



To: HF 888 Environment and Natural Resources Omnibus Bill Conference Committee Members

Representative and Committee Chair Fabian
Representative Swedzinski
Representative Ecklund

Representative Heintzeman
Representative Uglem

Senator and Committee Chair Ingebrigtsen
Senator Westrom
Senator Tomassoni

Senator Ruud
Senator Mathews

April 26, 2017

Dear Environment and Natural Resources Conferees:

On behalf of the undersigned organizations and their hundreds of thousands of Minnesota members, we would like to highlight a number of provisions in the Environment and Natural Resources Omnibus Bill Conference Committee (HF 888) that are of great concern for the environment and conservation communities. We also note that we are happy to see that the provision which establishes a goal for improving water quality by 25% by the year 2025 is in the Senate version.

Though we do not detail them all here, we share many of the agency concerns as indicated in their most recent letters. We also have significant concerns about the cuts to the core work of protecting our Great Outdoors. The Senate proposes a \$40 million reduction in general fund support, the House \$21 million, during a time of budget surplus -- and also during a time when our air, land and water needs more investment, not less.

Below is an outline of outcomes we would like to see from the conference committee for HF 888. Thank you for your consideration.

No Net Gain of Public Land in Northern Counties. (Department of Natural Resources)

House:	Page R1	Lines 32.22 – 33.11
Senate:	None	

This section allows one county board to thwart: (1) a landowner's conservation incentive to sell land to the DNR, knowing that other state land in the same county must be sold; (2) Minnesotans' present and future state-wide conservation goals; and (3) the will of Minnesota voters, who adopted two constitutional amendments to establish the Minnesota Environment and Natural Resources Trust Fund and the Clean Water, Land, and Legacy funds, which are dedicated, in part, to acquisition of land for conservation purposes. **We urge you to adopt the Senate position.**

Buying Expedited Permits. (Department of Natural Resources)

House: Page R3 Lines 34.26 – 35.18
Senate: Page R3 Lines 104.4 – 104.30

This provision allows permit applicants to pay a fee in addition to the existing permit application fees to expedite the permitting process for their business. This disadvantages smaller businesses that may not have the resources to pay an expedited fee and are then put behind other businesses that do. **We ask that this provision be dropped from further consideration.**

Expanding the Definition of Rules. (Department of Natural Resources)

House: Page R4 Lines: 36.3 – 36.8
Senate: Page R4 Lines: 105.14 – 105.26

This provision hobbles the DNR from carrying out their duties. It bars the DNR from enforcing against any permittee or polluter any guidance, policy, or interpretation that meets the definition of a rule under Minn. Stat. 14.02, without first conducting full Chapter 14 rulemaking, and creates a presumption against the agency in any challenges alleging that DNR is enforcing an un-adopted rule. The guidance, policy, and other interpretations provided by the DNR is intended to answer common questions, typically from regulated parties, about how the DNR’s rules and state law would be applied, without resorting to court action.

This provision also establishes presumption that DNR guidance documents are invalid, un-promulgated “rules.” This makes environmental regulation much more complex, time consuming and expensive – it’s the opposite of streamlining. It also invites litigation. Guidance documents that are truly being used inappropriately can already be challenged in court under existing law. **We ask that this provision be dropped from further consideration.**

Removal of Contested Case and Appeal Options / Excluding Public Participation.

House: Pages R30-32 Lines 58.24 – 60.30
AND
Pages R33 Lines 60.32 – 61.30
Senate: Pages R33 Lines 106.8 – 106.11

These provisions taken together eliminate public participation in mining permits. It limits the right of affected citizens and local governments to have a “contested case” hearing on mining permits, allowing it only for adjacent property owners and affected governments. A contested case is an opportunity to present evidence, question industry and agency experts, and build a solid record to support smart decisions, including how lands can be reclaimed and what type and amount of financial assurance should be required from mining companies. Since 1969 this has been a right of citizens, guaranteeing public participation in important decisions that affect the whole state. **We ask that these provisions be dropped from further consideration.**

Rules Limiting Use of Lead Shot Prohibited.

House: None.
Senate: Page R39 Lines: 105.14 – 105.26

This provision restricts the DNR from using existing authority to reduce non-target mortality of birds (including Bald Eagles) and wildlife exposed to lead shot. Steel shot is readily available, performs similarly as lead, costs the same or less, and is non-toxic to birds and wildlife that ingest it. Modern ballistics have developed many superior ammunition loads and restricting the use of toxic lead shot makes environmental sense and does not impact Second Amendment rights. **We urge you to adopt the House position.**

Progress Goals for Improving Water Quality.

House: None.
Senate: Page R43 Lines: 64.25 – 66.50

This provision establishes a goal of improving water quality by 25% by the year 2025. It also details a broad public and stakeholder engagement process to consider water safety and quality parameters such as chloride, infectious agents, phosphorus, sediment, nitrates, lead, and other factors that contribute to biological and human health risks. **We urge you to adopt the Senate position.**

Buffer Rollbacks

Authority to issue penalty orders

House: Page R45 Lines 68.26 – 69.7
Senate: Page R45 Lines 66.7 – 66.19

This provision removes the administrative penalty order option for counties and watershed districts to enforce buffer requirements, leaving this authority only with the Board of Water and Soil Resources. It is important that counties and watershed districts have the option to use administrative penalty orders to enforce buffer requirements. **We ask that this provision be dropped from further consideration.**

Shoreland classification

House: Page R46 Lines 70.16 and 70.21-70.22
Senate: Page R46 Lines 67.29 and 68.3 – 68.4

This provision limits the 50-foot buffer requirement to only those waterways that have a shoreland classification, leaving all other waterways subject to only the 16.5 foot buffer requirement. This exempts 200,000 acres and 24,000 miles of watercourses from 50-foot buffer requirements, rolling back many water protections that were in place before passage of the 2015 buffer law. **We ask that this provision be dropped from further consideration.**

Buffer delay

House: Page R47 Lines 71.12 – 71.13
Senate: Page R47 Lines 68.34 – 69.1

This provision delays implementation of 50-foot buffers for one year, despite Board of Water and Soil (BWSR) and local Soil and Water Conservation District (SWCD) reports that most counties already have 60 – 100% compliance with the law. **We ask that this provision be dropped from further consideration.**

Seed mixes / Buffer law suspension

House: None
Senate: Page R47 Lines 69.5 – 69.10

This provision requires that any new planting of buffers use only seed mixes that were grown and processed in Minnesota, and if those seeds cannot be found, the buffer requirement is not enforceable. This is an unnecessary restriction that would severely reduce buffer protections for water quality and wildlife habitat. Minnesota’s Seed and Noxious Weed statues already prohibit noxious weeds and provide a strict process for seed importation, labeling, and inspection. Recent incidence of Palmer Amaranth was the result of an illegal sale that is under investigation for enforcement action. The Minnesota Department of Agriculture has implemented an eradication program and focused its attention on preventing future seed contamination from outstate sources. The Minnesota grown restriction also eliminates planting common haying mixes. Haying and grazing are two ways that buffers can be used to benefit farmers. This law all but eliminates these options because there are few if any alfalfa, brome, or orchard grass mixes available from Minnesota. Additionally, alfalfa is highly beneficial for pollinators, who would be negatively affected by the loss of habitat and food sources. **We ask that this provision be dropped from further consideration.**

Eliminates buffer requirement unless 100% paid for with state or federal assistance

House: Page R48 – R49 Lines 71.18 – 72.27
Senate: Page R47 Lines 69.5 – 69.10

This provision eliminates the buffer requirement unless the state or federal government pays for the entire cost of establishing buffers. The Senate goes further and also requires that the state or federal government make either annual payments or an easement for the land. **We ask that this provision be dropped from further consideration.**

Reducing Supply of Groundwater to Rare Calcareous Fens.

House: None.
Senate: Page R57 Lines 76.24 – 108.13

Calcareous Fens are one of the rarest and most sensitive ecosystems in Minnesota. They support an unusually large number of rare and threatened plant species including several that live only in calcareous fens. Groundwater is their lifeblood. They are very susceptible to disruptions in their groundwater supply. When the native plants are stressed, aggressive invasive species move in to push them out. Once the invasive species have a foothold, they do not leave even if natural levels are returned. This provision requires that the DNR reduce the supply of groundwater and it will lead to an irreparable loss of many calcareous fens. **We urge you to adopt the House position.**

Discounting Well Interference Damage.

House: None.
Senate: Page R65 Lines 82.8 – 82.16

Requiring the use of a depreciation schedule in well interference settlements is unnecessary and will harm rural families who depend on private wells for their drinking water. The value of the water they no longer have access to due to the actions of another does not depreciate. Additionally, the lifespan of a well can vary dramatically from one well to the next. Factors may include the type of well, how it is drilled, the local geology, how the well is used, and the volume of water withdrawn. Any consideration of the current condition of the affected wells is best evaluated on a case-by-case basis via the settlement process. This is a one-size-fits-all approach that further harms those who lose their wells due to the interference from others. **We urge you to adopt the House position.**

Bypassing Agency Scientists for Proposed Pollution Control Agency Actions.

House: Pages R66 – R69 Lines 87.12 – 90.25
Senate: Pages R66 – R69 Lines 108.14 – 111.24

This additional layer of review takes the science out of agency decisions. It eliminates deference to PCA's science when a water quality decision is challenged, and creates a special process for municipalities to end run existing expertise and challenge agency decisions. This to support a few municipalities that want to re-fight a losing battle over the state's science based river eutrophication standards. Their science and arguments haven't held up in front of agencies or courts, and this section creates a new opportunity to rehash the same arguments at taxpayer expense and delay. **We ask that this provision be dropped from further consideration.**

Clean Air Act (VW) Settlement Money.

House:	Page R80	Lines 97.3 – 97.7
Senate:	Page R80	Lines 88.12 – 88.22

Minnesota is poised to gain \$47 million from the VW settlement, but this provision could result in Minnesota missing out on those funds. The funds should be used under the guidance of the Trustee, to redress the public health effects of pollution from VW's vehicles. **We ask that this provision be dropped from further consideration.**

Buying Expedited Permits. (Pollution Control Agency)

House:	Page R82	Lines 98.30 – 98.19
Senate:	Page R82	Lines 116.9 – 116.32

This provision allows permit applicants to pay a fee, in addition to the existing permit application fees, to expedite the permitting process for their business. This disadvantages smaller businesses that may not have the resources to pay an expedited fee and are then put in line behind other businesses that do. **We ask that this provision be dropped from further consideration.**

Expanding the Definition of Rules. (Pollution Control Agency)

House:	Page R83	Lines 100.5 – 100.27
Senate:	Page R83	Lines 117.18 – 117.30

This provision hobbles the MPCA from carrying out their duties. It bars the MPCA from enforcing against any permittee or polluter any guidance, policy, or interpretation that meets the definition of a rule under Minn. Stat. 14.02, without first conducting full Chapter 14 rulemaking, and creates a presumption against the agency in any challenges alleging that MPCA is enforcing an un-adopted rule. The guidance, policy, and other interpretations provided by the MPCA is intended to answer common questions, typically from regulated parties, about how the MPCA's rules and state law would be applied, without resorting to court action.

This provision also establishes presumption that MPCA guidance documents are invalid, un-promulgated "rules." This makes environmental regulation much more complex, time consuming and expensive – it's the opposite of streamlining. It also invites litigation. Guidance documents that are truly being used inappropriately can already be challenged in court under existing law. **We ask that this provision be dropped from further consideration.**

Elimination of Responsibilities for the Environmental Quality Board.

House: Page R85 Lines 101.18 – 102.3
Senate: None.

This provision removes the jurisdiction for the Environmental Quality Board to consider and investigate environmental issues of community interest, including population and settlement patterns, air and water resources and quality, solid waste management, transportation and utility corridors, economically productive open space, energy policy and need, growth and development, and land use planning. **We urge you to adopt the Senate position.**

Weakening Environmental Review Standards for the Largest Feedlots.

House: None.
Senate: Page R88 Lines 120.9 – 120.13

This provision doubles the size a large feedlot can be before mandatory environmental review is required -- from 1,000 animal units to 2,000 in virtually all cases. Environmental review plays a critical role in allowing rural neighbors to understand what is being proposed and have a meaningful say in the process. The current standard is very generous, impacting only the largest 7% of feedlots in our state and only 9 large feedlots were required to do an environmental review in 2016. **We urge you to adopt the House position.**

Environmental Review: Corporations to Write Their Own.

House: Page R90. Lines 106.21 – 106.27
Senate: Page R90 Lines 122.25 – 122.31 AND 123.1 – 123.7

This provision allows corporations to write their own environmental impact statements. This effectively puts the fox in charge of the hen house as this language restricts the government’s role to “review, modification and determination of completeness and adequacy” of an EIS. This is antithetical to the whole point of environmental review, which is to allow the regulator (and public) to gather information about environmentally harmful impacts of a project and alternatives. It also prevents the public from accessing all of the underlying data and analyses that support the EIS because private companies are not subject to data practices laws.

The Senate includes language that would make data used in writing the environmental review public, an important provision if this language is to remain. But this improvement does not address the underlying problems with this language. **We ask that this provision be dropped from further consideration.**

Merchant Bags: Prohibit Local Government Bans.

House: None.
Senate: Page R97 Lines 95.18 – 95.30

This provision prohibits local government from banning or placing fees on plastic bags. Banning or charging a fee on plastic bags is a proven effective method of reducing air and water pollution, protecting wildlife and human health by keeping plastic out of our food stream and providing significant economic savings to communities. Local communities have already democratically voted to implement a bag ban, and this pre-emption bill erodes local control and overrides the political will of the residents. **We urge you to adopt the House position.**

Removal of PCA Requirement to Adopt Air Quality Standards for Silica Sand.

House: Page R99 Lines 108.2 – 108.10
Senate: Page R99 Lines 97.29 – 98.3

The Senate provision removes the requirement that the MPCA adopt air quality standards for frac sand mines. Long-term low level exposure to silica dust can cause silicosis, which is fatal. Communities need these standards to protect their citizens. **We ask that this provision be dropped from further consideration.**

Sand Dunes State Forest: Interference with Science-Based Management.

House: Pages R101-R102 Lines 110.20 – 111.18
Senate: Pages R101-R102 Lines 101.1 – 101.13

This section does an end run around the existing well-established, science-based forest planning process that already includes the involvement of local citizens and representatives. Except for a pre-existing contract, if any, this section revokes the authority to restore any part of the forest to native oak savannah, of which less than 1% of Minnesota’s original oak savannah forest remains. **We ask that this section be dropped from further consideration.**

Effluent Limitation: Delaying Actions to Clean-up Polluted Water.

House: Pages R104-R105 Lines 113.14 – 113.26
Senate: Pages R104-R105 Lines 101.14 – 101.24

This provision exempts cities that build new facilities from future technology updates to meet standards for clean water for 16 years. This provision broadly delays actions to clean-up pollution and creates more uncertainty for operators because it puts state-issued water pollution permits at odds with federal Clean Water Act requirements. **We ask that this section be dropped from further consideration.**

Groundwater Permits for Special Interests by Statute.

House: None
Senate: Pages R105-R106 Lines 100.7 -- 100.31

This provision requires that the DNR issue a groundwater use permit to irrigators impacting calcareous fens in Pipestone County. The permit provides unprecedented special treatment not available to other permittees elsewhere. The special treatment includes a permit that is significantly longer than other water users can get. It also cannot be revoked within the first five years and after that then only under unfairly limited circumstances. Additionally, if DNR does find a reason to revoke the permit, state funds must pay for the private irrigation equipment already installed. After the initial fifteen-year term, the permit becomes irrevocable. DNR is also required to perform expensive monitoring and analysis of the impacts of the permit on nearby calcareous fens. **We urge you to adopt the House position.**

Suspension of Water Quality Standards.

House: None.
Senate: Page R 106 Lines 123.8 – 102.20

This provision suspends water quality standards adopted between mid-2014 and mid-2019 if a facility would have to make updates to protect water quality. This section aims to block standards that protect rivers from algae-causing pollution and new standards proposed for pollutants such as sulfate or nitrate. This could lead MPCA to rely more on less-certain narrative standards, and put MPCA at odds with the Clean Water Act, which requires compliance with EPA-approved standards such as the river eutrophication standard. **We urge you to adopt the House position.**

Thank you for your consideration.



Steve Morse

Minnesota Environmental Partnership

Alliance for Sustainability
Audubon Chapter of Minneapolis
Center for Biological Diversity
Clean Water Action
CURE (Clean Up the River Environment)
Friends of Minnesota Scientific & Natural Areas
Friends of the Boundary Waters Wilderness
Friends of the Cloquet Valley State Forest
Friends of the Mississippi River
Institute for Local Self Reliance
Izaak Walton League – Minnesota Division
Land Stewardship Project
League of Women Voters Minnesota

Lower Phalen Creek Project
Minnesota Center for Environmental Advocacy
Minnesota Conservation Federation
Minnesota Native Plant Society
Minnesota Ornithologists Union
Minnesota River Valley Audubon Chapter
MN350
Pesticide Action Network
Pollinate Minnesota
Renewing the Countryside
Save Our Sky Blue Waters
Sierra Club – North Star Chapter
Transit for Livable Communities

