsistent with the Implementing Legislation, Minn. Stat. § 116P.08, subd. 2(1), (4)-(5), and violates Minn. Const., art. XI, § 14, because it is contrary to voter intent.

168. The MPCA appropriation for the Waste Disposal Engineering site under the 2018 Act violates Minn. Const., art. XI, § 14’s purpose and voter intent at the time the ENRTF amendment was ratified.



**COUNT 5**  
**VIOLATION OF MINNESOTA CONSTITUTION**

**Unconstitutional Use of the ENRTF For Projects Not Consistent with the Strategic Plan**

169. Plaintiff Organizations restate and reallege all preceding paragraphs.

170. The Legislature used appropriation bonds funded through the ENRTF to fund the projects listed in paragraph 58.

171. The Implementing Legislation, Minn. Stat. § 116P.08, subd. 2(6) (1988), provides that ENRTF funds “may not be spent for . . . projects or purposes inconsistent with the strategic plan.”

172. Because the Implementing Legislation, Minn. Stat. § 116P.08 (1988), was enacted when the ENRTF was submitted to the voters for approval, it is the best evidence of the intent of the voters’ intent at the time Minn. Const., art. XI, § 14 was ratified.

173. In appropriating money from the ENRTF, the Legislature admitted that the 2018 Act was inconsistent with the limits established in the Implementing Legislation by using a “[n]otwithstanding” clause.

174. The Legislature cannot avoid a conflict between the 2018 Act and Minn. Const., art. XI, § 14 by use of this “[n]otwithstanding” clause.

175. LCCMR did not determine that the projects listed in paragraph 58 were consistent with the Strategic Plan.

176. LCCMR did not review the projects listed in paragraph 58 at all.

177. The Legislature made no findings that the projects listed in paragraph 58 are consistent with the Strategic Plan.

178. By circumventing the process and failing to do any factfinding regarding whether the projects listed in paragraph 58 receiving funding from ENRTF appropriation bonds serve the

goals outlined by the Strategic Plan, the projects violate Minn. Const., art. XI, § 14, because it is contrary to voter intent.

**COUNT 6**  
**BREACH OF FIDUCIARY DUTY**

**The Legislature Ordered MMB to Breach Its Fiduciary Duty to the Citizens of Minnesota**

179. Plaintiff Organizations restate and reallege all preceding paragraphs.

180. The ENRTF is a trust fund.

181. The ENRTF trust fund resides in the state treasury and has a res. *See* Minn. Const., art. XI, § 14.

182. The ENRTF trust fund has the following explicit purpose: “The assets of the fund shall be appropriated by law for the public purpose of protection, conservation, preservation, and enhancement of the state’s air, water, land, fish, wildlife, and other natural resources.” Minn. Const., art. XI, § 14.

183. MMB inherited the duties of the state treasurer and is the fiduciary for the ENRTF trust fund.

184. Minnesota’s citizens, including Plaintiff Organizations and their members, are the designated beneficiaries of the ENRTF. *See* Minn. Const., art. XI, § 14.

185. Minnesota’s citizens, including Plaintiff Organizations and their members, have an enforceable right to the performance of the trust for their benefit.

186. As the fiduciary, MMB owes a duty to Minnesota’s citizens to maintain the ENRTF trust fund and use the ENRTF in a manner consistent with the purposes for which it was established.

187. If MMB uses ENRTF trust fund as directed by the Legislature in the 2018 Act, MMB will breach its fiduciary duty to Minnesota's citizens, including Plaintiff Organizations and their members, by using the ENRTF in a manner inconsistent with Minn. Const., art. XI, § 14.

188. Plaintiff Organizations, therefore, are entitled to have this illegal appropriation of funds enjoined.

### **REQUEST FOR RELIEF**

Plaintiff Organizations respectfully ask that this Court:

A. Find that by reason of the foregoing, there exists a justiciable controversy between Plaintiff Organizations, and their members, and Defendants, which must be resolved by decree of this Court and that Plaintiff Organizations and their members are entitled to a declaration of their rights respecting the unconstitutionality of the 2018 Act.

B. Find the 2018 Act is unconstitutional.

C. Find Plaintiff Organizations, and their members, will suffer irreparable harm both now and in the future due to the unconstitutional diversion of funds that would otherwise have been used as authorized by Minn. Const., art. XI, § 14 for the purpose of purpose of "protection, conservation, preservation, and enhancement of the state's air, water, land, fish, wildlife, and other natural resources" or "loans for of up to five percent of the principal of the fund for water system improvements as provided by law."

D. Find that if such unconstitutional disbursement of funds from the ENRTF were made, it would be a breach of Defendants' fiduciary obligations which will irreparably harm Plaintiff Organizations and their members.

WHEREFORE, Plaintiffs pray for judgment and a decree of this Court as follows:

I. Declaring the 2018 Act authorizes unconstitutional expenditures of money from the ENRTF;

II. Declaring the 2018 Act authorizes unlawful disbursements of public money or illegal actions on the part of public officials;


III. Enjoining Defendants and any agency or individual acting on behalf of Defendants from issuing appropriation bonds and making appropriations as provided in the 2018 Act;

IV. Awarding Plaintiff Organizations their costs and attorney fees; and

V. Awarding Plaintiffs Organizations such other relief as the Court deems just and proper.

Date: October 3, 2018

MINNESOTA CENTER FOR ENVIRONMENTAL  
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ACKNOWLEDGEMENT

Plaintiffs, by their attorneys, acknowledge that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties pursuant to Minn. Stat. § 549.211 (2018).

MINNESOTA CENTER FOR  
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