



Grant Agreement

State of Minnesota

Doc Type: Contract/Grant

SWIFT Contract Number: 223086

Agency Interest ID: 206152

Activity ID: PRO20210001

This Grant Agreement is between the state of Minnesota, acting through its Commissioner of the **Minnesota Pollution Control Agency**, 520 Lafayette Road North, St. Paul, MN 55155-4194 ("MPCA" or "State"), and **Brown's Creek Watershed District**, 455 Hayward Ave North, Oakdale, MN 55128 ("Grantee").

Recitals

1. Under Minn. Stat. § 116.03, subd. 2, the State is empowered to enter into this grant.
2. The State is in need of the **Brown's Creek Watershed Restoration Phase I** project.
3. Grantee will comply with required grants management policies and procedures set forth through [Minn. Stat. § 16B.97](#), subd. 4(a)(1).
4. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant agreement to the satisfaction of the State. Pursuant to [Minn. Stat. § 16B.98](#), subd. 1, the Grantee agrees to minimize administrative costs as a condition of this grant.

Grant Agreement

1. Term of Grant Agreement

- 1.1 **Effective date: January 6, 2023**, Per [Minn. Stat. § 16B.98](#), Subd. 5, the Grantee must not begin work until this grant contract agreement is fully executed and the State's Authorized Representative has notified the Grantee that work may commence. Per [Minn. Stat. § 16B.98](#) Subd. 7, no payments will be made to the Grantee until this grant contract is fully executed.
- 1.2 **Expiration date: July 31, 2025**, or until all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of terms.** The following clauses survive the expiration or cancellation of this grant agreement: Indemnification; State Audits; Government Data Practices and Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure.

2. Grantee's Duties

The Grantee, who is not a state employee, will perform the duties specified in **Attachment A**, which is attached and incorporated into this grant agreement.

3. Time

The Grantee must comply with all the time requirements described in this grant agreement. In the performance of this grant agreement, time is of the essence.

4. Consideration and Payment

4.1 **Consideration.** The State will pay for all services performed by the Grantee under this grant agreement as follows:

(a) **Compensation.** The Grantee will be paid according to the breakdown of costs contained in **Attachment A** which is attached and incorporated into this grant agreement. Grantee certifies they will provide no less than 40% (forty percent) of the total project cash as cash match or in-kind services, using non-federal funds and/or resources.

(b) **Travel expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this grant agreement will not exceed \$0.00; provided that the Grantee will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Commissioner's Plan" promulgated by the Commissioner of Minnesota Management and Budget (MMB). The Grantee will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

(c) **Total obligation.** The total obligation of the State for all compensation and reimbursements to the Grantee under this grant agreement will not exceed **\$320,705.50 (Three Hundred Twenty Thousand Seven Hundred Five Dollars and Fifty Cents).**

4.2 **Payment**

(a) **Invoices.** The State will promptly pay the Grantee after the Grantee presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule: **at least quarterly, along with the updated workplan budget showing current expenditures and budget balances**, and be received within 30 (thirty) days from the end of each quarter.

Invoices must be emailed to mpca.ap@state.mn.us, and contain the following information:

- Name of Grantee
- Grantee project manager
- Grant amount
- Grant amount available to date
- Invoice number
- Invoice date
- MPCA project manager
- SWIFT Contract No.
- Invoicing period (actual working period)
- Subcontractors invoices, if applicable
- Itemized labor, equipment, lab fees, shipping expenses, mileage and subcontractor charges, etc.
- Time and material breakdown of invoice. Amount billed to date for work, including this invoice
- Receipts for supplies, shipping, lab fees and any other subcontractor invoices must be attached

- Per diem expenses submitted on travel expense forms and receipts may be requested to be submitted with invoice
- Matching fund summary

If there is a problem with submitting an invoice electronically, please contact the Accounts Payable Unit at 651-757-2491.

The Grantee shall submit an invoice for the final payment within 15 (fifteen) days of the original or amended end date of this grant contract. The State reserves the right to review submitted invoices after 15 (fifteen) days and make a determination as to payment.

(b) Federal funds. Payments under this grant agreement will be made from federal funds obtained by the State through Section 319 (h), CFDA number 66.460 of the Federal Clean Water Act. The Grantee is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Grantee's failure to comply with federal requirements.

<https://www.epa.gov/grants/grant-terms-and-conditions>

(c) Unexpended Funds. The Grantee must promptly return to the State any unexpended funds that have not been accounted for annually in a financial report to the State due at grant closeout.

4.3 **Contracting and Bidding Requirements**

Per [Minn. Stat. §471.345](#), grantees that are municipalities as defined in Subd. 1 must follow the law.

(a) For projects that include construction work and have a total project cost of \$25,000 or more, prevailing wage rules apply per [Minn. Stat. §§177.41](#) through [177.44](#). These rules require that the wages of laborers and workers should be comparable to wages paid for similar work in the community as a whole.

The grantee must not contract with vendors who are suspended or debarred in Minnesota: <http://www.mmd.admin.state.mn.us/debarredreport.asp>

5. **Conditions of Payment**

All services provided by the Grantee under this grant agreement must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative/MPCA's Project Manager and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6. **Authorized Representative**

The State's Authorized Representative/Project Manager is **Eric Alms**, 520 Lafayette Road, St. Paul, MN 55155, 651-757-2589, Eric.alm@state.mn.us, or their successor, and has the authority to monitor the Grantee's performance and to accept the services provided under this agreement. If the services are satisfactory, the MPCA's Project Manager will certify acceptance of each invoice submitted for payment.

The Grantee's Authorized Representative is **Karen Kill**, 455 Hayward Ave North, Oakdale, MN 55128, 651-330-8220 x26, karen.kill@mnwcd.org, or their successor. If the Grantee's Authorized Representative changes at any time during this grant agreement, the Grantee must immediately notify the State.

7. Assignment, Amendments, Change Orders, Waiver, and Grant Agreement Complete

7.1 **Assignment.** The Grantee shall neither assign nor transfer any rights or obligations under this grant agreement without the prior written consent of the State, approved by the same parties who executed and approved this grant agreement, or their successors in office.

7.2 **Amendments.** Any amendments to this grant agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant agreement, or their successors in office.

7.3 **Change orders.** If the State's Project Manager or the Grantee's Authorized Representative identifies a change needed in the workplan and/or budget, either party may initiate a Change Order using the Change Order Form provided by the MPCA. Change Orders may not delay or jeopardize the success of the Project, alter the overall scope of the Project, increase or decrease the overall amount of the Contract/Agreement, or cause an extension of the term of this Agreement. Major changes require an Amendment rather than a Change Order.

The Change Order Form must be approved and signed by the State's Project Manager and the Grantee's Authorized Representative **in advance of doing the work**. Documented changes will then become an integral and enforceable part of the Agreement. The MPCA has the sole discretion on the determination of whether a requested change is a Change Order or an Amendment. The state reserves the right to refuse any Change Order requests.

7.4 **Waiver.** If the State fails to enforce any provision of this grant agreement, that failure does not waive the provision or the State's right to enforce it.

7.5 **Grant agreement complete.** This grant agreement contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant agreement, whether written or oral, may be used to bind either party.

8. Indemnification

The Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant agreement by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant agreement.

9. State Audits

Under [Minn. Stat. § 16B.98](#), subd.8, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this grant agreement or transaction are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant agreement, receipt and

approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

10. Government Data Practices and Intellectual Property

10.1 **Government data practices.** The Grantee and State must comply with the Minnesota Government Data Practices Act, [Minn. Stat. Ch. 13](#), as it applies to all data provided by the State under this grant agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant agreement. The civil remedies of [Minn. Stat. § 13.08](#) apply to the release of the data referred to in this clause by either the Grantee or the State. If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released. The Grantee's response to the request shall comply with applicable law.

10.2 Intellectual property rights

(a) Intellectual property rights. The State owns all rights, title and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this grant agreement. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Grantee, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this grant agreement. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Grantee, its employees, agents, or subcontractors, in the performance of this grant agreement. The Documents shall be the exclusive property of the State and all such Documents must be immediately returned to the State by the Grantee, at the Grantee's expense, upon the written request of the State, or upon completion, termination, or cancellation of this grant agreement. To the extent possible, those Works eligible for copyright protection under the United States' Copyright Act will be deemed to be "works made for hire." The Grantee assigns all right, title, and interest it may have in the Works and the Documents to the State. The Grantee must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

(b) Obligations.

- (1) **Notification.** Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Grantee, including its employees and subcontractors, in the performance of this grant agreement, the Grantee shall immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure therein.
- (2) **Representation.** The Grantee must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Grantee nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Grantee

represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause Liability, the Grantee shall indemnify, defend, to the extent permitted by the Attorney General, and hold harmless the State, at the Grantee's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Grantee will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including, but not limited to, attorney fees. If such a claim or action arises or in Grantee's or the State's opinion is likely to arise, the Grantee must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

- (3) **License.** The State hereby grants a limited, no-fee, noncommercial license to the Grantee to enable the Grantee's employees engaged in research and scholarly pursuits to make, have made, reproduce, modify, distribute, perform, and otherwise use the Works, including Documents, for research activities or to publish in scholarly or professional journals, provided that any existing or future intellectual property rights in the Works or Documents (including patents, licenses, trade or service marks, trade secrets, or copyrights) are not prejudiced or infringed upon, that the Minnesota Data Practices Act is complied with, and that individual rights to privacy are not violated. The Grantee shall indemnify and hold harmless the State for any claim or action based on the Grantee's use of the Works or Documents under the provisions of Clause 10.2(b)(2). Said license is subject to the State's publicity and acknowledgement requirements set forth in this grant agreement. The Grantee may reproduce and retain a copy of the Documents for research and academic use. The Grantee is responsible for security of the Grantee's copy of the Documents. A copy of any articles, materials or documents produced by the Grantee's employees, in any form, using or derived from the subject matter of this license, shall be promptly delivered without cost to the State.]

11. Workers' Compensation

The Grantee certifies that it is in compliance with [Minn. Stat. § 176.181](#), subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

12. Publicity and Endorsement

12.1 **Publicity.** Any publicity regarding the subject matter of this grant contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from

this grant contract. All projects primarily funded by state grant appropriations must publicly credit the State of Minnesota, including on the grantee's website when practicable.

12.2 **Endorsement.** The Grantee must not claim that the State endorses its products or services.

13. Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this grant agreement. Venue for all legal proceedings out of this grant agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

14. Termination

14.1 **Termination by the State.** The State may immediately terminate this grant agreement with or without cause, upon 30-days' written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

14.2 **Termination for cause.** The State may immediately terminate this grant agreement if the State finds that there has been a failure to comply with the provisions of this grant agreement, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the state of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

14.3 **Termination for insufficient funding.** The State may immediately terminate this grant agreement if:

(a) Funding is withdrawn by the United States Environmental Protection Agency

(b) It does not obtain funding from the Minnesota Legislature.

(c) Or, if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.

15. Data Disclosure

Under [Minn. Stat. § 270C.65](#), subd. 3, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

To protect Grantee's personal data, Grantee is strongly encouraged to obtain and use a Minnesota tax identification number.

16. Reporting Requirements

The Grantee shall submit to the State for review and approval Semi-Annual reports in a format prescribed by the State. These reports shall be due to the State each **February 1** and **August 1** throughout the life of this grant agreement.

If water quality monitoring is applicable, all monitoring data collected during the project must be submitted annually and reported in EQuIS (MPCA's monitoring database) each **November 1** throughout the life of this grant agreement. The MPCA has developed an EQuIS format for an Electronic Data Deliverable (EDD). This format is called the MPCA LAB_MN and is available at the following: <http://www.earthsoft.com/products/edp/edp-format-for-mnpca/>. Analytical data must be provided in the MPCA LAB_MN format within the first year of the grant agreement.

If Best Management Practices (BMPs) are installed, a summary of the reporting year's BMPs and pollutant load reductions must be entered annually into the eLINK (supported by the Minnesota Board of Water and Soil Resources) database each **February 1** throughout the life of the grant agreement.

No later than thirty days before the end date of this grant agreement, the Grantee shall provide the State with one electronic copy of all final products produced under this grant agreement, including reports, publications, software and videos.

A Final Progress and Financial Report, in a format prescribed by the State, shall be due no later than 15 (fifteen) days before the expiration date of the grant agreement. Final payment will not be made to the Grantee until the final report is received and approved by the MPCA's Project Manager. **Payments may be withheld from grantees until all reporting requirements have been met.**

17. Quality Assurance

No costs for environmentally related measurements or data generation can be incurred by any entity other than the MPCA, until quality assurance practices for the project are documented and approved by the MPCA. If quality assurance practices are approved, costs for environmentally related measurements or data generation shall be reimbursable. [40 C.F.R. 31.45.]

All water monitoring programs and projects that involve environmental data acquisition from direct measurement activities or laboratory analysis must have an approved Quality Assurance Project Plan (QAPP) to ensure that the data collected are of known and suitable quality and quantity. The Contractor shall cooperate in the State's development of the QAPP, as necessary, and comply with the requisite elements of the plan.

Signatures

Title	Name	Signature	Date
Encumbrance Verification	Katie Shea	 1C7A9AE6E72C42D...	January 5, 2023

Karen Kill

phosphorus to reflect more recent monitoring data (BCWD 2019).

Opportunities:

The Environmental Protection Agency (EPA) approved Brown’s Creek Nine Key Element Bridge document (NKE plan) provides a list of best management practices (BMPs) and watershed goals that when implemented will yield the estimated reductions needed to meet water quality standards and improve habitat quality. The strategies listed in the NKE plan are intended to provide the flexibility to the BCWD to choose the best practice with the available implementation opportunity. The BCWD must not only gain the trust and permission from landowners, but also must work and coordinate efforts with multiple entities that work within the watershed.

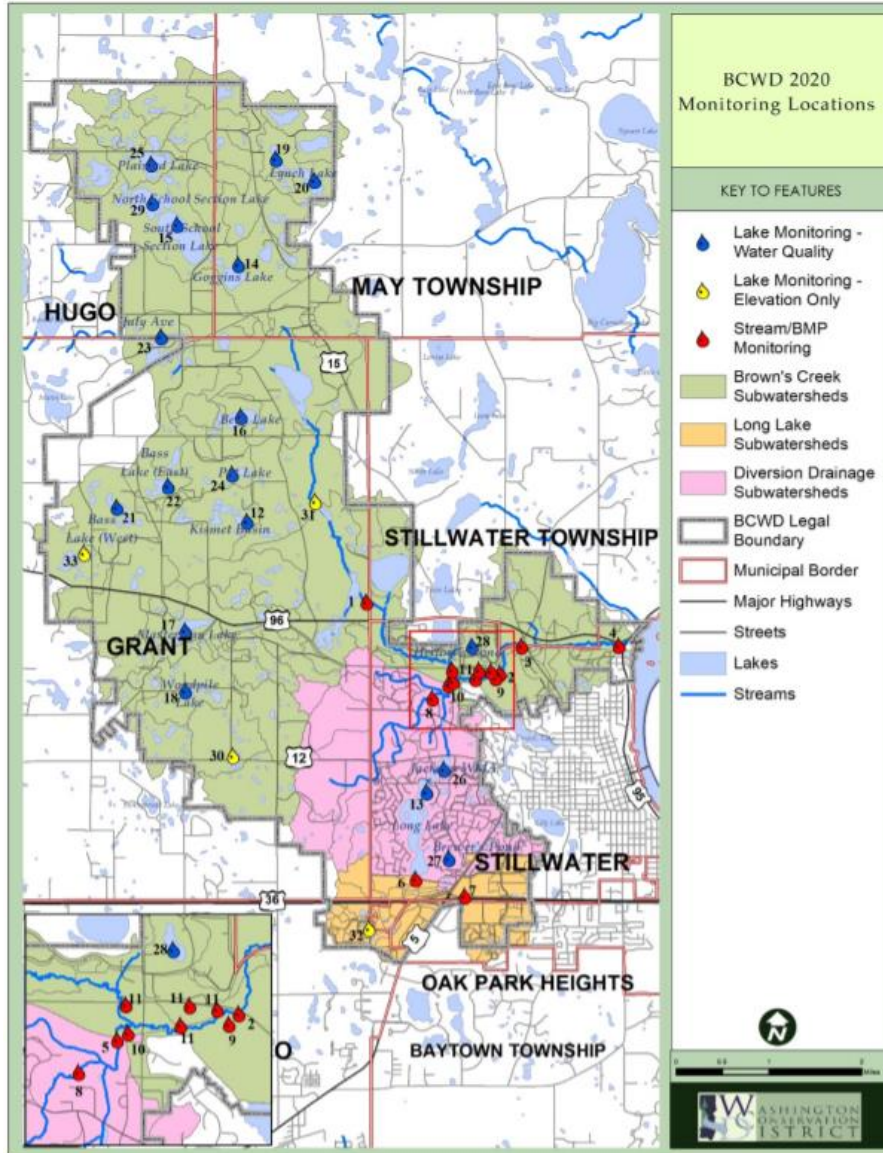


Figure 1: Brown’s Creek Watershed District subwatersheds and boundaries.

The milestone-strategies found in table 7 of the NKE plan includes the planned years for the activities and the completed years for the activities if the activities have been completed.

This project is Phase 1 in the implementation of the NKE plan to restore and protect the water quality of surface water resources in the watershed. This workplan lists the BMPs identified in the NKE that will address reducing phosphorus, total suspended solids, thermal stressors, and *E. coli* loadings, while finding area and opportunities for multiple added benefits.

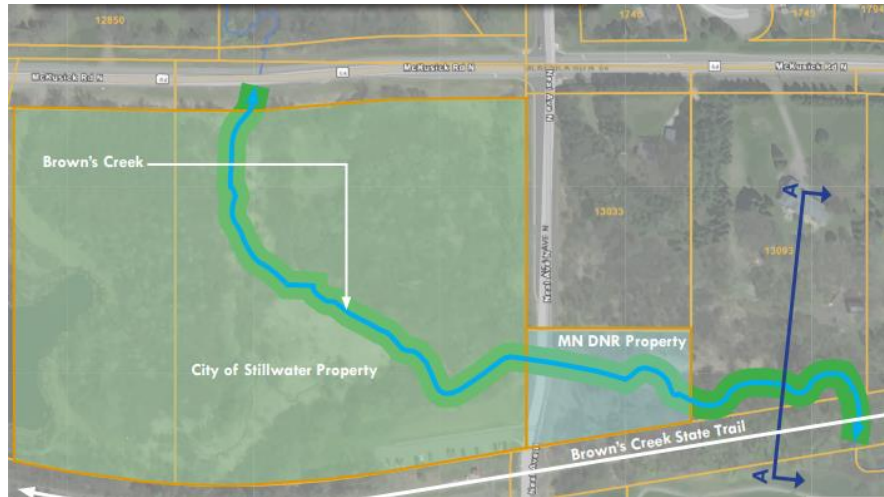
Goals, Objectives, Tasks, and Subtasks

Goal: To address existing watershed impairments and stressors, and to decrease pollutant loading to waterbodies within the Browns Creek and Long Lake Watersheds (including an unnamed creek between Brown’s Creek and Long Lake), as identified in the NKE plan.

Objective 1: BMP Implementation

Task 1: Stream Geomorphology and Thermal Buffer Improvements (these activities are not required by a stormwater permit)

- Proposed length of restored stream in Brown's Creek - 2,000 Linear Feet (LF).
 - Location: McKusick Road through the Brown's Creek Park (owned by city of Stillwater), crossing Neal Ave, through the Department of Natural Resources (DNR) Aquatic Land Management Area to approximately 25 feet downstream of the Brown's Creek State Trail.



- Activities could include stream channel improvements grading, tree thinning and invasive species removal, restored floodplain, riffle/pool restoration, bank shaping and stabilization, and improved access from Brown's Creek State Trail.
- Subtasks could include project development by staff and legal counsel, design, engineering, and construction costs associated with implementation.

Objective 1 Timeline: January 2023 - July 31, 2025

Objective 1 Cost: \$534,509.50 (Grant: \$320,705.50, Match: \$213,804.00)

Objective 1 Deliverables: Design Plans, Construction of stream restoration and Brown's Creek access from Brown's Creek State Trail

Measurable Outcomes

- Proposed length of restored stream: 2,000 LF.
- Initial sediment and nutrient reduction estimates are 15 tons/year annual soil loss and 15 lbs P/year.
- Habitat restoration for macroinvertebrates and fish will include restoration of riffle and pool habitat which is lacking in much of the project reach due to bank erosion and instream sedimentation. Based on the length of the reach, it is anticipated about 25 riffles and pools will be restored.