

## Lessard-Sams Outdoor Heritage Council

**MEMO:** Agenda Item #9

**DATE:** August 11, 2015

**SUBJECT:** Advancement of Funds: Sand Hill River Watershed District  
ML 2015, First Special Session, Ch. 2, Art. 1, Sec. 2

**PRESENTER:** Tim Smith or Aaron Snyder, USACE  
Jamison Wendel, DNR  
Dan Wilkens, Sand Hill River Watershed District

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### **Suggested Motion:**

Motion by Councilmember X to approve the \$990,000 advancement of funds to Sand Hill River Watershed District due to inadequate cash flow and with the stipulation that within one year DNR Grants Management Unit will receive all receipts showing the costs spent.

No motion by the Council is denying the advancement.

### **Background:**

Currently the Army Corps of Engineers has \$4.5M in Federal funding available for this project with a 75 Federal/25 local cost share.

According to federal laws and grants policies (see attached e-mail for details), the Corps will need to have all of the local contributions provided to the Corps prior to the contract bids being opened and issued, which includes the match grant funding being provided. The bids for this program need to be issued and awarded before the end of September to solidify the federal funds.

This is before the Council in accordance with session law, Subd 8. Payment Conditions and Capital Equipment Expenditures (inserted below). According to the project partners, if the advancement is not approved by the Council the success of this project is jeopardized and the money may go unspent.

.Subd 8.

.....”, Reasonable amounts may be advanced to projects to accommodate cash flow needs, support future management of acquired lands, or match a federal share. The advances must be approved as part of the accomplishment plan. “

**Attachments:** e-mails from USACE and DNR Contracts Management



**From:** [Snyder, Aaron M MVP](#)  
**To:** [Smith, Tim J MVP](#); [jamison.wendel@state.mn.us](mailto:jamison.wendel@state.mn.us); [karen.cibuzar-mueller@state.mn.us](mailto:karen.cibuzar-mueller@state.mn.us); [daniel.wilkins@sandhillwatershed.com](mailto:daniel.wilkins@sandhillwatershed.com); [Mark Johnson](#); [Sandy Smith](#)  
**Subject:** Sand Hill - USACE information (UNCLASSIFIED)  
**Date:** Monday, July 13, 2015 3:49:15 PM

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Classification: UNCLASSIFIED

Caveats: NONE

Dan, Jamison, Karen, Mark, and Sandy -

Thanks for the call last week here is some information to support the request to the board to release all of the grant upfront to accommodate the Federal process. Please take a look and let us know if there is anything else you think we need to provide to support this request, or if you would like anything modified.

Currently the Corps has \$4.5M in Federal funding available for this project with a 75 Federal/25 local cost share. One criteria for the federal funds was that it was to be obligated (meaning a contract awarded) by the end of the Federal fiscal year on September 30th 2015. If we do not obligate those funds by that date we risk losing these funds and it would be very difficult to have them returned to the project. There is a strong emphasis on the ability to execute our Federal program. On the flip side if we are able to demonstrate the ability to execute on this project it will improve our chances of getting additional federal funding for this project and other projects within the St. Paul District. For those reasons it is critical that we are able to award the first construction contract on the Sand Hill river before the end of September.

To ensure a contract award the Corps will need to have all of the local contributions provided to the Corps prior to the contract bids being opened, which includes the grant funding being provided. Federal law requires that the Corps has all funding in hand before we can award a contract. This is formalized in a number of laws and Corps policy, the first is 41 U.S.C. 6301 which states that we either need to have all the money up front to award a contract or we need to have some other statutory authority allowing us to make the award based on the hope and expectation of future monies. However, the Corps of Engineers does not have the ability to access the "other statutory authority." Meaning that for the Corps the bottom line is that all the money necessary to make the contract award must be available up front.

The Antideficiency Act (31 U.S.C. 1341) also applies which overtly makes it unlawful for an officer or employee of the United States to obligate funds in advance or excess of the funding. There are criminal and administrative penalties for violation of §1341 including suspension without pay, removal from office or (in the case of willful violations) jail time for up to 2 years (see 31 U.S.C. §§1349 - 1350).

This information is also solidified in the Project Partnership Agreement, which is a contract between the Corps and the non-Federal sponsor (in this case the Sand Hill Watershed District). This agreement has already been signed between the Corps and the non-Federal sponsor.

We understand that the grant being provided is a reimbursable grant and the Corps contracting and oversight process are designed to ensure that not only the Federal investment in the project is properly delivered but that the non-Federal funding, in this case the grant funding, is also properly invested and that the project at the end of the day is acceptable to all.

Based on the information above it could be beneficial for consideration of a policy that would allow for all funding to be released up front for cost shared projects with Corps. It is apparent that there are potentially many more opportunities within the MN and Red River Basins that could benefit from continued cooperation.

Thanks,  
Aaron

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Classification: UNCLASSIFIED  
Caveats: NONE

**From:** [Cibuzar-Mueller, Karen \(DNR\)](#)  
**To:** [Mark Johnson](#); [Sandy Smith](#)  
**Subject:** SHRWD and USACE conference call  
**Date:** Wednesday, July 08, 2015 11:21:58 AM

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Hi Mark and Sandy,

Thank you for participating in today's conference call with Sand Hill River Watershed District and the United States Army Corps of Engineers regarding the advance of funds.

Please make sure whatever language brought into the amendment to the accomplishment plan to approve the advance of funds that it includes why the advance of funds is necessary (cash flow problems) and that within one year we (DNR –Pass-Through Grants Unit) need all of the receipts showing the costs spent.

Thank you,

Karen