

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** September 19, 2022

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER:** MVP-2022-01416-MWV

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Minnesota County/parish/borough: Faribault City: Blue Earth, Blue Earth City Twp.,  
Emerald Twp., Brush Creek Twp.

Center coordinates of site (lat/long in degree decimal format): Lat. 43.657651° N, Long. -93.95228° E.

Universal Transverse Mercator: Zone 15

Name of nearest waterbody: Blue Earth River, Blue Earth River East Branch, CD5 Main Trunk, Unnamed  
Streams

Name of watershed or Hydrologic Unit Code (HUC): 0702000908, 0702000905

- ☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.  
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

- ☒ Office (Desk) Determination. Date: August 25, 2022  
☐ Field Determination. Date(s):

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There are no “*navigable waters of the U.S.*” within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There are no “*waters of the U.S.*” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

**1. Waters of the U.S.: N/A**

**2. Non-regulated waters/wetlands (check if applicable):<sup>1</sup>**

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: **In accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330) and the 2008 Rapanos guidance, the Corps does not generally consider non-tidal drainage and irrigation ditches excavated on dry land to be waters of the United States. Further clarification is provided in the December 2, 2008, Revised Guidance on Clean Water Act Jurisdiction following the Supreme Court Decision in Rapanos v. U.S. and Carabell v. U.S. issued jointly by the Corps and EPA which indicates that ditches excavated wholly in and draining only uplands and do not carry a relatively permanent flow are not waters of the United States. According to the wetland delineation report submitted by MnDOT District 7, forty-two linear ditches were delineated within the review area. Wet Ditch 3, 5, 7, 8, 9, 10, 11, 12, 14, 16, 18, 22, 23, 24, 25, 28, 32, 33, 35, 36, 37, 38, 40, 41, 43, and 46 and Median Ditch 2, 3, 4, 7, 8, 10, 11, 12, 14, 15, 16, 18, 20, 23, 24, 25, and 26 as shown on the attached figure are outside of mapped NWI wetlands and are described as wetlands formed within upland constructed ditches to convey runoff. As seen in photos from the delineation report, these features do not convey relatively permanent flow and, according to the wetland delineation report, were identified in areas where the wetland criteria were limited to a defined channel that ran parallel to the road and had upland on the opposite side. The preamble to the 1986 Corps Regulations (33 CFR Parts 320-330) also states that artificial lakes or ponds created by excavating dry lands to collect and retain water and which are used exclusively for such purposes as settling basins are not generally considered waters of the United States. In the wetland delineation report submitted by MnDOT District 7, four stormwater ponds were delineated within the review area. Stormwater Pond 3, 4, 5, and 6 as shown on the attached figures are outside of mapped NWI wetlands and are wetlands formed within upland. According to the wetland delineation, the stormwater ponds are defined as areas that meet wetland**

<sup>1</sup> Supporting documentation is presented in Section III.F.

criteria but are in locations of historic upland or have been filled and regraded during the construction of the roadway for the purpose of conveying and treating stormwater runoff from the roadway. These areas differed from wet ditches as they were not linear features along the roadway but were rounded in shape and were generally located within the green space separating the entrance and exit ramps from I90. Therefore, Wet Ditch 3 (3,276 linear feet), 5 (2,450 linear feet), 7 (3,105 linear feet), 8 (3,050 linear feet), 9 (2,144 linear feet), 10 (1,645 linear feet), 11 (642 linear feet), 12 (297 linear feet), 14 (533 linear feet), 16 (1,115 linear feet), 18 (3,870 linear feet), 22 (178 linear feet), 23 (551 linear feet), 24 (716 linear feet), 25 (1,200 linear feet), 28 (564 linear feet), 32 (152 linear feet), 33 (1,044 linear feet), 35 (1,145 linear feet), 36 (1,471 linear feet), 37 (2,223 linear feet), 38 (262 linear feet), 40 (185 linear feet), 41 (1,166 linear feet), 43 (1,956 linear feet), and 46 (481 linear feet); Median Ditch 2 (1.253 acres), 3 (0.234 acres), 4 (0.369 acres), 5 (0.124 acres), 7 (0.331 acres), 8 (0.255 acres), 10 (0.415 acres), 11 (0.826 acres), 12 (0.453 acres), 14 (0.110 acres), 15 (0.540 acres), 16 (0.131 acres), 18 (0.086 acre), 20 (0.231 acres), 23 (0.219 acres), 24 (0.260 acres), 25 (0.053 acres), and 26 (0.193 acres); and Stormwater Pond 3 (1.14 acres), 4 (0.93 acres), 5 (1.06 acres), and 6 (1.25 acres) as shown on the attached figures are not waters of the U.S.

### **SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs:** N/A

**B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):** N/A

**C. SIGNIFICANT NEXUS DETERMINATION:** N/A

**D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):** N/A

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):** N/A

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - ☐ Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
- ☒ Other (explain, if not covered above): **See Section II.B.2 above**

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams):          linear feet          width (ft).
- ☐ Lakes/ponds:          acres.
- ☐ Other non-wetland waters:          acres. List type of aquatic resource:          .
- ☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams):          linear feet,          width (ft).
- ☐ Lakes/ponds:          acres.
- ☐ Other non-wetland waters:          acres. List type of aquatic resource:          .
- ☐ Wetlands:          acres.

### **SECTION IV: DATA SOURCES**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: I90 Unbonded Overlay Wetland Delineation Report Dated July 22, 2022.
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps:
- ☐ Corps navigable waters' study:

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**B. ADDITIONAL COMMENTS TO SUPPORT JD:**