

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): February 15, 2023

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Park I-35 Project, MVP-2014-03991-RMH

C. PROJECT LOCATION AND BACKGROUND INFORMATION: This AJD considers the aquatic resources identified as WB-01, WB-02, WB-06, WB-07, WB-09, WB-11, WB-12, WB-13, WB-14 and WC-01 within the approximately 98 acre property located in Section 25, Township 113 North, Range 21 West.

State: Minnesota

County/parish/borough: Scott County

City: Elko New Market

Center coordinates of site (lat/long in degree decimal format): Lat. 44.568621° N, Long. -93.29343° W.

Universal Transverse Mercator: X: 476700.323976, Y: 4935073.324858, Zone 15

Name of nearest waterbody: Vermillion River

Name of watershed or Hydrologic Unit Code (HUC): Upper Mississippi Region Watershed (HUC 07040001)

☒ 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: January 20, 2023

☐ 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):¹

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **The review area for this jurisdictional determination is the extent of the aquatic resources identified as WB-01, WB-02, WB-06, WB-07, WB-09, WB-11, WB-12, WB-13, WB-14 and WC-01 within the delineation area identified in the Wetland Delineation Report. The aquatic resources with exception of WC-01 are depressional basins located within a predominately agricultural area. WC-01 is an ephemeral channel that drains into WB-13. All of the aquatic resources lack a surface or shallow subsurface hydrologic connection to any navigable waters or their tributaries. The closest tributary in which a connection would be possible is an unnamed tributary identified by the USGS NHD as intermittent. It is located approximately 700' east of WB-02 with a residence and a major transportation corridor separating the aquatic resource from the tributary. Based upon a review of aerial photographs, United States Geological Society (USGS) 1:24K Quad and its associated National Hydrography Dataset (NHD), Natural Resource Conservation Service (NRCS) soil survey, National Wetland Inventory (NWI) maps, topography data, and the materials submitted, the aquatic resources have been determined to be hydrologically isolated with no surface water connection to any waters of the United States (WOUS). The review area is not within the 100-year flood plain. The aquatic resources are surrounded by uplands, and have no apparent swales, ditches, pipes, or other means that would provide a surface or subsurface connection to a WOUS. We have determined that the aquatic resources: WB-01, WB-02, WB-06, WB-07, WB-09, WB-11, WB-12, WB-13, WB-14 and WC-01 are isolated and hydrologically separated from other aquatic resources. The surrounding land use comprised of agricultural, commercial, residential and transportation uses does not provide cover or habitat between the aquatic resources or other aquatic**

¹ Supporting documentation is presented in Section III.F.

resources. Based on this, it was determined that the aquatic resources do not have an ecological connection to a WOUS.

The aquatic resources do not support a link to interstate or foreign commerce because they are not known to be used by interstate or foreign travelers for recreation or other purposes; do not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and are not known to be used for industrial purposes by industries in interstate or foreign commerce. The aquatic resources were determined to not be WOUS and therefore not to be jurisdictional under the CWA.

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):

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: Wetland WB-01: 0.25 ac, Wetland WB-02: 0.05 ac, Wetland WB-06: 0.67 ac, Wetland WB-07: 0.14 ac, Wetland WB-09: 3.50 ac, Wetland WB-11: 0.52 ac, WB-12: 0.26 ac, Wetland WB-13: 4.25 ac, Wetland WB-14: 1.78 and Wetland WC-01: 0.02 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: Wetland Delineation Report dated October 20, 2021, and the Memorandum Re: Elko Development Wetland Delineation Update dated November 5, 2021 submitted by Westwood Professional Services
- ☒ 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:
- ☒ U.S. Geological Survey Hydrologic Atlas:
 - ☒ USGS NHD data.

- ☒ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: USGS 1:24K Quad Name: New Market
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Scott County Soil Survey
- ☒ National wetlands inventory map(s). Cite name:
- ☐ State/Local wetland inventory map(s):
- ☒ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Mn Geo WMS Aerial Imagery: 1991, 2003, 2008-2010, 2013, 2015, 2017, 2019 Google Earth 2004, 2006, 2012, 2014, 2016, 2018, 2020
- or ☒ Other (Name & Date): Site photos submitted with delineation report
- ☒ Previous determination(s). File no. and date of response letter: MVP-2014-03991-RMH dated May 8, 2015
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): National Regulatory Viewer Layers: 2ft Lidar contours, 3DEP Hillshade, MN Altered Watercourse layers

B. ADDITIONAL COMMENTS TO SUPPORT JD: The site was previously delineated in 2014 by Westwood Professional Services. An updated approved jurisdictional determination (AJD) was requested by the applicant. This updated AJD concurs with the findings of the AJD that was issued on May 8, 2015.

The Wetland Delineation Report also identified WB-3, WB-4, and WB-5 within the delineation area, these wetlands were considered in a separate AJD. This AJD does not consider WB-3, WB-4, and WB-5.