2015 MAWD Resolutions Background Information

Proposing District: Coon Creek WD

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Resolution Title:
Addressing the Conservation of Endangered and Threatened Species and Encouraging The Minnesota Department of Natural Resources to Fulfill its Legal Responsibilities to These Resources and The People Of Minnesota Through Responsible, Timely and Open Regulation and Policy

Factual points which provide background to, or a basis for, the issue addressed by the Resolution:
The Coon Creek Watershed District contains 51 plant and animal species that are listed on the state threatened and endangered species list. Three of the principal laws under which the District operates require the District to consider, address and or regulate land use actions which may affect wildlife or threatened or endangered species specifically.

The Minnesota Department of Natural Resources Threatened and Endangered species program:
1. Has initiated a new policy to expedite the permitting of taking of these species through cash payments in lieu of seeking avoidance or minimization of impacts on these species.
2. Has not disclosed how it is arriving at the cash value of these species, many of which are also listed as rare, as has been the case in both the Winslow Woods development in Andover and the Main Street reconstruction in Blaine.
3. Has not been timely in commenting back to local governments regulating conservation and potential impacts or applicants or land owners seeking information within the 45 days facing local permit decision
4. Has not required design or development alternatives for avoiding or minimizing impacts on Threatened & endangered species

Proposed solution to the problem

1. **Require Sequencing Analysis before considering issuing a Taking Permit:** The DNR be required or require applicants to conduct a sequencing analysis that assesses the prudence and feasibility of avoiding impacts to the species or community in question through avoidance and then minimization of impact before being allowed to “take” said species under the state threatened and endangered species act.
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2. **Allow salvage transplantation of plant species to similar habitat** if the issuance of a takings permit for a threatened or endangered plant species in that location is found to be feasible and prudent.

3. **Seek clear and specific authorization from the Legislature to pursue cash mitigation** for the loss or taking of an endangered or threatened species.

4. **Clarify Method for Determining Cash Value of Mitigation**: The method for determining the cash value of a species should be subject to due process and public review.

**Likely Reaction by the Public or Other Governmental Units**
Municipalities and road authorities may perceive the sequencing requirement as an added “complicator” in an already complex and time involved process. This process is the same process as used in the Wetland Conservation Act (WCA) and should/can be done at the same time. Forewarning provided by the Natural Heritage Information System (NHIS) provides an easily accessible source of information similar to the National Wetland or Public Waters Inventories. The proposed solution should benefit from what has been learned in administering WCA and provide for sequencing flexibility and provide for cash payment, but only after an open and consistent review.
WHEREAS, The Coon Creek Watershed District (District) is a Minnesota special purpose unit of government established and governed under Minnesota Statute 103D, and

WHEREAS, The District is also a Water Management Organization (WMO) engaged in Comprehensive watershed management under the Metropolitan Water Management Act, and

WHEREAS, The District is also a “Local Governmental Unit” (LGU) administering the Minnesota Wetland Conservation Act, and

WHEREAS, the District through its Comprehensive Plan is committed to protecting and providing for the beneficial uses of the water and related resources, including wildlife and the endangered and threatened species of the Coon Creek watershed, and

WHEREAS, urban growth and the need to improve public infrastructure in the north metro area has presented numerous projects that have involved endangered and threatened species, some of which have been classified as rare by the Minnesota Department of Natural Resources, and

WHEREAS, the Minnesota Department of Natural Resources is directed by the Minnesota Environmental Policy Act (M.S. 116D.02 Subd. 2 (10)) to “preserve important existing natural habitats of rare and endangered species of plants, wildlife and fish and provide for the wise use of our remaining areas of natural habitation, including necessary protective measures where appropriate” and the “Protection of Threatened and Endangered Species (M.S. 84.0895 Subd. 7 (c)) to not issue a takings permit “until all alternatives, including trapping and transplantation, have been evaluated and rejected, and

WHEREAS, The Minnesota Department of Natural Resources is not expressly authorized to accept cash payments as a form of mitigation for the loss of Threatened or Endangered species, and

WHEREAS, The Minnesota Department of Natural Resources has issued permits within the District affecting no less than six different species on three different projects and suggested and/or received cash payments as mitigation for the species or as a stipulation of the taking permit, and

WHEREAS, There was no public review, no evidence that alternatives to avoid or minimize impacts were considered that are unique to the species proposed to be impacted, that transplantation was refused, even after the takings permit was approved and that there is no written policy, procedure or methodology that has undergone public review and comments as how the cash value for the takings of these species was determined, and
WHEREAS, The Threatened and Endangered Species program has taken so long to check the Natural Heritage Information System that substantial delays, costs and inconvenience has occurred to land owners, developers and local government, and

THEREFORE BE IT RESOLVED THAT, The Coon Creek Watershed believes that the Minnesota Department of Natural Resources should:

1. Conform to the timelines required of local government units administering the Wetland Conservation Act and provide Natural Heritage Database information in a timely manner.

2. Be required or require applicants to conduct a sequencing analysis that assesses the prudence and feasibility of avoiding impacts to the species or community in question through avoidance and then minimization of impact before being allowed to “take” said species under the state threatened and endangered species act.

3. Allow salvage transplantation of plant species to similar habitat, if the issuance of a takings permit for a threatened or endangered plant species in that location is found to be feasible and prudent.

4. Seek clear and specific authorization from the Legislature to pursue cash mitigation for the loss or taking of an endangered or threatened species.

5. The method for determining the cash value of a species should be subject to due process and public review.

BE IT FURTHER RESOLVED THAT, The Coon Creek Watershed District believes that the Minnesota Department of Natural Resources and the Minnesota Association of Watershed Districts should support an amendment to Minnesota Statute 84.0895 concerning the Protection of Threatened and Endangered Species that requires applicants for permits under that Act to:

1. Establish or confirm the presence of endangered, threatened or special concern species or communities on-site and the source of that information.

2. Assess the potential effect of a proposed project on wildlife and vegetation and the habitats upon which they depend through an effects analysis.

3. To assess the prudence and feasibility of a project and/or proposed taking on the effect on a threatened or endangered species through a sequencing analysis similar to that required under the Minnesota Wetland Conservation Act.

4. Require applicants to provide a habitat management plan when the Commissioner determines the applicant cannot avoid direct or indirect impacts on the habitat in question.