



May 4, 2019

The Honorable Bill Ingebrigtsen, Assistant Majority Leader
Co-Chair, Environment and Natural Resources Conference Committee
Minnesota Senate
Minnesota Senate Building, Room 3207
95 University Ave West
St. Paul, Minnesota 55155

The Honorable Rick Hansen
Co-Chair Environment and Natural Resources Conference Committee
407 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Dear Senator Ingebrigtsen and Representative Hansen:

Thank you for your ongoing work toward arriving at a joint legislative position for the Department of Natural Resources (DNR) budget and policy provisions. Unfortunately, these proposals do not yet comprehensively address many of the key priorities and challenges we laid out in prior communications.

The Walz-Flanagan budget supports the DNR's three-part mission of natural resource conservation, outdoor recreation, and sustainable commercial use of natural resources. The Governor's budget promotes community prosperity throughout Minnesota by protecting our natural resources, promoting smart decisions based on good information, connecting people with the outdoors, and addressing critical operational needs.

At the most fundamental level, the Walz-Flanagan budget promotes community prosperity by maintaining DNR's current level of service, ranging from parks and trails operations and enforcement activities to timely permitting processes and state forest management. Both the Governor's budget and the House position retain DNR's current funding levels and provide an operating adjustment to cover known FY20-21 compensation increases under current labor agreements, so that DNR can continue to meet its statutory mandates and provide core services to the state. In sharp contrast, the Senate proposal makes significant General Fund reductions across the DNR and fails to provide funding to address the impacts of inflation over the coming biennium. This letter addresses the impacts of the Senate's proposed budget reductions and outlines the DNR's remaining concerns with the House and Senate proposals.

Protecting Our Natural Resources

Chronic Wasting Disease. As you are aware, one of Governor Walz's top priorities for protecting our natural resources is an urgent and aggressive response to the spread of chronic wasting disease (CWD). The Governor's budget and the House proposal recommend a General Fund investment of \$4.57 million for needed response, surveillance, and enforcement efforts. The House proposal would allocate \$500,000 of this \$4.57 million to CWD research at the University of Minnesota. While we support the U of M's work in this area, the DNR needs the full \$4.57 million General Fund investment for CWD surveillance and response. The Senate proposal does not include any General Fund investment for CWD.

The Governor's budget and the House proposal also allocate \$1.8 million from the Game and Fish Fund to address deer management and research recommendations made by the Office of the Legislative Auditor. The Senate bill allocates this same amount of Game and Fish Fund dollars to support both CWD response and deer management efforts. The Senate's proposed investment is insufficient. The DNR spent \$1.3 million for CWD response in FY18 alone; since then, the identification of confirmed CWD cases in new areas of the state suggests a high and growing risk to Minnesota's deer population. Furthermore, without General Fund investment, our agency would need to rely solely upon the Game and Fish Fund for the CWD response. This means that deer hunters would continue to bear the full cost of this response. Minnesotans, as a whole, have a stake in the future of our deer population, so investment through the General Fund is appropriate and necessary. The Senate's approach also means the CWD response would be smaller and less effective, given the size of the Game and Fish Fund appropriation.

The DNR, along with the Minnesota Department of Agriculture and the Board of Animal Health (BAH), supports the efforts of both bodies to implement recommendations contained in the April 20, 2018 Office of the Legislative Auditor report to better manage cervid farms. The House language is currently included in the House Agriculture Omnibus Finance bill, however, it is the understanding of the Walz-Flanagan Administration that this issue will be dealt within this conference committee. This includes provisions to depopulate CWD infected herds, tag farmed cervids as quickly as possible, and ensure for regular inspections of cervid farms. The DNR also supports additional funding to allow the BAH to continue its work with cervid farms in the state. In addition, the DNR supports the Senate's inclusion of a hunter-harvested carcass importation ban to reduce the risk of transmission of the disease from out-of-state populations.

Public waters. Protecting Minnesota's public waters is fundamental to maintaining our quality of life. The DNR's public waters protection program provides important water management activities such as responding to floods, addressing lake level concerns, and assisting local government with water-related land-use decisions. To that end, the Governor recommended a General Fund increase of \$1.6 million in FY20-21 and an increased appropriation of \$716,000 from the Water Management Account for our public waters program. This would allow the DNR to continue providing services that our agency has been supporting from other water program funding. There is no longer sufficient funding in these other areas to subsidize the public waters program.

The House proposal includes the Governor's recommendation to generate \$716,000 in additional revenue to the Water Management Account by increasing public waters permit application fees from the current range of \$100 to \$1,000 to a range of \$300 to \$3,000. Even with these permit fee increases, public waters work would continue to depend on General Fund investment, as applicants are not expected to pay the full cost of permitting. The House position includes only half of the Governor's recommended General Fund increase for this program or \$800,000 for the biennium. This lower level of General Fund investment would cause us to reduce staff, thereby decreasing our ability to provide technical assistance and slowing our permitting efforts for public waters work.

The Senate proposal does not fund the Governor's initiative for public waters and also makes significant reductions to water protection programs. Specifically, the bill makes a \$6.4 million General Fund base reduction to our Division of Ecological and Water Resources (38 percent General Fund reduction), along with a \$4.4 million reduction to groundwater protection (37 percent General Fund reduction). Together, these Senate reductions would severely compromise our ability to protect Minnesota's waters, decrease

our ability to act on permit applications in a timely manner, and reduce technical assistance to individuals and communities. These General Fund reductions would negatively impact businesses and local governments seeking permits.

Aquatic Invasive Species. The DNR is committed to containing the spread of aquatic invasive species (AIS) throughout Minnesota. The Governor's budget proposes increasing the AIS surcharge from \$5 to \$7.25 to support programs that prevent the spread of AIS and restore needed grants to lake shore associations for their AIS prevention efforts. The House proposal goes beyond the Governor's recommended increase to raise the AIS surcharge to \$20. The DNR would use the additional House funding to enhance our aquatic invasive species programming, including increased inspections, training, and response to new detections.

The Senate proposal does not include any increase to the AIS surcharge and cuts funding to programs that fight the spread of AIS. The bill's \$2 million base reduction to the AIS program, which represents a 31% General Fund reduction that will result in a loss of DNR inspectors. Furthermore, local units of government would receive less training for their own inspectors, further reducing the state's capacity to control the spread of AIS.

Enforcement. The Governor's budget and House proposal maintain the DNR's current service levels across the agency, including in the Division of Enforcement. In contrast, the Senate proposal makes a \$1.8 million base reduction to our Division of Enforcement. Funding reductions at this level would have a significant impact on our work to enforce the natural resources laws of the state and would force the DNR to cancel its upcoming academy

Forest management. In March 2018, the DNR in consultation with multiple stakeholder groups set a new, ten-year sustainable timber harvest target to offer 870,000 cords for sale each year from DNR-managed forests, plus an additional 30,000 cords of ash and tamarack for sale annually. We would not be able to meet this sustainable timber harvest target with the budget reductions included in the Senate position. The proposed \$5.1 million General Fund base reduction, \$2.3 million reduction to forestry systems, and \$1.5 million reduction to county and private forest management more than offset the Senate's \$3 million additional appropriation from the Forest Management Investment Account (FMIA). These cuts would cripple our capacity to manage Minnesota's forests so that they support wildlife, sustain biodiversity, and provide a reliable source of wood for our state's forest products industry. By contrast, the Governor's budget and House proposal include a \$2 million increase from FMIA in FY20-21 over current funding levels. These proposed increases would support the agency in meeting the new sustainable timber harvest level.

Conservation easement stewardship. The Governor's budget and House proposal maintain the DNR's current level of funding for managing conservation easements. The Senate proposes to cut the \$125,000 General Fund appropriation for this work. Elimination of this funding would cut staffing for the operation and maintenance of DNR's easement monitoring program and would limit the agency's ability to determine compliance with easement conditions. The State of Minnesota has invested considerable resources in the acquisition of conservation easements, and this program is critical to ensure protection of this investment.

Making Smart Decisions with Good Information

Pineland Sands Study. The Governor recommended a one-time General Fund appropriation of \$1.9 million to evaluate the impact of land conversion and increased agricultural irrigation on water and other resources in the Pineland Sands Area, which includes parts of four counties. Neither the Senate nor the House proposals include funding for this important study. This one-time research is necessary to inform

permitting decisions that affect Minnesota communities in an environmentally sensitive area undergoing rapid change.

Environmental research related to mining. The Governor's budget and House proposal maintain the DNR's current level of funding for mining related environmental research. The Senate proposes to eliminate funding for this work. This reduction would eliminate the DNR's environmental research program, which has been providing critical data needed for environmental review and permitting decisions since the 1970s. This environmental research is primarily conducted in DNR's Hibbing field office and is essential to effective mining regulation.

Connecting People to the Outdoors

Service levels at parks and trails. As noted previously, the Senate position does not include the operating adjustment proposed by the Governor and the House to cover known compensation increases under current contracts. The omission of the operating adjustment would lead to staff and service reductions at state parks and trails. Specifically, the funding shortfall created by the omission of the operating adjustment would eliminate camping and other services at up to 34 parks, close campgrounds and core parks for the shoulder seasons (Labor Day to Memorial Day), and reduce tours at our highest-visitation destination parks. Trail maintenance and grooming throughout the state would also suffer noticeable impact.

ATV trails. The Governor's budget includes a \$1.3 million increase in appropriations to the DNR from the All-Terrain Vehicle (ATV) account in FY20-21 for the management of ATV trails and related enforcement activities, as well as a \$600,000 appropriation increase for the Grant-in-Aid program for ATV trail development by partner groups. The House position makes \$1 million of these appropriations contingent on the proposed gas tax increases, while the Senate position foregoes these increases altogether. Without these appropriation increases, our agency would not be able to support the existing trail systems or keep pace with demand for new trails.

ORV trails. The Governor and House proposals include a \$1 million increase in appropriations from the Off-Road Vehicle (ORV) Account in FY20-21 for trail development and related enforcement activities. The Senate position includes a number of appropriations for specific ORV trails and includes some technical clarifications. We appreciate the Senate Committee's work in this area. Our remaining concern with the Senate position is the lack of additional funding for enforcement on these ORV trails. We support the Governor's recommendation of a \$250,000 increase in appropriations from the ORV Account for enforcement. Effective enforcement on trails is vital to reducing user conflicts, protecting natural resources, and fostering community acceptance.

Boat registration fees. The Governor and House proposals support needed investments in Minnesota's public water access infrastructure through modest boat registration fee increases. The Senate proposal does not fund these proposed increases. Without these increases, the DNR will not be able to provide for critical maintenance and improvements to Minnesota's boating infrastructure. This will mean fewer access sites upgraded to ADA design standards; fewer partnerships with local governments; less effective management of storm water runoff, erosion control and shoreland buffers. In addition, this infrastructure helps support the state's \$3.1 billion recreational boating industry.

Addressing Operational Needs

Operating Adjustment. As noted above, the Governor's budget included an operating adjustment to cover the cost of known increases in compensation under the current labor contracts. The Senate's exclusion of this adjustment would reduce the DNR's capacity in functions ranging from issuing permits and surveying lakes to managing parks, trails, and forests.

Legal Costs. The Governor recommended a one-time General Fund appropriation of \$5.565 million in FY20-21, plus an estimated \$500,000 carryforward, to cover the cost of major litigation cases at DNR and the Minnesota Pollution Control Agency (MPCA). The House bill appropriates \$3 million for this purpose, plus an estimated \$500,000 in carryforward. The Senate bill includes no funding for these critical needs. The costs of current legal cases such as PolyMet and Fargo-Moorhead are significant and cannot be absorbed by the DNR and MPCA's operating budgets, particularly in light of the other operating budget cuts proposed in the Senate position.

Unfilled positions within 180 days of posting. Section 153 of the Senate bill proposes to reduce General Fund and non-General Fund operations appropriations to the DNR and other agencies in an amount equal to any salary and benefits savings resulting from positions unfilled after 180 days of posting. While the DNR does not often have positions left unfilled for 180 days, there are sound business reasons why this does occur. Agencies should not be penalized for exercising good fiscal and personnel management in such circumstances.

Environment and Natural Resources Trust Fund (ENRTF) Appropriations

The Legislative-Citizen Commission on Minnesota Resources (LCCMR) is a thoughtful, deliberative body for considering ENRTF-related projects and funding decisions. The DNR supports the LCCMR process and resulting recommendations.

The DNR opposes the Senate's extensive departures from the LCCMR's recommendations. The Senate would reduce FY 20-21 General Fund for state parks and trails by over \$10 million and offset this with a one-time ENRTF appropriation. The Senate accommodated this shift by reducing or eliminating several LCCMR-recommended projects and programs. Some of DNR's priority projects for protecting the state's natural resources would be eliminated by this action, including a \$3.5 million proposal for scientific and natural areas (SNAs). The removal of this project severely impairs DNR's ability to conduct essential management on SNAs, including prescribed burns and invasive species control.

Additionally, the Senate proposal removes a \$2.4 million project for the County Geological Atlas. The program cannot survive this reduction, especially considering the deep cuts proposed to our General Fund base. County Atlases would not be completed, and counties and others would lose access to the important geologic, hydrogeologic, and groundwater quality information they need to inform decisions relating to water infrastructure investments.

Other appropriations to the DNR impacted by the proposed reversal of LCCMR recommendations include a \$2 million reduction to state trails development and the elimination of \$2 million for state parks and trails acquisition. Again, we hope you will reconsider these proposed reversals to the legislative-citizen panel's strong work.

Other Concerns with Fiscal Implications

Senate

- *(Article 1, Sec. 3, Subd. 3 (k))* The DNR opposes the allocation of funds to dredge a boat landing on Lake Minneiska. The landing was designed and built for small watercraft such as kayaks, canoes, and flat bottom boats. Even if the site were dredged, it may not be capable of accommodating the level of water recreation desired. The DNR will be completing a final survey in 2019, which will be used to inform selection of the final plan.
- *(Article 1, Sec. 3, Subd. 6 (d))* While the DNR strongly supports increasing youth involvement in outdoors activities, this language takes \$200,000 from the Heritage Enhancement Account and directs it to grants to high school fishing leagues. This would reduce existing activities, including depredation program support, water control and dam safety contingency funding, elk food plots and aerial surveys, and angler surveys, and redirect the funds to the fishing leagues. DNR would prefer to see this program funded with General Fund dollars.
- *(Article 3, Sec. 28)* Language regarding state park open house days adds statutory language creating additional open house days on major holidays. As the bill is currently written, we expect a negative fiscal impact to state park revenue of approximately \$175,000. While the DNR supports the concept of hosting additional visitors in state parks, this provision would attract additional visitors on days when state parks are already nearing or beyond capacity, resulting in diminished visitor experiences and substantial lost revenue. The DNR has proposed the substitution of Winter Recreation Day, National Get Outdoors Day and Free Park Friday in place of the major holidays identified in the current language.
- *(Article 3, Sec. 34)* The Senate bill requires the DNR to remove snow on any State Forest road if the agency receives a request from a resident. There are 2,340 miles in the State Forest road network. This requirement could cost an estimated \$2.6 million each year. In addition to the fiscal impact, there are a number of implementation concerns relating to this provision, including that the DNR is not a road authority.
- *(Article 3, Sec.156)* While both the House and Senate measures contain language pertaining to the Hill-Annex Mine State Park, the DNR has concerns with the House language. The House bill appropriates \$260,000 for Hill-Annex Mine State Park in addition to funds current expended there, which would double the operating budget of this park at the expense of other parks. The DNR is committed to operating the park at current service levels and to working with the Western Mesabi Mine Planning Board and other local units of government to develop alternative operating models for this site.

House

- *(Article 2, Sec. 45)* Validations and donations are two important funding sources for the Walk-In Access (WIA) program. By eliminating these funding sources as proposed in the House, the DNR

could lose approximately \$100,000 at a time when the future of federal funding for WIA is unknown. In addition, DNR is concerned that eliminating the validation and opening to the land to all users may create issues that would reduce landowner interest and reverse a trend of strong enrollment growth.

Policy Provisions

There are a number of policy items in both the House and Senate omnibus bills. While our agency supports many of these policy items, several others present critical problems to the agency, as noted below.

Senate

- *(Article 3, Sec. 11)* Language would prevent the DNR from enforcing un-adopted rules. The agency is concerned that the proposed definition of un-adopted rules casts a wider net than is intended. Specifically, we are concerned that this definition could be interpreted to include policies and guidance that inform the internal management of the department and that do not directly affect the rights of, or procedures available to, the public. If the agency is forced to promulgate rules on our internal guidance documents, it would substantially impair our efforts to ensure consistency among our staff across the state. The consequence of this would be undue delays to the permit processes, increase the complexity of review, and create confusion among regulated parties.
- *(Article 3, Sec. 55)* This provision would require the DNR to manage elk herds to population goals when population estimates exceed the goal. These provisions do not account for elk moving between populations or hunting season constraints that ensure the hunt can be conducted safely and effectively.
- *(Article 3, Sec. 58)* Language regarding the use of two fishing lines when angling is problematic for the fundamental construction of DNR open water regulations, which are based on the concept of one line. The requirement of an additional license endorsement will cause enforcement challenges due to the need to physically check for this endorsement. This provision also adds regulation complexity since the endorsement only allows the use of two lines on waters that are not subject to special regulations. If this provision were to pass into law, the DNR would need to evaluate the current open water regulation structure.
- *(Article 3, Sec. 81)* Language regarding irrigation and groundwater management is similar to provisions the DNR opposed during the 2018 legislation session. The language conflicts with Minnesota's water law [Chapters 103A-103G] by implying western water rights, whereby water is owned as a property right that can be bought and sold. This contrasts sharply with Minnesota's regulated riparian system, where water is a public trust resource managed by the state for all citizens.
- *(Article 3, Sec. 84)* Language in this section would prevent the DNR from discussing a groundwater management area with the public. This is inconsistent with the purpose of groundwater

management areas, which are a tool for DNR to work with the public, including permit holders, to address groundwater sustainability issues in a proactive, transparent, and cooperative fashion. Moreover, withholding data from the public is in direct conflict with the Data Practices Act (MN Statutes Chapter 13).

- *(Article 3, Sec. 85)* Language in this section misrepresents the work of the Thresholds Stakeholder Group. The Stakeholder Group was established to develop alternative standards to be used for appropriating ground water. The group's recommendations were based on using 10 percent of the August median base flow and also discussed that this is not a one size fits all solution. This language doubles that value to 20 percent of August base mean flow, which will have severe impacts to watercourses. Furthermore, the language in this section is not consistent with our recommendations to the legislature in 2016.
- *(Article 3, Sec. 135)* Language on the Sand Dunes State Forest would prohibit the DNR from converting land within the forest to non-forest cover types. The proposed changes are contrary to existing, approved management plans, which recognize a diverse landscape, and do not represent the consensus viewpoint of the stakeholder advisory group.
- *(Article 3, Sec. 143)* This provision would require DNR to provide Aggregate Reclamation Guidance as an unfunded mandate. The DNR does not have the resources to perform this work without additional funding.
- *(Article 3, Sec. 151)* Language in this section would establish a new Citizen-Legislative advisory committee on fish hatcheries. One of the duties of this committee is to recommend what and how many fish we raise and stock. The agency's stocking plans are currently driven by lake management plans that are already developed with citizen input and the best available science. In addition, the DNR works closely with the Capital Investment committees to address the needs for rehabilitation and repair of the state's fish hatcheries.
- *(Article 3, Sec. 162)* This provision would expand the Wright County Aquatic Invasive Species pilot project to nine lakes, adding six new lakes to the program. After reviewing the plan submitted earlier this spring, the Commissioner approved the continuance of the existing plan and identified concerns that need to be addressed before the DNR could properly evaluate any proposal to expand the program. The DNR does not support expansion of the pilot program to nine lakes at this time.

House

- *(Article 2, Sec. 99)* This provision would establish a Minnesota Outdoor Recreation Office. A number of state agencies and stakeholders have testified as to the need to have an inclusive process to establish the office and its priorities. The language in the bill does not provide for this. While the DNR supports the concept of an Outdoor Recreation Office or similar collaborative effort, experiences in other states and with analogous offices in Minnesota have demonstrated that the success of such an effort requires robust stakeholder outreach and engagement before an office of this nature is established.

Senate and House

- Neither the House nor the Senate contain necessary language regarding firefighter licensing requirements. In 2015, the Minnesota Board of Firefighter Training and Education Board amended 299N. As an unintended result, one could argue that DNR wildfire staff are required to take structural fire training that is not applicable to their work in the field fighting wildfires. Language to clearly exempt DNR wildfire staff from this requirement has been vetted through all relevant committees and also passed off of the floors in both bodies last session. We recommend including it in this year's bill.

Thank you for the opportunity to work with you this session on these critical budget and policy issues for the benefit of all Minnesotans. I am committed to working with you to address the concerns that we have raised in this letter. In order to ensure that all positions on the final bill are clear and transparent, the DNR commits to providing all offers in writing and would appreciate the same courtesy from the House and Senate.

Sincerely,



Sarah Strommen

Commissioner

cc: House Environment and Natural Resources Policy and Finance Conference Committee
Majority Leader Paul Gazelka, Minnesota Senate
Minority Leader Tom Bakk, Minnesota Senate
Speaker Melissa Hortman, Minnesota House of Representatives
Minority Leader Kurt Daudt, Minnesota House of Representatives
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