Testimony of Minnesota Center for Environmental Advocacy
Conference Committee on HF888/SF723: Environment Omnibus Budget and Policy Bill

April 20, 2017

Thank you for the opportunity to share our thoughts on provisions in the two Environment Omnibus bills that appear only in one of the bills.

Budget (Article 1)

First, a word on the budget itself, contained in Article 1 of each bill. MCEA opposes the cuts from the General Fund to agency budgets. In a time when there is a significant budget surplus, the Legislature should be working to increase and enhance state services, not limiting them. The cuts made to agency budgets from the General Fund will make it more difficult for the agencies to carry out their duties, such as permitting and providing environmental review services and technical support to industry and local governments. This decrease in state services will have a negative impact on Minnesota commerce and industry, as well as make it more difficult to protect and enhance our natural resources.

In particular, MCEA opposes the cut to the Soil and Water Conservation District funding in this bill, with its domino effect of funding from the Clean Water Fund for those operational expenses.

Policy Provisions

The bills contain many policy items, and we will offer our views on several of them that are contained in one of the two bills.

First, the policy items that we support:

[Line R43-44, Senate Sec 70] Goal of a 25 percent reduction in water pollution by 2025

We support the Governor's new initiative to address our state's water issues. Minnesotans have long agreed that the water is a high priority, and a goal like this has the potential to create energy and innovation to move us forward. MCEA supports this provision.

[Line R90, Senate Sec. 18] Public access to data used to create environmental impact statements.

We support the Senate language, since it will ensure transparency in the preparation of environmental review documents. Both bills will allow private parties to prepare their own draft Environmental Impact Statements. We do not support those provisions. However, if private parties are allowed to independently draft their own documents, we feel the related information should be public. So if these provisions are included in the final bill, it is imperative that the process of creating the draft EIS be transparent. It is vital to ensure that the public have access

to the underlying information created in preparation of the EIS. Thus, we support the Senate's decision to require that data associated with private preparation of an EIS be treated as though it were created by a public entity.

Policy Items MCEA opposes

Moving on, I must share with you our serious concerns about several of the many policy provisions in this bill. As requested, we limit our comments to those provisions identified by committee staff as being only in one or the other of the two bills.

[R30, House Sec. 51-52] Eliminating public right to appeal in Permit to Mine

The House and Senate have different approaches to this issue, both affecting the rights of citizens to ask for review of government decisions related to a permit to mine.

Both bills would amend the permit to mine statute to eliminate the current administrative appeal and require appeals to go straight to court [R32, House Sec. 53, Sen Sec. 6]. The House adds several sections that do permit a very limited class of citizens and governments to appeal through the administrative avenue.

So if only that provision is passed, there would be no right of affected citizens and local governments to have a contested case on any issues dealt with in mining permits. For that reason, MCEA asks that the conference committee work to improve the House language, so that the rights of affected citizens are preserved.

What issues are involved? For example, how the land will be reclaimed and what financial commitments will be required so that the company will not leave tax-payers holding the bag if things don't go as planned. In general, significant decisions affecting the environment made by agencies are subject to what is referred to as "contested case" proceedings – essentially a trial where parties with different perspectives can present their evidence and build a record to support or oppose an agency decision. That has always been the case for permits to mine, since 1969 when this statute was first passed.

Since 1969 those permits have been subject to review in contested case proceedings. In other words, local governments and affected citizens could request that an administrative law judge review DNR's decisions on these critical matters in the permit to mine. This right was affirmed most recently in a decision by the Court of Appeals just a couple months ago, which involved Lake of the Woods County's challenge to HibTac's wetland replacement plan. (DNR's approval of wetland replacement under a mining reclamation plan is subject to review through a contested-case proceeding. See Minn.Stat. § 93.50 (2014) (providing for review under chapter 14). In re Hibbing Taconite Mine & Stockpile Progression, 888 N.W.2d 336, 341 (Minn. Ct. App. 2016))

The House provision retains a very, very limited right to an administrative appeal in permit to mine cases. Those who own property adjacent to the mine, and affected governments, would still be able to get a review of aspects of the permit to mine decision. Since the current standards allows any "aggrieved person" to challenge a decision, this takes away the rights of the majority of affected Minnesotans to ask for a review of a decision that affects them.

Section 51, amending Minn Stat. § 93.481, subd. 2
This provision affects the permits that regulate all mining activities. That would *include reclamation plans – what will happen to the land after the company is gone? The bill eliminates the public's ability to seek administrative review of decisions on financial assurance" – the amount and type of collateral the company has to put up so that taxpayers are not left holding the bag for huge clean-up costs if the company goes bankrupt. Taxpayers have a strong interest in ensuring that the company, and not taxpayers, are stuck with these costs.*

House, Section 52 provides that very few people *can request contested cases:*

- *People who own property "adjacent to the proposed operation" (line 56.6)*
- *ANY federal, state, and local governments with "responsibilities affected by the proposed operation"*

With respect to the property owners: Why is it limited to only people who live next door? If I have a lake place downstream from a project that could pollute the water, why am I excluded from commenting? What if I regularly hunt or fish on the land? Or what if I rent next door: why would only the landlord be covered, but not a renter?

The House bill says that appeals are ok from "any federal, state and local government" if the government has responsibilities affected by the mining operation. It appears that the House bill gives rights to foreign governments that are being taken away from our own citizens. So, Russia, for example, whose interests in mining are well known, could ask for a contested case? Or China, where mining is clearly the responsibility of the government, would have this right? But not ordinary Minnesota citizens, because they don't own property adjacent to the mine?

For these reasons, we cannot support either the House or Senate approach to this issue. We strongly encourage you to work on the House language and find a way to retain the right of Minnesota taxpayers to seek administrative review of important public decisions that affect them and their wallets.

[R56-R57, Senate Sec 81] **Calcareous Fens**

Calcareous Fens are one of the rarest and most sensitive ecosystems you will find 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. Section 81 (R56-57) of the

Senate bill that REQUIRES DNR to allow this lifeblood to be cut is a sure path to the irreparable loss of many calcareous fens.

[R65, Senate Sec. 90] of the Senate bill to require the use of a depreciation schedule in well interference settlements is unnecessary and will harm rural families who depend on private wells for their drinking water. The value of the water they no longer have access to due to the actions of another does not depreciate. Additionally, the lifespan of a well can vary dramatically from one well to the next. Factors may include the type of well, how it is drilled, the local geology, how the well is used, and the volume of water drawn. Any consideration of the current condition of the affected wells is best evaluated on a case-by-case basis via the settlement process. This is a one-size-fits-all approach that further harms those who lose their wells due to the interference from others.

Golden Shiners; an open door for invasive carp

[R42-43, Senate Sec. 68] Section 68 (R42-43) of SF 723 would allow the importation of golden shiners from outside the state. One or more species of juvenile invasive carp are indistinguishable from golden shiners, and a likely source for importation is the Missouri River watershed where we know we have invasive carp. We have been undertaking many efforts to keep invasive carp from working up the Mississippi River system, and these provisions could allow them in the back door via minnow buckets. MCEA opposes this provision.

Water quality suspensions

[R106, Senate Sec. 19] **SF732 Art. 3, Sec. 18, Line 122.10-122.20.** Suspends Water Quality Standards Adopted to Protect Rivers and Streams from Algae Pollution.

Instead of "streamlining" processes to make agency work more efficient, this provision would bog down agency work on water quality, opening the way for new challenges and for interference by EPA. MCEA opposes this provision since it will interfere with clean water efforts, and undermines agency science. Basically, this provision tells PCA not to apply standards that state scientists believe are needed to protect rivers and streams. Minnesotans deserve better.

Background: Minnesota adopted water quality standards establishing safe levels of phosphorus mid-2014. Technically called the River Eutrophication Standards, these standards are designed to protect Minnesota waters from excess algae and other water quality problems that result from phosphorus pollution. Because EPA approved these standards in 2015, they are in effect under the Clean Water Act, until or unless EPA promulgates or approves a different standard. So, even if Minnesota suspends these standards MPCA is still obligated under the Clean Water Act to rely on the standards to identify polluted waters and set permit limits.

This section directs MPCA to do something it can't do under federal law – suspend EPA approved water quality standards. Suspending these standards creates uncertainty for permittees because permits that don't contain limits to meet the EPA approved standards will violate the Clean Water Act.

The actual effect of this section is unknown, since it would also suspend any new standards adopted between now and 2019 – for example MPCA has developed science showing that new standards for nitrates and sulfate are needed to protect aquatic life.

MCEA opposes this provision and we ask that conferees instead provide the requested funding to cities for addressing water quality problems.

Changes in Environmental Quality Board:

[R85-86, House Sec. 113-114] HF888, Section 113 significantly changes the makeup of the Environmental Quality Board, which has served the state well as a place for cross-silo work on environmental issues that affect the entire state and multiple stakeholders. For example, the Board did excellent work in addressing the controversial issue of silica sand mining, bringing together interested parties to forge a consensus that had eluded the Legislature.

We do not see any reason to make the proposed changes in the EQB: Section 113, eliminating a designee of the Governor's Office, and adding 3 citizen appointments, or Section 134, the repeal of Minn. Stat. 116C.04, subdivision 4.

Our strongest objections are to the major limitation on the work of the Board, contained in amendments to Minn. Stat. 116C.04, subdivision 2 (Section 114).

Instead of serving to connect state agencies to bring in relevant points of view and expertise, these changes restrict the jurisdiction of the Board to working on streamlining of environmental review and permitting. No reason has been given for this change, and the current chair of the EQB Board testified that "if it ain't broke, don't fix it, and the EQB is definitely not broken."

Finally the changes actually cut citizen input from the Boards' work; eliminating its ability to convene interdepartmental and citizen task forces and subcommittees.

Thank you very much for your consideration of our views. We stand ready to assist in discussions of these and the many other important provisions in the two bills as the conference committee continues with its work. Relevant contact information is below.

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