



**U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE**

**I. ADMINISTRATIVE INFORMATION**

Completion Date of Approved Jurisdictional Determination (AJD): 6/22/2020

ORM Number: MVP-2015-02665-KDZ

Associated JDs: MVP-2015-02665-KDZ (03 March 2017 and Revised 31 May 2018 Following Remand)

Review Area Location<sup>1</sup>: State/Territory: Wisconsin City: Tomah County/Parish/Borough: Monroe

Center Coordinates of Review Area: Latitude 43.995268 Longitude -90.507686

**II. FINDINGS**

**A. Summary:** Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- ☐ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

**B. Rivers and Harbors Act of 1899 Section 10 (§ 10)<sup>2</sup>**

| § 10 Name | § 10 Size | § 10 Criteria | Rationale for § 10 Determination |
|-----------|-----------|---------------|----------------------------------|
| N/A.      | N/A.      | N/A.          | N/A.                             |

**C. Clean Water Act Section 404**

| Territorial Seas and Traditional Navigable Waters ((a)(1) waters): <sup>3</sup> |             |                 |                                    |  |
|---|-------------|-----------------|------------------------------------|--|
| (a)(1) Name   | (a)(1) Size | (a)(1) Criteria | Rationale for (a)(1) Determination |  |
| N/A   | N/A.        | N/A.            | N/A.                               |  |

| Tributaries ((a)(2) waters): |             |                 |                                    |  |
|------------------------------|-------------|-----------------|------------------------------------|--|
| (a)(2) Name                  | (a)(2) Size | (a)(2) Criteria | Rationale for (a)(2) Determination |  |
| N/A.                         | N/A.        | N/A.            | N/A.                               |  |

<sup>1</sup> Map(s)/figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

<sup>3</sup> A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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| Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters): |             |      |                 |                                    |
|---|-------------|------|-----------------|------------------------------------|
| (a)(3) Name   | (a)(3) Size |      | (a)(3) Criteria | Rationale for (a)(3) Determination |
| N/A.  | N/A.        | N/A. | N/A.            | N/A.                               |

| Adjacent wetlands ((a)(4) waters): |             |      |                 |                                    |
|------------------------------------|-------------|------|-----------------|------------------------------------|
| (a)(4) Name                        | (a)(4) Size |      | (a)(4) Criteria | Rationale for (a)(4) Determination |
| N/A.                               | N/A.        | N/A. | N/A.            | N/A.                               |

**D. Excluded Waters or Features**

| Excluded waters ((b)(1) – (b)(12)): <sup>4</sup> |                |             |  |   |
|--|----------------|-------------|--|---|
| Exclusion Name                                   | Exclusion Size |             | Exclusion <sup>5</sup>   | Rationale for Exclusion Determination   |
| Ditch to Deer Creek                              | 1,150          | linear feet | (b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1). | The Ditch to Deer Creek is a man-made waterway varying from 6-12 feet in width and waters depths of 1-3 feet. This AJD is for the approximately 1,150 linear foot portion of the Ditch to Deer Creek which begins along Jefferson St. and ends at mapped wetlands abutting Deer Creek as shown on Figure 1. This reach of the Ditch to Deer Creek flows northerly through an 18-inch culvert located in a private driveway and discharges into wetlands abutting Deer Creek. A portion of the Ditch to Deer Creek was originally constructed in a mapped wetland system (Wetland 1), however, it does not meet the NWPR definition of a tributary since it is not a naturally occurring surface water channel nor a relocated tributary and was not constructed in a jurisdictional wetland.              |
| Wetland 1  | 7.16           | acre(s)     | (b)(1) Non-adjacent wetland.   | Wetland 1 lies entirely south of an existing man-made private driveway and mapped uplands near an existing residence. An existing culvert (7-inch height x 24-inch width on north end and 17-inch height x 33-inch width on south end) is present within the private driveway and located on the northeast portion of Wetland 1 near the Highway 12 (Superior Ave) right-of-way. Flow characteristics from Wetland 1 through the existing culvert into Deer Creek is best described as ephemeral surface flow occurring on an infrequent basis. The existing culvert in the private driveway does not allow for a direct hydrologic surface connection between Wetland 1 and Deer Creek in a typical year, thus not meeting the NWPR definition of adjacency. Flooding from Deer Creek is not expected to |

<sup>4</sup> Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

<sup>5</sup> Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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| Excluded waters ((b)(1) – (b)(12)). <sup>4</sup> |                |                        |   |   |
|--|----------------|------------------------|---|---|
| Exclusion Name                                   | Exclusion Size | Exclusion <sup>5</sup> | Rationale for Exclusion Determination   |   |
|  |                |                        | inundate Wetland 1 in a typical year. Based on this information, the Corps has determined that Wetland 1 is not adjacent to Deer Creek. |   |
| Wetland 2  | 0.05           | acre(s)                | (b)(1) Non-adjacent wetland.  | Wetland 2 is a small (0.05 acre) portion of the larger mapped wetland which extends north and northwest towards Deer Creek. The WWI shows Wetland 2 extending north within approximately 65 feet of the Deer Creek channel, however, Wetland 2 does not abut Deer Creek. To further assess connectivity between Wetland 2 and Deer Creek, the Corps reviewed 2013 Monroe County LiDAR data for elevation data near Wetland 2 and Deer Creek. The 2013 LiDAR data shows that an east-west unnamed ditch exists along the northern portion of Wetland 2 and outlets into Deer Creek. The east-west unnamed outlet ditch is also visible on aerial photography. The east-west ditch appears to be a man-made feature constructed in both mapped wetlands and uplands and provides a hydrologic surface connection between Wetland 2 and Deer Creek. However, the east-west ditch does not meet the NWPR definition of a tributary since it was not constructed entirely within a jurisdictional wetland and is not a naturally occurring surface water channel or relocated tributary. The WDNR SWDV shows the Deer Creek 100 year floodplain (Zone A) extending into the majority of Wetland 2, however, Deer Creek is not expected to inundate Wetland 2 in a typical year. Based on this information, the Corps has determined that Wetland 2 does not meet the NWPR definition of adjacency. |

### III. SUPPORTING INFORMATION

**A. Select/enter all resources** that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

☒ Information submitted by, or on behalf of, the applicant/consultant: [October 2013 Bopray Environmental Services Wetland Delineation Report \(BES Report\) and Addendums, Peter Thorson Submitted Information](#)

This information is and is not sufficient for purposes of this AJD.

Rationale: The Corps evaluated the BES Report and supplemental addendums created by BES dated 16 February 2016, 13 May 2016, and 3 August 2016. The Corps has not concurred with the BES Report findings in Wetlands 1 and 2, however, this does not effect the jurisdictional status of these wetlands.



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- ☒ Data sheets prepared by the Corps: April 2001, September 2002, April 2003, November 5, 2015, July 21 & 22, 2016.
- ☒ Photographs: Aerial and Other: Corps Site Photos: 2002, 2003, 2015, 2016. Aerial Photography: 1939-High Resolution Historical Image, 2005, 2015-Monroe County WG Xtreme Online GIS, 1999, 2003, 2005, 2008, 2010, 2013-Google Earth Pro, 2011-Bing Maps, 2010, 2013, 2015-WDNR SWDV, All available years NAIP, 2013 Monroe County LiDAR.
- ☒ Corps site visit(s) conducted on: April 2001, September 2002, April-July 2003, 05 November 2015, 07 April 2016, 21 & 22 July 2016
- ☒ Previous Jurisdictional Determinations (AJDs or PJDs): MVP- 2015-02665-KDZ (03 March 2017 and Revised 31 May 2018 Following Remand)
- ☐ Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- ☒ USDA NRCS Soil Survey: Monroe County
- ☐ USFWS NWI maps: Title(s) and/or date(s).
- ☒ USGS topographic maps: 1:24,000:LaGrange.

**Other data sources used to aid in this determination:**

| Data Source (select)       | Name and/or date and other relevant information             |
|----------------------------|---|
| USGS Sources               | USGS National Map, National Hydrography Dataset             |
| USDA Sources               | N/A.  |
| NOAA Sources               | N/A.  |
| USACE Sources              | N/A.  |
| State/Local/Tribal Sources | Wisconsin Wetland Inventory, WDNR Surface Water Data Viewer |
| Other Sources              | WDNR SWDV-FIRM Panel 55081C0382D eff. 1/20/2010.            |

- B. Typical year assessment(s):** Corps staff conducted bi-weekly streamflow monitoring of the Ditch to Deer Creek during mid-March 2016 thru May 2016. In addition, the Corps utilized a State Off-Site Method analysis covering years 1999-2015, available field data, and airphoto interpretation for the typical year assessment. This information and data is available in the Corps administrative record.
- C. Additional comments to support AJD:** This presence/absence AJD only applies to Wetland 1, Wetland 2, and an approximately 1,150 linear foot portion of the Ditch to Deer Creek. The wetland boundaries utilized for this AJD are approximate and were derived from a combination of the Wisconsin Wetland Inventory, Corps field data, and 2013 BES Report. As shown on Figure 1, the approximate mapped wetlands lying north of the private driveway and along the Deer Creek corridor are likely waters of the U.S. under the NWPR and were not included in this AJD.