MUCC™

MICHIGAN UNITED CONSERVATION CLUBS

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Dear Senators:

I am writing to you today on behalf of MUCC's nearly 70,000 members and supporters and over 250 affiliate organizations, collectively representing hundreds of thousands of Michigan citizens, regarding Senate Bills 39 and 40. These bills, which are up for testimony in Senate committee this week, represent a fundamental and deeply concerning threat to Michigan's hunting, fishing, and trapping heritage.

Michigan's public land resources ensure the democracy of our outdoor heritage by providing places that are open and available for any Michigan citizen to exercise their rights to hunt, fish, and trap. These bills imperil that notion by exposing all state forest land, state wildlife areas, state fish and wildlife areas, state fish and wildlife research areas, boating access sites, and state fish hatcheries to sale because they could meet the bill's definition of surplus land. Taking away the places to hunt, fish, or trap does the same damage as taking away the rights to hunt, fish and trap.

The bills also propose alarming changes to the public's involvement in land sales. Under the halo of secrecy written into this bill, negotiations for the sale of the public's land could be carried out with no public notice, no public comment, and no public engagement.

The bills fundamentally alter how wildlife resources are managed, establishing a statutory standard that all wildlife management actions should always arc toward the enhancement of fish and game populations. There are numerous reasons why enhancing a game population may not be desirable, but more than this, the Scientific Fish and Wildlife Conservation Act establishes that fish and wildlife management decisions will be made upon the principles of sound science by the Natural Resources Commission. This provision runs afoul of that Act.

Further, the bills undermine the good faith doctrine for law enforcement officers that will result in a chilling effect on investigating poaching and hunter harassment complaints.

I respectfully request that you review the concerns brought forward by Michigan's hunters, anglers, and trappers regarding these bills and those of other organizations. Since their introduction over a year ago, many have provided comments outlining the deeply concerning flaws in these bills. With each set of drafts and substitutes where these fundamental concerns have gone unaddressed, it is appears that resolving them is not possible. It is my hope that should the opportunity present itself, that you will stand with Michigan's hunters, anglers, and trappers and vote no on Senate Bills 39 and 40.

Sincerely,

Daniel Eichinger
Executive Director

Further Analysis:

Senate Bills 39 and 40 contain numerous changes to public land management in Michigan, but each one of the changes does one of these things:

- Pressures the sale of our public land;
- Prevents the acquisition public land for the people of Michigan;
- Impairs the value of public land for wildlife habitat, hunting, fishing and trapping;
- Impairs law enforcement's ability to stop poaching.

Since public land ensures a place to hunt, fish and trap, and wildlife habitat for the species we pursue, public land is good for hunting, fishing and trapping. The more public land we have, the more places we have to hunt, fish and trap. The less public land we have, the fewer places we have to hunt, fish and trap. And if you think public land hunting pressure is too high now, that pressure will only grow if more hunters are left with fewer places to hunt. The same goes for fishing access sites.

Selling Public Land

Senate Bill 39 pressures the sale of our public land in the following ways:

- It allows private entities to enter into confidential agreements with the DNR to sell our public land before the public has a chance to comment on them. Essentially, it authorizes back-room deals to sell the public lands where we hunt, fish and trap.

Page 26, Line 27 through Page 27, Line 17:

Sec. 2101C. (1) Upon request, the department shall consider selling or leasing land if all of the following requirements are met:
(A) The prospective buyer or lessee is a business seeking expansion, but is limited by adjacent state land.
(B) The sale or lease will result in an economic or other benefit for a local unit of government or region.
(C) The department has considered any comments on the proposed sale or lease from local units of government, SUBJECT TO SUBSECTION (3).
(2) In making its decision on the request under subsection (1), the department shall consider the impact on natural resources and outdoor recreation in this state, giving due regard to the variety, use, and quantity of lands then under control of the department.
(3) THE DEPARTMENT MAY ENTER INTO A CONFIDENTIAL AGREEMENT WITH THE PERSON MAKING THE REQUEST UNDER SUBSECTION (1) UNTIL REVIEW IS COMPLETE AND A RECOMMENDATION FOR DECISION IS MADE.

- It expands the definition of "surplus" land to include land that would promote literally "any economic activity" if sold. Never mind the economic contributions generated by the outdoor recreation activities supported by public land; if someone thinks they can make a buck on it, it would be "surplus" and available to be sold at auction.

Page 31, Line 7 through 12 and Line 20 through Page 32, Line 1:

*Sec. 2131. (1) ~~Except as otherwise provided in~~ **subject to** subsection (2), ~~or (3),~~ the department may designate as surplus land any ~~state owned~~**state-owned** land that is under the control of the department ~~and that has been dedicated for public use~~ and may, on behalf of ~~the~~ **this** state, sell that land ~~if~~ **after** the department ~~DETERMINES ALL OF~~ **CONSIDERS ALL OF** the following:*

((a) - (c) mostly unchanged))
(d) That 1 or more of the following conditions are met:
~~(i) The land has been dedicated for public use for not less than 5 years immediately preceding its sale and is not needed to meet a department need.~~
(D) ~~(ii) The land is occupied for a private use through~~ ***Whether the land will resolve an inadvertent trespass.***
(E) ~~(iii) The~~ ***Whether*** *the sale will promote the development of the forestry or forest products industry or the mineral extraction and utilization industry* ***OR OTHER ECONOMIC ACTIVITY*** *in this state.*

- It treats all public land, except for state parks, recreation or game areas, as surplus simply at the request of anyone who wants it. Countless boating and fishing access sites and every acre of state forest would be vulnerable to auction as "surplus" under this legislation.

Page 35, Lines 4 through 13:

Sec. 2137. (1) UPON REQUEST, THE DEPARTMENT SHALL CONSIDER SELLING OR EXCHANGING LAND THAT IS NOT DESIGNATED AS SURPLUS LAND, APPLYING THE SAME CRITERIA AS APPLY TO THE DESIGNATION OF LAND AS SURPLUS LAND UNDER SECTION 2131. THE SALE OR EXCHANGE IS SUBJECT TO THE SAME PROCEDURES AS THE SALE OF SURPLUS LAND UNDER THIS SUBPART.
(2) Subsection (1) does not apply to land in a state park, recreation area, or game area. Subsection (1) does not apply to a request to sell land if the request meets the requirements of section 2102(C).

Preventing the Acquisition of Public Land

Senate Bills 39 and 40 prevent the acquisition of public land to hunt, fish and trap in the following ways:

- Instead of removing the Land Cap as was promised by Governor Snyder when he signed Public Act 240 of 2012, Senate Bill 39 replaces it with an immediate land cap on any county in the northern Lower Peninsula or the Upper Peninsula, should any Payment in Lieu of Taxes (PILT) payment by the state to any local government in that region be late. The problem with this is that multiple pieces of legislation have already mandated the full payment of PILTs, so the only way that payments would fail to be made is if the Legislature itself failed to appropriate the funds for them.

Page 4, Lines 11 through 21:

(3) ~~(4) Beginning May 1, 2015~~, ***IF ANY PAYMENT UNDER SUBPART 13 OR 14 OF PART 21 OR SECTION 51106 FOR LAND LOCATED NORTH OF THE MASON-ARANAC LINE IS NOT MADE IN FULL AND ON TIME, THEN UNTIL DECEMBER 31 OF THAT YEAR, OR UNTIL FULL PAYMENT IS MADE, WHICHEVER OCCURS LATER,*** *the department shall not acquire surface rights to land north of the Mason-Arenac line if the department owns, or as a result of the acquisition will own, the surface rights to more than 3,910,000 acres of land north of the Mason-Arenac line* ***THAN THE DEPARTMENT OWNED WHEN THE PAYMENT BECAME DUE.*** *~~This subsection does not apply after the enactment of legislation adopting the strategic plan.~~*

- Senate Bill 39 gives a veto authority on public land purchases to local government units containing 33% state or federal land or commercial forest, meaning that a local county commission or township board could interfere with a private landowner's decision to sell his or her land into the public trust simply because his or her choice of buyer is the citizens of Michigan. A township board should not be able to deny all the citizens of Michigan outdoor

recreation opportunities nor interfere in the free market sale of property by one of its own residents.

Page 10, Lines 20 through 27:

(12) If land owned by this state, land owned by the federal government, and land that is commercial forestland as defined in section 51101 constitute 33% or more of the land in a county or township, the department shall not acquire land in that county or township, respectively, UNLESS THE ACQUISITION IS APPROVED BY A RESOLUTION ADOPTED BY THE LEGISLATIVE BODY OF THE COUNTY OR TOWNSHIP, RESPECTIVELY, AND, IF APPLICABLE, THE CITY OR VILLAGE WHERE THE LAND IS LOCATED.

- An exception to the local veto authority exists if the DNR sells an equivalent amount of acreage in the county, creating an artificial pressure on the DNR to sell our public land whether or not it meets the state's strategic land management objectives.

Page 11, Lines 4 through 7:

(B) County or township approval is not required if, not more than 60 days before the acquisition, THE DEPARTMENT SOLD THE SAME NUMBER OF ACRES OF LAND LOCATED IN THE SAME COUNTY OR TOWNSHIP, RESPECTIVELY.

- Senate Bill 40 opens the Land Exchange Facilitation Fund up for purposes other than acquiring replacement public land for land that is sold. By expanding its funding to cover facilities, maintenance and administration, less will be available for its express purpose: purchasing public land for the citizens of Michigan.

SB 40 (S-1), Page 2, Lines 14-15 and Line 27 through Page 3, Line 4:

Sec. 2135. (1) Money from the fund shall be used by the department only for the following purposes:
(Subsections (a) through (c) mostly unchanged)
(D) THE COSTS OF NATURAL RESOURCES MANAGEMENT AND PUBLIC RECREATION ACTIVITIES, INCLUDING, BUT NOT LIMITED TO, ADMINISTRATION, MAINTENANCE, DEVELOPMENT PROJECTS INCLUDING TRAILS AND OTHER FACILITIES, AQUATIC INVASIVE AND AQUATIC NUISANCE SPECIES CONTROL, GAME MANAGEMENT, AND FISH STOCKING.

Impairing Fish and Wildlife Habitat

In numerous ways, SB 39 impairs fish and wildlife habitat by frustrating the ability of professional wildlife biologists to do their jobs.

- It prohibits limiting activities in any lands not purchased directly with fish and game or Pittman-Robertson dollars, such as on tax-reverted lands that have been managed with and received substantial investment from hunter, angler and trapper license dollars.

SB 39 (S-1) Page 18, Lines 5 through 22:

(6) THE DEPARTMENT SHALL NOT PROMULGATE A RULE UNDER SUBSECTION (1) OR ISSUE AN ORDER UNDER SUBSECTION (12) THAT LIMITS THE USE OF OR ACCESS TO ANY LAND UNLESS 1 OR MORE OF THE FOLLOWING APPLY:
(A) The land was acquired with money appropriated from funds made available to this state under the Pittman-Robertson Wildlife Restoration Act, 16 USC 669 to 669I, or the Dingell-Johnson Sport Fish Restoration Act, 16 USC 777 to 777N. The department may allow RECREATIONAL ACTIVITIES AND RELATED FACILITIES THAT ARE NOT FISH AND WILDLIFE DEPENDENT ON SUCH LAND if the department determines that the activities will not interfere with the purpose for which the land was acquired, was developed, or is being managed. The department SHALL take steps to mitigate any interference in order to allow reasonable recreational activities AND RELATED FACILITIES that are not fish and wildlife dependent on the land.

- It prohibits spending game and fish dollars on non-game animals, taking away the essential argument in support of hunting that hunters pay for the conservation of all species, not just those we hunt.

Page 38, Line 21 through Page 39, Line 5:

The department shall manage land acquired with money received under the Pittman-Robertson Wildlife Restoration Act, 16 USC 669 to 669I, to enhance game and fish populations to ensure increased recreational hunting and fishing opportunities. UNLESS THE DEPARTMENT CAN DEMONSTRATE THAT THE PRIMARY PURPOSE OF THE EXPENDITURE IS FOR GAME SPECIES, AND BENEFITS TO NONGAME SPECIES ARE A RESULT OF THE PRIMARY PURPOSE, BOTH OF THE FOLLOWING APPLY:
(A) MONEY RECEIVED UNDER THAT ACT SHALL NOT BE EXPENDED FOR MANAGEMENT OF NONGAME SPECIES.
(B) FOREST TREATMENTS ON LANDS ACQUIRED WITH MONEY RECEIVED UNDER THAT ACT SHALL NOT BE UNDERTAKEN TO BENEFIT NONGAME SPECIES.

Further, SB 39 allows private landowners to sue the DNR for damages that occur in the commission of a conservation officer's duty, for instance, investigating a poaching on private land!

Page 21, Lines 4 Through 9:

SEC. 514. IF AN OFFICER OR EMPLOYEE OF THE DEPARTMENT ENGAGED IN THE EXERCISE OR DISCHARGE OF A GOVERNMENTAL FUNCTION COMMITS AN ACT OF TRESPASS AS DESCRIBED IN SECTION 552 OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.552, THE OWNER OR LESSEE OF THE LANDS OR PREMISES MAY RECOVER ACTUAL PROPERTY DAMAGES IN A CAUSE OF ACTION AGAINST THE DEPARTMENT.

These are just a few of the many provisions in these bills that pressure the sale of our public land, prevent the acquisition of public land, impair fish and wildlife habitat, or simply frustrate conservation officers and wildlife biologists from doing the jobs hunters, anglers and trappers pay them them to do through our license dollars. For these reasons, Michigan United Conservation Clubs opposes Senate Bills 39 and 40.