

## Lessard-Sams Outdoor Heritage Council

**MEMO:** Agenda Item #6  
**DATE:** Friday, August 3, 2018  
**SUBJECT:** Information: Constitutional and Statutory considerations of out-of-state use of OHF  
**PRESENTER:** LSOHC Staff

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### **Background:**

In the current round of OHF habitat program proposals, at least one proposal seeks funding for use outside of Minnesota.

Questions have been raised with regards to the constitutional and/or statutory ramifications of spending OHF monies for habitat work outside of MN.

Simultaneously, LCCMR received at least one identical request for funding to use outside of MN. Consequently, LCCMR has undergone this same exercise regarding out of state use of constitutionally dedicated funding.

In collaboration with House and Senate nonpartisan staff and LCCMR staff, LSOHC staff has compiled a memo (attached) reviewing the constitutional and statutory parameters regarding expenditure of OHF monies outside of MN. Additionally, the memo also reviews potential precedent considerations and potential policy considerations.

**Attachments:** Use of OHF Outside of Minnesota Memo



Lessard-Sams Outdoor Heritage Council  
The State of Minnesota

State Office Building, Room G95 100 Dr. Rev. Martin Luther King Jr. Blvd. Saint Paul, Minnesota 55155

TO: Members of the Lessard-Sams Outdoor Heritage Council

FROM: Staff

DATE: July 24, 2018

RE: Use of Outdoor Heritage Fund Money Outside of Minnesota

### Summary

This memorandum examines whether it is constitutionally permissible to use money from the Outdoor Heritage Fund (OHF) outside of Minnesota and, if so, what sort of legal and policy considerations govern that use. It concludes that although spending OHF money outside of Minnesota is constitutionally permissible, proposals to do so raise unique policy questions that should be considered by the Lessard-Sams Outdoor Heritage Council (LSOHC).

### The Minnesota Constitution Does Not Prohibit Out-of-State Expenditures

The Minnesota Constitution requires that money appropriated from the OHF be spent “for the benefit of Minnesotans...to restore, protect, and enhance wetlands, prairies, forests, and habitat for fish, game, and wildlife.”<sup>1</sup> This language is a limitation on the *purpose* for which OHF money may be spent, not on the *geographical location* of expenditures. Thus, although one would expect most expenditures from the fund to be made in Minnesota, there is no constitutional requirement that a particular expenditure be made in-state. So long as it is made for the benefit of Minnesotans and for the purpose of restoring, protecting, or enhancing wetlands, prairies, forests, or habitats, it is constitutionally permissible.

### The Same Statutes Apply Regardless of Where Money Will Be Spent

Minnesota statutes section 97A.056 governs the work of the LSOHC and expenditures from the OHF, and that section makes no distinction between proposals to spend money in-state and proposals to spend money out-of-state. Put differently, there are no special statutory requirements that apply to projects funded outside of Minnesota. Section 97A.056 applies to those projects and proposals the same as it does to all others.

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<sup>1</sup> Minn. Const. art. XI, § 15.

## **OHF Guidelines on Allowable Expenses and Precedent**

In 2012, with LSOHC recommendation, the MN Legislature appropriated OHF monies for installation of an invasive carp barrier in Iowa about 11 miles south of the MN border (ML 2012, Ch. 264, Art.1, Sec. 2, Subd.5(h) Protect Aquatic Habitat from Asian Carp). The rationale for placement of the barrier was as follows:

- a. The location of the barrier provided the best opportunity to prevent upstream movement of carp. This location allowed the construction of the most effective barrier (width of stream, flood levels, predicted structure life, etc.). Other locations were explored but not deemed as effective. This location was the best pinch point to install the electric system.
- b. The further downstream, the more aquatic resources that could be protected. Locating the barrier further upstream would have excluded some of the risk waters.
- c. By building the barrier in Iowa, the costs were shared with the state of Iowa. As its contribution, Iowa paid over half of the construction costs as well as the operating/maintenance costs.

Numerous OHF appropriations involving out of state NGOs (DU, TNC, etc.) include budgets that may include Direct Support Services, Professional Services, etc. that are paid to those entities. Although the entities reside out of MN, the services are deemed as direct and necessary for the program activities of the particular appropriation. Thus far, with the exception of the ML2012 example above, all program habitat work has taken place within the borders of MN on permanently protected lands.

## **Proposals to Spend OHF Money Outside of Minnesota Raise Unique Policy Questions**

Even if spending OHF money outside of Minnesota is constitutionally and statutorily permissible, proposals to do so raise unique policy questions that the LSOHC should consider. These include, but are not limited to:

- Is the benefit to Minnesotans and Minnesota's natural resources clear, direct and significant enough to justify the expenditure?
- Are there other committed Minnesota partners on the project?
- If funds are to be expended outside Minnesota, to what geographic extent is it acceptable to use OHF funds? For example, for border lakes only? Upstream of border waters and to what extent? Lands and waters within 10 miles of a state boundary? To enhance habitat for wildlife that is known to have at least one multi-day stop-over per year?
- Is it possible to achieve substantially similar outcomes by funding an alternate proposal within Minnesota's borders?
- Would funding the out of state proposal mean that Minnesota would bear more than its fair share of a multi-state problem? What proportion of the total cost would OHF provide? What portion or percentage would other states provide?
- Are the benefits to Minnesota proportionate to the proposed expenditures, especially considering partner and other states' contributions to the project?
- Considering enforcement of statutory or accomplishment plan requirements, would MN's ability to enforce NOFRs on acquisitions, easement restrictions, etc., encounter additional enforcement challenges and/or expense due to out of state locations?

- How would John Q. Public view the spending of Minnesota OHF sales tax dollars on out of state lands and waters? Is the expenditure consistent with what he or she envisioned when they voted for the Legacy amendment?
- Even if allowable, how positively or negatively would MN media headlines and articles portray out of state expenditures and projects?
- Are there equal or better projects benefitting Minnesota lands, habitat and wildlife that could receive funding if dollars were not spent on the out of state project?
- If OHF monies are not allocated to fund an out of state project, are other sources of funding potentially available to fund the project? If not, why?
- Is the out of state project's accomplishment critically beneficial to Minnesota?