Minnesota
Environmental
Partnership

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Dear Members of the Minnesota House:

We, the undersigned organizations and the citizens we represent, ask you to vote NO on the Omnibus Environment and Natural Resources Budget Bill, H.F. 888. We do not make this request lightly. This bill will roll back environmental protections and erode the basic foundation of Minnesota's legacy of protecting our Great Outdoors. The bill contains many provisions that undo existing protections and make it more costly and time consuming to adopt new protections for our state's air, land, lakes, rivers and streams.

In addition, at a time when the state's coffers are full, this bill makes historic cuts, effectively raiding $21 million in general public support from the core work of protecting our Great Outdoors. The impacts of this nearly 7% cut in support will be compounded if the significant cuts in grant funds to the state, proposed by the Trump Administration, are adopted. These combined cuts threaten the long term viability of major areas of work for the citizens of our state.

This bill is out of sync with Minnesota voters. Just last month, our extensive statewide issue poll found that 20% of voters think our environmental laws are at the right levels and fully 62%, from all corners of the state, would like to see environmental laws be made tougher or enforced better. Yet this bill goes in the opposite direction.

House File 888 includes a large number of policy provisions that obstruct or prohibit the state agencies, charged with protecting our water and controlling pollution, from carrying out their functions and duties. Some of these duties are delegated to Minnesota under the Federal Clean Water Act, and legislative action interfering with the state's ability to carry out delegated duties puts Minnesota at odds with the Clean Water Act.

Though what follows is not a comprehensive list, we are deeply concerned that this bill:

Unravels Buffer Protections for Habitat and Water Quality (Art. 2, Sec. 80, 81.)

- 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 water protections that were in place before passage of the 2015 buffer law.

- Eliminates the buffer requirement altogether unless the state or federal government pays for the entire cost of establishing the buffer.

- 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.

Hobbles the MPCA and DNR from carrying out their duties. (Art. 2, Sec. 6, 110, 111):

- Bars the MPCA and 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 MPCA is enforcing an unadopted 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.
- Establishes presumption that DNR and PCA guidance documents are invalid, unpromulgated "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.

Takes the science out of agency decisions. (Art 2, Sec. 98):

- 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 is a favor for a few municipalities that want to re-fight a losing battle over the state's 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.

Delays actions to clean-up polluted drinking water. (Art. 2, Sec. 132):

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.

Eliminates public participation in mining permits (DNR). (Art. 2, Sec. 51, 52):

- 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.

Allows corporations to write their own environmental impact statements. (Art. 2, Sec. 117, Lines 106.2 – 106.27):

- Puts the fox in charge of the hen house, allowing corporations to author their own environmental impact statements and restricting 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 destructive projects 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.

Undermines effective environmental review by requiring agencies to begin action on permits before environmental review is complete. (Art. 2, Sec. 115, 105.8 – 105.11)

- This undermines the core purpose of environmental review which is to do an assessment of potential environmental harm to see if it can be mitigated through conditions on the permit. To be effective, action on the permit must wait until environmental review is complete.

Requires DNR and PCA to issue draft permits within 150 days. (Art. 2, Sec. 3, 106):

- DNR and PCA are already issuing more than 90% of permits in line with statutory streamlining goals. This mandate is a one-size-fits-all requirement that does not recognize that some projects are located in sensitive areas or are simply too big or too complex to be permitted within such a short period.

Eliminates requirement to adopt air quality rules and environmental review standards for frac sand facilities. (Art. 2, Sec. 121, Lines 108.1-108.17):

- Removes the requirement that the MPCA must develop ambient air quality standards for frac sand mines. Long-term low level exposure to silica dust can cause silicosis, which is fatal.

Prohibits rules regarding use of lead shot. (Art.2, S. 71):

- Restricts the DNR from using existing authorities 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.

Interferes with science-based forest planning process at Sand Dunes State Forest. (Art. 2, Sec. 126, Lines 110.17 – 111.13):

- This provision does an end run around the existing well-established, science-based forest planning process that includes the involvement of local representatives. It also suspends 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. Finally, it improperly delegates approval of the state forest plan to an unspecified county board.

Lastly we would like to object to the insertion of the large amount of unrelated policy language into this biennial appropriations bill. This action ignores the strong objection Governor Dayton expressed in his letter to Speaker Daudt on March 13, 2017. As many of the policy provisions that have been added to this bill are highly unpopular with the voting public, this combining of budget and policy provisions allows these issues to avoid the public process and scrutiny they would receive otherwise. These unpopular issues should be required to stand on their own as separate policy bills.

This bill is not right for the shared legacy of Minnesota's Great Outdoors and it is not acceptable to Minnesota voters. Please vote no on HF888.

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
Minnesota Trout Unlimited
MN 350
Pesticide Action Network
Pollinate Minnesota
Renewing the Countryside
Save Our Sky Blue Waters
Sierra Club – North Star Chapter
Transit for Livable Communities
Water Legacy