MINNESOTA DEPARTMENT OF NATURAL RESOURCES

RECORD OF DECISION

In the Matter of the Determination of the Need for an Environmental Impact Statement for the Gorman Creek Channel Restoration, Wabasha County, Minnesota

FINDINGS OF FACT, CONCLUSIONS, AND ORDER

FINDINGS OF FACT

1. The Minnesota Department of Natural Resources (DNR) proposes a stream restoration project on channelized reaches of Gorman Creek (M-033) and a spring tributary (Costello Spring, M-033-014), near Kellogg, in Wabasha County. The project will replace 2,060 feet of unstable, channelized stream with 4,800 feet of sinuous stream channel that would enhance ecological function, improve water quality, and establish stable ecological habitat.

2. Gorman Creek is a coldwater trout stream in Southeast Minnesota. The proposed project is in Wabasha County, approximately 4.5 miles south and west of Kellogg, Minnesota. The project reach of Gorman Creek was channelized sometime before 1949, based on aerial photography records, and the proposed project is an extension of a similar restoration project immediately upstream of the current proposed project and completed in 2001. The stream and tributary in the project area are incised and highly unstable. The section to be restored currently contributes excessive sediment downstream of this site. The channelized reach of Gorman Creek in the project area is currently 1,330 feet long and the channelized spring tributary reach is 730 feet long, for a total of 2,060 feet of channelized stream. DNR proposes a channel restoration that would re-establish dimension, pattern, and profile as well as establish additional habitat on these channelized stream reaches. A functional floodplain would also be excavated along the stream, allowing smaller and more frequent floods to overtop the streambanks at a lower elevation than is currently the case. Post project stream lengths are estimated to be 2,500 feet for Gorman Creek and 2,300 feet for the spring tributary, due to the increased sinuosity, for a total of 4,800 feet. The project would affect approximately 14.8 acres of stream and wetland.

3. Pursuant to *Minnesota Rules* 4410.4300, subpart 1, an environmental assessment worksheet (EAW) must be prepared for projects that meet or exceed the threshold defined in any of the subparts 2-37. The proposed project exceeds the threshold defined under *Minnesota Rules* 4410.4300, Subp. 26, regarding stream diversion. The project would change the alignment of a designated trout stream and therefore required the completion of an EAW.

4. Pursuant to *Minnesota Rules*, part 4410.4300, subpart 26, the Responsible Governmental Unit (RGU) is either the local governmental unit (LGU) or the Minnesota Department of Natural Resources (DNR). In this case, the LGU would be Wabasha County. Further,

according to Minn. R. 4410.0500, when a State Agency proposes a project then the agency shall always be the RGU. Since this is the case with the proposed project, the DNR has taken on the role of the RGU.

5. The DNR prepared an EAW for the proposed project, pursuant to *Minnesota Rules* 4410.1400.

6. The EAW is incorporated by reference into this Record of Decision on the Determination of Need for an Environmental Impact Statement (EIS).

7. The EAW was filed with the EQB and a notice of its availability was published in the *EQB Monitor* on May 17, 2022. A copy of the EAW was sent to all persons on the EQB Distribution List, to those persons known by DNR to be interested in the proposed project, and to those persons requesting a copy. A statewide press release announcing the availability of the EAW was sent to newspapers and radio and television stations. Copies of the EAW were distributed to the DNR Central Region Headquarters, the DNR Library located at DNR's Central Office, the Hennepin County-Minneapolis Central Public Library, the Rochester Public Library, and the Wabasha Public Library. The EAW was also made available to the public via posting on DNR's website. *See Minn. R. 4410.1500.*

8. The 30-day EAW public review and comment period began May 17 and ended June 16, 2022, pursuant to *Minnesota Rules*, chapter 4410.1600. The opportunity was provided to submit written comments on the EAW to the DNR by U.S. mail or electronically.

9. During the 30-day EAW public review and comment period, the DNR received written comments from the agencies and individuals listed below.

10. Minnesota Rules 4410.1700, subp. 4 indicates that the Record of Decision must include specific responses to all substantive and timely comments on the EAW. All comments and issues raised in comment submittals were reviewed to determine if they addressed the accuracy or completeness of the material contained in the EAW or environmental impacts that may warrant further investigation prior to the final ROD.

11. Responses to all substantive comments are summarized below in paragraph 12. Each submittal was arranged alphabetically by commenter last name and given an identification letter. If a submittal contained more than one comment, each comment was assigned a unique comment identification letter and number.

    A. Jon Holland (May 29, 2022)
    B. Karen Kromar, on behalf of the Minnesota Pollution Control Agency (MPCA) (June 16, 2022)

12. Comments received, as well as the DNR's response to the comment, are provided below.

    A. Commenter- Jon Holland:

A.1 I hope that stabilization of the stream banks is allowed to take place before rerouting the creek.

RESPONSE: The contours of the new stream banks are more gradual than those of the existing banks and would therefore be more stable than those which presently exist. In addition, the new stream banks would be seeded with habitat-appropriate native vegetation (i.e., sedges and other wetland species) and stabilized within seven days. Additional erosion-control practices that would be used while the vegetation establishes itself include mulch, erosion control blankets, vegetation mats, silt fencing, and placement of stone. The stream would be rerouted and water introduced into the new stream channel only after the vegetation on the stream banks has become sufficiently established to stabilize the banks.

A.2 A lot of wood ducks use small streams like Gorman to nest. Re-routing the stream will kick a few nesting wood ducks out. Do you plan to put a few wood duck houses on the new stream path?

RESPONSE: Thank you for your concern for the wood ducks. In Minnesota, wood ducks typically nest from late May to early June, and they have only one brood per season. Although the specific work schedule has not been determined, it is expected that work would occur during low flow times and drier conditions in mid to later summer and into fall or winter. This is outside the wood duck nesting season, so no impact on nesting wood ducks is anticipated.

B. Commenter- Karen Kromar, on behalf of the Minnesota Pollution Control Agency:

B.1 Minnesota Pollution Control Agency (MPCA) staff has reviewed the EAW and have no comments at this time.

RESPONSE: Noted.

13. Based upon the information contained in the EAW and received as public comments, the DNR has identified the following potential environmental effects associated with the project:

a) **Soils and topography.** This topic was addressed under EAW Items 6b and 11.

The proposed project would have a temporary adverse effect on soils in the areas in which land alteration activities are conducted. This adverse effect would last for the duration of earth disturbance activities, until soils are stabilized. Adverse effects include the possibility of soil loss through exposure and erosion. After completion, the project would have a permanent beneficial effect on soils, topography and small-scale landscape features in the project area, as the current unstable topography is replaced with stable, sloped and varied features appropriate to the landscape; the currently steep and exposed streambanks are replaced with more gently sloped banks covered with vegetation that holds the soil better; and cattle are managed.

b) **Water Resources.** This topic was addressed under EAW Items 6b and 12.

Surface water and water quality would experience a short temporary adverse impact, limited in geographic extent to the project area and the area immediately downstream. This would be due to sedimentation and stormwater runoff from active construction and land alteration activities, as well as from the action of connecting the existing stream to the new stream channel. The magnitude of these impacts would be minimized by using Best Management Practices (BMPs) to limit and manage sedimentation and stormwater runoff during active construction phases as well as after construction but before vegetation establishes. These BMPs would include, but are not limited to, phasing of activities; timing of activities to be carried out during low-flow and drier conditions; and use of silt barriers, vegetation mats, erosion control blankets, and other techniques to minimize and contain sedimentation and runoff. These BMPs would be further guided by conditions attached to the 401 and 404 permit

After project completion, it is expected that water resources would experience a permanent beneficial impact from reduction in sedimentation and erosion due to restoration of the stream banks, restoration of natural hydrology, and reduction in flashiness of flood events.

c) **Habitat.** This topic was addressed under EAW Item 14.

The project would have a temporary adverse impact on aquatic habitat, limited in geographic extent to the portion of Gorman Creek and the Costello Spring tributary in the active project area and limited in time to the duration of the project. Although the project staff would minimize disturbance to and impacts on the watercourses, a minimal amount of disturbance would be unavoidable when the old channel is cut off from its upstream and downstream ends and the new channel is connected. After completion of the project, habitat quality in the project area would be enhanced due to restoration of natural stream features and aquatic habitats.

d) **Wildlife.** This topic was addressed under EAW Item 14.

The proposed project would have temporary, minor adverse impacts on wildlife due to increased noise and human activity during construction. The geographic extent of this impact would be limited to the project area and its immediate surroundings. Fish and other aquatic organisms would experience a minor temporary negative impact due to increased sedimentation in the stream and the construction activities associated with joining the new stream bed to the upstream and downstream intersections with the existing stream and severing the connections with the current channelized stretch. After completion, the project would have a permanent beneficial impact on fish and other aquatic organisms due to restoration of natural stream features and aquatic habitats and an increase in water quality. Brook trout (*Salvelina fontinalis*), brown trout, and other cold water fishes associated with designated trout streams are expected to experience a permanent beneficial impact due to restoration of natural trout stream habitat.

e) **Visual Impacts.** This topic was addressed under EAW Item 16.

The proposed project would have temporary and limited negative impacts to the area's visual and scenic qualities. This impact is limited to the project area and the duration of construction activities. Once the project is completed, it would have a permanent positive impact on the area's visual and scenic qualities due to restoration of vegetation, stabilized stream banks, and reconnection to the floodplain.

f) **Air Quality impacts.** This topic was addressed under EAW Item 17.

The proposed project would have temporary negative impacts to local air quality from operation of construction and grading equipment. Use of this equipment would also result in a small increase in greenhouse gas emissions. All of this equipment would be required to comply with emissions and maintenance requirements as part of standard conditions of the construction contract. Adherence to these requirements ensures that emissions would be considered *de minimus.*

The higher than normal levels of exhaust emissions and odors produced during project construction from the use of this equipment would be considered temporary and minor. This impact is limited to the project area and the duration of construction activities.

Excavation and grading would be expected to contribute some airborne dust.

g) **Traffic impacts.** This topic was addressed under EAW Items 6b and 20.

Construction equipment and activities would generate a slightly increased amount of traffic, but the effect is limited to periods of active construction activity and would be considered temporary and minor. After restoration, this stretch of Gorman Creek is expected to be visited more frequently by anglers than it is now, so there would be a permanent minor increase in traffic.

h) **Cumulative Potential Effects.** This topic was addressed under EAW Item 21.

The potential environmental effects related to this proposed project could combine with environmental effects from other past, present, or reasonably foreseeable future projects for which a basis of expectation has been laid. The proposed project has been identified to have temporary, limited and minor negative environmental effects to soils and topography, water resources, aquatic habitat, wildlife, visual and aesthetic impacts, air impacts, and traffic. Any potential negative effects due to the proposed project are temporary and limited to the duration of active construction activities, and until the establishment of stable vegetation on the stream banks.

No other projects were identified as part of the cumulative potential effects analysis that would result in cumulative potential effects on land use, soils, topography, water resources, habitat, fish and wildlife, rare features, or visual, air or traffic qualities.

The project would have a permanent cumulative positive impact on water resources, aquatic habitat, wildlife, and visual and aesthetic impacts because it combines with and is an areal extension of a previous restoration project undertaken on Gorman Creek just upstream of the proposed project area.

The proposed project would have a permanent beneficial impact on land use throughout the project area, due to restoration of natural hydrologic patterns, addition or increase in landscape appropriate habitats, increase in angling opportunities, and better management of cattle in the project area. Currently, the proposed project area is degraded and unstable, so there would be no short-term loss of or impact to land uses during project activities.

14. The DNR requested and was granted a 15-day extension for making a decision on the need for an EIS as provided under the provision of *Minnesota Rules*, chapter 4410.1700 Subp. 2.b.

15. The following permits and approvals are needed for the project:

Unit of Government	Type of Application	Status
U.S. Fish and Wildlife Service	Section 7 concurrence	To be obtained
Minnesota Pollution Control Agency	NPDES/SDS Construction stormwater permit	To be obtained
Minnesota Pollution Control Agency	401 Water Quality Certification	To be obtained
Minnesota Department of Natural Resources	Work in public water permit	To be obtained
Minnesota Department of Natural Resources	Water appropriation permit	To be obtained, if required
State Historic Preservation Agency	Section 106 concurrence	Issued Attachment G
Minnesota Office of State Archaeologist	Project approval	Issued Attachment G
Minnesota Department of Natural Resources	Natural Heritage Information System Data	Issued Attachments D, E
State of Minnesota	Lessard-Sams Outdoor Heritage Grant	Funded
U.S. Army Corps of Engineers	Section 404 Permit	To be obtained
Wabasha County	Permits or Approvals for Off Site Sediment Storage, other work requiring county permits or approval	To be obtained, if required

CONCLUSIONS

1. The Minnesota Environmental Review Program Rules, *Minnesota Rules*, chapter 4410.1700, subparts 6 and 7 set forth the following standards and criteria, to which the effects of a project are to be compared, to determine whether it has the potential for significant environmental effects.

   In deciding whether a project has the potential for significant environmental effects, the following factors shall be considered:

   a. *type, extent, and reversibility of environmental effects;*
   b. *cumulative potential effects of related or anticipated future projects;*
   c. *extent to which the environmental effects are subject to mitigation by on-going regulatory authority; and*

d. the extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by agencies or the project proposer, including other EISs.

1. Type, extent, and reversibility of environmental effects

Based on the Findings of Fact above, the DNR concludes that the following potential environmental impacts, as described in paragraph 13, will be either limited in extent, temporary, or reversible:

a. Soils and topography
b. Water resources
c. Habitat
d. Wildlife
e. Visual impacts
f. Air quality impacts
g. Traffic

Based on the Findings of Fact above, the DNR concludes the following potential environmental effects of the project, as described in paragraph 13, would be beneficial:

Habitat, land use, water resources and wildlife improvements resulting from restoration of this stretch of Gorman Creek and reconnection to its flood plain. The proposed project would result in water quality improvement in the stream, and increased quality and variety of aquatic and wetland habitat. It would also have a beneficial impact on land use throughout the project area, due to restoration of natural hydrologic patterns, addition or increase in landscape appropriate habitats, increase in angling opportunities, and better management of cattle in the project area.

2. Cumulative potential effects of related or anticipated future projects.

There are no known planned or anticipated future projects that would result in cumulative adverse potential effects on land use, soils and topography, water resources, habitat, wildlife, visual impacts, air quality impacts, or traffic. If a similar stream restoration project is carried out downstream of the proposed project area, it would have a positive cumulative effect on habitat, wildlife, water resources, and visual impacts; however, such a project is not yet planned.

3. Extent to which environmental effects are subject to mitigation by on-going public regulatory authority.

Based on the information in the EAW and Findings of Fact above, the DNR has determined that the following environmental effects, as described in Finding No. 13, are subject to mitigation by ongoing public regulatory authority:

a. Physical impacts on water resources are subject to regulatory authority by the DNR Public Waters Work permit.

b. Possible impacts to the wetlands in the proposed Project Area are subject to regulatory authority by the U.S. Army Corps of Engineers Section 404 permit and the 401 permit.
c. When applying standards and criteria used in the determination of the need for an environmental impact statement, the DNR finds that the project is subject to regulatory authority through the Minnesota public water and wetland conservation rules to sufficiently mitigate potential environmental effects on water resources through measures identified in the EAW that are specific and reasonably expected to occur.
d. Project-related impacts to soil erosion, sedimentation, and overall water quality from construction-related activity are subject to regulatory authority by the MPCA NPDES/SDS General Construction Stormwater Permit and the MPCA's CWA 401 Water Quality Certification.

4. Extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or other EISs.

The project proposer has completed, or developed in collaboration with others, numerous habitat improvement and stream restoration projects within public waters that have included EAW preparations. One of these was a very similar restoration project on Gorman Creek immediately upstream of the current proposed project. The effects and benefits of prior projects are used in planning and developing other similar projects such as the proposed Gorman Creek Channel Restoration Project. The information gained on the effects and results of past projects provides part of the basis for predicting the effects of similar future projects, such as the proposed project.

2. The DNR has prepared EAWs for other habitat creation and enhancement projects engaged in by the project proposer that have similar environmental effects. These include the Keene Creek Stream Restoration, Vermillion River AMA Stream Bank Stabilization, the Mission Creek Stream Restoration, and the Wisel Creek Trout Stream Habitat Restoration/Improvement Project. The DNR has fulfilled all the procedural requirements of law and rule applicable to determining the need for an environmental impact statement on the proposed Gorman Creek Channel Restoration Project.

3. Based on consideration of the criteria and factors specified in the Minnesota Environmental Review Program Rules (*Minnesota Rules*, chapter 4410.1700, subpart 6 and 7) to determine whether a project has the potential for significant environmental effects, and on the Findings and Record in this matter, the DNR determines that the proposed Gorman Creek Channel Restoration Project does not have the potential for significant environmental effects.

ORDER

Based on the above Findings of Fact and Conclusions:

The Minnesota Department of Natural Resources determines that an Environmental Impact Statement is not required for the Gorman Creek Channel Restoration Project in Wabasha County, Minnesota.

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

Dated this 22nd day of July, 2022.

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

Jess Richards
Assistant Commissioner