

April 2, 2022

Senator Julie Rosen  
Chair, Senate Finance Committee  
Minnesota Senate Building, Room 2113  
95 University Avenue West  
St. Paul, MN 55155

Senator Bill Ingebrigtsen  
Chair, Senate Environment and Natural Resources Finance  
Minnesota Senate Building, Room 3207  
95 University Avenue West  
St. Paul, MN 55155

Dear Chair Rosen and Chair Ingebrigtsen:

I am writing on behalf of the Minnesota Department of Natural Resources (DNR) regarding the Senate Omnibus Environment and Natural Resources Supplemental Budget and Policy Bill, SF4062 1<sup>st</sup> Engrossment. The DNR appreciates Chair Ingebrigtsen, Chair Ruud, and their committees for their work they have done to assemble this bill.

Many of DNR's policy provisions, including the Lands Bill, are contained in this bill. We continue to believe these are important initiatives, and we look forward to working with the Senate to pass them into law.

As discussed in Senator Ingebrigtsen's committee the 2022 Walz-Flanagan Budget to Move Minnesota Forward includes \$97.4 million in investments in Minnesota's trees, forests, wetlands, grasslands, and natural resources infrastructure. This ambitious funding recommendation reflects the significance of Minnesota's outdoors and outdoor recreation infrastructure to our state's economy, health, and way of life. With a historic budget surplus, we have a unique opportunity to work together and make significant one-time investments in natural resources and outdoor recreation. The timing could not be more critical, as many of our facilities are aging and in poor condition at the very same time as Minnesotans are using these outdoor spaces and facilities in record numbers. Reinvestments will ensure Minnesotans are able to enjoy the high quality experiences that they expect throughout our public lands for generations to come.

Senate File 4062, unfortunately, foregoes the once in a generation investment opportunity contained in the Walz-Flanagan budget. In this letter, we outline the lost opportunities that this bill represents, as well concerns we have with some of the policy items contained in the bill. We look forward to working with you to address these issues in the final version of the bill.

## Opportunities for Durable One-Time Investments

### *Trees and Forests*

The Walz-Flanagan budget supports private woodland owners in managing their forests. That budget includes a \$5.5 million investment to meet the increased demand for planning assistance and cost-share funding to assist private forest owners, whose lands account for 49 percent of Minnesota's forests. Private landowner assistance would be implemented through a partnership between DNR, soil and water conservation districts, and the Minnesota Forestry Association. We encourage the Committee to join the Governor in supporting these private forest management efforts.

### *Wetland, Grassland, and Public Land Protection and Restoration*

The Walz-Flanagan budget includes investments in public lands as well as wetlands and grasslands to improve habitat, resiliency, and outdoor recreation experiences across Minnesota. These public lands investments include \$10 million to enhance and restore more than 6,000 acres of grasslands and wetlands on existing state Wildlife Management Areas (WMAs) in western and southern Minnesota, and \$24 million to acquire new public lands for recreation and conservation. Public lands provide habitat for wildlife, pollinators, and other species. The Senate Omnibus bill foregoes the opportunity to improve and protect habitat and expand outdoor recreation.

### *Natural Lands and Waters Investments*

The Senate Omnibus Environment and Natural Resources Supplemental Budget and Policy Bill does not include the Walz-Flanagan recommendation of \$42 million for natural lands and waters investments to improve Minnesota's outdoor recreation system and help ensure the continued health of, and public access to, natural lands and waters. These are important investments that will connect Minnesotans to the outdoors and maintain our high quality of life throughout the state.

Of the Walz-Flanagan recommended \$42 million for natural lands and waters, \$10 million would be invested in rehabilitating public water access sites. Public water access sites across the state are in significant need of repair and modernization to protect public waters from stormwater runoff and invasive species. Without investment, public water access sites around the state will continue to decay and fall short of the Minnesotan's needs and expectations for high-quality boating experiences.

Minnesota's renowned fishing heritage is supported by fish hatcheries that are in critical need of renewal and modernization. The Walz-Flanagan budget invests \$10 million in modernizing fish hatcheries, many of which were built in the 1950s and still rely on the original equipment. Investments in our hatcheries will increase our capacity to produce fingerlings, improve efficiency of our systems, and provide more cost-effective infrastructure including new boilers and filtration systems. Also in support of Minnesota's fishing tradition, the Walz-Flanagan budget invests \$13 million to replace culverts and restore streams in a manner that will enhance the resiliency of these structures, promote fish passage, and improve fishing opportunities.

The Walz-Flanagan budget invests \$9 million in state parks and trails. This includes \$1 million for restoring plant communities in state parks to enhance the landscape for current and future visitors to enjoy, and \$8 million to make needed improvements in trails and recreational roads. Reinvestments focus on roads that serve outdoor recreation facilities and upgrades to walking and hiking trails that have seen increased use in recent years.

## **Other Budget Needs**

### *Public Safety Deficiency*

The Walz-Flanagan budget includes \$1.73 million in FY22 to address a deficiency in the Enforcement Division's budget due to the costs of public safety efforts of conservation officers' response to protect state assets during the fiscal year. It is essential for the General Fund to fund this work, particularly as the DNR cannot use dedicated funding such as the Game and Fish Fund to pay for these general public safety activities. The Senate Omnibus Environment bill currently does not include any funding for DNR Enforcement, and we urge inclusion in the final bill.

### *Increase Capacity for Broadband Licensing*

Broadband expansion is currently a major focus of investment for many communities, particularly in rural areas of the state. The DNR will require additional staff to process utility license applications for utilities crossing state land or public waters to ensure DNR is not a bottleneck to ensuring timely and efficient review of broadband applications. The Walz-Flanagan budget provides \$246,000 for two full-time employees for three years to conduct broadband permitting and licensing. Without this funding, broadband access to Greater Minnesota may suffer delays depending on the number of license applications for broadband infrastructure to cross DNR-administered state land or public waters.

## **Policy Items of Concern**

### *Unadopted Rules (Article 2, Sec.2)*

This section would prevent the DNR from enforcing un-adopted rules. We believe this provision is unnecessary since MN Statute 14.381 already prohibits unpromulgated rulemaking. Furthermore, we are concerned that this provision, as proposed, 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. The use of guidance is fundamental to all state agencies' operations. We need to be able to provide interpretation and assistance in navigating complex rules and laws. Even if interpreted more narrowly, a definition that forces the agency to promulgate rules on our guidance documents will undoubtedly add unnecessary and costly delays to the permit processes, increase the complexity of review, and create confusion among regulated communities. It would also treat DNR guidance differently than other agencies' policy guidance, which makes government harder for Minnesotans and others to access and understand. All of these impacts would undermine the integrity of the rulemaking process that this bill seeks to preserve. Therefore, DNR opposes this language.

### *Definition of ATV (Article 2, Sec.9)*

This section amends the definition of an all-terrain vehicle (ATV) to include vehicles weighing up to 3,000 pounds. Larger ATVs may create additional damage to certain maintained trails. The DNR does not oppose this language but would prefer that no definition changes be enacted until the trail inventory is completed next year.

### *Repeal of Minnow Importation Ban; Minnow Health Requirements (Article 2, Sec.28 and 30)*

These sections repeal the prohibition on importing minnows for release into public waters and authorizes permitted minnow dealers to import minnows into the state based on requirements outlined in these sections. The DNR has concerns with these minnow importation provisions. The language would significantly increase the potential importation of invasive species or diseased fish into our state. Importation of live minnows is a high-risk potential pathway for invasive carp, as young silver carp and golden shiner minnows look nearly identical. In addition to the potential for invasive species to be contained in a large load of fish, it is also very difficult to detect and test for diseases. The DNR supports local minnow production and has worked with tribal governments and commercial bait harvesters to create a pilot project to allow bait harvest with additional gear types, such as hard-sided traps, in zebra mussel infested waters. Our staff are working with partners to finalize the pilot project for implementation in the 2022 open water season. We hope the Senate will consider removing this language and allow time for the pilot project to be implemented.

### *Nuisance Bear (Article 2, Sec.25)*

This section requires the DNR to issue permits for wildlife control operators to take nuisance bears by live trapping and relocation. In most cases, nuisance bear issues can be resolved by education and technical guidance. When there are serious issues of agricultural or property damage, or human safety issues, bears may be trapped and dispatched. DNR's Fish & Wildlife Division already permits a limited number of bear trappers to trap bears when these serious nuisance issues occur. DNR opposes the addition of this language to the bill, as permits are currently available and trapping and relocating is not necessarily the best way to address nuisance bear issues.

### *Open Season on Wolves (Article 2, Sec.26)*

This section provides for a wolf hunt if and when wolves are delisted under the federal Endangered Species Act. The DNR is in the process of finalizing and update to the state's Wolf Management Plan. The plan is based on wildlife science, input from stakeholder groups and people across Minnesota, and consultation with tribal nations using a public process. A draft plan will be released for public review and comment in the summer of 2022. Given the significant public interest in this plan, we believe it is essential to complete this science-based process and public review before considering holding a wolf hunt. DNR opposes the language in the bill because it is premature.

### *Public Waters Inventory Revisions (Article 2, Sec. 31)*

This section gives local governments veto power over DNR corrections to the Public Water Inventory (PWI). A water body is subject to public water regulations if it meets the statutory definition, regardless of identification on the inventory. To have the inventory not reflect waters that meet the statutory definition because of a local veto

risks misunderstandings and violations within those waters that are not correctly identified. The PWI is an important tool for managing one of Minnesota's most valuable resources – public water, but this language has the potential to diminish its usefulness. The DNR opposes this language since it risks confusion over how public water regulation functions.

#### *White Bear Lake Water Appropriations (Article 2, Sec.32, 37, 40 and 41)*

These sections require DNR to issue any requested water appropriations or amendments to municipalities within a five-mile radius of White Bear Lake as long as the request is consistent with a water supply plan that was approved for the community prior to 2021. DNR is currently under a court order regarding the White Bear Lake matter. The agency has concerns with this proposal because the requirement to approve permits directs the DNR to disregard the obligation to ensure the statutory sustainability and protection of surface waters standards are met. These provisions need to be considered to ensure the health of ecosystems, water quality, use for future generations of households, and riparian uses. Therefore, the agency opposes this language.

#### *Application (groundwater permits) (Article 2, Sec.59 and 60)*

These sections amend the Minnesota Environmental Rights Act (MERA) to prohibit lawsuits related to water appropriation permits under criteria described in other sections of this bill. This specifically excludes groundwater appropriations from being applicable under MERA. This would prevent Minnesota's citizens from bringing a civil action and seeking relief under this Act. The DNR supports the right of Minnesotans to bring such action and opposes this language.

#### *Continuation of White Bear Lake Appropriation Permits (Article 2, Sec.67)*

This section prohibits termination of certain modifications of nonmunicipal water appropriations permits within five miles of White Bear Lake. DNR is currently under a court order regarding the White Bear Lake matter. The provision as written would be an indefinite moratorium, therefore limiting DNR's authority to exercise regulatory oversight over appropriations in the area.

#### *Report on White Bear Lake Water Supply Options (Article 2, Sec. 69)*

This section directs work that the DNR has already completed as part of a past study. It requires the DNR to explore available options for supplying east metropolitan area communities with safe drinking water, allowing for municipal growth and ensuring sustainability and quality and includes a report of recommendations to the legislature. To ensure an effective study, the DNR believes additional language is warranted in the bill to provide specific direction for the development of details on governance, engineering, and funding, which would help develop a path forward on any alternative solution. Related to the report, the appropriation for a study in Art. 1 Sec. 3(g) would need to increase to \$750,000 since the study would be more rigorous than any previously completed. The appropriation for the study would also need to be available until June 30, 2024.

#### *Review of Calcareous Fen Decisions (Article 2, Sec.33)*

This section moves the cost of the hydrologic evaluation and permit review for calcareous fens from the permit applicant, as is current practice, to the taxpayer. DNR opposes the addition of this language to the bill, as it is an

unnecessary burden to state taxpayers.

#### *Water Appropriations to Facilitate Tree Growth (Article 2, Sec.34)*

This section authorizes appropriation of water from the Mt. Simon-Hinckley aquifer, where the appropriation is less than four million gallons per year to facilitate the growth of trees. DNR generally avoids making statutory changes to allow for specific projects to occur. We would need to assess the project to ensure there are no feasible or practical alternatives to this source, so this language would not guarantee a permit. DNR opposes this provision as written.

#### *Transfer of Water Use Permits (Article 2, Sec.35)*

This section prohibits the DNR from changing or imposing any additional conditions on a water use permit when a permit is transferred as part of the conveyance of real property. This 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 with Minnesota's regulated riparian system, where water is a public trust resource managed by the state for all. DNR opposes this provision since requiring the automatic transfer of appropriation permits may mislead property buyers into believing that the permit is not subject to future modification.

#### *Analysis of Water Appropriation Effect on Land Values (Article 2, Sec.36)*

This section requires DNR to provide estimates of the impact of any new restriction or policy on land values in the affected area before a water management plan is prepared. DNR understands the value of groundwater and considers any potential impact to a community or area when making decisions on groundwater management. DNR does not currently have the expertise to assess irrigations impacts to land values. This would have to be hired or contracted, which would create a fiscal impact. Therefore, the DNR opposes this language.

#### *Groundwater Management Area Plan Development (Article 2, Sec.38)*

This section contains language that prevents the DNR from discussing a groundwater management area with the public. Withholding public data is in direct conflict with the Data Practices Act (MN Statute Chapter 13). Therefore, the DNR opposes this language.

#### *Definition of Sustainable Groundwater Use (Article 2, Sec.39)*

This section creates a definition of "sustainable" for purposes of groundwater management areas as a use that does not result in a hydrologic regime of more than 20 percent relative to August median stream flow. The "sustainable" standard in the bill misrepresents the work of the Thresholds Stakeholder Group by assuming that one numerical value would be applicable to all of the state's waters. A range between ten and twenty percent, depending on site-specific characteristics, is the recommendation of the work group. In contrast, this bill takes a one size fits all approach by applying a single value. The DNR supports the public stakeholder group's work and opposes this language.

### *Well Interference and Testing Requirements (Article 2, Sec.42)*

This section requires the DNR to take into account the condition of a well when validating a well interference claim. This language is not needed. DNR already takes the condition of the well into account as part of the investigation and assessment process, which is covered in Minn. R. 6115.0730. Under the rule, parties already have the option of resolution through negotiation, settlement, or a hearing. Well interference complaints are resolved through negotiation between the parties. DNR only knows of one hearing that was requested, which occurred twenty years ago. A contested case hearing may extend out of water situations, which is a public health emergency, often involving older, low income Minnesotans. Because the language is not needed, the DNR opposes the provision.

### *EAW Petitions (Article 2, Sec.61)*

This section of the bill requires that 100 signatories to an environmental assessment worksheet petition reside or own property in the county where the proposed action will be undertaken or in one or more adjoining counties. This language reduces transparency and an opportunity for all Minnesotans to provide input, even those impacted and downstream of a project. The impacts of many projects, particularly those involving water, do not stay within county boundaries. Therefore, the DNR opposes the language.

### *Requiring permits be issued for CSAH 13 in Murray County (Article 2, Sec.70)*

This section requires the DNR to issue any permits applied for by Murray County and convey any rights-of-way, easements, or other interest in real property administered by the DNR to facilitate the widening of County State-Aid Highway 13 in Murray County over Lake Shetek. If any permits or requests made by Murray County are denied, the DNR is required to immediately report this to the chairs and ranking minority members of the house of representatives and senate committees and divisions overseeing the environment and natural resources. The reporting requirement further stipulates that DNR policies directing that the lake is more important than the lives of travelers does not constitute a sufficient decision to deny a permit. The EAW developed for this project does not sufficiently identify project impacts or consider alternative designs options that could reduce the scope and scale of the environmental impacts. Therefore, the DNR opposes this language.

### *EAW and Public Waters (A10 Amendment)*

This section states that a mandatory environmental assessment worksheet is not required for a project that will diminish the course, current, or cross-section of one acre or more of any water unless the affected water is on the public waters inventory. In addition, a discretionary environmental assessment worksheet is not required if the water is not on the PWI unless the responsible government unit determines the project is likely to have catastrophic environmental effects. Currently, statute provides a definition of a public water. Waters meeting this definition, should have the same standard of environmental review. The Minnesota Supreme Court is currently reviewing a related case. DNR opposes this language.

In conclusion, Minnesotans are proud of our nationally-recognized outdoor recreations system; our hunting and angling opportunities; and the economic opportunities in our tourism, timber, and mining industries. With more Minnesotans appreciating and using these opportunities at historically high levels, this is a critical time to be

investing in our outdoors and natural resources. Missing this once-a generation opportunity will undermine the quality of experiences Minnesotans are seeking today and jeopardizes the future availability of these experiences.

Thank you for the opportunity to work with you this session on these critical natural resources budget and policy issues. The DNR is available to you and your staff to answer any questions and to work with you to develop solutions that will provide long lasting improvements in our states natural resource and outdoor recreation assets.

Sincerely,



Sarah Strommen  
Commissioner

CC:

Majority Leader Jeremy Miller  
Chair Carrie Ruud, Environment and Natural Resources Policy and Legacy Finance Committee  
Ranking Minority Member Patricia Torres Ray, Environment and Natural Resources Finance Committee  
Rachel Ganani, Policy Advisor, Office of Governor Tim Walz and Lt. Governor Peggy Flanagan