

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): 14 December 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Preston Mine Project
MVP-2022-01899-JMB

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Trempealeau City: Blair
Center coordinates of site (lat/long in degree decimal format): Lat. 44.31497° N, Long. -91.24784° W.
Universal Transverse Mercator: 15N

Name of nearest waterbody: Unnamed tributary to Trempealeau River (250' east of site)

Name of watershed or Hydrologic Unit Code (HUC): Trempealeau (07040005 8-digit HUC)

- ☒ 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: 05 December 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):¹

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain:

Wetland w02 (0.05 acres) and w03 (0.02 acres) are located in the central portion of the site within drainage swale features that appear to be constructed stormwater features. Wetland w05 (0.14 acres) and a connected drainage swale (~1,080 linear feet) are located in the southern portion of the site and appear to be constructed stormwater features (water retention basin and swale). In accordance with 33 CFR Part 328.3(b)(10), the Corps does not consider the following features to be waters of the U.S.: stormwater control features constructed or excavated in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater run-off. Following a desktop review of the 91.29-acre review area as well as the historical and current aerial photography, and historic and current USGS quadrangle maps, it has been determined that Wetland w02 (0.05 acres), w03 (0.02 acres), w05 (0.14 acres) and a connected drainage swale (~1,080 linear feet) were constructed in uplands, draining only uplands. The wetlands were created because of human modifications to the landscape/hydrology as part of grading and construction activities that took place in 2013. Prior to the grading that took place, no prior stream or wetland history was observed in any of the reviewed resources. Therefore, Wetlands w02 (0.05 acres), w03 (0.02 acres), w05 (0.14 acres) and a connected drainage swale (~1,080 linear feet) are not waters of the U.S. and are not jurisdictional under Section 404 of the Clean Water Act as defined by 33 CFR Part 328.3(b).

Wetland w04 (0.01 acres) within the review area is located in the central portion of the site along a constructed berm and appears to have been created incidental to construction of the berm (i.e. borrow). In accordance with 33 CFR Part 328.3(b)(9), the Corps does not consider the following features to be waters of the U.S.: water-filled depressions constructed or excavated in upland or in non-jurisdictional waters

¹ Supporting documentation is presented in Section III.F.

incidental to mining or construction activity, and pits excavated in upland or in non-jurisdictional waters for the purpose of obtaining fill, sand, or gravel. Following a desktop review of the 91.29-acre review area as well as the historical and current aerial photography, and historic and current USGS quadrangle maps, it has been determined that Wetland w04 (0.01 acres) was constructed in uplands, draining only uplands. The wetland was created because of human modifications to the landscape/hydrology as part of grading and construction activities that took place in 2013. Prior to the creation of the berm, no prior wetland history was observed in the location of the reviewed resource. Therefore, Wetland w04 (0.01 acres) is not a water of the U.S. and is not jurisdictional under Section 404 of the Clean Water Act as defined by 33 CFR Part 328.3(b).

Pond p01 (0.12 acres) is located in the northern portion of the site and appears to be an artificial pond that has been constructed entirely in uplands. In accordance with 33 CFR Part 328.3(b)(8), the Corps does not consider the following features to be waters of the U.S.: artificial lakes and ponds, including water storage reservoirs and farm, irrigation, stock watering, and log cleaning ponds, constructed or excavated in upland or in non-jurisdictional waters, so long as those artificial lakes and ponds are not impoundments of jurisdictional waters. Following a desktop review of the 91.29-acre review area as well as the historical and current aerial photography, and historic and current USGS quadrangle maps, it has been determined that Pond p01 (0.12 acres) was constructed entirely in uplands. The pond was created because of human modifications to the landscape/hydrology as part of grading and construction activities that took place in 2013. Prior to the construction of the pond, no prior wetland history was observed in the location of the reviewed resource. Therefore, Pond p01 (0.12 acres) is not a water of the U.S. and is not jurisdictional under Section 404 of the Clean Water Act as defined by 33 CFR Part 328.3(b).

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): **0.12 acres (p01); 0.22 acres (Wetlands w02, w03, w04, and w05); 1,080 linear foot drainage swale**

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: **Wetland Delineation Report submitted by Merjent, dated July 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:
- ☐ 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: **1:24K - Preston**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Web Soil Survey (USDA - NRCS)**
- ☐ National wetlands inventory map(s). Cite name:
- ☒ State/Local wetland inventory map(s): **Wisconsin Wetland Inventory**
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☐ Aerial (Name & Date):
or ☒ Other (Name & Date): **Site photos included in Wetland Delineation Report**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): **Historic aerial imagery review (dated July 2022)**

B. ADDITIONAL COMMENTS TO SUPPORT JD: On 11/21/2022 WDNR made a determination that the wetlands identified as w02, w03, w04, w05, and p01 lacked wetland histories prior to August 1, 1991, and fulfill all artificial wetland exemption standards according to state regulations.

A 2010 aerial photograph shows the property in a pre-disturbance condition. By 2013, significant grading activity was shown to be occurring within each of the requested features that appears to be associated with nearby mining activities. The 2015 aerial photograph shows the site to be stabilizing into the current conditions that exists today, along with the reviewed features. The Corps has determined that the aquatic resources (w02, w03, w04, w05 and a connected drainage swale, and p01) within the review area are not jurisdictional waters and are not regulated by the Corps under Section 404 of the Clean Water Act.