

TO: Members of the Legislative-Citizen Commission on Minnesota Resources

FROM: LCCMR Staff and Nonpartisan House and Senate Staff

DATE: July 11, 2018

RE: Use of Environment and Natural Resources Trust Fund Money Outside of Minnesota

This memorandum examines whether it is constitutionally permissible to use money from the Environment and Natural Resources Trust Fund (ENRTF) outside of Minnesota and, if so, what sort of legal and policy considerations govern that use. It concludes that although spending trust fund money outside of Minnesota is constitutionally permissible, proposals to do so raise unique policy questions that should be considered by the Legislative-Citizen Commission on Minnesota Resources (LCCMR).

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

The Minnesota Constitution requires that money appropriated from the ENRTF be spent only “for the public purpose of protection, conservation, preservation, and enhancement of the state's air, water, land, fish, wildlife, and other natural resources.”¹ This language is a limitation on the *purpose* for which trust fund 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 public purpose of protecting, conserving, preserving, or enhancing the state’s natural resources, it is constitutionally permissible.

The Same Statutes Apply Regardless of Where Money Will Be Spent

Minnesota statutes chapter 116P governs the work of the LCCMR and expenditures from the ENRTF, and that chapter 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. Chapter 116P applies to those projects and proposals the same as it does to all others.

LCCMR Guidelines on Allowable Expenses & Precedent

Out of state personnel and travel vs. lands and waters out of state

LCCMR has created and posted its own policies on eligible and prohibited expenses. While these policies don’t directly respond to the question of using ENRTF funds on air, land, water, fish, wildlife, and other natural resources outside of the state, it does categorize “out of state transportation and travel expenses” as “generally ineligible unless explicitly approved.” This type of expense requires extra justification as well as clear documentation that the expense is direct and necessary to the project.

¹ Minn. Const. art. XI, § 14.

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The LCCMR has previously both denied and approved funds to be spent outside of Minnesota, however none of the recent examples included spending on air, land, water, fish, wildlife, and other natural resources outside of Minnesota.

Recent examples of allowed expenditures are provided below for out of state researcher(s), student(s), contractor(s), or technical expert(s) when work was conducted in or clearly for the benefit of Minnesota, justification included the role not being able to be filled using in-state expertise, and explanation was provided for how the work would benefit the state. Project managers in most of these cases were based in Minnesota, however examples exist of project managers being based in North Dakota and Wisconsin as well.

- Zebra mussel eradication project led by USGS personnel based in Wisconsin. Testing was conducted in an inland Minnesota lake in cooperation with Minnesota- based partners and water resource managers.
- Project assessing contaminants in loons and pelicans included payment for contractors outside the state of Minnesota to conduct tissue sample analysis because they were the designated lab for the associated oil spill
- Travel by Minnesota-based researchers to test an invasive carp tracking technique in Illinois waters because invasive carp are not currently found in significant numbers in water bodies in Minnesota, which makes testing in the wild here difficult.
- An expert was hired from out of state to assess conditions of a trail system in Minnesota because it was deemed the expertise did not exist in Minnesota.
- A project manager was based in Fargo, North Dakota, however the project included restoration work only on lands and waters in Minnesota.

Recent examples of denied out of state expenditures:

- A Minnesota- based project manager for a restoration project left his/her position. The organization requested staff in Kansas to fill the project manager position. Request was denied.

Recent examples of allowed or denied expenditures for air, land water, fish, wildlife, or other natural resources outside the state of Minnesota

- None

Proposals to Spend Trust Fund Money on Lands and Waters Outside of Minnesota Raise Unique Policy Questions

Even if spending trust fund money outside of Minnesota is constitutionally and statutorily permissible, proposals to do so raise unique policy questions that the LCCMR should consider. These include:

- Is the benefit to 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 ENRTF funds? For example, for border lakes only? Upstream of border waters? Lands and waters

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within 10 miles of a state boundary? Air that travels over Minnesota within 1 day? Wildlife that is known to have at least one multi- day stop-over a year?

- Is it possible to achieve a substantially similar end by funding an alternate proposal within the state?
- Would funding the proposal mean that Minnesota would bear more than its fair share of a multi-state problem? What proportion of the total cost would ENRTF provide? What proportion would the other state(s) provide?
- Are the benefits to Minnesota proportionate to the proposed expenditures, especially considering partner and the other state(s) contributions to the project?
- Since Minnesota doesn't have legislative oversight over lands and waters beyond its boundaries, are there other mechanisms in place to ensure that out-of-state parties will abide by their obligations? For example, if another state's agency has a duty to maintain land, will this duty be backed up by a contract? If a proposal would benefit another state's land, will they agree to return the money to the trust fund if they subsequently convert the land to some other use?
- How would John Q. Public view spending Minnesota funds on out of state lands and waters?
- Are there equal or better projects benefitting Minnesota that could receive funding if dollars were not spent on the out of state project(s)?

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