



May 16, 2022

To: Members of the Conference Committee on the Omnibus Environment and Natural Resources Bill SF4062

Re: Please support critical investments in Minnesota's environment and natural resources

Dear Legislators,

Thank you for serving on this important committee. Minnesota's environment, people and natural resources are faced with many challenges, including dealing with a changing climate. This conference committee has a significant opportunity to respond to these challenges and invest in the future and health of Minnesota's environment and communities, by making strategic investments now that prevent pollution and protect our clean water, air, and land.

We urge you to support the many good provisions and investments made in the House bill that our statewide coalition members believe move Minnesota in a positive direction by protecting our environment and the health of our people. At this critical moment, we cannot afford to take steps backward. Therefore, we ask you to remove many provisions from the Senate version of this bill that would cause irreparable environmental harm.

I. Positive Investments and Programs

Natural Climate solutions

We are encouraged by the drive behind investing in Minnesota's landscape. Protecting and restoring the natural landscapes that define Minnesota will help provide solutions to climate change while making communities more livable and our natural resources more resilient. We encourage your support for the following provisions and investments from the House version of this bill:

Peatland Protection (Article 2, Page R56)

Art. 2, Sec. 7 prioritizes **peatland protection** and sets state goals to protect, restore, and enhance 25 percent by August 1, 2030, and 50 percent by August 1, 2040 of the state's presettlement peat soils that were drained for and used for agricultural purposes or pastures. Peatlands have tremendous value for carbon storage.

Native Plant Restoration at State Parks (Article 1, Page R12)

Art. 1, Sec. 3, Subd. 2, ppg (a) invests \$5 million for **native plant restoration at state parks** as part of efforts to strengthen climate adaptation measures for natural lands and waters.

Grassland Enhancement and Wetland Restoration (Article 1, Pages R12-R13)

Art. 1, Sec. 3, Subd. 2, ppg (c) invests \$5 million to **enhance grasslands and restore wetlands** on existing state-owned wildlife management areas to sequester carbon and improve climate resiliency.

Ash Tree Replacement (Article 1, Page R14)

Art. 1, Sec. 3, Subd. 2, ppgs (k) and (l) invests \$11 million to **replace ash trees** removed due to emerald ash borer (an invasive insect), giving priority to environmental justice areas and \$1 million to **plant trees on school grounds**.

Accelerated Conservation Planting Program (Article 1, Pages R20-R21)

Art. 1, Sec. 4, ppg (i) invests \$8 million for an accelerated **conservation tree planting program** that will reduce greenhouse gas emissions and add resiliency to the landscape by sequestering carbon, conserving energy, and improving water quality and habitat.

Conservation Reserve Program (Article 1, Pages R19-R20)

Art. 1, Sec. 4, ppg (e) invests \$10 million to support the **Conservation Reserve Program State Incentive** that builds on federal incentives to keep or enroll land in conservation.

Conservation Reserve Enhancement Program (Article 1, Page R20)

Art. 1, Sec. 4, ppg (h) invests \$30 million in the **Conservation Reserve Enhancement Program** to purchase and restore permanent conservation sites by enrolling targeted new lands or environmentally sensitive lands in federal conservation easements.

Lawns to Legumes (Article 1, Page R20 and Article 2, Page R70)

Art. 1, Sec. 4, ppg (f), Art. 2, Sec. 35 continues support for the **Lawns to Legumes program**, investing \$5 million in FY 23 and \$1.25 million in 2024 and beyond, to provide grants or payments to plant residential lawns with native vegetation and pollinator-friendly forbs and legumes to protect a diversity of pollinators.

Healthy Soil Program (Article 2, Page R68-R70)

Art. 2, Sec. 36 & 38 appropriates \$5 million in the **Healthy Soil Program**. We support the creation of the soil health cost-share program and a state-wide soil-healthy farming goal of at least 30 percent of Minnesota farmland utilizing cover crops, perennial crops, no-till or managed rotational grazing by 2030. This would have many positive benefits, including boosting farm income, building soil health, preventing or minimizing erosion and runoff, retaining and cleaning water, sequestering carbon, supporting pollinators, and increasing farm resiliency.

Multifamily Building Composting (Article 2, Pages R78-R80)

Art. 2, Sec. 50 invests \$5 million to establish a **multifamily building composting pilot program** to award grants to increase composting of food wastes by residents in multifamily buildings.

Labeling Compostable Products (Article 2, Pages R117-R120)

Art. 4, Sec. 7 protects the quality of compost by setting **standards for labeling compostable products** (bags, food or beverage products) **and packaging**.

Environmental Justice

Many communities across Minnesota have suffered - and continue to suffer - from a legacy of air and water pollution that is concentrated in the neighborhoods where they live and work. Native American tribes, communities of color, and low-income communities are especially at risk and suffer most from environmental harm with quantifiably worse health outcomes due to pollution. The provisions listed below from the House bill would help to reduce this harm and improve health and economic vitality throughout the state:

St. Louis River TMDL Study (Article 1, Page R25)

Art. 1, Sec. 11, ppg (f) provides \$50,000 to conduct a critical **St. Louis River TMDL study** that will determine the mercury reductions needed for lakes and rivers in the St. Louis River watershed to meet the water quality standard for mercury and support the healthy consumption of fish. This study will help protect children and communities who are most vulnerable to mercury exposure and respect the cultural and economic importance of fishing in the watershed and tribal treaty rights.

Environmental Justice in Decisions (Article 2, Pages R85-R92)

Art. 2, sections 58, 59, 64-66, & 69 makes critical investments for implementation of **environmental justice, cumulative impact analysis, and demographic analysis requirements in permitting decisions**. This includes \$9.08 million from the general fund in FY 23, and additional funding from the environmental fund in future years. Members of the Minnesota Environmental Partnership have expressed support for legislation that prioritizes environmental justice communities in Minnesota, accurately defines environmental justice and where environmental justice areas are located, collects thorough information on

local environmental health conditions, and considers the cumulative environmental and health impacts of pollution in permitting decisions. We strongly encourage meaningful consultation of communities of color, Indigenous communities, and low-income communities who are overburdened by pollution as this bill moves forward so that those most impacted by pollution can actively participate in identifying and advancing solutions to address environmental injustice.

Air Quality Monitoring (Article 1, Page R6)

Art. 1, Sec. 2, Subd. 2, ppgs (o) and (p) prioritizes the health of Minnesotans, especially those who are most vulnerable to pollution, by investing \$5 million for development of a **statewide air quality monitoring program**, and \$540,000 to purchase **air monitoring devices** to measure pollutants in ambient air and place these devices in environmental justice areas.

Lead Service Line Replacement (Article 1, Page R23 and Article 2, Page R96)

Art. 1, Sec. 6, ppg (d), Art. 2, Sec. 80-83 invests \$2.335 million to **replace residential lead service lines**. MEP strongly supports immediate action to mitigate and ultimately eliminate the risk of lead exposure through home drinking water in Minnesota through grants for residential lead service line replacements. Lead exposure disproportionately impacts Black, brown, and Indigenous Minnesotans, children, people with disabilities, and people with low incomes. Getting the lead out is crucial to advancing justice for all people. We commend the program's targeted delivery to populations who face the most severe risks of lead exposure.

Cadmium and lead in consumer products (Article 2, Page R94-R95)

Art. 2, Sec. 78 **restricts cadmium and lead in certain consumer products** and includes \$74,000 in FY 23 and continuing in the base budget for compliance monitoring and testing of lead and cadmium in consumer products.

Lead protections for wildlife

Lead ammunition and tackle (Article 2, Page R65 and R103)

Art. 2, Sec. 27 & 90 Subd. 3. **restricts the use of lead ammunition as well as lead fishing tackle** that are critical to protecting swans and other wildlife. This bill supports the **Swan Protection Act** by investing \$1 million in FY 23, and in the ongoing budget base. This funding is for a lead tackle collection program that provides collection sites throughout the state where anglers may safely dispose of lead tackle.

Reversal of inappropriate money transfer

Municipal Landfill Contingency Transfer (Article 1, Page R10)

Art.1, Sec. 2, Sub. 3 makes an important, long overdue **onetime repayment of \$29.055 million** to the **metropolitan landfill contingency action trust account** to restore money that had been inappropriately transferred from the account during tight budget times in years past.

II. Harmful Provisions

At this critical moment for Minnesota's people and natural resources, we cannot afford to go backward on protecting our lands, air, water, and public health. We believe the following provisions from the Senate version of this bill are misguided and ask you to remove them from SF 4062:

404 Wetlands Permitting Assumption (Article 1, Page R9)

Art. 1, Sec. 2, Subd. 3 [Environmental Quality Board] appropriates \$740,000 for Clean Water Act Section 404 assumption, requires a report be submitted to the Legislature by December 31, 2024, and requires the State of Minnesota to apply for assumption of the Section 404 wetlands permitting program by June 30, 2025. The scope of federal Clean Water Act wetlands permitting and "Waters of the United States" is currently in dispute, and depending on the final resolution, it could dramatically change the impact of this provision. Any decision on whether to apply for Section 404 assumption should be based on a full report to the Legislature, and the decision should not be decided in advance.

Calcareous Fen-Related Permit Studies (Article 1, Page R12)

Article 1, Section 3, Subd. 2, paragraph (f) appropriates \$387,000 from the heritage enhancement account in the game and fish fund to pay for studies on permits denied due to calcareous fen impacts and exempts appropriation from MS 297A.94 requiring that funds “may be spent only on activities that improve, enhance, or protect fish and wildlife resources...” This is an inappropriate use of the heritage enhancement account to facilitate water appropriations permits that threaten one of the rarest wetland types in Minnesota.

Unadopted Rules (Article 2, Pages R2 & R36)

Article 2, Sections 2 and 57 [Unadopted Rules] are anti-public information, unnecessary and overbroad. First, the sections define all guidance as unadopted rules, effectively “gagging” agencies by preventing publication of any documents that would help regulated parties understand and comply with complicated statutes and rules. Second, these provisions are unnecessary. Under Minn. Stat. 14.381, agencies are not allowed to enforce “unpromulgated rules.” Similarly, Minn. Stat. 14.07 prohibits agencies from incorporating documents into rules unless standards are met. The sections do not help regulated parties or the public and will result in a reduction of public information or massively expensive and unnecessary rulemaking.

Time Limits on Environmental Review of Metallic Mining Projects (Article 2, Pages R9-R10)

Article 2, Section 15 seems to assume that all mining proposals are permissible under Minnesota and federal law, and that it is the job of state agencies to approve these proposals under a specific time frame. Minnesota agencies must maintain their ability to say no if a proposal does not meet the requirements of Minnesota and federal law. Establishing deadlines in statute compromises the agencies’ ability to do their job. Often, an Environmental Review deadline needs to be adjusted for good reasons that are not in the agencies’ control. For example, it could be because a proposal does not meet standards and must be redesigned, which is what happened to the PolyMet EIS in 2010. Sometimes project proposers make significant changes in the middle of an environmental review process, which can also delay environmental review. Placing deadlines in statute does no favor for agencies, mining companies, or other stakeholders.

Public Waters Inventory (Article 2, Pages R18-R19)

Article 2, Section 31. Minnesota public waters belong to all Minnesotans. The State holds public waters in trust for the benefit of the people and has the obligation to protect public waters. The Legislature defined public waters broadly in Minn. Stat. 103G.005, subd. 15 and all waters that meet the definition of a public water are protected. In the 1970s, the Legislature mandated the Minnesota Department of Natural Resources (DNR) to publish the Public Waters Inventory (PWI) to list waters in Minnesota that met the statutory definition. The Legislature later gave DNR power to correct errors in the PWI.

The PWI is an important informational tool for protecting Minnesota’s water resources. This amendment undermines the DNR’s authority to correct errors in the PWI because, if a local government objects, the DNR cannot list a water even though it meets the statutory definition of “public water.” The DNR is the proper agency to determine what waters meet the definition of a “public water,” based on the existing state law definition. If a local government disputes the DNR’s analysis, that dispute should be addressed by administrative procedures, and not by veto. If this provision becomes law, it would limit the ability of the DNR to correct errors in the PWI, create uncertainty, and provide more limited protections for these water bodies.

Calcareous Fens (Article 2, Pages R20-R21)

Article 2, Section 33 would threaten some of the rarest wetland habitats in Minnesota with large water appropriation permits nearby that can drain them of the groundwater they depend on. This section gives applicants whose permits are denied because of the damage caused to a nearby wetland several additional “bites at the apple,” and require taxpayers to pay for third party analyses that may undermine the analysis conducted by the Minnesota DNR.

Transferring Permits (Article 2, Page R21)

Article 2, Section 35 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, 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. Minnesota property owners do not own groundwater, it is a public resource.

Management plans: effect on land values (Article 2, Page R21)

Article 2, Section 36 assumes that the impact of groundwater management plans on land values are negative and directs the DNR commissioner to study and address just this one factor. Depleted groundwater tables, which groundwater management plans seek to prevent, also have negative impacts on property values. That side of the question should also be included in any study of land values.

Groundwater management areas (Article 2, Page R22)

Article 2, Section 38, paragraph (a) includes a gag rule that 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 just poor public policy. State policy should be to support greater transparency, not less transparency.

Sustainability standard (Article 2, Page R23)

Article 2, Section 39, paragraph (b) defines “sustainable” use of groundwater to mean a change of 20 percent or less with regard to the “August median stream flow,” which has nothing to do with 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.

Well Interference; Validation; Contested Case (Article 2, Page R24)

Article 2, Section 42 harms those hurt by well interference by forcing the DNR to consider the “condition of the impacted well,” which has the intent of forcing DNR to reduce awards to individuals harmed if their wells are older. This provision will harm low-income persons who 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 parties ordered to pay an affected well owner.

Legislative approval of user fees (Article 2, Pages R27-R29 and R34)

Article 2, Section 43 [PCA Training Fee], Section 46 [Wastewater & Water Supply System Operator Certification Fee], Sections 47 & 48 [Wastewater Laboratory Certification Fee], and Section 56 [Water Permit Fees] User fees are a necessary component of funding state permit programs. The MPCA has not increased most water permit fees for more than 28 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.

Effluent Limitations; Compliance (Article 2, Page R28)

Article 2, Section 44 allows 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. If new water quality standards are established, polluters should be required to meet those new standards.

Chemical plastic recycling (Article 2, Pages R29-R31)

Article 2, Sections 49 through 53. This broad swath of statutory language would create a whole new industrial category in Minnesota statutes and exempt it from a number of existing rules and statutes that apply to similar recycling operations in Minnesota. Existing recycling operations have testified against these provisions in previous sessions, arguing that there is no reason to exempt “waste to fuel” operations from standards that others in the recycling industry have to meet. The bottom line is that there is nothing about converting plastics into fuel that warrants being exempt from the same rules as all solid waste.

Environmental assessment worksheet petition (Article 2, Page R38)

Article 2, Section 60, paragraph (e) limits petitions for environmental review to residents of the county (or

adjacent county) where a project is proposed. Air and water pollution do not respect county boundaries. Projects undertaken in one county can significantly impact downstream or downwind communities across the state, as when an important fish spawning area is located miles upstream from where anglers seek to fish. This provision would limit the rights of affected persons to petition for environmental review.

State implementation plan revisions (Article 2, Page R51)

Article 2, Section 75, lines 79.20-80.5 [State Implementation Plan Revision] Ambient air quality standards are critical to protecting public health, and must be applied uniformly for all facilities to be effective. This section is a legally dubious attempt to direct the MPCA to seek a change in Minnesota's State Implementation Plan for the Clean Air Act. The U.S. Environmental Protection Agency would need to approve it and it's likely to be challenged in court, which would create additional uncertainty for regulated parties. Overburdened communities will also be denied relief if this provision becomes law, since it would prevent reductions in existing emissions, even if they violate ambient air quality standards.

Sugar beet processing rulemaking (Article 2, Pages R50 and R52)

Article 2, Sections 72 and Section 76 require a rulemaking to be done to examine a highly technical issue for one industry (sugar beet processing.) According to an April 1, 2022 letter from the Commissioner of the Minnesota Pollution Control Agency to the chair of the Senate Finance Committee, "This policy and the \$671,000 appropriation for rulemaking is not needed. If the legislature decides to move ahead with the appropriation for rulemaking the agency requests the removal of Section 72 (d) where anti-backsliding provisions are nullified. This is in direct contradiction with the federal Clean Water Act and will increase water pollution which no Minnesotan wants." At a minimum, the impact of this provision on Minnesota's water needs to be made very clear before any changes to this highly technical area are considered.

Conclusion

This bill holds great potential to move us forward by protecting the health of our air, land, water and people. It also holds potential for significant rollbacks that would harm Minnesotans and further compromise ecosystems already strained to their breaking point. As you proceed with negotiations over legislative investments this session, we ask that you respond to these environmental challenges by investing in the future and health of Minnesota's environment and communities.

Sincerely,



Steve Morse
Executive Director

Submitted on behalf of the organizations listed on the following page.

Audubon Chapter of Minneapolis

CURE (Clean Up the River Environment)

Friends of Minnesota Scientific and Natural Areas

Friends of the Boundary Waters Wilderness

Friends of the Mississippi River

Hastings Environmental Protectors

Humming for Bees*

Izaak Walton League Minnesota Division

Lakeville Friends of the Environment*

Land Stewardship Project

League of Women Voters Minnesota

Minnesota Center for Environmental Advocacy

Minnesota Interfaith Power and Light

Minnesota Ornithologists Union

Minnesota Trout Unlimited

MN350

Pollinate Minnesota*

Pollinator Friendly Alliance

Renewing the Countryside

St. Paul Audubon Society

Vote Climate

**denotes non-MEP member*