

## Lessard-Sams Outdoor Heritage Council

**MEMO:** Agenda Item #5  
**DATE:** Friday, August 3, 2018  
**SUBJECT:** Information: Enforcement of OHF requirements  
**PRESENTER:** LSOHC Staff

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### **Background:**

In 2016 a question was raised regarding enforcement ability of OHF requirements should a Notice of Funding Restriction (NOFR) be violated or accomplishment plans not be adhered to. On August 19, 2016, Council staff conversed with Attorney General's staff as to OHF enforcement authority and the appropriate procedure for Council to follow regarding enforcement requests.

Two recommendations of guidance were received:

1. As a general rule, LSOHC is to work with House and Senate nonpartisan staff whenever legal guidance is needed.
2. If the LSOHC has concerns and/or recommendations for legal action, the Council may forward those concerns to DNR for consideration. If DNR feels the action is warranted, DNR will then engage the office of the Attorney General to bring appropriate action.

Subsequent to receiving the above information, DNR received a request from the council for enforcement activity with regards to a specific appropriation and compliance with the accomplishment plan's requirements. Discussions ensued where DNR legal staff felt that DNR may not have the necessary authority to "enforce" noncompliance by an OHF appropriation recipient. They felt that there may be a hole that forms at the time the contract agreement expires (when the final accomplishment plan is approved). Without the active contract, DNR felt they may have no authority until the Council requests DNR to review and seek intervention by the Attorney General's office (see attached letter from DNR Commissioner Landwehr of January 30, 2017).

At LSOHC's December 12, 2017 meeting, LSOHC and nonpartisan staff provided Council with a draft of potential language regarding enforcement. The Council discussed the language. However, due to various concerns and because the language had not been properly noticed, it was tabled for potential future review.

**More Recently:**

On 7/17/2018, LSOHC staff spoke with two representatives of the MN Attorney General's Office. While the AG's office is not able to provide an opinion, several items of guidance were discussed and are bulleted below.

- Since LSOHC is part of the Legislature, LSOHC should continue to work with Legislative nonpartisan staff on legal matters.
- For Council recommendations of enforcement activity or legal action on behalf of the Council, as recommended previously, the Council should forward its recommendations to DNR for consideration. DNR will then assess the situation for the appropriate application of actions. If DNR feels necessary, they may then engage the office of the Attorney General.
- Any Council recommended action involving enforcement activity or legal action may likely have financial requirements. As a result, the council should consider that forwarding a recommendation for enforcement without providing appropriate financial resources may result in an unfunded mandate. Consequently, the Council should consider a funding process to provide necessary finances in the case enforcement activity or legal action is necessary via DNR or the Office of the Attorney General.

**Attachments:**

Commissioner Landwehr 1/30/17 letter

# Minnesota Department of Natural Resources

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Office of the Commissioner

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January 30, 2017

Mr. Robert (Bob) Anderson  
 Chairman, Lessard-Sams Outdoor Heritage Council  
 State Office Building, Room G95  
 100 Dr. Rev. Martin Luther King Jr. Blvd.  
 St. Paul, Minnesota 55155

Dear Chair Anderson:

Thank you for your letter dated November 1, 2016 notifying me of the Lessard-Sams Outdoor Heritage Council's (LSOHC) request that DNR "initiate appropriate legal action" relative to Crow Wing County and the Mississippi Northwoods project.

Following receipt of your letter, I asked DNR General Counsel to review DNR's authority with respect to this matter. The conclusion of our General Counsel is that DNR has no clear authority to initiate legal action on behalf of the LSOHC or to enforce the terms of the Outdoor Heritage Fund (OHF) Accomplishment Plan for the Mississippi Northwoods. Your letter correctly notes that DNR is the holder of OHF grant agreements, however, that particular grant agreement is now closed, meaning Crow Wing County has no further obligations to the DNR.

Alternatively, DNR met with Crow Wing County, the All-Terrain Vehicle Association of Minnesota (ATVAM), and local ATV clubs and reached a reasonable resolution to the concerns about appropriate use of lands purchased with OHF dollars. I have attached the letter I recently sent to Crow Wing County Board Chair Doug Houge confirming that resolution.

Going forward, I do believe this circumstance has raised an interesting question regarding the mechanism to enforce OHF accomplishment plan obligations long-term, and I would be happy to work with you and the Legislature on a clarification. In the meantime, please don't hesitate to contact me with any questions regarding DNR's role administering OHF funds or the resolution for Mississippi Northwoods.

Sincerely,



Tom Landwehr  
 Commissioner

c: Mark Johnson, Executive Director, Lessard-Sams Outdoor Heritage Council  
 Mark Liedl, Crow Wing County Land Services Director

