

# UNIVERSITY OF MINNESOTA

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Office of the General Counsel


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November 15, 2010

## MEMORANDUM

TO: Robert H. Bruininks  
President

FROM: Mark B. Rotenberg   
General Counsel

RE: Report of Events Surrounding Release of *Troubled Waters: A Mississippi River Story*

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This responds to your request that the Office of the General Counsel prepare a public report on the events surrounding the release of the Bell Museum's documentary film, *Troubled Waters: A Mississippi River Story*. As you know, in response to requests from the press and other interested parties under the Minnesota Government Data Practices Act, this office gathered and made publicly available over 2,500 pages of University documents related to *Troubled Waters*.<sup>1</sup> This report is based in part on a review of those documents, and on other information gathered by this office.

### I.

#### **2007 to Summer 2010: The University Receives Funding for the Project, the Film is Produced, and TPT Agrees to Broadcast the Film.**

In the summer of 2007, Barbara Coffin, Coordinator of Public Programs and Executive Producer of Bell Museum Productions at the University,<sup>2</sup> submitted a proposal to the Legislative-Citizen Commission on Managed Resources (LCCMR) for a project that was then entitled, "Waters of Minnesota Documentary on Watersheds." The LCCMR recommended to the Legislature that the project receive funding. In 2008 the Legislature appropriated \$349,000 to the University "to begin the development of an educational documentary television series on the waters of Minnesota designed to promote watershed understanding and citizen action in protecting, restoring, and

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<sup>1</sup> Requests to review these documents may be made to the University Records Manager, Susan McKinney, at [mckin018@umn.edu](mailto:mckin018@umn.edu).

<sup>2</sup> In addition to her work in the Bell Museum, Coffin has worked for the University in the College of Natural Resources and the University Press; she also previously worked for the Minnesota Department of Natural Resources. Coffin's position at the Bell Museum is academic administrative (a P&A appointment). Coffin was the Executive Producer of the Emmy Award-winning series, "*Minnesota: A History of the Land*," a production of the University and Twin Cities Public Television (TPT).

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conserving water resources.”<sup>3</sup> The project later also received an additional \$150,000 in funding from private sources.

In November 2008 the Bell Museum contracted with Larkin McPhee to direct the film. McPhee is a veteran documentary film producer, and has received a Peabody Award for her work. During the period 2008-2010, Coffin and McPhee worked to produce the film and they provided periodic reports to the LCCMR.

In February 2010 the Bell Museum contracted with TPT for post-production services for the film. The contract gave TPT a non-exclusive right to broadcast *Troubled Waters*, and granted TPT the right to determine if the film met TPT’s editorial guidelines. During the summer of 2010 TPT and Coffin agreed on an October 5, 2010 broadcast of the film by TPT.

Coffin’s final report to the LCCMR dated August 30, 2010 indicated that the film was in broadcast quality form as of June 30, 2010, and stated that the marketing plan and implementation would occur in the summer and fall of 2010. A public premiere screening event was planned for October 3, 2010, at which President Bruininks was scheduled to speak.

## II.

### **August 2010: The Bell Museum Develops a Communications Plan and Screens the Film for Other Communications Staff and the CFANS Dean’s Council.**

In August 2010 the Bell Museum began developing a communications plan with the goal of managing anticipated negative reaction to the film by agricultural organizations. This effort was led by the Bell Museum’s Associate Director for Communications and Operations, Martin Moen. The communications plan identified key strategies and messages related to the film. The plan assumed an October 3 premiere and October 5 TPT broadcast.

Associate Director Moen invited several University communications staff people to view the film and comment on the communications plan. On August 12, 2010 Becky Beyers, Communications Director for the College of Food, Agricultural and Natural Resource Sciences (CFANS), informed Vice President for University Relations Karen Himle that an invitation to view the film would be coming her way. According to emails between Moen and Beyers, Vice President Himle was interested but possibly unable to attend the film screening. The film was shown to the communications group on August 25, but no one from University Relations attended. On August 27 Moen brought the communications plan and a copy of the film to Vice President Himle’s office, seeking her

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<sup>3</sup> Minn. Laws 2008, Ch. 367, subd. 6(a).

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input as soon as possible since the premiere and TPT broadcast were coming up on October 3 and 5. Moen followed up with Vice President Himle on Thursday, September 2, asking if she watched the film.

Around that same time, in late August, *Troubled Waters* was also shown to CFANS Dean Allen Levine and his CFANS dean's council. On August 30, Susan Weller, Director of the Bell Museum, and Barbara Coffin met with the CFANS dean's council to discuss the film. It appears there were substantial divergent opinions about the film.

### III.

#### Vice President Himle Reviews the Film and Contacts TPT.

On Labor Day, September 6, Vice President Himle viewed the film. That evening, she sent an email to Dean Levine and to Beverly Durgan, Dean of Extension. Vice President Himle wrote that she had serious concerns about the film, including that it had "virtually nothing to do with the Mississippi River," but rather seemed "to be an advocacy piece for organic farming combined with an anti-farm bill agenda." She criticized the film for not exploring mainstream production agriculture and its role in meeting food demand; for not adequately addressing "the efforts to find alternatives to nitrogen and/or best management practices;" for lacking balance on "non-ag/non-point source pollutants;" for "lack[ing] any balance – or actually a full analysis of the issue." Himle said that as a lay person she found the scholarship lacking, and concluded, "I understand that this will air in October on the primary TPT channel before it moves to the Minnesota Channel. I would like to consider our options prior to that point as I anticipate a legitimately negative response to this from sectors of our ag community."

Dean Levine responded by email that same Monday evening. He wrote, "All of us have been concerned, particularly since Bob B. is going to host a premiere of the movie." In a second email that evening, Himle wrote to Levine, "I doubt that Bob has even seen it and I doubt that he would be enthusiastic if he understood the bias. . . . The public will anticipate a sequel to "The Land" and this isn't that at all! I will be happy to bring this up to Bob as soon as tomorrow morning. What's your view of the scholarship/balance as I think that ultimately that will be the most compelling argument. I think we also have to change the advance billing of this as well as the title ASAP." Himle and Levine also spoke by phone that evening. According to Himle, they did not discuss delaying or canceling the broadcast by TPT.

Dean Durgan emailed Vice President Himle Tuesday morning, writing, "I share your concerns. This video would have had much more credibility if the beginning would have focused on the three sources of water quality concerns for the Mississippi – agriculture, point source and urbanization. However, the authors missed that opportunity." Dean Durgan added, "As Al mentioned – I am not sure what can be done. However, this video is not based on science – which makes it difficult to support."

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At 5:57 a.m. that morning, Tuesday, September 7, Vice President Himle sent an email to Bill Hanley, TPT's Executive Vice President, regarding *Troubled Waters*. She wrote him that there "are some pretty big troubles with this." Himle noted that while the film gave some attention to other contributions to river problems, "the vast majority of the piece is an anti-nitrogen/anti-farm bill/pro-organic farming advertisement." Himle also noted that "Organic Valley and Thousand Acres Cattle Company are both prominently featured with both signage and t-shirts emblazoned with their corporate names." She wrote, "Not sure why this happened but it just isn't a piece that is appropriate for the U – at last [sic] in this form. Perhaps it can be retitled as something to do with organic farming and water – but it is decidedly NOT about the river. I also want the U's logo removed from the piece." Vice President Himle spoke by phone with Hanley later that Tuesday morning, and told him that the University wanted the film withdrawn because it appeared to be an advocacy piece for organic farming. She said that Hanley told her that broadcast of the film would not take place until a TPT committee reviewed it. Vice President Himle reported that after Hanley reviewed the film later that week he told her that he did not think it was appropriate to broadcast on TPT in its present form.

#### IV.

#### **Himle Reports to the President; the Bell Museum Cancels the Premiere; a Panel Review of the Film is Planned.**

Later in the morning of Tuesday, September 7, after contacting TPT, Vice President Himle met briefly with President Bruininks and discussed with him her views of *Troubled Waters*. However, Himle apparently did not discuss with the President the issue of when or whether TPT would broadcast the film.

Shortly after noon on Tuesday, September 7, Dean Levine emailed Susan Weller, Director of the Bell Museum, who was boarding a plane to Portugal, informing her, "Karen Himle viewed the documentary and called TPT to cancel it – the President is aware of this. Sorry to ruin your vacation. Karen will be setting up a meeting with Marty and Barb to discuss sending cancellation notes to all." Although Dean Levine wrote that the President "is aware of this," in fact Vice President Himle had only shared with the President her own concerns with the film, and not the specific issue of TPT's cancelling its broadcast. Himle expressed her view that the film as produced did not satisfy the terms of the legislative appropriation.

Later that night, Vice President Himle sent the President an email elaborating on her views of the film after she had viewed it a second time. She explained her substantive concerns with the film and said that it contained "what can generally be described as 'informercials' for Organic Valley Dairy Farms and Thousand Acres Cattle Ranch." She concluded, "I know this is a significant disappointment – and a lost opportunity to tell the story of the Mississippi River. I do hope that story can still be

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told." Vice President Himle copied Deans Levine and Durgan on her email. The email did not discuss TPT, or TPT cancelling its broadcast.

Later that day Susan Weller responded to Dean Levine by email, stunned by the action. She informed Barbara Coffin that Vice President Himle had canceled the TPT broadcast. Coffin responded with a lengthy email late at night (12:19 a.m. September 8), in which she wrote, "I felt certain that we are heading for a much bigger potential problem for the University with this action. . . . I would expect editorials and a big bru-haw [sic] about University censorship. I just heard earlier today that MinnPost wants to do an article. I suspect that we will get coverage on this decision both locally and nationally. We have worked with advisors and scientists both locally and nationally."

On Wednesday morning, September 8, Dean Levine emailed President Bruininks and Vice President Himle, suggesting a meeting. He wrote, "In my opinion the documentary/film is unbalanced journalism. However, stopping the film will appear as censorship." That same morning, Dean Durgan wrote to Vice President Himle, in response to a phone call. Durgan identified the deans and associate deans who had reviewed the film. She wrote that she had met with Dean Levine that morning and that "the argument that this video was peer reviewed from experts in the field is a valid one. However, there is still the issue of 'academic freedom.' We both agree that this issue will probably hit the press."

There were a number of emails on September 8 and 9 among Levine, Coffin, and Weller, culminating on September 9 with a long email from Weller, who was still in Portugal, to Coffin stating that the premiere of the documentary would be postponed until spring semester. Weller stated that several factors contributed to the decision, including her own lack of familiarity with relevant University policies and procedures, and a late determination by University Relations that the film was "unfit for Regents' endorsement." Weller also noted the lack of support among the CFAN's dean's council for the film. Weller said she would establish a faculty-chaired panel "to review the film's scientific (not artistic) content."

On Thursday, September 9 Weller emailed Himle that she was postponing the premiere and release of *Troubled Waters* until spring. She asked Himle for a "link to the University policy regarding intellectual property and your University Relations review procedures for creative works." She also wrote Dean Levine, "I am canceling the premiere. We have time to involve people in a thoughtful way. I am very displeased with Karen's undisciplined approach—What is the U's standard review policy & procedures regarding creative and scientific products?"

The afternoon of Thursday, September 9, Barbara Coffin wrote directly to President Bruininks, saying she was sorry that the project was causing distress. Regarding the content of the film, Coffin wrote that it "was reviewed by many scientists and experts and fact-checking was rigorous, however, it is clear that for some the tone and message are problematic." Coffin described the preparations underway for the

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upcoming premiere and wrote, "I am concerned that the sudden cancellation of this event and the broadcast might have negative repercussions for the University."

President Bruininks responded to Coffin the following morning, writing:

I have very high personal regard for your work. I believe that the series on Minnesota: A History of the Land was an extraordinary contribution to public knowledge and education, and an exemplary production for the Bell Museum and TPT. I would encourage you to work with Karen Himle, Susan Weller, Al Levine and other leaders to find the best way to address the issue.

On Friday, September 10 Vice President Himle updated President Bruininks. President Bruininks asked her to contact the Office of the General Counsel and to involve that office in the handling of the matter. Himle did call the Office of General Counsel later that day. During this period President Bruininks also directed Vice President Himle to discuss the matter with Senior Vice President and Provost E. Thomas Sullivan and Professor Tom Clayton (former Chair of the Academic Freedom and Responsibility Committee) to ensure that the University's policy on Academic Freedom and Responsibility was being followed.

The following week, on Wednesday, September 15, TPT's Executive Vice President Hanley emailed Vice President Himle:

The shame here is that many of us were misled about this project based on our otherwise un-questioned respect for the University and its reputation for academic and ethical rigor. Because the project was coming in from the U and was described as closely related to our earlier co-production of the wonderful "Minnesota: A History of the Land" it was green-lighted for broadcast without our normal level of oversight or healthy skepticism. We likely won't make that mistake again. Clearly because of the questions now being raised about the project we will wait till [sic] the University has had the chance to carefully review the research upon which it was based.

Also on Wednesday, September 15, the President of the McKnight Foundation, a funder of the project, wrote President Bruininks, indicating that her staff had reviewed the film and "sees its content as consistent with valid and robust scientific evidence." She encouraged President Bruininks to meet quickly with key stakeholders in the film's production so the film could be aired as soon as possible. President Bruininks responded that same day, explaining that some "very thoughtful experts have questioned the scientific balance of this production," and that he believed the additional peer review to be conducted would achieve a good outcome, and expressed his belief that "we owe it to everyone who supported the project to assure that the product is all we hoped for."

V.  
**Publicity Begins.**

On Wednesday, September 15, the Twin Cities Daily Planet published an article reporting that *Troubled Waters* "was pulled from TPT by University Relations." The following day, September 16, the University issued its first public statement about the film, stating that a group of qualified faculty would review the film to determine whether it met the specifications of the legislative appropriation and whether it was factually accurate, objective, and balanced in its presentation. The press release stated that the University looked forward to hosting the premiere when the process was concluded. The next day, Friday, September 17, the University issued a statement from Susan Weller. In it Weller stated that the Bell's standard procedure of having "at least one researcher who oversees the project's scientific integrity from inception to completion" had not been followed for the film, that a faculty panel would review the film, that no outside interests had been involved in the University's decision making, and that the Bell Museum looked forward to hosting the premiere at the conclusion of the review process. At this point, Weller had not yet received documentation from Bell Museum staff detailing what level of scientific review had been completed for the film.

VI.  
**The Week of September 20: The President is Out of the Country;  
the Provost Meets with the FCC; the Film is Publicly Released.**

On Sunday, September 19, President Bruininks left for Morocco on University business for the week. On Tuesday, September 21, Senior Vice President and Provost E. Thomas Sullivan sent a message to CFANS faculty and staff, reaffirming the administration's support of academic freedom and explaining that he had been informed the Bell Museum was gathering a group of distinguished scholars and educators from the University to review the film.

On Wednesday, September 22, Bell Museum Director Weller communicated to University administrators, urging that the film be released. By that point, Director Weller had finally received and reviewed a substantial amount of material from Bell Museum staff describing the review process during the film's production, including research oversight. With that material in hand, she concluded that the film could be released without additional academic review. That same day the *StarTribune* published an article about the canceling of *Troubled Waters* and the Land Stewardship Project's call for Vice President Himle's resignation.

On Thursday, September 23, Provost Sullivan appeared before the Faculty Consultative Committee. Provost Sullivan explained that Weller had received information that she had requested from Bell Museum staff that demonstrated the level of oversight and review the film had during its production phase, and that it was her

judgment that further consideration by a review panel prior to the film's release was not necessary. Provost Sullivan said that, after discussions with Dean Levine and Director Weller, he had contacted President Bruininks and recommended that the film be immediately released to the University community and beyond. He reported that President Bruininks had accepted the recommendation, and the film was being made available for release that day. An on-campus public screening and discussion was immediately scheduled for October 3. Provost Sullivan stated that, given the immediate release of the film, there was no longer a need for the review that was being planned within CFANS and the Bell Museum.

#### VII.

#### **The Film is Premiered on Campus and Broadcast on TPT.**

On October 3, the originally scheduled date, the Bell Museum hosted two full-house showings of *Troubled Waters*. On October 5 TPT broadcast the film. The film was shown and broadcast without any editing or modification. For the Bell Museum showings, Susan Weller, Barbara Coffin, and faculty leaders constituted a panel of four commentators to discuss the content and issues related to the film.

#### VIII.

#### **The University Produces Public Records About the Issue; President Bruininks Asks the General Counsel to Prepare this Report.**

The *Troubled Waters* issue generated significant interest and concern among the media and advocacy groups. The University received several requests for public data pursuant to the Minnesota Government Data Practices Act. The University's Records Manager, Susan McKinney, worked with our attorneys to gather all records, including email, relating to the decisions regarding airing *Troubled Waters*, and redacted private personnel data and attorney-client privileged communications as required by law. The records were made publicly available on Friday, October 15.

Accompanying the public release of records was a statement from President Bruininks that affirmed the University's commitment to academic freedom<sup>4</sup>:

I am particularly disappointed in the turn of events surrounding the release of the film, *Troubled Waters: A Mississippi River Story*. I regret that the appropriate steps were not taken to ensure that academic and university leaders were convened to resolve any questions about the film and whether it had been subject to the appropriate academic review prior to the

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<sup>4</sup> The entire statement can be found at [http://www1.umn.edu/news/news-releases/2010/UR\\_CONTENT\\_258977.html](http://www1.umn.edu/news/news-releases/2010/UR_CONTENT_258977.html).



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initial decision to postpone the Twin Cities Public Television (TPT) broadcast and the premiere event at the Bell Museum.

Vice President for University Relations Karen Himle also acknowledges that this would have been a stronger course of action:

“After I reviewed the film *Troubled Waters*, at the request of the staff at the Bell Museum, I knew that institutional interests as well as matters of academic freedom were intertwined. While I did consult with deans with academic responsibilities related to the subject matter of the film, my mistake was in not immediately initiating a process that more broadly engaged academic leadership and other university experts to fully evaluate the options and to then make a shared decision as to the best course of action, regardless of the short time before the film was scheduled for a screening at the Bell Museum and to air on TPT. I am sorry for this mistake and I accept responsibility for my decisions and actions in this matter.” (Karen Himle)

During this period some media reported on an assertion made by Vice President Himle in an email to the Secretary of the Board of Regents, in which Himle suggested that Bell Museum Director Susan Weller had “been threatened in some way by the Provost and/or Dean Levine within the academic ranks.” At the President’s request, I spoke with Professor Weller on Sunday, October 17, about the assertion. A report of my conversation with Professor Weller was submitted for inclusion in the Faculty Consultative Committee’s (FCC) minutes of October 21, following a conversation I had with FCC Chair Professor Kathryn VandenBosch:

As we discussed this morning, this memorializes my conversation with Professor Susan Weller on Sunday, 10.17, at the President’s request. In that conversation I asked her perspective on a 9.28 e-mail that was released to the media, which suggested that she had been muted by the administration. Professor Weller informed me that statements about her in the e-mail were not based in fact; that nothing could be further from the truth, and that she did not feel pressured by Dean Levine or Provost Sullivan; that they were the ones who asked the right questions; that she asked for their help and that they supported her in ways that have helped her get through this difficult matter; and that if it weren’t for them this matter would have turned out even worse.

Following his meeting with the FCC on October 21, 2010, President Bruininks asked the Provost and General Counsel to work with both the FCC and the Senate Committee on Academic Freedom and Tenure to fully understand what happened, and address a broad series of questions in order to reinforce and strengthen the full implementation of the University’s Policy on Academic Freedom and Professional

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Responsibility. To date, both the Provost and the General Counsel have met with the Academic Freedom and Tenure Committee and schedules are being prepared for regular subsequent meetings on the subject of academic freedom with the Committee.

MBR/mwl

cc: E. Thomas Sullivan, Senior Vice President and Provost  
Karen Himle, Vice President, University Relations  
Allen Levine, Dean, College of Food, Agriculture, and Natural Resource Sciences  
Susan Weller, Director, Bell Museum of Natural History  
Ann Cieslak, Executive Director, Board of Regents