



Department of Natural Resources
Office of Management and Budget Services
500 Lafayette Road
Saint Paul, MN 55155

August 24, 2023

Mark Johnson
Executive Director
Lessard-Sams Outdoor Heritage Council
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 95
St. Paul, MN 55155

Dear Mr. Johnson:

I am writing in response to your request for an opinion on whether the ML2024/FY2025 LSOHC proposal HA06 Trout Stream Restoration in the Root River Watershed, by RES, meets state grants statutes and policies. After review, we have identified several areas where the proposal is not in alignment with current statutes, policies, and procedures:

Easements

As part of their proposal, RES would acquire easements, restore them, and convey them to the DNR. This would require RES to, for a short time, hold the easements themselves. Under Minn. Stat. sec. 84C.01 (2)(ii), non-governmental easement holders must be charitable organizations. As RES is an LLC, they cannot hold easements.

Pay for Performance Model

The pay-for-performance model RES proposes is similar to models used occasionally with other state funding sources. While a methodology is used to define agreed-upon pay rates, and payment happens after work is done, the payment itself is not based on reimbursement for actual costs incurred. This presents several complications:

- Existing state policies on payments are based on reimbursement for actual expenses, as is Outdoor Heritage Funds payment conditions language. Overriding that requires special enabling statute or rider language.
- Using a fixed-price model creates a risk that not all payments will adhere to the OHF's direct and necessary requirements. Even if RES's methodology is designed to include only direct costs, the State would still pay the excess if expenses came in under the agreed-on price.

- DNR Grants would need to review a detailed methodology, including land acquisitions, in order to minimize these risks.
- The model makes it possible for RES to profit on this work, and difficult to prevent.
- Because payments are predicated on successful restoration, by making payments DNR Grants would be certifying successful performance, which has been LSOHC's area.

Performance Oversight

The pay for performance model RES proposes to use requires payment only for restorations that meet a certain, undefined quality standard. Usually, performance oversight is handled by LSOHC staff through the status update process and the Restoration Evaluation appropriation. RES proposes to score its own performance for purposes of payment.

According to Office of Grants Management policy, DNR staff must monitor and review payments to ensure they are accurate. In order to determine whether RES has met the conditions for payment, RES's restoration score model would need to be reviewed in advance by technical experts. Besides involving the DNR in the performance process, this would require considerable technical review from DNR staff. Grants Unit staff do not have the right expertise. This would be a substantial departure from the current pass-through appropriation structure. and raises several additional concerns:

- Equity with performance oversight for other pass-through projects
- Perceived conflicts of interest with DNR staff, who often also apply for OHF funding.
- No mechanism for funding technical review identified.

These concerns would make it difficult, if not impossible, to administer the project as it is proposed. Please let me know if you have any questions, I would be happy to discuss this at your convenience.

Sincerely,



Katherine Sherman-Hoehn
Grants Manager, Office of Management and Budget Services

CC: Bob Meier, DNR Assistant Commissioner
Kelly Wilder

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