



South St. Louis

SOIL & WATER CONSERVATION DISTRICT

Minutes from the May 18, 2022 Regular Board Meeting

Call to Order Chair Debra Taylor called the meeting to order at 7:00 pm

Members Present:

Al Moline
Brandon Silgjord
Marcia Stromgren
Debra Taylor
John Tollgaard

Others Present:

R.C. Boheim, SWCD Staff
Allison Praet, NRCS Staff

Members Absent:

Agenda The Board reviewed the agenda. Motion by Stromgren, seconded by Moline to approve the Agenda.

Affirmative: Moline, Silgjord, Stromgren, Taylor, Tollgaard
Opposed: None ***Motion Carried***

Approval of minutes

Minutes from the April meeting were reviewed by the Board. Motion by Tollgaard seconded by Moline to approve the Minutes.

Affirmative: Moline, Silgjord, Stromgren, Taylor, Tollgaard
Opposed: None ***Motion Carried***

Financial and Administrative Reports

Financial Reports The Board reviewed the financial reports. Total fund balance as of April 30, 2022 was \$1,024,850.43. Motion by Silgjord, seconded by Tollgaard to approve the financial report.

Affirmative: Moline, Silgjord, Stromgren, Taylor, Tollgaard
Opposed: None ***Motion Carried***

Treasurer's Report Moline reported that everything checked out. Motion by Tollgaard, seconded by Stromgren to approve the report.

Affirmative: Moline, Silgjord, Stromgren, Taylor, Tollgaard
Opposed: None ***Motion Carried***

MASWCD Resolutions and meeting No resolutions were considered. The meeting is June 10th. Taylor and Silgjord will likely attend along with all other Board members

Miller EAW Negative Declaration for EIS The Board considered the Findings of Fact, Conclusions, and Order regarding the EAW for the Miller Creek Channel and Floodplain Restoration Project. Motion by Silgjord, seconded by Moline to accept and approve the Findings of Fact, Conclusions, and Order that concludes *The South St. Louis Soil and Water Conservation District determines that an Environmental Impact Statement is not required for the Miller Creek Channel and Floodplain Restoration Project in St. Louis County, Minnesota. Any Findings that might be properly termed Conclusions and any Conclusions that might be properly termed Findings are hereby adopted as such.*

Affirmative: Moline, Silgjord, Stromgren, Taylor, Tollgaard
Opposed: None ***Motion Carried***

The Findings of Fact, Conclusions, and Order are attached to the minutes.

State Cost-share Program None

Grant Agreements None

District Conservationist's Report Praet provided a verbal and written report for the Board.

Committee and Board Membership Reports

Area III SWCD Technical Service Area (Nonpoint Engineering Assistance) Has not met since the last meeting.

SWCD Forestry Association Moline reported the next meeting is tomorrow.

Laurentian Resource Conservation & Development Moline reported the next meeting is Monday

MASWCD Northeast Area 3 No report.

St. Louis River 1W1P Policy Committee Moline met ins person on April 28th. The Policy Committee approved the format for the final plan.

Supervisor Reports and Concerns

Taylor reported some citizens are concerned with potential flooding.

Stromgren attended UM Extension spring gardening extravaganza.

Stromgren judged at the Envirothon.

Moline attend a meeting in Meadowlands regarding the maintenance of Ditch #4.

Other Business None

Supervisor Expenses Stromgren reviewed expense reports with the Board. Motion by Silgjord, seconded by Stromgren to approve the reports.

Affirmative: Moline, Silgjord, Stromgren, Taylor, Tollgaard

Opposed: None **Motion Carried**

Adjourn Motion by Moline to adjourn the meeting.

Affirmative: Moline, Silgjord, Stromgren, Taylor, Tollgaard

Opposed: None **Motion Carried**

Meeting adjourned at 8:00 p.m.



Submitted by: _____
R.C. Boheim, District Manager and recording secretary

SOUTH ST. LOUIS SOIL AND WATER CONSERVATION DISTRICT

RECORD OF DECISION

**In the Matter of the Determination of the Need for an
Environmental Impact Statement for the Miller Creek
Channel and Floodplain Restoration Project in St. Louis
County, Minnesota.**

FINDINGS OF FACT, CONCLUSIONS, AND ORDER

FINDINGS OF FACT

1. The South St. Louis Soil and Water Conservation District proposes to restore approximately 7,100 feet of Miller Creek and an unnamed tributary to Miller Creek, both designated trout streams in Duluth, MN; St. Louis County, Minnesota. Natural Channel Design methodology will be used to restore the creeks to their appropriate pattern, profile, and dimension. Fish habitat and floodplain connection components are an integral part of the design.
2. Pursuant to the requirements of Minn. R. 4410.4300, subp. 26, the proposed Project requires preparation of an Environmental Assessment Worksheet (EAW) for a diversion, realignment, or channelization of any designated trout stream, or affecting greater than 500 feet of natural watercourse with a total drainage area of ten or more square miles, unless exempted by part 4410.4600, subpart 14, item E, or 17. The local government unit shall be the Responsible Government Unit (RGU).
3. The South St. Louis Soil and Water Conservation District (SWCD) is the RGU and the Project Proposer.
4. The South St. Louis Soil and Water Conservation District prepared an EAW pursuant to Minnesota Rules, parts 4410.1400 and 4410.1500.
5. On March 8, 2022, the SWCD distributed the EAW to the official EQB mailing list. The EAW notice appeared in the EQB Monitor on March 15, 2022.
6. In accordance with Minn. R. 4410.1600, a 30-day EAW comment period commenced on March 15, 2022 and ended on April 14, 2022. Comments were accepted by mail and email.
7. During the 30-day EAW public review and comment period, the SWCD received comments from the agencies and individuals listed below:
 - A.) Minnesota Board of Soil and Water Resources, David Demmer (March 16, 2022)
 - B.) Minnesota Department of Natural Resources, Shelly Patten (April 12, 2022)
 - C.) Minnesota Department of Transportation, Matt Meyer (April 14, 2022)
 - D.) Minnesota Pollution Control Agency, Karen Kromar (April 11, 2022)

The comment letters are included in this Record of Decision as attachments. The comments

received and the RGU's responses are provided below:

BWSR Comment #1:

- The EAW is unclear on the nature and extent of potential wetland impact that will occur. The cover types table on page 5 states that 9.8 acres are present before the project and 8.9 will exist post project. This suggests that 0.9 acres of wetlands will be impacted by the project. A Wetland Conservation Act (WCA) decision from the City of Duluth (WCA LGU cc'd) obtaining approval for these impacts is not listed in the "permits and approvals required" section beginning on page 5. However, in section iv (a) (on the top of page ten), the EAW states that "there will not be any negative environmental effects to these wetlands". It goes on to say that "the result will be a 0.9-acre increase in riverine wetlands and a 0.9-acre decrease in forested/shrub and emergent wetlands" - suggesting a zero net loss of wetlands (just type conversion) on the site. These statements appear to contradict themselves. You may want to consider clarifying whether there be a permanent loss of wetlands or whether the project will just result in wetland type conversion. As you know, stream restoration projects conducted by a SWCD typically qualify under a WCA no-loss per MN Rule 8420.0415 D- projects conducted by public agencies for the purpose of restoration. While wetland type conversions are generally not considered an impact under the WCA, I recommend you consult with the Army Corps on their interpretation under Section 404 of the Clean Water Act. Finally, note that an applicant "may apply" for no-loss decisions. However, you may want to consider applying for a WCA decision if there is uncertainty regarding the extent and nature of potential wetland impacts resulting from the project.

Response: The contradiction within the EAW was unavoidable due to the formatting of the Cover Types table. The current EAW table lists "Wetland" land cover separately from "Deep water/streams" land cover, and thus is not well-suited to ditch restoration projects like this where the primary goal of the project is to restore ditched wetland back to stream channel. There was no way to accurately complete this table without inaccurately implying a loss of wetland. To clarify, this project will not result in a loss of wetlands but as you mention will just result in a 0.9-acre wetland type conversion – from forested/shrub and emergent wetlands to riverine wetlands. This project thus qualifies under a WCA no-loss per MN Rule 8420.0415D.

MN DNR Comment #1:

- Floating marsh-marigold (*Caltha natans*) has been documented in the vicinity of the project; this is a state protected species. The previous botanical survey occurred within one year of a major flood event and did not detect any individuals. This species is sensitive to habitat disturbance and habitat conditions may have become more suitable since the previous survey occurred. A qualified surveyor will need to conduct a habitat assessment of the tributary and if suitable habitat is present, a botanical survey will also need to be conducted. It is also recommended that Miller Creek be re-evaluated. Please see the attached Natural Heritage Information System (NHIS) review letter for more information.
 - Note that results of this NHIS review are valid for one year and are only valid for the location identified in the NHIS request.
 - If there are any changes to the project, or construction has not occurred within one-year additional review may be required.

Response: We are now aware of this requirement and have contacted a qualified surveyor to conduct an assessment of Miller Creek and Tributary 1.

MN DNR Comment #2:

- References are made in the EAW to attachment 10, but there does not appear to be an attachment 10 included in the document.
-

- One instance where attachment 10 is referenced is regarding a planting plan. Planting plan information can be found in attachment 11 and in the planting plan maps (Maps 23-29). The text in the EAW should be changed to reflect the intended documentation.
- Another reference is made regarding a Storm Water Pollution Protection Plan (SWPPP). Information regarding the SWPPP can be found in attachment 11 and design plans (Map 30). The text in the EAW should be changed to reflect the intended documentation.

Response: The title sheet for Attachment 10 (page 57) mistakenly reads “Attachment 11”. That error is hereby corrected.

MN DNR Comment #3:

- In attachment 11, the planting plan (Map 23) identifies three plant community zones (1, 2, & 3), with plant species and specifications appropriate for each.
 - Zone 1 has a map symbol assigned to it, and only Zone 1 appears on any of the maps. Are there parts of the plan area that will receive Zone 2 and Zone 3 plantings? Please clarify.

Response: The planting plan has been clarified in a revised draft of the design which was uploaded to MPARS on 4/12/2022. This draft addresses these comments and can be made available upon request.

MN DNR Comment #4:

- A three-year maintenance plan is mentioned in the EAW to ensure planting success. This is an important place to address invasive species spread. Invasive species should be monitored during the maintenance period. Invasive species are briefly addressed in other parts of the EAW; adding this information here would strengthen the efficacy of the maintenance plan.

Response: More detail regarding the Vegetation Maintenance Plan is included in the project bid package and is as follows:

The following maintenance plan will be followed for the three years after the installation of the project.

1. *The project area will be monitored by the Contractor once per month during the growing season. It will be inspected for germination and/or growth of desired natives, presence of non-native weeds, damage to erosion control materials or bioengineering structures, plant material or protective structures, or the presence of damage from flooding or drought. Any concerns and recommended actions should be reported to the Funding Agency (South St. Louis SWCD) upon inspection.*
2. *During the first growing season, the project area may need to be mowed to control annual weed development. If a “closed” canopy of weed cover develops, it should be mowed to aid in the growth of the seedlings by reducing competition. Mowing may also be necessary if the weeds are about to set seed. Optimum cutting height, depending on the species present, is typically 4 to 6 inches.*
3. *In years following the first growing season, management services could include site monitoring, mowing, spot spraying, spot mowing, herbicide wicking or hand-weeding.*

Projected Management Procedures, by Year:

Year 1 Project Monitoring (1 per month during active growing season)

Complete site mowings to control annual weed canopy (2 or 3 mowings as needed)

Year 2 Project Monitoring (1 per month during active growing season)

Complete site mowing (if needed)

Integrated Plant Management (IPM) – includes spot spraying, spot mowing, wicking, hand-weeding, and other techniques to control weeds and invasive species (4 visits)

Year 3 Project monitoring (1 per month during active growing season)

Complete site mowing (if needed)

Management (IPM) (4 visits)

At the end of the maintenance period, the Project will have at least 80% overall coverage with the planted native species, and no greater than 20% non-native weeds or invasive species. Tree and shrub plantings will be showing adequate growth to provide functional stabilization. At the completion of the maintenance period, the vegetation will meet the guarantee standards, or the Contractor will be required to continue maintaining the vegetation at no cost to the Funding Agency or Owner(s), and/or re-seed and re-plant as necessary to achieve the standards.

MN DNR Comment #5:

- It is unclear whether temporary impacts associated with a stream diversion channel and/or pumping are accounted for in the EAW. If the method of stream diversion is unknown at this time, it would be useful to include likely diversion plans and associated potential temporary impacts.

Response: The temporary stream diversion shall convey water by means of a pump, open channel, or piped diversion system. The Contractor will submit a Temporary Stream Diversion System Plan to the Engineer for approval prior to the start of the work. Required steps to minimize temporary impacts from the stream diversion are further described in Section G of the SWPPP.

MN DOT Comment #1- Section 8 of EAW lists required approvals. This list should be updated to include the Minnesota Wetland Conservation Act.

Response: Section 8 of the EAW is hereby revised to include the following information:

<u>Unit of government</u>	<u>Type of application</u>	<u>Status</u>
MN Department of Transportation	Minnesota Wetland Conservation Act	Complete

MN DOT Comment #2 – MnDOT is an MS4 entity and part of the TMDL for Miller Creek. Please list MnDOT as an additional beneficiary under Section 6.D.6 for the work on MnDOT ROW.

Response: Section 6.D.6 of the EAW is hereby revised to list MN DOT as a project beneficiary due to its status as a MS4 permittee within the Miller Creek watershed.

MNPCA Comment #1:

- As stated in the EAW, Miller Creek has undergone multiple stream channel and watershed alterations over many years that have negatively affected stream water quality. Recent studies on Miller Creek, including The Miller Creek Water Temperature Total Maximum Daily Load (TMDL) study, and Duluth Urban Area Streams Watershed Restoration and Protection Strategies (WRAPS) report include projects and activities that could be implemented to reduce pollutant loading and restore degraded water quality conditions. The Project location was identified as a priority area for improving riparian vegetation density and composition, improving water retention, and improving habitat conditions for cold water species (e.g., brook trout). The Project will include these components and will contribute to the ongoing efforts of restoring physical and ecological functions in Miller Creek.

Response: We agree that this project is a high priority and will contribute to restoring Miller Creek.

MNPCA Comment #2:

- The MPCA provides the following information to clarify water quality impairments for Miller Creek:
-

Stream segment	Year added to list	Affected designated use	Pollutant or stressor	TMDL status
04010201-512	2002	Aquatic Life	Lack of Coldwater Assemblage	Impairment removed through correction (draft 2022 Impaired Waters List)
04010201-512	2002	Aquatic Life	Temperature	Approved 2018
04010201-512	2010	Aquatic Life	Chloride	Target TMDL completion in 2025
04010201-512	2012	Aquatic Recreation	<i>Escherichia coli</i> (<i>E. coli</i>)	Approved 2020
04010201-512	2012	Aquatic Life	Benthic macroinvertebrates	Target TMDL completion (or recategorization) in 2025

Minnesota’s Impaired Waters List can be found at: [Minnesota’s Impaired Waters List | Minnesota Pollution Control Agency \(state.mn.us\)](#). For questions, please contact Tom Estabrooks at 218-302-6608 or Tom.Estabrooks@state.mn.us.

Response: The removal of the “Lack of Coldwater Assemblage” impairment from the Draft 2022 Impaired Waters List has been noted. Section 6 of the EAW is hereby revised to instead refer to the aquatic life impairment and temperature stressor.

MNPCA Comment #3:

- This section includes the U.S. Army Corps of Engineers (USACE) Section 404 Permit and hence, must include the Minnesota Pollution Control Agency (MPCA) 401 Water Quality Certification.

Response: Section 8 of the EAW is hereby revised to include the following information:

Unit of government
MN Pollution Control Agency

Type of application
401 Water Quality Certification

Status
Incomplete

MNPCA Comment #4:

- The National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) Construction Stormwater Permit (CSW Permit) will apply to areas of the Project that are 1 acre or more located above the Ordinary High Water Level (OHWL) that are not subject to the Department of Natural Resources (DNR) Public Waters Permit. The Stormwater Pollution Prevention Plan (SWPPP) for the Project will also need to include plans for redundant (double) down gradient sediment control best management practices (BMPs) where soil disturbance occurs within 100 feet of the trout stream. The down gradient sediment control BMPs should be located above the OHWL and in addition to in water BMPs used to control movement of sediment downstream. Redundant down gradient BMPs are also required for soil disturbances within 50 feet of wetlands at the site.

Response: The project SWPPP is hereby revised to include redundant down gradient sediment control best management practices where soil disturbance occurs within 100 feet of Miller Creek and within 50 feet of wetlands.

MNPCA Comment #5:

- The EAW states that no soils will remain unworked for 7 days due to continuous construction unless there is rainfall. It is advised to limit the amount of soil disturbed at any one time and to have temporary cover available at the site that can be quickly applied to prevent sediment discharges from

these areas during heavy rain events. The CSW Permit requires that soil stockpiles are also covered within 7 days in addition to the sediment controls installed at the base of the piles.

Response: Noted, thank you for that information.

MNPCA Comment #6:

- Dewatering during the stream diversion requires monitoring and using sediment control BMPs for any turbid water prior to discharging back into the stream.

Response: The SWPPP addresses this issue and requires that any “dewatering activities that have sediment-laden discharge must discharge into a temporary or permanent sedimentation basin or through some form of BMP, such as a filter bag, to limit sediment from leaving the site and to ensure effluent water is free of sediment.”

MNPCA Comment #7:

- The Permittees should also utilize tracking controls to prevent construction vehicles from transporting sediment if entering the stream. Questions regarding Construction Stormwater Permit requirements should be directed to Roberta Getman at 507-206-2629 or Roberta.Getman@state.mn.us.

Response: We have planned for multiple project area access points specifically to avoid construction vehicles entering the stream during this project so it is not anticipated that this will be an issue.

MNPCA Comment #8:

- The Project will restore a straightened section of Miller Creek and Miller Creek Tributary 1 to a more stable, meandering channel and re-establish natural stream processes, re-connect the creek to its floodplain, and create quality habitat. Additionally, the reconnection of the stream to the floodplain will likely raise the water table to pre-ditched elevations, which will benefit the wetland plant communities throughout the entire wetland complex.

However, care must be taken for any construction as Miller Creek is a 303d Impaired Water and designated trout stream. With the location of this impaired water, additional mitigation may be required and agreed upon by all permitting agencies. Additional in-water BMPs may be required that possibly include weighted (double) floating silt curtain, winter construction conditions, coffer and/or rock check dams to further protect these impaired waters.

In accordance with Minnesota Statutes, the Project should include the MPCA as a regulator of all surface waters as defined by MN Stat. § 115.01 subd. 22. Waters of the state. “Waters of the state” means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof. Even though there may be surface waters that are determined to be USACE nonjurisdictional, or exempt from the Wetland Conservation Act, all surface waters are regulated by the MPCA and any surface water impact needs to be described in the application and may require mitigation.

In addition, if a future USACE 404 permit is required, the 401 Water Quality Certification must also be included and becomes an enforceable component of the associated federal license or permit, issued under either Section 404 of the Clean Water Act (CWA) or Section 10 of the Rivers and Harbors Act. The scope of a CWA Section 401 certification is limited to assuring that a discharge from a federally licensed or permitted activity will comply with water quality requirements. Along with an Antidegradation Assessment, it is recommended that the applicant request a pre-filing meeting from the certifying agency at least 30 days prior to submitting a 401 Water Quality Certification request. The MPCA is the certifying authority in the State of Minnesota. For further information about the 401 Water Quality Certification process, please contact Bill Wilde at 651-757-2825 or william.wilde@state.mn.us.

Response: Noted, thank you for that information.

MNPCA Comment #9:

- For petroleum spills that are five or more gallons, the Project proposer or their contractors are required to contact the State Duty Officer at (651) 649-5451 or (800) 422-0798. Information on reporting spills and leaks is available on the MCPA website at:
<http://www.pca.state.mn.us/index.php/viewdocument.html?gid=2807>.

Response: Noted, thank you for that information.

CONCLUSIONS

Based on the Environmental Assessment Worksheet, comments received during the comment period, and responses to the questions raised and issues identified, the South St. Louis Soil and Water Conservation District, as the Responsible Governmental Unit for this environmental review, concludes the following:

1. The Environmental Assessment Worksheet, this "Record of Decision" document, and related documentation for the project, were prepared in compliance with the procedures of the Minnesota Environmental Policy Act and Minn. Rules, Parts 4410.1000 to 4410.1700.
2. The Environmental Assessment Worksheet, this "Record of Decision" document, and related documentation for the project have satisfactorily addressed all of the issues for which existing information could have been reasonably obtained.
3. The project does not have the potential for significant environmental effects based upon the above findings and the evaluation of the following four criteria (per Minn. Rules, Parts 4410.1700 Subp. 7):

A. type, extent, and reversibility of environmental effects;

B. cumulative potential effects;

C. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and

D. the extent to which environmental effects can be anticipated and controlled as result of other available environmental studies undertaken by public agencies or the Project proposer, including other EISs.

RECORD OF DECISION

Based on consideration of the criteria and factors specified in the Minnesota Environmental Review Program Rules (Minnesota Rules, part 4410.1700, subpart 6 and 7) to determine whether a project has the potential for significant environmental effects, and on the Findings of Fact and Conclusions in this matter, the South St. Louis Soil and Water Conservation District determines that the proposed Miller Creek Channel and Floodplain Restoration Project does not have the potential for significant environmental effects. Consequently, the South St. Louis Soil and Water Conservation District makes a Negative Declaration and does not require the development of an Environmental Impact Statement (EIS) for this project.

ORDER

Based on the above Findings of Fact and Conclusions:

The South St. Louis Soil and Water Conservation District determines that an Environmental Impact Statement is not required for the Miller Creek Channel and Floodplain Restoration Project in St. Louis County, Minnesota.

Any Findings that might be properly termed Conclusions and any Conclusions that might be properly termed Findings are hereby adopted as such.

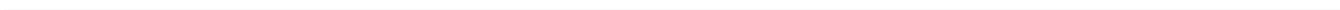
Dated this 4th day of May, 2022.

South St. Louis Soil and Water Conservation District

A handwritten signature in cursive script that reads "Tim Beaster". The signature is written in black ink and is positioned above a horizontal line.

Tim Beaster, Conservation Specialist

COMMENTS RECEIVED



From: Demmer, David (BWSR) <david.demmer@state.mn.us>
To: tim.beaster@southstlouisswcd.org
Cc: kdeming@duluthmn.gov
Subject: RE: Miller Creek EAW distribution

Sent: Wed 3/16/2022 8:25 AM

Tim,

As discussed, I have a comment regarding the extent of potential permanent wetland impacts resulting from the project. The EAW is unclear on the nature and extent of potential wetland impact that will occur.

The cover types table on page 5 states that 9.8 acres are present before the project and 8.9 will exist post project. This suggests that 0.9 acres of wetlands will be impacted by the project. A Wetland Conservation Act (WCA) decision from the City of Duluth (WCA LGU cc'd) obtaining approval for these impacts is not listed in the "permits and approvals required" section beginning on page 5.

However, in section iv (a) (on the top of page ten), the EAW states that "there will not be any negative environmental effects to these wetlands". It goes on to say that "the result will be a 0.9-acre increase in riverine wetlands and a 0.9-acre decrease in forested/shrub and emergent wetlands"- suggesting a zero net loss of wetlands (just type conversion) on the site.

These statements appear to contradict themselves. You may want to consider clarifying whether there be a permanent loss of wetlands or whether the project will just result in wetland type conversion.

As you know, stream restoration projects conducted by a SWCD typically qualify under a WCA no-loss per MN Rule 8420.0415 D- projects conducted by public agencies for the purpose of restoration. While wetland type conversions are generally not considered an impact under the WCA, I recommend you consult with the Army Corps on their interpretation under Section 404 of the Clean Water Act. Finally, note that an applicant "may apply" for no-loss decisions. However, you may want to consider applying for a WCA decision if there is uncertainty regarding the extent and nature of potential wetland impacts resulting from the project.

Thank you in advance for considering my comment. Good luck with the project.

Regards,

David Demmer | Wetland Specialist | CMWP
MN Wetland Professional Certification Program
Minnesota Board of Water and Soil Resources (BWSR)
394 South Lake Avenue, Room 403
Duluth, MN, 55802
C: 218-464-8289
[Web](#) | [Twitter](#) | [Facebook](#)

From: Meyer, Matthew (DOT) <matthew.m.meyer@state.mn.us>
To: Tim Beaster
Cc: Mohar, David J (DOT); Tiedeken, Nicklas (DOT); Carson, Tara (DOT)
Subject: Miller Creek Channel and Floodplain Restoration Project - EAW Comment

Sent: Thu 4/14/2022 2:40 PM

Tim,

On behalf of MnDOT, I have two minor comments related to the Miller Creek Channel and Floodplain Restoration Environmental Assessment Worksheet.

Comment #1- Section 8 of EAW lists required approvals. This list should be updated to include the Minnesota Wetland Conservation Act. This can be listed as 'complete' for the MnDOT WCA LGU areas.

Comment #2 – MnDOT is an MS4 entity and part of the TMDL for Miller Creek. Please list MnDOT as an additional beneficiary under Section 6.D.6 for the work on MnDOT ROW.

Thank you for the opportunity to comment.

Matt Meyer
Environmental Coordinator
MnDOT, District 1
1123 Mesaba Avenue
Duluth, MN 55811
Office Phone: 218-725-2758

Minnesota Department of Natural Resources
Northeast Region - Region 2
1201 East Highway 2, Grand Rapids, MN 55744

April 12, 2022

South St. Louis Soil & Water Conservation District
Tim Beaster, Conservation Specialist
4215 Enterprise Circle
Duluth, MN 55811
218-723-4867
tim.beaster@southstlouisswcd.org

RE: Miller Creek Channel and Floodplain Restoration Project

Dear Tim Beaster,

The Minnesota Department of Natural Resources (MNDNR) has conducted a review of the Environmental Assessment Worksheet (EAW) of the **Miller Creek Channel and Floodplain Restoration Project**. The project will address known impairments of the system by reconnecting the stream to its floodplain and improving ecological and biological functions of the stream. A substantial amount of early coordination has occurred with our agency prior to the publication of this EAW; this early coordination is greatly appreciated. We look forward to continuing to do so for future projects.

Below are items identified in our review where we seek clarification, action, or additional information.

NHIS & Botanical Items

- Floating marsh-marigold (*Caltha natans*) has been documented in the vicinity of the project; this is a state protected species. The previous botanical survey occurred within one year of a major flood event and did not detect any individuals. This species is sensitive to habitat disturbance and habitat conditions may have become more suitable since the previous survey occurred. **A qualified surveyor will need to conduct a habitat assessment of the tributary and if suitable habitat is present, a botanical survey will also need to be conducted.** It is also recommended that Miller Creek be re-evaluated. Please see the attached Natural Heritage Information System (NHIS) review letter for more information.
 - Note that results of this NHIS review are valid for one year and are only valid for the location identified in the NHIS request.
 - If there are any changes to the project, or construction has not occurred within one-year additional review may be required.
- References are made in the EAW to attachment 10, but there does not appear to be an attachment 10 included in the document.

Miller Creek Channel and Floodplain Restoration Project

Tim Beaster

April 12, 2022

2 | Page

- One instance where attachment 10 is referenced is regarding a planting plan. Planting plan information can be found in attachment 11 and in the planting plan maps (Maps 23-29). The text in the EAW should be changed to reflect the intended documentation.
- Another reference is made regarding a Storm Water Pollution Protection Plan (SWPPP). Information regarding the SWPPP can be found in attachment 11 and design plans (Map 30). The text in the EAW should be changed to reflect the intended documentation.
- In attachment 11, the planting plan (Map 23) identifies three plant community zones (1, 2, & 3), with plant species and specifications appropriate for each.
 - Zone 1 has a map symbol assigned to it, and only Zone 1 appears on any of the maps.
 - Are there parts of the plan area that will receive Zone 2 and Zone 3 plantings? Please clarify.
- A three-year maintenance plan is mentioned in the EAW to ensure planting success. This is an important place to address invasive species spread. Invasive species should be monitored during the maintenance period. Invasive species are briefly addressed in other parts of the EAW; adding this information here would strengthen the efficacy of the maintenance plan.

Water Resources

- It is unclear whether temporary impacts associated with a stream diversion channel and/or pumping are accounted for in the EAW. If the method of stream diversion is unknown at this time, it would be useful to include likely diversion plans and associated potential temporary impacts.

An application for a public waters work permit has been received by MNDNR, and will be processed after environmental review is complete.

Thank you for the opportunity to review the **Miller Creek Channel and Floodplain Restoration Project**. Please contact MN DNR NE Regional Environmental Assessment Ecologist, Jessica Parson, with any questions. Jessica can be reached at (218) 328-8826 or via email at: jessica.parson@state.mn.us .

Sincerely,

Shelly Patten,
Regional Director, Northeast Region 2

CC:

Jill Townley

Lisa Joyal

Darrell Schindler

Greg Root

Jessica Parson



Minnesota Department of Natural Resources
Division of Ecological & Water Resources
500 Lafayette Road, Box 25
St. Paul, MN 55155-4025

March 31, 2022

Correspondence MCE # 2022-00018

Tim Beaster
South St. Louis Soil and Water Conservation District
215 N 1st Avenue E, Suite 301
Duluth, MN 55802

RE: Natural Heritage Review of the proposed Miller Creek and Tributary 1 Restoration,
T50N R14/15W Sections 18/13; St. Louis County

Dear Tim Beaster,

As requested, the Minnesota Natural Heritage Information System has been queried to determine if any rare species or other significant natural features are known to occur within an approximate one-mile radius of the proposed project. Based on this query, rare features have been documented within the search area (for details, please visit the [Rare Species Guide Website](#) for more information on the biology, habitat use, and conservation measures of these rare species). Please note that the following rare features may be adversely affected by the proposed project:

State-listed Species

- As you are aware, floating marsh-marigold (*Caltha natans*), a state-listed endangered plant, was documented in 1994 in the direct vicinity of the proposed project. Floating marsh-marigold is an aquatic species that occurs in shallow slow-moving water in streams, creeks, ditches, swamps, pools, beaver ponds, and sheltered lake margins. This species is particularly sensitive to habitat disturbances. A survey for this species in 2013 did not find any individuals. The current geographic scope of the project, however, has been expanded since the 2013 survey to include a tributary of Miller Creek.

Given the potential for this state-protected plant to occur in the tributary, a qualified surveyor will need to conduct a habitat assessment of the tributary and, if suitable habitat is present, a botanical survey. In addition, given that the previous survey occurred within a year after a large flood event, it is recommended that Miller Creek also be re-evaluated for suitable habitat and

the need for a botanical survey. If suitable habitat is present in Miller Creek, the species may have re-established presence since the 2012 flood and 2013 survey. Please note that surveys must follow the standards contained in the attached Rare Species Survey Process and Rare Plant Guidance. Project planning should take into account that any botanical survey needs to be conducted during the appropriate time of the year, which may be limited. Please consult with the Endangered Species Environmental Review Coordinator, Lisa Joyal (lisa.joyal@state.mn.us), regarding this process.

Environmental Review and Permitting

- Please include a copy of this letter in any state or local license or permit application. Please note that measures to avoid or minimize disturbance to the above rare features may be included as restrictions or conditions in any required permits or licenses.

The Natural Heritage Information System (NHIS), a collection of databases that contains information about Minnesota's rare natural features, is maintained by the Division of Ecological and Water Resources, Department of Natural Resources. The NHIS is continually updated as new information becomes available, and is the most complete source of data on Minnesota's rare or otherwise significant species, native plant communities, and other natural features. However, the NHIS is not an exhaustive inventory and thus does not represent all of the occurrences of rare features within the state. Therefore, ecologically significant features for which we have no records may exist within the project area. If additional information becomes available regarding rare features in the vicinity of the project, further review may be necessary.

For environmental review purposes, the results of this Natural Heritage Review are valid for one year; the results are only valid for the project location (noted above) and the project description provided on the NHIS Data Request Form. Please contact me if project details change or construction has not occurred within one year as additional review may be required.

The Natural Heritage Review does not constitute review or approval by the Department of Natural Resources as a whole. Instead, it identifies issues regarding known occurrences of rare features and potential effects to these rare features. For information on the environmental review process or other natural resource concerns, you may contact your [DNR Regional Environmental Assessment Ecologist](#).

Thank you for consulting us on this matter, and for your interest in preserving Minnesota's rare natural resources. An invoice will be mailed to you under separate cover.

Sincerely,



Samantha Bump
Natural Heritage Review Specialist
Samantha.Bump@state.mn.us

Links: Rare Species Guide
<http://www.dnr.state.mn.us/rsg/index.html>
DNR Regional Environmental Assessment Ecologist Contact Info
http://www.dnr.state.mn.us/eco/ereview/erp_regioncontacts.html
USFWS IPaC Tool
<https://ecos.fws.gov/ipac/>

Cc: Jessica Parson and Brooke Haworth

April 11, 2022

Tim Beaster
Conservation Specialist
South St. Louis Soil and Water Conservation District
4215 Enterprise Circle
Duluth, MN 55811

Re: Miller Creek Channel and Floodplain Restoration Project Environmental Assessment Worksheet

Dear Tim Beaster:

Thank you for the opportunity to review and comment on the Environmental Assessment Worksheet (EAW) for the Miller Creek Channel and Floodplain Restoration Project (Project) located in Duluth, St. Louis County, Minnesota. The Project consists of restoration of a portion of the creek. Regarding matters for which the Minnesota Pollution Control Agency (MPCA) has regulatory responsibility and other interests, the MPCA staff has the following comments for your consideration.

General Comment

As stated in the EAW, Miller Creek has undergone multiple stream channel and watershed alterations over many years that have negatively affected stream water quality. Recent studies on Miller Creek, including The Miller Creek Water Temperature Total Maximum Daily Load (TMDL) study, and Duluth Urban Area Streams Watershed Restoration and Protection Strategies (WRAPS) report include projects and activities that could be implemented to reduce pollutant loading and restore degraded water quality conditions. The Project location was identified as a priority area for improving riparian vegetation density and composition, improving water retention, and improving habitat conditions for cold water species (e.g., brook trout). The Project will include these components and will contribute to the ongoing efforts of restoring physical and ecological functions in Miller Creek.

Project Description (Item 6)

The MPCA provides the following information to clarify water quality impairments for Miller Creek:

Stream segment	Year added to list	Affected designated use	Pollutant or stressor	TMDL status
04010201-512	2002	Aquatic Life	Lack of Coldwater Assemblage	Impairment removed through correction (draft 2022 Impaired Waters List)
04010201-512	2002	Aquatic Life	Temperature	Approved 2018
04010201-512	2010	Aquatic Life	Chloride	Target TMDL completion in 2025
04010201-512	2012	Aquatic Recreation	<i>Escherichia coli (E. coli)</i>	Approved 2020
04010201-512	2012	Aquatic Life	Benthic macroinvertebrates	Target TMDL completion (or recategorization) in 2025

Minnesota’s Impaired Waters List can be found at: [Minnesota’s Impaired Waters List | Minnesota Pollution Control Agency \(state.mn.us\)](https://www.pca.state.mn.us/impairment/). For questions, please contact Tom Estabrooks at 218-302-6608 or Tom.Estabrooks@state.mn.us.

Permits and Approvals (Item 8)

This section includes the U.S. Army Corps of Engineers (USACE) Section 404 Permit and hence, must include the Minnesota Pollution Control Agency (MPCA) 401 Water Quality Certification.

Water Resources (Item 11)

Stormwater

- The National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) Construction Stormwater Permit (CSW Permit) will apply to areas of the Project that are 1 acre or more located above the Ordinary High Water Level (OHWL) that are not subject to the Department of Natural Resources (DNR) Public Waters Permit. The Stormwater Pollution Prevention Plan (SWPPP) for the Project will also need to include plans for redundant (double) down gradient sediment control best management practices (BMPs) where soil disturbance occurs within 100 feet of the trout stream. The down gradient sediment control BMPs should be located above the OHWL and in addition to in water BMPs used to control movement of sediment downstream. Redundant down gradient BMPs are also required for soil disturbances within 50 feet of wetlands at the site.
- The EAW states that no soils will remain unworked for 7 days due to continuous construction unless there is rainfall. It is advised to limit the amount of soil disturbed at any one time and to have temporary cover available at the site that can be quickly applied to prevent sediment discharges from these areas during heavy rain events. The CSW Permit requires that soil stockpiles are also covered within 7 days in addition to the sediment controls installed at the base of the piles.
- Dewatering during the stream diversion requires monitoring and using sediment control BMPs for any turbid water prior to discharging back into the stream.

- The Permittees should also utilize tracking controls to prevent construction vehicles from transporting sediment if entering the stream. Questions regarding Construction Stormwater Permit requirements should be directed to Roberta Getman at 507-206-2629 or Roberta.Getman@state.mn.us.

Surface water

The Project will restore a straightened section of Miller Creek and Miller Creek Tributary 1 to a more stable, meandering channel and re-establish natural stream processes, re-connect the creek to its floodplain, and create quality habitat. Additionally, the reconnection of the stream to the floodplain will likely raise the water table to pre-ditched elevations, which will benefit the wetland plant communities throughout the entire wetland complex.

However, care must be taken for any construction as Miller Creek is a 303d Impaired Water and designated trout stream. With the location of this impaired water, additional mitigation may be required and agreed upon by all permitting agencies. Additional in-water BMPs may be required that possibly include weighted (double) floating silt curtain, winter construction conditions, coffer and/or rock check dams to further protect these impaired waters.

In accordance with Minnesota Statutes, the Project should include the MPCA as a regulator of all surface waters as defined by MN Stat. § 115.01 subd. 22. Waters of the state. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof. Even though there may be surface waters that are determined to be USACE non-jurisdictional, or exempt from the Wetland Conservation Act, all surface waters are regulated by the MPCA and any surface water impact needs to be described in the application and may require mitigation.

In addition, if a future USACE 404 permit is required, the 401 Water Quality Certification must also be included and becomes an enforceable component of the associated federal license or permit, issued under either Section 404 of the Clean Water Act (CWA) or Section 10 of the Rivers and Harbors Act. The scope of a CWA Section 401 certification is limited to assuring that a discharge from a federally licensed or permitted activity will comply with water quality requirements. Along with an Antidegradation Assessment, it is recommended that the applicant request a pre-filing meeting from the certifying agency at least 30 days prior to submitting a 401 Water Quality Certification request. The MPCA is the certifying authority in the State of Minnesota. For further information about the 401 Water Quality Certification process, please contact Bill Wilde at 651-757-2825 or william.wilde@state.mn.us.

Contamination/Hazardous Materials/Wastes (Item 12)

For petroleum spills that are five or more gallons, the Project proposer or their contractors are required to contact the State Duty Officer at (651) 649-5451 or (800) 422-0798. Information on reporting spills and leaks is available on the MPCA website at: <http://www.pca.state.mn.us/index.php/view-document.html?gid=2807>.

We appreciate the opportunity to review this Project. Please provide your specific responses to our comments and notice of decision on the need for an Environmental Impact Statement. Please be aware that this letter does not constitute approval by the MPCA of any or all elements of the Project for the purpose of pending or future permit action(s) by the MPCA. Ultimately, it is the responsibility of the Project proposer to secure any required permits and to comply with any requisite permit conditions. If you have any questions concerning our review of this EAW, please contact me by email at Karen.kromar@state.mn.us or by telephone at 651-757-2508.

Sincerely,

Karen Kromar

This document has been electronically signed.

Karen Kromar
Planner Principal
Environmental Review Unit
Resource Management and Assistance Division

KK:rs

cc: Dan Card, MPCA, St. Paul
Tom Estabrooks, MPCA, Duluth
Roberta Getman, MPCA, Rochester
Bill Wilde, MPCA, St. Paul
Jeff Udd, MPCA, Duluth