

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): May 27, 2020

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Waukesha Water Utility Alternate Booster Pump Station, MVP-2017-02087-MHK

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: WI County/parish/borough: Waukesha City: Waukesha, New Berlin
Center coordinates of site (lat/long in degree decimal format): Lat. 43.00607° N, Long. -88.19356° W.
Universal Transverse Mercator: Zone 16 (X 402124.05, Y 4761151.82)

Name of nearest waterbody: Poplar Creek

Name of watershed or Hydrologic Unit Code (HUC): 07120006

- ☒ 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: April 27, 2020
☐ 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 contains 5 intrastate wetlands (W-3, W-4, W-5, W-6, and W-7) and linear ditches containing W-8 through W-10 and W-12 through W-18.**

A review of the draft 2020 TRC Environmental Corporation Great Water Alliance Wetland and Waterway Delineation Report including NRCS soil survey, USGS topographic map, Waukesha County GIS 1 and 5-foot contour map, Wisconsin Wetland Inventory, National Hydrography Dataset, FEMA floodplain, aerial photos from 2000 to 2017, and site photos indicate that W-3 through W-7 are isolated waters with no surface or shallow subsurface connection to waters of the U.S. Waukesha County GIS aerial photos back to 1941 show historic land alterations within the review area. An unnamed tributary to Poplar Creek is the closest waterway which is approximately 2,036 feet to the south. There are no surface inlets/outlets observed in the wetlands. These wetlands do not border, neighbor nor are contiguous with another water of the U.S. The wetlands are not separated from other WOUS by man-made dikes, barriers, or berms. These five wetlands are bordered by residential, agriculture, and some commercial development. The disturbance of surrounding land uses precludes an ecological connection to a WOUS.

W-3 through W-7 are aquatic resources that do not support a link to interstate or foreign commerce; 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 commerce. Therefore, the Corps has determined that W-3 through W-7 are not regulated by the Corps under Section 404 of the Clean Water Act.

¹ Supporting documentation is presented in Section III.F.

Linear ditches containing W-8 through W-10 and W-12 through W-18 were constructed wholly in uplands and drain only uplands. These ditches do not have relatively permanent flow and are not waters of the U.S. The determination of no jurisdiction for the ditches is in accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330) and the 2008 Rapanos Guidance.

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): **W-8 is 0.03 acre, W-9 is 0.01 acre, W-10 is 0.01 acre, W-12 is 0.03 acre, W-13 is 0.03 acre, W-14 is 0.01 acre, W-15 is 0.03 acre, W-16 is 0.01 acre, W-17 is 0.02 acre, and W-18 is 0.01 acre in size. The discussion of jurisdiction for these aquatic resources is in Section II B(2).**

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: W-3 is 0.02 acre, W-4 is 0.01 acre, W-5 is 0.08 acre, W-6 is 0.15 acre and W-7 is 0.12 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: **Draft TRC Environmental Corporation Great Water Alliance Wetland and Waterway Delineation Report for "Alternate Booster Pumping Station and Water Supply Pipeline Sites" dated April 23, 2020**

☒ 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 WI-Muskego**

☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Waukesha County**

- ☐ National wetlands inventory map(s). Cite name:
- ☒ State/Local wetland inventory map(s): Wisconsin Wetland Inventory (Wisconsin DNR Surface Water Data Viewer)
- ☒ FEMA/FIRM maps: in delineation report
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): 2000, 2005, 2010, 2015, 2017 in delineation report; 1941, 1950, 1963, 1970, 1980, 1990, 1995 on Waukesha County GIS website.
or ☒ Other (Name & Date): ground level photos in 2020 delineation report
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): Waukesha County GIS 1, 5-foot contour map

B. ADDITIONAL COMMENTS TO SUPPORT JD: