

From: [Rylee Hince](#)
To: [Sandy Smith](#)
Cc: [Thomas \(Tom\) MVP Novak](#); [Kelly, Brenda F - DNR](#); andrea.eilers@wisconsin.gov; [Schmit, Michael D - DNR](#); [Vottero, Nicholas G CPT USARMY CEMVP \(USA\)](#)
Subject: Request for consideration of funds advancement.
Date: Tuesday, May 3, 2022 11:02:22 AM

Good morning, Sandy,

I am writing to formally request that the Lessard Sams Outdoor Heritage Council consider the advancement of funds to Lake Pepin Legacy Alliance in the amount of \$750,000 as an amendment to the grant contract under ML 2019, First Special Session, Ch. 2, Art. 1, Sec. 2, Subd. 5(o), Restoring the Upper Mississippi River at Lake Pepin: Phase 1.

The reason for this request is to meet policy requirements for the project's federal match from the U.S. Army Corps of Engineers. More specifically, the Corps of Engineers has a policy of requiring projects funds to be in hand before beginning bidding procedures. 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).

The Corps of Engineers has \$19.1M available for this project from two sources: O&M (\$4.7) and Section 1122 (\$14.4M). Section 1122 is a 65 Federal / 35 Local cost-share between the Corps and the non-Federal sponsor (in this case the Wisconsin Department of Natural Resources). The non-Federal sponsor is responsible for \$5.2M to fully realize the project objectives and a Project Partnership Agreement between the Corps and the non-Federal sponsor has been signed.

According to federal laws and grants policies, 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. Awarding a contract this summer will allow work to begin in 2023 and be completed before June 30, 2024 per the expiration date of this grant contract for restoration or enhancement work.

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.

In the case of the Sand Hill project, which received \$990,000 in advanced funds in 2015 due to the same constraints from the Corps of Engineers, a comment was made to consider a policy that would allow for funding to be released up front for cost shared projects with the

Corps in order to leverage more opportunities that would benefit from this cooperation.

We are requesting that the Council consider releasing the \$750K up-front for this project to ensure we are fully leveraging the available federal match before the expiration of this grant.

Thank you for your consideration,

Rylee Hince

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