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September 11, 1995

Mr. Peter Sausen
Assistant Commissioner
of Finance
MN Department of Finance
400 Centennial Office Building
658 Cedar Street, 4th Floor
St. Paul, MN 55155

Re: Use of Certain State General Obligation Bond Proceeds
for Permanent Easement Acquisition and Improvement

Dear Peter:

I have reviewed the attached Memorandum dated August 25 written by Roger Holmes and have concluded that, based upon the information set forth in the Memorandum and below, the expenditure of State general obligation bond proceeds as described in the Memorandum is legal and proper. If the information set forth in the Memorandum or below is not correct please let me know, as the opinion expressed above then may not be correct.

The proceeds of State general obligation bonds which will be expended as described in the Memorandum are derived from bonds issued pursuant to Laws 1992, Chapter 558, Section 18, subdivision 13, which appropriates \$1,250,000 to the critical habitat private sector matching account established by Minnesota Statutes, Section 84.943 (the "Account"). Appropriations to the Account can be expended only to the extent that they are matched equally with private contributions to the Account or the non-game wildlife management account. Mr. Holmes has assured you that the matching funds requirement has been met and need not be considered further in connection with the proposed expenditure.

Money in the Account is appropriated to the Commissioner of Natural Resources only for the direct acquisition or improvement of land or interests in land as provided in Minnesota Statutes, Section 84.944. Section 84.944 sets forth criteria as to what critical natural habitat shall be acquired or improved. Again,

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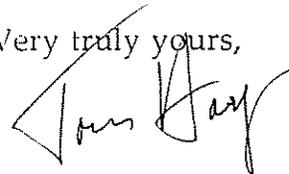
Mr. Peter Sausen
September 11, 1995
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based upon Mr. Holmes' assurances we are assuming that the expenditures proposed in the Memorandum are being made in accordance with the criteria set forth in Section 84.944.

The Memorandum indicates that the expenditures will be made to (1) acquire permanent easements on private land along the Mississippi River, and (2) improve both publicly owned land along the river and the area comprising the permanent easements by grading and/or planting of native trees, bushes and grasses. The acquisition of the permanent easements is dependent upon and spells out the obligations of the State and each land owner with respect to the easement area and the improvements. The expenditures described above are authorized specifically by Laws 1992, Chapter 558 and Minnesota Statutes, Sections 84.943 and 84.944, and appear to be clearly for a public purpose as outlined in the Memorandum. Also, consistent with opinions we have given you in the past relating to the RIM program, a permanent easement is a sufficiently substantial public interest in real estate to justify its acquisition and improvement with bond proceeds. Under the terms of the permanent easements as outlined in the Memorandum the public will acquire real, substantial and permanent interests in the land in question and the improvements to be placed on it. I have no way to know what the exact improvements will be on each piece of property involved in the program, but grading and related replanting and installation of trees, rip-rap, or artificial structures such as retaining walls to prevent erosion and protect the river or make the property useable by the public, would be of a "capital nature". Thus, the expenditures of bond proceeds appear to meet all of the constitutional and statutory requirements and are legal and proper.

I hope this answers any questions you or others may have concerning the legality of the proposed expenditures; however, if additional information is needed, or if the facts recited in the Memorandum or above are incorrect, please let me know.

Very truly yours,



Thomas S. Hay

TSH/pmh
Enclosure

STATE OF MINNESOTA
Office Memorandum

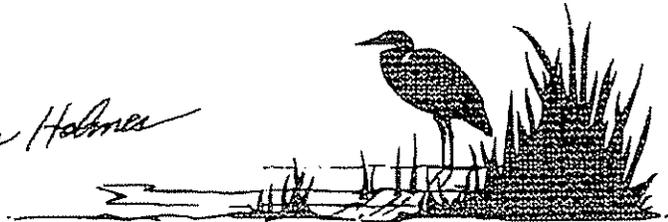
DEPARTMENT: Natural Resources - Section of Wildlife Box 7

DATE: 08-25-95

TO: Peter Sausen
Department of Finance

FROM: Roger Holmes, Director
Division of Fish and Wildlife

Roger Holmes



PHONE: 296-3344

SUBJECT: Greening the Great River Park Project
Reinvest in Minnesota (RIM) Critical Habitat Matching Program

The Division of Fish and Wildlife is proposing to commit \$300,000 in RIM Matching bonding funds for the Greening the Great River Park Project (GGRPP) in the Mississippi River Valley in downtown St. Paul. The RIM Matching funds would be used to reimburse the GGRPP for site preparation and native planting stock to be planted on public and private lands along the Mississippi River corridor in St. Paul. The goal of the project is to restore, enhance, and protect permanent, native plantings aimed at reconnecting fragmented native cover along the Mississippi River migratory corridor.

Permanent easements would be conveyed to the State on private and public lands involving plantings with the RIM Matching funds. The easements would provide for the following:

1. The landowner agrees to allow the planting to be placed on their property and to protect and maintain any vegetation planted on their property as part of the GGRPP.
2. The landowner acknowledges that ownership of vegetation planted under this easement rests with the State and agrees to not remove, alter, or destroy vegetation protected under the easement without mitigation.
3. The landowner agrees to be responsible for the care and maintenance of the vegetation planted.
4. The State may gain access to the property to monitor the conditions of the plantings and ensure that the terms of the easement are being followed.
5. The easement runs with the land and will be binding to all persons or entities that come into possession of the property.

The propriety of expending bonding dollars to plant trees and other vegetation on private lands was questioned by the Legislative Commission on Minnesota Resources (LCMR) at our last meeting with them seeking expenditure approval for this project. LCMR did approve expenditure of RIM Matching bonding dollars for

plantings on public lands, but requested a determination from the Attorney General's Office and the bond counsel if bonding dollars could be spent on private lands for this project.

Senator Merriam stated at the LCMR meeting that projects must meet four basic criteria in order to qualify for capital expenditure financing from state general obligation bond proceeds:

1. The expenditure funded must be for a public purpose. In this case, the public purpose is to re-create diverse, sustainable, natural plant communities by restoring wildlife habitat along the Mississippi River corridor. The public benefits from this project are both aesthetic and ecological.

2. The project for which the bonds are issued must be publicly owned. Plantings under the GGRPP will occur on public lands and private lands. The State will obtain a perpetual easement from the landowner that conveys to the State "public ownership" of the right to plant on the easement area as well as the obligation of the landowner to protect and maintain the plantings on their property.

3. The expenditure funded must be of a capital nature. The trees and other vegetation to be planted under this project would be a capital improvement that is a long-lived tangible asset that is controlled by the State as a result of the easement granted by the landowner.

4. The purpose for which the bonds are issued must be clearly set forth in the law. Specific legislative authorization for the RIM Match bonding funds from the 1992 appropriation provides for "transfer to the critical habitat private sector matching account under Minnesota Statutes, section 84.943." M.S. 84.943 provides that "money in the account is appropriated to the commissioner of natural resources only for the direct acquisition or improvement of land or interests in land as provided in section 84.944."

Our next meeting with LCMR is scheduled for September 13 and 14th and I would like to be able to provide them with a determination if bonding dollars can be spent on private lands for this project. I would like to request your assistance in pursuing this matter with the Attorney General's staff and the bond counsel.

c: John Heintz, Administrator-DNR Bureau of Financial Management
Lori Christenson, Business Manager-Division of Fish and Wildlife
Kim Hennings, Section of Wildlife Land Acquisition Coordinator