



**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): 2/8/2021

ORM Number: MVP-2019-02216-BGO

Associated JDs: N/A

Review Area Location¹: State/Territory: Minnesota City: Aitkin County/Parish/Borough: Aitkin

Center Coordinates of Review Area: Latitude 46.533416 Longitude -93.706675

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)²

§ 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): ³				
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination	
N/A.	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.	N/A.

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.

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

² 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.

³ 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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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):⁴ The review area for this determination is limited to the delineated boundaries of 13 wetlands labeled as Wetlands W-6, W-9, W-16, W-17, W-18, W-19, W-20, W-21, W-22, W-48, W-49, W-50 and W-53, and 60 ditches labeled as Linear Ditches LD-1 through LD-32, LD-36 and LD-41 through LD-67 on the attached figures labeled as 2019-02216-BGO AJD Attachments, Pages 1-14 of 14. All the labels for these waters are also highlighted in yellow on the attached figures.

Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
W-6, W-9 (Page 1-2 of 13)	2.24	acre(s)	(b)(1) Non-adjacent wetland.	<p>Wetlands W-6 and W-9 are two separate wetland basins located in-between Trunk Highway (TH) 210 and the Soo Line Railroad on the south side of the highway. Both wetland areas are connected by a series of non-jurisdictional roadside ditches (LD-6, LD-7, LD-14 and LD-15) that drain east at the intersection of County Road 12 and may contribute surface water flow to Wetlands W-10 through W-15, which are adjacent to an unnamed tributary to Ripple River. However, as discussed below, LD-6, LD-7, LD-14 and LD-15 were constructed in uplands and do not meet tributary flow conditions. Therefore, these non-jurisdictional ditches do not provide a sufficient hydrologic connection to meet the adjacency criteria in the Navigable Waters Protection Rule (NWPR).</p> <p>Based on this review, Wetlands W-6 and W-9 are not jurisdictional under the NWPR because they meet the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). The assessed wetlands do not abut jurisdictional waters, are not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and are not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A.</p>
W-16, W-17 (Page 3 of 13)	1.15	acre(s)	(b)(1) Non-adjacent wetland.	<p>Wetlands W-16 and W-17 are two separate wetland basins located on the north side of TH 210. Both wetlands are surrounded by uplands and non-jurisdictional roadside ditches and do not have a direct hydrologic surface connection to potential downstream waters.</p>

⁴ 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.

⁵ 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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Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
				Based on this review, Wetlands W-16 and W-17 are not jurisdictional because they meet the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). The assessed wetlands do not abut jurisdictional waters, are not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and are not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A.
W-18, W-19 (Page 3 of 13)	0.07	acre(s)	(b)(1) Non-adjacent wetland.	<p>Wetlands W-18 and W-19 are located on the south side of TH 210 and are part of a larger NWI mapped area located outside the review area. Both wetlands are surrounded by uplands and non-jurisdictional roadside ditches and do not have a direct hydrologic surface connection to potential downstream waters.</p> <p>Based on this review, Wetlands W-18 and W-19 are not jurisdictional because they meet the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). The assessed wetlands do not abut jurisdictional waters, are not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and are not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A.</p>
W-20 (Page 3-4 of 13)	0.04	acre(s)	(b)(1) Non-adjacent wetland.	<p>Wetland W-20 is a small isolated basin located in a residential parcel on the north side of TH 210. This wetland is surrounded by uplands and does not have a direct hydrologic surface connection to potential downstream waters.</p> <p>Based on this review, Wetland W-20 is not jurisdictional because it meets the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). The assessed wetland does</p>



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Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			not abut jurisdictional waters, is not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and is not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A.
W-21, W-22 (Page 4 of 13)	0.21	acre(s)	<p>(b)(1) Non-adjacent wetland.</p> <p>Wetlands W-21 and W-22 are two separate wetland basins located on both sides of TH 210. Both wetland areas drain northeast through a series of non-jurisdictional roadside ditches (LD-27 through LD-32) and may contribute surface water flow to Wetlands W-23, W-24, W-26, and W-27, which are adjacent to Sissabagamah Creek. However, as discussed below, LD-27 through LD-32 were constructed in uplands and do not meet tributary flow conditions. Therefore, these non-jurisdictional ditches do not provide a sufficient hydrologic connection to meet the adjacency criteria in the NWPR.</p> <p>Based on this review, Wetlands W-21 and W-22 are not jurisdictional because they meet the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). The assessed wetlands do not abut jurisdictional waters, are not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and are not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A</p>
LD-36 (Page 5 of 13)	0.09	acre(s)	<p>(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</p> <p>Linear Ditch LD-36 is a roadside ditch that was constructed in wetlands but does not meet the tributary flow conditions or adjacency criteria in the NWPR. Surrounding areas on the north side of TH 210 were delineated as non-wetlands and there are no culverts that would provide a direct hydrologic connection to Linear Ditch LD-35 on the south side of the highway. Based on this</p>



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Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
		conditions of (c)(1).	review, Linear Ditch LD-36 is not jurisdictional under the NWPR because it meets the requirements of the exclusion for ditches under paragraph (b)(5).
W-48, W-49, W-53 (Page 9-10 of 13)	1.53	acre(s)	<p>(b)(1) Non-adjacent wetland.</p> <p>Wetlands W-48, W-49 and W-53 are three separate wetland basins located on the west side of TH 210. All three wetland areas drain south through a series of non-jurisdictional roadside ditches (LD-51 through LD-57) and may contribute surface water flow to Wetland W-44, which is adjacent to the Rice River. However, as discussed below, LD-51 through LD-57 were constructed in uplands and do not meet tributary flow conditions. Therefore, these non-jurisdictional ditches do not provide a sufficient hydrologic connection to meet the adjacency criteria in the NWPR.</p> <p>Based on this review, Wetlands W-48, W-49 and W-53 are not jurisdictional because they meet the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). The assessed wetlands do not abut jurisdictional waters, are not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and are not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A</p>
W-50 (Page 9 of 13)	0.53	acre(s)	<p>(b)(1) Non-adjacent wetland.</p> <p>Wetland W-50 is a small wetland basin located on the east side of TH 210. This wetland is surrounded by uplands and non-jurisdictional roadside ditches (LD-49, LD-50, LD-58, and LD-59) that drain south at the intersection of Township Road 349W and may contribute surface water flow to Wetland W-46, which is adjacent to the Rice River. However, as discussed below, LD-49, LD-50, LD-58, and LD-59 were constructed in uplands and do not meet tributary flow conditions. Therefore, these non-jurisdictional ditches do not provide a sufficient hydrologic connection to meet the adjacency</p>



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Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			<p>criteria in the NWPR.</p> <p>Based on this review, Wetland W-50 is not jurisdictional because it meets the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). The assessed wetland does not abut jurisdictional waters, is not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and is not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A.</p>
LD-1 through LD-32 and LD-41 through LD-67 (Pages 1-4, 8-10 and 12-13 of 13)	13.05	acre(s)	<p>(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).</p> <p>Linear Ditch LD-1 through LD-32 and LD-41 through LD-67 were constructed in uplands to convey runoff from the adjacent roadway and are now linear wetlands that meet the definition of “ditch” under paragraph (c)(2). In addition, the ditches are not (a)(1) waters, are not relocated tributaries, are not constructed in a tributary, and are not constructed in an adjacent wetland. This was confirmed by reviewing aerial photography, national hydrography data, and the wetland delineation report. Based on this review, the assessed ditches are not jurisdictional under the NWPR because they meet the requirements of the exclusion for ditches under paragraph (b)(5).</p>

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: [MnDOT SP 0119-30/TH 210 Wetland Delineation Report, September 2019](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A](#)

☐ Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).

☒ Photographs: [Aerial: 2017 FSA, Google Earth Imagery, 1991-2015 and Historic Aerial Photography, 1939, 1940 and 1975](#)

☐ Corps site visit(s) conducted on: [Date\(s\)](#).

☐ Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\)](#).



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- ☐ Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- ☐ USDA NRCS Soil Survey: Title(s) and/or date(s).
- ☒ USFWS NWI maps: USFWS NWI of MN, 1974-1978
- ☒ USGS topographic maps: USGS Topographic Quads (USA Topo Maps)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
<u>USGS/WBD/NHD data/maps</u>	<u>National Hydrography Dataset (USGS Service)</u>
<u>USDA Sources</u>	<u>N/A.</u>
<u>NOAA Sources</u>	<u>N/A.</u>
<u>USACE Sources</u>	<u>N/A.</u>
<u>State/Local wetland inventory maps</u>	<u>DNR NWI Update – MN, 2010-2018</u>
<u>Other Sources</u>	<u>2-Foot Contours Minnesota (LIDAR Service)</u>

B. Typical year assessment(s): N/A

C. Additional comments to support AJD: N/A