



May 3, 2021

Senator Bill Ingebrigtsen
Co-Chair, Environment and Natural Resources Conference Committee
3207 Minnesota Senate Building
95 University Avenue West
St. Paul, MN 55155

Representative Rick Hansen
Co-Chair, Environment and Natural Resources Conference Committee
407 State Office Building
St. Paul, MN 55155

Dear Chair Ingebrigtsen and Chair Hansen:

Thank you for your ongoing work toward arriving at a joint legislative position for the Department of Natural Resources (DNR) budget and policy provisions, contained in the Omnibus Environment Bill, SF959.

As you know, Minnesotans have been embracing outdoor activities and Minnesota's natural resources in record numbers to manage stress and anxiety during the pandemic, and to find solace in nature. Given the clear value the public places on Minnesota's natural resources and outdoor spaces, we believe now is a critical time to reinvest in our infrastructure and operations. To that end, the Governor's FY22-23 budget maintains current funding levels across programs, ranging from parks and trails operations and enforcement activities to timely permitting processes and state forest management, while also making strategic key investments.

The House bill largely funds the Governor's budget initiatives, while the Senate proposal makes \$9.8 million in General Fund reductions across the DNR. Some of these reductions will be realized as cuts to programs and services, while a portion of the spending is shifted to dedicated funding sources that cannot sustain increased spending levels. This is not a viable funding approach to ensure the future of Minnesota's outdoors and natural resources.

We know the Conference Committee is scheduled to meet Monday, May 3, to begin the side-by-side walk through. This letter addresses the impacts of the Senate's proposed budget reductions and spending shifts, and compares the investments made in the Governor's budget to the House and Senate budget proposals. We also highlight other issues in both the House and Senate language we hope can be resolved prior to final resolution on the Omnibus Environment Bill.

Impacts of General Fund Reductions and Shifts in the Senate

Minerals Environmental Research

The Senate makes a \$322,000 General Fund base reduction to the Division of Lands and Minerals in FY22-23. As a part of this reduction, the bill eliminates the entire \$238,000 biennial General Fund appropriation for minerals research and pulls funds instead from the Minerals Management Account. This program has been providing critical data needed for environmental review and permitting decisions since the 1970s. Removing the stability of General Fund support negatively impacts our ability to conduct effective mining regulation.

Water Management

The Senate also makes a \$3.0 million reduction to DNR's water management programs and the Division of Ecological and Water Resources. This reduction would have significant impacts to water programming across the state, eroding our ability to provide technical services to small communities, permittees, and other stakeholders seeking hydrologist assistance. The reduction would also inhibit our research and promotional efforts related to water conservation. Furthermore, it would slow progress on the County Geologic Atlas, which local communities use to inform their own water management decisions.

Aquatic Invasive Species

The DNR is committed to containing the spread of aquatic invasive species (AIS) throughout Minnesota. The Senate reduces General Fund investment in AIS programs by \$1 million in FY22-23 and shifts this funding to the Heritage Enhancement Account in the Natural Resources Fund. Continued General Fund investment is critical to ensure that DNR can effectively work with partners to both protect the habitat of native plants and animals and support the continuation of a strong outdoor recreation economy.

Forest Management

The Senate also makes a \$3.1 million reduction to the Division of Forestry, shifting \$1.7 million of that reduction to the Forest Management Investment Account (FMIA) in the Natural Resources Fund. This is another example of placing an additional burden on strained dedicated funding sources. As both the Senate and House have already recognized through their timber relief initiatives, Minnesota's timber industry is experiencing economic difficulties, which puts FMIA in a precarious position. Shifting additional spending to FMIA would constrain future opportunity, ultimately resulting in fewer forest management activities.

State Parks and Trails

Minnesota's state park system is in a financially unsustainable position given a structural health issue in the State Parks Account that results in a projected deficit by the end of FY22-23. The Senate bill takes a one-time approach to addressing the projected deficit in the State Parks Account by reducing appropriations from this account by \$1 million in FY22 and shifting those expenses temporarily to lottery in lieu dollars. We oppose this shift and encourage investment in the future of our state park system.

The Senate bill also reduces General Fund appropriations for grants to local parks and trails, and shifts these appropriations to lottery in lieu dollars. The DNR opposes shifting General Fund spending on local parks and trails to other sources, just as we oppose similar shifts to our own agency operations. The Senate bill also makes a \$500,000 General Fund reduction to state park operations in FY22-23 and in future years, which would result in public-facing reductions to park programs and services.

Enforcement

The Senate makes a \$336,000 base reduction to our Division of Enforcement in FY22-23, and shifts that same amount to the Heritage Enhancement account within the Game and Fish Fund. This shift continues the historical trend of moving the Enforcement Division's funding from the General Fund to dedicated funding sources, limiting our flexibility to provide general public safety services and ultimately resulting in less capacity to provide service to Minnesotans.

Strategic Investments in the Governor's Budget Relative to the House and Senate

The Governor's FY22-23 budget furthers the DNR's mission by maintaining critical services delivery and making strategic new investments that fall into four thematic categories: connect people with the outdoors, mitigate climate change, proactively manage natural resources, and address operational needs. The section below uses the strategic investments contained in the Governor's budget as a basis for examining the House and Senate bills.

Connect People to the Outdoors

Maintain High-Quality Park and Recreation Area Experiences

Similar to the Governor's proposed budget, the House maintains current state park service levels through a modest increase in state park vehicle fees. As mentioned above, the Senate does not support the proposed state park fee increase. The investment provided by the Governor's proposal and the House (though the House delays the fee increase for a year) would allow DNR to continue to provide outdoor family time and health and wellness benefits for all Minnesotans at state parks and recreation areas. Specifically, we would be able to continue current camping seasons at state parks, maintain park trails and signage, and offer interpretive naturalist programs for school groups and the broader public. The Senate does not include the Governor's recommendation to maintain these state park service levels through a modest fee increase. Without these fee increases, we would be forced to reduce services that Minnesotans are currently enjoying in record numbers. We support the fee schedule as proposed in the Governor's budget to both maintain services and provide a solution to the structural imbalance in the State Parks Account.

Invest in Water Recreation

Consistent with the Governor's proposed budget, the House makes needed investments in Minnesota's public water access infrastructure through modest boat registration fee increases. These increases would allow us to provide increased rehabilitation of existing public water accesses in collaboration with local government partners, maintain public water access sites and water trails, increase efforts to prevent the spread of aquatic invasive species by adding boat-cleaning stations, and upgrade facilities to meet current Americans with Disabilities standards.

The Senate does not fund these proposed investments. Boat registration fees have not been raised since 2006, and the continued failure to raise these fees means that investment in the state's water recreation system would not keep pace with Minnesotans' expectations and actual use of the system. Users would experience a decline in the maintenance of boat access sites and water trails, which would impact local water recreation tourism economies just at the time they are recovering from the impacts of the pandemic.

Invest in State Forest Campgrounds

The DNR operates twenty-six state forest campgrounds on school trust lands. Currently, all camping fee revenues are deposited in the Permanent School Fund, and the DNR must subsidize the operation and maintenance of these campgrounds from other funds. The Governor recommended in his budget that DNR be authorized to capture 80 percent of the camping fees from those state forest campgrounds to cover maintenance and operations, with the remaining 20 percent of revenue continuing to go to the Permanent School Fund. Neither the House nor the Senate includes this recommendation, effectively requiring the DNR to continue to subsidize the full cost of maintenance and operation of these campgrounds with other funds. Without the ability to reinvest campground revenues into operations, we would not be able to maintain the current level of maintenance at these campgrounds, nor make additional visitor enhancements.

Mitigate Climate Change

Accelerated Tree Planting to Capture Carbon

The House includes the Governor's recommended General Fund investment of \$2.6 million each biennium for expanding capacity at the state forest nursery. This investment would increase the number of seedlings available for planting as an economical and common sense way to offset greenhouse gas emissions. We greatly appreciate the House's support of this important piece of Minnesota's climate change mitigation strategy and we urge the Senate to support this initiative.

Proactively Manage Natural Resources

Modernize Minnesota's Forest Inventory

We appreciate that both the House and Senate proposals include a one-time investment from the Forest Management Investment Account (FMIA) within the Natural Resources Fund to modernize DNR's forest inventory work. This investment would significantly enhance the quality and extent of Minnesota's forest inventory through the purchase of high-density light detection and ranging ("LiDAR"). It would lower annual forest inventory costs in the future, allow for more frequent reevaluation of forest stands, improve data accuracy, and increase overall efficiency. The House provision is consistent with the Governor's recommendation of \$500,000 per year in FY22 and FY23, whereas the Senate includes only one year of investment.

Addressing Chronic Wasting Disease

One of DNR's top priorities for protecting our natural resources is an urgent and aggressive response to the spread of chronic wasting disease (CWD). Toward that end, the Governor recommended a one-time General Fund investment of \$1 million for response, surveillance, and enforcement efforts. The House funds a portion of the Governor's recommendation, whereas the Senate eliminates all General Fund support for CWD response efforts and shifts all CWD spending to the Game and Fish Fund. While we appreciate the Senate's recognition of the importance of funding CWD response, shifting CWD response costs to the Game and Fish Fund places further burden on a fund that is already projected to go negative in the next few years. Furthermore, this shift unfairly places the full cost burden on deer hunters, making fewer license dollars available for other vital deer management work. Finally, this shift is also counter to the Game and Fish Fund Budget Oversight Committee recommendation that more General Fund dollars be made available to support fish and wildlife work that broadly benefits Minnesotans.

We strongly support General Fund investment in CWD surveillance and response, and in light of the additional

work that will be necessary as a result of the CWD-positive captive deer in Beltrami County, we urge full funding for this initiative. With this latest detection, CWD has traveled more than 300 miles, from Winona County to Beltrami County. Minnesota has 500,000 deer hunters who are part of a vibrant outdoor recreation economy and many other Minnesotans, including agricultural producers and other rural landowners, benefit from deer hunting. It is imperative that action is taken to ensure that the state has adequate resources to address the further spread of this disease.

Also related to preventing the spread of CWD, the House transfers responsibilities for administering and enforcing rules regarding farmed cervidae from the Board of Animal Health to the DNR. The DNR supports this transfer. If these responsibilities do transfer, it is essential that the final bill adequately fund this additional work.

Ensure Full-Use of Critical Habitat License Plate Contributions

We appreciate that the Senate includes the Governor's recommended modifications to the popular Reinvest in Minnesota (RIM) Critical Habitat License Plate program to accelerate investments in land management and other activities to improve habitat for fish and wildlife, rare resources, and native plants. These modifications include changing the equal (1:1) matching requirement to \$2.00 license plate dollars for every \$1.00 in private donation (2:1); allowing for increased use of nongame donations; allowing some state appropriations to serve as RIM matching dollars; and providing a limited amount of funding for monitoring and evaluation as part of adaptive management and improvement of critical habitat.

The House also includes some of these proposed modifications, including the change in matching requirements and the increase in nongame funding. However, the House also includes a provision that would direct funding to specific purposes (essentially game v. nongame) based on the license plate image. This approach would hinder DNR's ability to acquire and improve critical habitat due to the additional restrictions placed on license plate dollars. We support the Governor's and Senate's shared position on the RIM critical habitat program modifications.

Simplify the Aquatic Invasive Species (AIS) Surcharge

The Governor proposed a small increase in the aquatic invasive species (AIS) surcharge from the current three-year fee of \$10.60 to \$11.00 to make watercraft registration easier and more efficient for deputy registrars and boat owners in Minnesota. The Senate does not include this recommendation or make any changes to AIS related fees. By contrast, the House goes beyond the Governor's recommend and proposes \$25.00 for a three-year fee. Of this proposed \$25.00 surcharge, \$4 would be allocated to the University of Minnesota for AIS research, \$2 would be allocated for grants to lake associations, and the remaining \$19.00 would go to the DNR for AIS prevention programs. The DNR would use the additional funding to enhance our aquatic invasive species programing, including increased inspections, training, research, and response to new detections.

Address Operational Needs

Ensure Public Safety

Over the past year, the State has called upon DNR conservation officers to provide public safety assistance with unprecedented frequency and scale, and it is essential for the General Fund to reimburse this work. The DNR cannot use dedicated funding sources such as the Game and Fish Fund to pay for these general public safety activities. We appreciate the legislature's continued support for meeting these urgent fiscal needs and want to highlight that there would be a need for additional funding in the months ahead.

Related to public safety costs, we are also concerned about the state law enforcement officer pay equity issue and support the House and Senate's efforts to address pay for conservation officers and other members of the

Minnesota Law Enforcement Association bargaining unit who did not receive the pay increase given to State Patrol last year. We would like to see this addressed, whether in the final environment bill or in another bill area.

Legal Costs

The Governor recommended a onetime General Fund appropriation of \$4 million in FY22-23 to cover legal costs at DNR and MPCA. The House bill appropriates \$2 million for this purpose, and the Senate bill does not fund these critical needs. Legal costs related to PolyMet, White Bear Lake, the challenge to the state's non-ferrous mining rule, and other major matters would be significant going forward. DNR and MPCA's operating budgets cannot absorb such costs, and we urge the House and Senate to support the Governor's budget recommendations in this important area.

Protecting Digital Assets against Cyber Attack

The House includes a portion of the Governor's recommendation to provide \$1.1 million annually from the General Fund to establish an information technology (IT) security and modernization program to protect DNR IT systems from cyberattack and migrate to a more secure and efficient cloud-based infrastructure. The Senate does not include any funding for these urgent needs. Omission of this funding increases our security risk and diminishes efforts to protect customer and stakeholder data, including data on minors, from cyberattack, and thereby risks erosion of the public trust. We encourage full funding for this initiative.

Operating Adjustment

We appreciate that the House's proposed budget provides funding for our anticipated General Fund cost growth at the same level as the Governor's budget. This represents a 0.3 percent increase in the DNR's budget across all funds and would not address the inflation-related pressures these funds and programs experience. However, the increase will play an important role in helping us maintain our service levels in FY22-23. We urge the Senate to support the operating adjustment as recommended by the Governor in the final bill.

Other Budget and Policy Items in House and Senate

We are pleased the Senate and House bills include the 2020 and 2021 lands bills and DNR's 2020 and 2021 policy bills. The House also carries the agency's Driving Under the Influence (DUI) uniformity bill, which was first introduced in 2020. The language provides clarification and updates DUI statutes to conform with the passage of "Little Alan's Law". While much of the agency policy language is technical, it is programmatically important. Below are items in the House and Senate bills that are of concern to the DNR.

Legislative-Citizen Commission of Minnesota Resources

We urge the conference committee to develop a resolution on the Legislative-Citizen Commission on Minnesota Resources (LCCMR) recommendations in the bill. As stated in our March 3rd letter to the LCCMR Chairs, because the legislature did not pass an LCCMR bill during the 2020 regular or special sessions, we did not receive our annual appropriation of \$135,000 to administer Environment and Natural Resource Trust Fund (ENRTF) grants in FY21. These appropriations are DNR's sole source of funding for this work, and we have expended all funding currently provided to us. To avoid disruption in the LCCMR grant process, we are temporarily funding the costs with other DNR operating funds, which will need to be repaid with ENRTF funds when the bill is passed. We are quickly approaching the point when DNR will no longer be able to sustain this temporary funding approach. Without a new appropriation, the DNR will be unable to continue our administrative work on the 72 grants that are currently open.

Senate

Minneiska Boat Launch Dredging (SF959, Article 1, Sec. 3, Subd 3(k))

The Senate bill includes a \$100,000 one-time General Fund appropriation for the dredging of the Minneiska boat launch. Consistent with our position in past sessions, DNR does not support dredging a river access to facilitate use by boats larger than the access was designed and permitted to accommodate. DNR would prefer to see these resources invested in water recreation facilities that have broader benefit and that are consistent with sustainable natural resource management.

Unadopted Rules (SF959, Article 2, Sec. 17)

The Senate bill would prevent the DNR from enforcing un-adopted rules. We believe this provision is unnecessary since MN Statute 14.381 already prohibits unpromulgated rulemaking. Furthermore, we are concerned that this provision, as proposed, could be interpreted to include policies and guidance that inform the internal management of the department and that do not directly affect the rights of, or procedures available to, the public. The use of guidance is fundamental to all state agencies' operations. DNR needs to be able to provide interpretation and assistance in navigating complex rules and laws. Requiring an agency to promulgate rules on guidance documents would be burdensome and expensive, and would add unnecessary delays to permit processes relying on these guidance documents, and create confusion among regulated communities. It would also treat DNR guidance differently than other agencies' policy guidance. All of these impacts would undermine the integrity of the rulemaking process that this bill seeks to preserve. DNR opposes the Senate position.

Wolf Season (SF959 Article 2, Sec. 68)

DNR is currently in the process of updating the state's 20-year-old Wolf Management Plan through a public process. The plan is based on wildlife science, input from stakeholder groups and people across Minnesota, as well as consultation with tribal nations. A draft plan will be released for public review and comment in the summer of 2021. Given the significant public interest in this plan, we believe it is essential to complete this process before considering holding a wolf hunt. DNR opposes the Senate's language in the bill because we believe it is premature and, if passed into law, it would circumvent the important science-based work and the public process currently underway.

Turtle Sellers License (SF959 Article 2, Sec. 75)

DNR proposed legislation this year to address the growing concerns around turtle population decline. The DNR has long recognized the need to phase out commercial turtle harvest. Following a series of public meetings from 2001-2004, the DNR developed a legislative initiative and initiated administrative rulemaking that created the current regulatory framework for turtle harvest in Minnesota. This framework was designed to achieve the goal of slowly phasing out commercial turtle harvest in Minnesota. The Senate proposal lifts the planned phase out of permitted commercial turtle harvesters. Allowing commercial turtle harvest to perpetuate would continue to allow for unsustainable levels of turtle harvest in Minnesota, putting several turtle species at risk.

Public Waters Inventory (SF959 Article 2, Sec. 85)

Senate language in the bill giving local governments veto power over DNR corrections to the Public Water Inventory (PWI) is a clear and direct attempt to circumvent ongoing legal challenges. Allowing local governments veto power without any basis or criteria likely would cause confusion over the regulatory status of public waters. A

water body is subject to public water regulations if it meets the statutory definition, regardless of identification on the inventory. Having the inventory not reflect waters that meet the statutory definition because of a local veto of a correction to the inventory would only create confusion, misunderstandings, and possibly violations within those waters not correctly identified. The PWI is an important tool for managing one of Minnesota's most valuable resources – public water, but this language has the potential to damage its usefulness. DNR opposes this language.

Fens (SF959 Article 2, Sec. 86)

The language in the Senate bill moves the cost of the hydrologic evaluation and permit review for calcareous fens from the permit applicant, as is current practice, to the taxpayer. DNR opposes this provision, as it is an unnecessary burden to state taxpayers and is inconsistent with the state's general approach of requiring permit applicants to supply data needed to evaluate their application.

Minnow Importation (SF959 Article 2, Sec. 75 and Sec. 77)

The DNR is opposed to the minnow importation provisions found in the Senate proposal. The language would allow for the potential importation of invasive species or diseased fish into our state. Importation of live minnows is a high-risk potential pathway for invasive carp to be introduced because young silver carp and golden shiner minnows look identical for all practical purposes. In addition to the potential for invasive species to be contained in a large load of fish, it is also very difficult to detect and test for disease.

Irrigation and Groundwater Management (SF959, Article 2, Secs 89, 90, 91, 92, and 93)

The Senate bill has irrigation and groundwater management provisions similar to those that the DNR has opposed during prior sessions.

- The language conflicts with Minnesota's water law [Chapters 103A-103G] by implying western water rights, whereby water is owned as a property right that can be bought and sold. This contrasts sharply with Minnesota's regulated riparian system, where water is a public trust resource managed by the state for all citizens.
- Requiring the automatic transfer of appropriation permits may mislead property buyers into believing that the permit is not subject to future modification.
- The bill also contains language that prevents the DNR from discussing a groundwater management area with the public. Withholding public data is in direct conflict with the Data Practices Act (MN Statute Chapter 13).

The "sustainability standard" language in the bill misapplies the work of Thresholds Stakeholder Group. The Thresholds Stakeholder Group recommended a threshold range between ten and twenty percent for watercourses depending on site specific characteristics. In contrast, the senate bill takes a one size fits all approach applying a single value to both flowing and non-flowing waters.

Moratorium on Special Permits to Take Canada Goose Nests and Eggs (SF959 Article 2, Sec. 165)

DNR has concerns about the language in the Senate bill regarding the moratorium on special permits to take Canada goose nests and eggs. The permits DNR issues are an important tool that allow for safe and humane management of goose populations. DNR has issued 41 permits in 2021 that allow egg and nest work at airports for runway safety. Municipalities and agricultural producers also obtain permits to manage populations that, if unchecked, would cause damage or a public nuisance. By placing a moratorium on permits, it would eliminate a useful tool where there are concerns about health impacts, property damage, and safety impacts resulting from

large geese populations that cannot be managed effectively through recreational hunting.

House

Sustainability Standard (UESF959 Article 5, Sec. 88)

The House Sustainability Standard language requires DNR to determine that the level of recharge is sufficient to replenish the aquifer when determining if a water appropriation for consumptive use is sustainable. Aquifer recharge cannot be directly measured; it is highly variable from one year to the next, and often follows climate cycles fluctuating over decades. Furthermore, the term replenish is not time bound, leaving considerable room for interpretation, thus making compliance with this standard extremely difficult.

Conclusion

Minnesotans are proud of our nationally-recognized outdoor recreations system; our hunting and angling opportunities; and the economic opportunities resulting from our natural resources. With more Minnesotans appreciating and using our natural resources and outdoor recreation opportunities, this is a critical time to be investing. Reducing funding now would undermine the quality of experiences Minnesotans are seeking today and jeopardizes the future availability of these experiences. DNR is committed to working with the House and Senate to address issues mentioned in this letter prior to finalization of the bill.

Thank you for the opportunity to work with you this session on these critical natural resources budget and policy issues.

Sincerely,



Sarah Strommen
Commissioner

CC:

Majority Leader, Paul Gazelka, Minnesota Senate
Minority Leader, Susan Kent, Minnesota Senate
Speaker Melissa Hortman, Minnesota House of Representatives
Minority Leader Kurt Daudt, Minnesota County Of Representatives

Members of the Environment and Natural Resources Conference Committee

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