

September 11, 2018

TO: Mark Johnson, Executive Director
LSOHC Members

FROM: Sandy Smith, Project Analyst Manager

RE: **Final Report Issue**
ML 2013, Ch. 137, Art. 1, Sec. 2, Subd 5(f) Lower Mississippi River Habitat Partnership

After reviewing the final report, there are concerns over the final deliverables of this appropriation.

- 1) The leverage in the final report fell short of what was promised. The original AP, stated a match of \$2,111,400, that was increased to \$13,279,000 in an amendment that was approved in July of 2015, however, the final report shows leverage of only \$530,000, which is less than the original approved plan.
- 2) The acres reported as achieved are less than half of what was promised (2,270 to 1,013) with enhancement being the underachievement. There was no amendment to indicate the reduction in acres.

When programs come in with this level of under-achievement, without any amendments indicating such, it may be something we need to bring to the Council's attention.

In the end, the project did complete the intentions of the program on less acres without the full federal match.

	Original Council Approved AP	Amended AP – July 2015	Final Report
Approp Amount	\$1,710,000		\$1,549,600
Leverage	\$2,111,400	\$13,279,000 (increased)	\$530,000
Acres Restored	70	70	113
Acres Enhanced	2200	2700 (increased)	900

The project manager was asked to address the deficiencies above. Below is the explanation of the deficiency.

Sandy -

Below is my attempt to explain the loss of Federal match/leverage for the overall project. I was not specifically involved with the project on North and Sturgeon Lake, but was kept informed of the issues which were compromising project completion. Dan Dieterman, Minnesota DNR in Lake City could provide a more comprehensive and complete discussion of the challenges the North and Sturgeon Lake project experienced as well as a more complete timeline.

The leverage and/or Federal match for the project came from two sources, the US Fish and Wildlife Service and the US Army Corps of Engineers. The US Fish and Wildlife Service match (\$30,000) was provided on the Root River portion of the overall project. The US Army Corps of Engineers match (about \$500,000) was provided on the North and Sturgeon Lakes portion of the overall project. The Corps match came through a Congressionally authorized and funded program called the Upper Mississippi River Restoration program. This program provides annual funding to the Corps of Engineers to complete habitat restoration and enhancement (HREP) projects on the Upper Mississippi River. The Corps of Engineers requires a project sponsor to provide a cost-share for construction costs as well as accept long term operation and maintenance costs for the completed project. The Minnesota DNR was initially identified as the project sponsor for the North and Sturgeon Lakes project and planning for construction of the project proceeded under this assumption. A tentatively selected plan for the project features was completed at an estimated ball park cost of \$15,000,000. The \$13,279,000 matched identified in 2015 is a reflection of the tentatively selected plan for North and Sturgeon Lakes.

Prior to proceeding with further planning on the project, the Corps required the project sponsor to sign a "partnership agreement" which thus commits the project sponsor to providing cost-share for the initial project construction and then committing to operation and maintenance of the project in perpetuity. The Minnesota DNR completed a due diligence review of the partnership agreement and determined that the State could not sign the agreement for a couple reasons: 1) the agreement has a "hold harmless" clause which transfers future liability for the project to the sponsor and 2) operation and maintenance costs would be an unfunded mandate on future legislatures. I believe this determination was made in early 2016.

The status update provided in July 2016 states that the project was placed in deferment at that time. After realizing that the State could not serve as the project sponsor, the Corps and Minnesota DNR sought options for other entities to serve as the project sponsor including approaching the Upper Mississippi River National Wildlife and Fish Refuge.

The Refuge was unable to serve as a sponsor because the Refuge boundary did not extend into Pool 3. The discussion between the Corps, Refuge and Minnesota DNR continued into late 2016. The Minnesota DNR continued to plan and execute their portion of the project (Brewer Lake inlet modification) in anticipation of a resolution to the project sponsorship issue. However, no project sponsor could be identified. No amendments were completed due to uncertainty around project sponsorship.

The loss of Federal match resulted in "deferment" of the North and Sturgeon Lake project resulting in a reduced acreage enhanced. The Minnesota DNR did complete their portion of the overall project which resulted in enhancement of a smaller portion of project area.

Tim Yager
Deputy Refuge Manager
Upper Mississippi River National Wildlife and Fish Refuge

Background on Reporting LSOHC has received

The original plan was a partnership between USFWS (\$450,000) and DNR (\$1,260,000). The original intent of the program was to protect and enhance habitat along the Mississippi River Corridor through wetland restoration and enhancement, goat prairie restoration, and water level management, island construction and backwater dredging. There were three areas identified for work: Pool 3 islands and drawdown, goat Prairie enhancement and Root River Tract Mississippi Refuge.

July 2015 Amendment Request – Program manager met with staff to discuss a change in the program based on additional federal leverage. This change was requested to include channel restoration with the increased the match. There was also a change in manager from Jim Nissen to Tim Yaeger. Below is a description of the amendment change:

This project was initially planned as a cost share project where a portion of the state monies from LSOHC from the project were to be used in Pool 3 to leverage Federal dollars. It was thought to be the only way possible for Federal monies to be used for habitat R/E in Pool 3 because of the lack of federally owned land. The cost share agreement of 35% non-federal and 65% federal. To enable this cost share agreement, a Project Partnership Agreement (PPA) was needed. Following numerous discussion between MN Attorney General's office and Federal lawyers, it was determined that the State of MN could not sign the PPA because of Constitutional limitations that might commit future appropriation for project maintenance and repair. While both side agreed that the Agreement could be written to remove any future fiscal responsibilities by the State, lack of leadership to push the issue to resolution doomed the project. Occuring at about the same time was a preliminary review of the potential project, and it was determined by the USACOE that a large portion of the bed of North Lake was actually owned by the Federal Government. This discovery allows the USACOE to spend 100% federal monies from Upper Mississippi River Restoration – Environmental Management Program on pool 3. State monies from the appropriation, while not available as a true cost share, will be used for those habitat restoration features planned for Sturgeon Lake, which is partially owned by the State of MN. North and Sturgeon Lakes are prominent feature in Pool 3 Habitat R/E project and both are included in federally funded project planning, which includes representatives from UFWS, MN and WI DNR, and Prairie Island Indian Community.

None of the \$1.1 million allocated in Pool 3 from the program appropriation has been spent as of January 31, 2015. Pool 3 habitat R/E project planning has been on-going and Final Project Reports will be completed in Summer of 2015. Plans and specs will be completed by Fall 2015 with construction awarded in 2016.

March 2016 Amendment – minor budget shifts between Personnel and Contracts, parcel title changes

September 2016 Amendment – minor budget shifts between Personnel and Contracts

March 2017 Amendment – minor budget shifts between Personnel and Supplies/Materials

May 2017 Amendment – extended the timeline 1-year to within the availability of the appropriation

Status Updates were completed on time.

Earlier updates showed that although progress was slow, it appeared to be on track and they articulated progress to date.

January 2016 – “Pool 3 (North and Sturgeon Lakes): None of the \$1.1 million allocated to Pool 3 (North and Sturgeon Lakes) from the Lower Mississippi River Habitat Project has been spent as of December 10, 2015. Pool 3 habitat restoration/enhancement project planning has been ongoing and final project reports and plans will be completed by February 2016. Minnesota Department of Natural Resource engineering staff have been contracted to finalize the design and manage the construction of project features that will be funded with the \$1.1 million allocation. Final plans and specifications for the project are scheduled to be completed in 2016, with construction to be completed in 2017.”

July 2016 Update and January 2017 Update - “The Federally funded portion of the Pool 3 (North Lake) habitat restoration and enhancement project (HREP) has been placed in deferment until the language associated with partnership agreements and future project management can be amended to satisfy legal requirements. Approximately \$500,000 Federal dollars have been spent on planning and the development of preliminary project specifications and Environmental Assessment (EA). Products from this planning effort were used to develop final plans and specs and to obtain the necessary permits for the LSOH funded portion of the project. Depending on which restoration technique is used, this portion of the Lower Mississippi River Habitat Partnership Project is scheduled to be completed either in 2017 or 2018.”

July 2017 Update – “Pool 3 (North and Sturgeon Lakes) – Pool 5 (Goose Lake): The goal of the overall project has not changed and habitat restoration/enhancement using established Large River Restoration techniques such as water level management, channel modifications, island building and dredging is still the objective. The Pool 5 (Goose Lake) portion of this project was completed in September 2016. Eight acres of Goose Lake, an important backwater lake, was dredged to a depth of 7 feet to restore important fisheries habitat. Of the \$1.1 million allocated to this project, \$158,000 has been expended for the backwater dredging in Pool 5 (Goose Lake). The remaining \$942,000 is still allocated for use in Pool 3 (North and Sturgeon Lakes), for a channel modification at the Brewer Lake inlet between North Lake and Sturgeon Lake.

All permits and agreements have been secured and the channel modification project went out for bid solicitation in March. The contract was awarded in April and the contractor plans to begin construction in early September with completion anticipated by mid-October. Pre-project monitoring of habitat conditions, fish populations and freshwater mussel populations will be completed before construction.

January 2018 Update - Pool 3 (North and Sturgeon Lakes) – Pool 5 (Goose Lake): The Pool 5 (Goose Lake) portion of this project was completed in September 2016. Eight acres of Goose Lake, an important backwater lake, was dredged to a depth of 7 feet to restore important fisheries habitat. Approximately \$158,000 was expended on backwater dredging in Goose Lake.

Of the \$1.1 million estimated costs for this portion of the project, \$942,000 remains allocated for use in Pool 3 (North and Sturgeon Lakes), for a channel modification at the Brewer Lake inlet between North Lake and Sturgeon Lake to reduce sediment deposition in Sturgeon Lake and to protect the ecologically important Buffalo Slough portion of Sturgeon Lake.

The channel modification project was scheduled to be completed in December 2017, but due to an oversight by the contractor, the project has been delayed until spring 2018.

Attachment: Final Report