



RE: Environment and Natural Resources Omnibus Bill (SF844)

May 27, 2017

Dear Governor Dayton,

Thank you for your resolve in defending what Minnesotans love about our state, including your strong work on behalf of Minnesota's environment and natural resources and your unyielding interest in the public good.

Now that the legislature has again passed a complete budget, we know that you are now weighing your options on your next steps.

This has been a tough and challenging year. In the area of environment and conservation, we faced dozens of bills containing raids, rollbacks and restrictions on citizen engagement. Citizens across the state worked tirelessly throughout the session to stop these provisions at every turn, but ultimately many still reached your desk. We are grateful for your veto of the first Environmental Budget bill, the positions you articulated in your veto letter and the negotiations that dropped many of these harmful provisions from the second Environmental Budget bill (SF 844) that is now before you. Thank you.

As you know, this Environment and Natural Resources Bill retains numerous detrimental provisions. While SF844 is much better than its predecessor (HF888), it is still part of a continuing trend of legislation that is chipping away at protections and the resources that safeguard our Great Outdoors.

We are writing to ask for your continued leadership. We believe that the harmful positions contained in this bill warrant a veto. However, given other considerations, if you feel it is in the overall best interest of the state to sign this bill, we ask that you take executive actions regarding a few of the most problematic provisions that remain. These actions, via signing statement or executive order, would help offset some of the damage that will be done by this bill the legislature has sent you.

We ask you to address the following provisions with these suggested corrective actions:

Appropriations:

Cutting \$22 million in operational funding to local Soil and Water Conservation districts resulting in a raid on the Clean Water Fund.¹

This raid amounts to a 10% diversion of the Clean Water Fund for a second biennium in a row, and cuts \$22 million in drinking, ground and surface water protections across the state. We believe that, taken together, this reduction, as contained in the Environmental Budget Bill (SF 844) and the Legacy Bill (HF 707), constitutes a clear violation of the commitment made in law by the 2015 budget and violates the intent of the Legacy Constitutional Amendment. We are greatly concerned about what this means for the long-term integrity of the Clean Water Fund and the overall Legacy Amendment.

Action: Commit to submitting a supplemental appropriations request to the 2018 legislature to restore general funds for these SWCD operations in FY19 and provide for ongoing base general fund support for this purpose in future biennia.

Policy:

Limiting citizen rights based on property ownership.

Article II: Sections 57-59

Since 1969, participating in a contested case petition has been a right of citizens, guaranteeing public participation in important decisions that affect the whole state. This provision would appear to limit this legal tool for mine permits to only those people who own property affected by the proposed operation.

Examples of those who appear to lose their right to contest mine permits include:

- People renting property that would be affected by a proposed mine;
- Fishing guides downstream of a proposed mine;
- People who hunt, fish and gather on lands and waters that would be affected by a proposed mine;
- Local governments not identified in an application for a permit to mine, but whose drinking water quality could be affected by water pollution.

Action: Issue a signing statement for SF 844 stating that:

- 1) Participation rights under existing Minnesota Rule 6132.4000, subpart 2(C) have been preserved in the legislation; and
- 2) You are directing your DNR to use the discretion retained in the law to hold a contested case hearing on all copper-nickel mining permits, including dam safety and water appropriations permits related to the permit to mine, and that all persons and governments potentially affected by the permits will be eligible to participate in this contested case hearing process under Minnesota Rule 1400.6200.

¹ We are pleased to see a provision in the Tax Bill that would use future surplus general fund balances to repay the Clean Water Fund for this raid, however the fate of that bill and the availability of future funds is unclear.

Reducing Supply of Groundwater to Rare Calcareous Fens.

Article II: Section 112

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 and 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 groundwater levels are returned.

This change in law greatly weakens the clear protection that calcareous fen habitats have had since the passage of the Minnesota Wetland Conservation Act more than a quarter century ago. Allowing seasonal drawdowns of water flows during the growing season to these sensitive habitats filled with unique plants, could do long term damage to these ecosystems about which we know little.

Action: Show extreme caution in any exercise of this authority. Direct your DNR to not approve any calcareous fen management plan that shows any measurable drawdown of ground water.

Removal of PCA Requirement to Adopt Air Quality Standards and Environmental Review Standards for Frac Sand Operations.

Article II: Section 105

Long-term low-level exposure to silica dust can cause silicosis, which is fatal.

This provision removes the mandate passed in 2013 that the “commissioner of the Pollution Control Agency shall adopt rules pertaining to the control of particulate emissions from silica sand projects.” Four years later these rules are yet to be adopted. Stakeholders participated in a year-long process to develop draft rules that should have been implemented over a year ago.

Action: Direct the MPCA Commissioner to begin the rulemaking process to implement these draft rules to protect Minnesotans from the health impacts of silica dust from frac sand facilities.

Rules Limiting Use of Lead Shot Prohibited.

Article II: Sec. 164

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 until 2019.

Although the language states, "...the commissioner of natural resources shall not adopt rules further restricting the use of lead shot"...[emphasis added], it does not prohibit other actions to reduce the amount of lead being released into the outdoors.

Action: Direct the DNR Commissioner to: (1) proceed with rule-making to restrict the use of lead bullets (as distinguished from lead shot) for all zones in Minnesota; and (2) continue the current rule-making process to restrict the use of lead shot, and expanding it for all zones in Minnesota, with the adoption date of July 1, 2019.

If you decide to sign this bill with these bad provisions into law, we ask that you take these actions at the time that you sign it, either through an executive order or a signing statement. By taking these steps Minnesota, as a state, will be better positioned to deal with the negative outcomes of the 2017 legislative session.

At a time when the air, soils and waters that sustain Minnesotans face ever greater challenges, our state should be doing more, not less. We should be moving forward to meet challenges together, not backward. We know you know this, and for your leadership and support we are thankful.

Please do not hesitate to contact me at any time should you have any questions.

Sincerely,



Steve Morse

Minnesota Environmental Partnership

Alliance for Sustainability

Audubon Chapter of Minneapolis

Center for Biological Diversity

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 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

Transit for Livable Communities

WaterLegacy