



To: Members of the Environment and Natural Resources Conference Committee

Re: **Please build a strong SF 959 to move forward on today's biggest challenges**

May 2, 2021

Dear Legislators:

Thank you for serving on this important committee. The environment and our natural resources are among our people's greatest shared assets. This conference committee has a significant opportunity to move forward on some of the biggest challenges facing our environment today:

- Alarming pollinator declines
- Degraded soil health, water quality and farm profitability
- Naturally sequestering carbon and greenhouse gas emissions through forests
- Landfill and waste streams
- Upholding citizen participation into environmental decisions.

We, the undersigned organizations and the many Minnesota residents we represent, ask you to put together the best of the House and Senate provisions to make a strong bill that will meaningfully tackle these and other challenges.

This letter comments first on policy provisions, then on the budget (p.11) and ENRTF appropriations.

Article II: Environment and Natural Resource Policy

While the following is not a comprehensive list, our coalition would like to highlight many provisions we strongly support as well as provisions of concern (p. 6) in these bills.

We strongly support the following provisions:

Bulk transport or sale of water prohibited.

Senate: 3rd Engrossment, Article 2, Section 88

House: Unofficial Engrossment, Article 5, Section 87
(page R64 of the side-by-side)

This provision maintains the supply of Minnesota's drinking water by prohibiting bulk transport of water further than 50 miles from where it is appropriated.

We ask you to include this language from both the Senate and the House.

Mattress Recycling

Senate: 3rd Engrossment, Article 2, Section 116

House: *No Language.*

(page R89 of the side-by-side)

We ask you to include this language from the Senate.

Application of certain pesticides prohibited in cities that adopt such ordinances.

Senate: *No Language.*

House: Unofficial Engrossment, Article 5, Sections 16 and 17

(page R11 of the side-by-side)

These sections would allow cities to have local control over pesticide regulations. This could help protect pollinators in these locations including the rusty patched bumble bee. This also requires maintenance of a list of pollinator-lethal pesticides on the department's website.

We ask you to include this language from the House.

Insecticides on State Lands.

Senate: *No Language.*

House: Unofficial Engrossment, Article 5, Section 30

(page R21 of the side-by-side)

“A person may not use a product containing an insecticide in a wildlife management area, state park, state forest, aquatic management area, or scientific and natural area if the insecticide is from the neonicotinoid class of insecticides or contains chlorpyrifos.”

Neonicotinoid insecticides are harmful to pollinators, birds, aquatic invertebrates and large mammals. A DNR study testing white-tailed deer spleens for neonicotinoid pesticides show the presence of this pesticide in deer throughout our state, even deep in our forests, and at levels known to impact fawn survival. Chlorpyrifos is a pesticide known for its damaging effects on the human nervous system, posing especially elevated risks for children as their brains and nervous systems develop.

We ask you to include this language from the House.

Nontoxic shot required for taking small game in certain areas.

Senate: *No Language.*

House: Unofficial Engrossment, Article 5, Section 71

(page R21 of the side-by-side)

This provision requires the use of non-toxic (lead-free) shot on wildlife management areas in a farmland zone. Lead shot, ammunition and fishing tackle are responsible for significant unintentional deaths among wildlife from loons and swans to bears. Shards also contaminate meat and pose a risk to public health – no level of lead exposure is safe. Alternatives to lead shot exist and should be required in these areas designed for the health of wildlife.

We ask you to include this language from the House.

Taking turtles; requirements.

Senate: 3rd Engrossment, Article 2, Section 78

House: Unofficial Engrossment, Article 5, Section 78

(page R51 of the side-by-side)

The House provision eliminates the turtle seller's license, ending the commercial harvest and sale of wild-caught turtles in Minnesota. The unique life history of turtles puts them at high risk of extinction when commercial harvest is a factor. Unlike many fish and game species managed via regulated harvest, turtles are long lived and many species take a decade or more to mature. Harvest of adult turtles, especially adult females, from wild turtle populations can result in population-level declines over the long term, even at relatively low harvest rates. The majority of states have prohibited commercial harvest, many in recent years, leaving Minnesota as one of approximately a dozen states that still allows commercial harvest of wild-caught turtles. We support this language.

The Senate language The Senate version of this provision removes the restriction that a turtle seller's license may be transferred only once to a direct child of the licensee. This creates potential for licenses to be maintained into perpetuity, and also creates potential for licenses to be sold to commercial turtle harvesting corporations, possibly foreign corporations, resulting in increased harvest of Minnesota turtles. We oppose this provision.

We ask you to include the language from the House.

Establishing “Lawns to Legumes” cost share program to increase backyard forage for pollinators.

Senate: *No Language.*

House: Unofficial Engrossment, Article 6, Section 2

(page R56 of the side-by-side)

Directs BWSR to establish a Lawns to Legumes program to provide grants for up to 75% of the cost of a project planting residential lawns with native vegetation and pollinator-friendly forbs and legumes. Residential areas that have a high potential for serving as habitat for the endangered rusty patched bumble bee may receive a grant for up to 90% of the cost of the project.

We ask you to include this language from the House.

“Soil and Water Conservation District Fee”

Senate: *No Language.*

House: Unofficial Engrossment, Article 6, Section 3

(page R57 of the side-by-side)

This provision will fund the Soil & Water Conservation Districts our farmers depend on to provide technical support, education, and information on funding sources. Unfortunately, SWCD funding levels wildly vary across the state. Requiring a small fee on certain housing filings is a step toward equitable and consistent funding for Soil & Water Conservation Districts regardless of zip code.

We ask you to include this language from the House.

Soil – Healthy Farming Goals and Soil Health Cost Share Program.

Senate: *No Language.*

House: Unofficial Engrossment, Article 6 Sections 5 and 7
(page R57-58, 60 of the side-by-side)

The first provision (Section 5) establishes a soil-healthy farming goal that at least 30 percent of Minnesota farmland implement cover crops, perennial crops, no-till, or managed rotational grazing by 2030 to boost farm income, build soil health, prevent or minimize erosion and runoff, retain and clean water, support pollinators, and increase farm resiliency. Long term perennial crops and managed rotational grazing also enable some long-term storage of carbon in the soil. The second provision (Section 7) establishes a cost share program to help achieve the stated goals.

We ask you to include this language from the House.

Including natural carbon sequestration among valuable qualities of forest resources.

Senate: *No language.*

House: Unofficial Engrossment, Article 5, Sections 20, 21, 54, 55, 92
(page R18, 30, 31, 136 of the side-by-side)

Section 54 adds “natural carbon sequestration and climate resiliency” to the list of qualities for which the DNR forestry professionals may advise those who own forest land. Section 55 adds “carbon sequestration for climate change mitigation” to the definition of Forest Resources.

Sections 20, 21, 92 adds “natural carbon sequestration” to the list of qualities for which the forests should be managed and acknowledges the important role forests play in mitigating climate change.

We ask you to include this language from the House.

“Carbon sequestration in forests of the state; goals.”

Senate: *No language.*

House: Unofficial Engrossment, Article 5, Section 95
(page R177 of the side-by-side)

This section requires the DNR Commissioner to establish carbon sequestration goals in public and private forests in Minnesota. To achieve these goals the commissioner must identify sustainable forestry strategies that increase the ability of the forest to sequester atmospheric carbon while enhancing other ecosystem services.

We ask you to include this language from the House.

“Environmental Justice”

Requires cumulative impacts analysis for environmental justice areas

Senate: *No language.*

House: Unofficial Engrossment, Article 4, Section 9
(page R79 of the side-by-side)

This section would require the PCA to perform a cumulative impacts analysis of new or expanded projects seeking permits when they are located in or near communities living in environmental justice areas.

We ask you to include this language from the House.

“Standards for Labeling Bags, Food or Beverage Products, and Packaging”

Requiring labeling accuracy regarding compostable products.

Senate: *No language.*

House: Unofficial Engrossment, Article 4, Section 42

(page R140 of the side-by-side)

This section would require labeling accuracy regarding compostable products. Currently the lack of a requirement causes confusion and materials that aren’t actually compostable are added to compost facilities, degrading the quality and usability of the compost.

We ask you to include this language from the House.

“Food Packaging; PFAS”

Prohibits food packaging that contains PFAS

Senate: *No language.*

House: Unofficial Engrossment, Article 4, Section 43

(page R140 of the side-by-side)

We ask you to include this language from the House.

“Carpet Stewardship program; Report.”

Establishing a program for the collecting and recycling of discarded carpet

Senate: *No language.*

House: Unofficial Engrossment, Article 4, Section 47

(page R175 of the side-by-side)

We ask you to include this language from the House.

“Seed Disposal Rulemaking Required.”

Requires pesticide-treated seed rulemaking for safe disposal.

Senate: *No language.*

House: Unofficial Engrossment, Article 4, Section 48

(page R176 of the side-by-side)

This section requires the Pollution Control Agency to conduct rulemaking to provide for the safe and lawful disposal of unwanted or unused seed that is treated or coated with pesticide. Pesticide-treated seeds in ethanol production were the cause of a large-scale environmental disaster in Mead, Nebraska earlier this year.

We ask you to include this language from the House.

The following are provisions of concern:

Unadopted Rules

Senate: 3rd Engrossment, Article 2, Sections 17, 125

House: *No Language*.

(page R12, 124 of the side-by-side)

These provisions upend current permitting stating that the PCA or DNR may not enforce any guideline, policy plan, manual standard or interpretive statement and may not incorporate this “guidance” into a permit or interpretation unless it has undergone rulemaking.

Relying on rulemaking alone assumes that all environmentally harmful activities must be explicitly defined by administrative rule before those activities may be guided or regulated by agencies. This assumption and approach would be contrary to the specific duties and responsibilities the legislature assigned to all state agencies under the Environmental Policy Act. Science-based decision-making and guidance relies on ever evolving peer reviewed literature. Agency permitting decisions must be responsive to new and developing science.

Relying on rulemaking is counter-productive to creating workable permits.

These proposed provisions would prevent agencies from producing any documents that would help regulated parties understand and comply with complicated statutes and rules. They would also prevent the regulated parties and agencies from being able to enter into agreements that reference documents that outline terms that both parties would have otherwise agreed to include. Flexibility of the agency on what is allowed according to the permit would be removed.

We ask that you take the House position and leave out this language.

Wild Rice Stewardship Council

Senate: 3rd Engrossment, Article 2, Section 19

House: *No Language*.

(page R13 of the side-by-side)

It is not helpful to Tribes in Minnesota for a “Stewardship Council” composed of stakeholders to direct or inform the stewardship of wild rice, a grain that has been central to their spiritual and physical sustenance for generations.

Tribal government-to-government relationships are not similar to those of “stakeholders.” The establishment of a council that puts tribal rights holders on par with industry interests is improper. The Governor and State agencies are engaging in consultation with Tribes. The proposed language telling leaders of Tribal government what they must review and consider misunderstands the role of Tribes as sovereign governments and is wholly inappropriate.

In addition, the makeup of the proposed council includes many positions representing industry and those who have a vested interest in preventing application of the sulfate water quality standard that by law must provide protection to wild rice. It is inappropriate to have those who work to eliminate the wild rice standard to now “steward” the standard and protocols for the protection of wild rice.

We ask that you take the House position and leave out this language.

“Calcareous Fens”

Sensitive ecosystem protections eroded by burdening DNR with new proof standard

Senate: 3rd Engrossment, Article 2, Section 86

House: *No Language.*

(page R62 of the side-by-side)

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. *A reduced supply of groundwater may lead to an irreparable loss of many calcareous fens.*

This provision tells the DNR that if it does not approve or renew a groundwater permit because of its impact on a calcareous fens, the DNR must, at taxpayer cost, demonstrate by a preponderance of the evidence the basis for this conclusion within one year. This is unnecessary and asks the DNR to inappropriately employ a new standard for protecting these sensitive ecosystems. This new burden is proposed even as the Senate bill makes a punitive \$1.5 million cut to this DNR Division.

We ask that you take the House position and leave out this language.

Transferring permit

Senate: 3rd Engrossment, Article 2, Section 89

House: *No Language.*

(page R65 of the side-by-side)\

This section prevents DNR from requiring testing or putting new conditions in a water appropriation permit that is being transferred. DNR should be able to review the adequacy of a permit at any time, including when it is transferred to a new operator, in order to protect groundwater resources. The transfer of a permit should result in administrative review of the terms of the permit, and modification as necessary to prevent depletion of water supplies. This language would effectively create a private sale of a permitted public natural resource

We ask that you take the House position and leave out this language.

Management plans; effect on land values

Senate: 3rd Engrossment, Article 2, Section 90 and 91 (d)

House: *No Language.*

(page R65 of the side-by-side)

These sections state “Before a management plan for appropriating water is prepared, the commissioner must provide estimates of the impact of any new restriction or policy on land values in the affected area. Strategies to address adverse impacts to land values must be included in the plan.”

This inappropriately prioritizes attention on a potential economic impact rather than on the needs of the area for sustainable groundwater. Water management plans should be about the protection of Minnesotans’ water resources. The DNR should not be required to evaluate economic interests before determining how to best safeguard the natural resources they are charged with protecting.

We ask that you take the House position and leave out this language.

Groundwater management areas

Senate: 3rd Engrossment, Article 2, Section 91

House: *No Language.*

(page R65 of the side-by-side)

This section prevents DNR from providing public information about a water management plan under development by limiting the information that DNR can provide to “direct factual responses.” This provision is in direct conflict with the Data Practices Act, which requires public data to be provided upon request, including drafts, and also requires state staff to explain the meaning of data. Preventing a state agency from open communication with the public about its activities is poor public policy. State policy should be to support greater transparency.

We ask that you take the House position and leave out this language.

“Sustainability standard”

Proposed definition of “sustainable” not based in science; aquifer recharge should be considered

Senate: 3rd Engrossment, Article 2, Section 92

House: Unofficial engrossment. Article 5, *Section 88*

(page R65-66 of the side-by-side)

The Senate proposes language that would define “sustainable” to mean a change of 20 percent or less with regard to the “August median stream flow” which is not scientifically determining what is actually sustainable in terms of long-term Minnesota water supplies. This arbitrary figure will prevent real preservation of sustainable water resources, which must be based on actual data from a particular water source and scientific evidence.

The House proposes that the level of groundwater recharge to the aquifer must be considered when determining whether consumptive use of groundwater is sustainable for permitting uses.

We ask that you take the House position.

“Well interference; validation; contested case”

Senate: 3rd Engrossment, Article 2, Section 93

House: *No Language.*

(page R65 of the side-by-side)

This section further harms those hurt by well interference by forcing the DNR to consider the “condition of the impacted well,” which would result in the reduction of awards to those who have older wells. This provision will harm people who have lower incomes and cannot easily afford new wells in favor of irrigators who want additional water. Similarly, the legislation favors parties who are interfering with existing wells by limiting the ability to contest the commissioner’s award to only those parties who have been already ordered to pay an affected well owner.

We ask that you take the House position and leave out this language.

Requiring Approval to increase MPCA user-fees that fund agency services

Senate: 3rd Engrossment, Article 2, Sections 96, 98-100, 123

House: *No Language.*

(page R77 of the side-by-side)

User fees are a necessary component of funding state permit programs. The MPCA has not increased most water permit fees for more than two dozen years. These fees cover the cost of reviewing applications, certifying personnel for wastewater treatment and water supply systems, and certifying laboratories. There is no need for an additional layer of approval to be required by statute.

We ask that you take the House position and leave out this language.

“Effluent Limitations; Compliance”

Businesses may bypass wastewater quality standards for 16 years

Senate: 3rd Engrossment, Article 2, Section 97

House: *No Language.*

(page R77 of the side-by-side)

This provision gives an industry that has already constructed or made improvements to a water treatment facility a 16-year pass for meeting any other water quality standards that may be developed. Water quality standards are developed to protect human health and the viability of our waters for important uses for all Minnesotans. If new water quality standards are established, the agency should have the ability to require these new standards be met.

We ask that you take the House position and leave out this language.

“Advanced Recycling”

Category created in order to exempt this industry from waste management laws

Senate: 3rd Engrossment, Article 2, Sections 101-115, 121

House: *No Language.*

(page R78 of the side-by-side)

These sections create a new “Advanced Recycling” category in statute in order that this industry may be exempted from other waste management laws. The process being considered converts plastic waste into combustible fuel, calling it “advanced recycling.” But this is not genuine recycling. Rather the industry increases the toxic environmental consequences of plastic production.

The proposed sections in this bill would establish “advanced recycling facility” in statute with corresponding definitions, then exempt these facilities from other laws related to waste management, including the federal Resource Conservation and Recovery Act, which gives the EPA authority over hazardous waste. These provisions create loopholes through which this emerging industry can avoid measures to protect human health and the environment.

We ask that you take the House position and leave out this language.

“Permitting efficiency”: *Adds requirements to increase reporting on agency permitting.*

Senate: 3rd Engrossment, Article 2, Section 120

House: *No Language.*

(page R77 of the side-by-side)

There is no evidence that MPCA’s permitting is inefficient now, nor that simply adding more reporting burdens on the agency will change outcomes. According to a 2018 MPCA report, 97% of “priority” permits and 93% of all permits were issued within stated goals.

We ask that you take the House position and leave out this language.

“Adopting standards”

Eliminates MPCA authority to regulate air quality standards for emissions from motor vehicles

Senate: 3rd Engrossment, Article 2, Section 122

House: *No Language.*

(page R77 of the side-by-side)

By inserting the word “not,” this provision would repeal the statutory authority of the MPCA to set standards for air quality, including the Clean Cars Minnesota rulemaking underway currently, as well as any future state regulations on air pollution from motor vehicles. This authority to regulate contaminants that impact air quality has existed since the MPCA was formed in 1967.

We ask that you take the House position and leave out this language.

“Counties; processing applications for animal lot permits”

Rollbacks for factory-farm manure application

Senate: 3rd Engrossment, Article 2, Section 124

House: *No Language.*

(page R77 of the side-by-side)

This is a harmful practice that threatens clean water, while serving a handful of large operations and their wealthy investors. Instead of protecting small to mid-sized operators and the rural communities that depend on them, this provision eliminates and limits restrictions for spreading factory-farmed manure. These large operations financially squeeze small and mid-sized farms, and leave rural communities to foot the bill to clean up their detrimental impacts on human health and environment.

We ask that you take the House position and leave out this language.

“When Prepared:” *Limiting citizen petition for environmental review*

Senate: 3rd Engrossment, Article 2, Section 128

House: *No Language.*

(page R128 of the side-by-side)

Air and water pollution do not respect county boundaries. Projects undertaken in one county can significantly impact downstream or downwind communities across the state. This provision would limit the rights of affected persons to petition for environmental review.

We ask that you take the House position and leave out this language.

“State Implementation Plan Revisions:”

Regulated parties given permission to not comply with federal laws

Senate: 3rd Engrossment, Article 2, Section 162

House: *No Language.*

(page R173 of the side-by-side)

This section would allow existing air pollution sources to elude ambient air quality standards protecting public health. These provisions contravene the federal Clean Water and Clean Air Acts and will only result in regulatory uncertainty.

We ask that you take the House position and leave out this language.

Article I: Environment and Natural Resources Appropriations

There are many positive budget items in this bill. We are especially pleased to see funding to

- increase composting and recycling, including creation of a mattress recycling program
- reduce greenhouse gas emissions through the Clean Air Minnesota program
- address knowledge gaps regarding mercury levels in the St. Louis River
- address PFAs contamination across our communities.

However, we are concerned about the Senate’s significant operating cuts to the agencies funded through this budget. The Senate bill makes massive budget cuts to frontline environment and conservation agencies while also weakening environmental protections and the people’s ability to engage with processes that affect them. In some cases, the lost funding due to these budget cuts is back-filled by raiding funds dedicated for other purposes, thus diverting funds from important uses or investments for which they were intended.

These cuts are short-sighted during a time when environmental degradation has reached a tipping point and new investments are needed for the health of our people, land, air and water. Our state’s agencies could and should lead our way down a cleaner, more equitable path to a brighter future. We must prioritize ensuring that they have the budgets and authority needed to do so.

Proposed Harmful Senate Cuts Include:

- MPCA general fund reduction of 33% from the Governor’s recommendations. This \$5.2 million difference includes a reduction of core operations for the MPCA and the Environmental Quality Board as well as providing no support for the Climate Adaptation and Resiliency Program.
- DNR general fund reduction of 11% from the Governor’s recommendations. This \$27.8 million difference includes a reduction of core operating funding and ground water management as well as failing to support the Governor’s proposal to ramp up aquatic invasive species protections with the Red Lake Nation and expanding tree planting for carbon capture.

- BWSR general fund reduction of 27% from the Governor’s Recommendations. This \$10.3 million difference includes a reduction in core operations as well as providing no support for new initiatives to enhance soil health through the use of cover crops or provide increased water storage as proposed by the Governor.
- Metropolitan Council – Regional Parks general fund cut of \$1.5 million for the biennium. This cut is then back-filled using “lottery-in-lieu” funds. The use of the “lottery-in-lieu” revenue to substitute for the cut in general fund appropriation directly violates Minn. Stat. 297A.94(i).

We would like to highlight strong support for the following programs that will move us toward important environmental objectives:

- **Funding for Soil and Water Conservation Districts (SWCD’s):** Our farmers depend on Soil & Water Conservation Districts to provide technical support, education, and information on funding sources. Unfortunately, SWCD funding levels wildly vary across the state. Requiring a small fee on certain housing filings is a step toward equitable and consistent funding for Soil & Water Conservation Districts regardless of zip code.
- **Establishing a Soil Health Cost Share Program:** An appropriation of \$1 million is for this Board of Water and Soil Resources (BWSR) proposal.
- **Funding for Pesticide-Treated Seed Disposal rulemaking.**

Article 3: 2021 Environment & Nat. Resources Trust Fund Appropriations

Every year a panel of Minnesota scientists, legislators and citizens review hundreds of scientific research and project applications, selecting the dozens they think will be most impactful for our environment to receive Environment and Natural Resources Trust Fund (ENRTF) funding. This ENRTF trust fund is supported with earnings from the Minnesota Lottery.

We are happy to see last year’s ENRTF allocations moving forward. At stake is over \$61 million in shovel-ready projects that would provide hundreds of jobs and help protect the environment in communities across our state.

We support passage of the package of recommendations tentatively approved by the LCCMR. However, the package included in Article 3 of the Senate bill cancels many approved projects, including \$3.2 million in projects for pollinators plus other important projects, redirecting some of those funds to parks and trails to offset the general fund budget cuts proposed by the Senate. This is an unconstitutional diversion of these funds which were created to supplement, not supplant, state investments in our natural resources and Great Outdoors.

These projects were vetted and approved by the LCCMR in response to tremendous pollinator losses that continue across Minnesota. We ask that these and other environmental projects selected by the LCCMR be restored in this package.

Article 4: 2022 Environment & Nat. Resources Trust Fund Appropriations

While we would prefer that the ENRTF Appropriations travel as stand-alone bills, we are hopeful that this package of LCCMR-recommended projects will pass in its entirety and without delay.

This bill holds great potential to move us forward and uphold the shared legacy of protecting the health of our air, land, water and people. It also holds potential for significant rollbacks that will further compromise ecosystems already strained to their breaking point. **Thank you for your work.**

Please feel free to contact me if you have any questions at steve@mepartnership.org.

Sincerely,



Steve Morse
Executive Director

Eureka Recycling
Friends of Minnesota Scientific and Natural Areas
Friends of the Boundary Waters Wilderness
Friends of the Mississippi River
Humming for Bees*
Izaak Walton League - Minnesota Division
Land Stewardship Project
League of Women Voters Minnesota
Minnesota Herpetological Society
Minnesota Interfaith Power & Light
MN River Valley Audubon Chapter
MN Trout Unlimited
Pesticide Action Network
Pollinator Friendly Alliance
Sierra Club - North Star Chapter
Vote Climate
Wilderness in the City

** indicates not a member of MEP*