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): 12/17/2013

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Magnetation Plant Site 4, access road, and Canisteo #2 north tailings basin, 2013-03607-WAB; Jurisdictional review of wetlands #1, 2, 17, 18, 19, 20, 21, 22 and all wetlands or aquatic resources located within the exterior containment dikes of the Canisteo #2 north tailings basin.

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: MN County/parish/borough: Itasca City:

Center coordinates of site (lat/long in degree decimal format): Lat. 47.29737° **N**, Long. -93.46409° **W**.

Universal Transverse Mercator:

Name of nearest waterbody: Prairie River (approximately 2 miles southwest of Plant 4 site)

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Mississippi River (approximately 5.5 miles southwest of Plant 4 site)

Name of watershed or Hydrologic Unit Code (HUC): Prairie-Willow 07010103

- ☒ 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: 11/13/13
- ☒ Field Determination. Date(s): 5/17/2012, 8/22/2012, 11/28/2012, 9/30/13

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. [*Required*]

- ☐ Waters subject to the ebb and flow of the tide.
- ☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: .

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. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
   - ☐ TNWs, including territorial seas
   - ☐ Wetlands adjacent to TNWs
   - ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
   - ☐ Non-RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
   - ☐ Impoundments of jurisdictional waters
   - ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

Non-wetland waters: linear feet: width (ft) and/or acres.
Wetlands: acres.

c. **Limits (boundaries) of jurisdiction** based on: **Pick List**
Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]

☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **This jurisdictional determination is for Wetlands number 1, 2, 17, 18, 19, 20, 21, 22 and all wetland aquatic resources present within the exterior dike encompassing the Canisteo #2 north tailing basin.**

The overall Canisteo #2 north tailings basin is approximately 175 acres in size. There are multiple wetland areas within the basin, but the precise boundaries have not been delineated. Wetlands (W) 1, 2, 17, 18, 19, 20, 21, 22 are located along a proposed access road and tailings processing plant site. These wetlands have been delineated, although only a portion of the W 2 basin was delineated. Approximate wetland sizes (in acres) are: W1 - 0.25, W2 - 1.75, W17 - 0.2, W18 - 0.018, W19 - 0.01, W20 - 0.02, W21 - 0.03, W22 - 0.25 for a total of 2.53 acres. Wetlands within the Canisteo #2 north tailings basin appear to be at least 30 acres in total area and are all within the constructed berm, built to retain tailings and process water.

Canisteo #2 basin wetlands: Iron ore tailings basins were created for tailings disposal or containment, but also allowed the capture and reuse of process water. Coarse tailings quickly drop out near the discharge points with finer material settling out in basins or areas further from the tailings discharge. The clarified water flowed to the downstream end of the settlement basins where it was either pumped or gravity fed back to the mill. The Canisteo mine tailing basin received iron ore mine tailings from the Canisteo processing plant that operated from the 1930's until 1979. The Canisteo facility processed ore extracted from the Canisteo mine, now submerged within the Canisteo Pit lake. The Canisteo plant was located approximately 0.8 miles southeast of the Canisteo #2 north basin, visible in the 1991 photo but not in the 2003 photo. The Canisteo tailings basin facility was created by constructing a large exterior dike system, with a network of interior dikes constructed to create seperate sub-basins. Tailings were delivered to the tailings basins via a slurry pipeline, and the clarified water was returned to the processing plant for re-use. The exterior and interior dikes were left intact after mining ceased and water levels began to decrease in size and depth. A 1981 aerial photo shows that the Canisteo #2 north basin is nearly filled with water, but a 1989 photo shows the water level has decreased substantially, with the basin now having three smaller areas of open water. In 1991, the water level appears to have dropped further with the largest open water area being approximately 8.01 acres in size. In the 2010 and 2011 aerial photo, the same open water area is approximately 5.4 acres in size. Open water areas eventually convert to wetlands, and many areas transitioning to upland. There is no contributing "watershed" outside of the 175 acre basin dike walls.

The Corps has recently reviewed adjacent abandoned tailings basin areas to determine the jurisdictional status of aquatic resources currently present, including the Canisteo #1 south basin and the Jennison basin. The Corps conducted site visits of the Canisteo south basin and Jennison basin on May 17, August 22, and November 28, 2012, and determined aquatic resources in those basins were nonjurisidictional. The project sponsor provided detailed elevation data and survey information to assist in the review of the Canisteo #1 and Jennison basins. The project sponsor also provided multiple topographic maps and historic aerial photos of the previous mining operation and site.

The company has determined that Canisteo #2 basin will be incorporated into the SCRAM mining operation, for processing and tailings disposal. Although numerous photos, maps and previous mining plans have been reviewed, the unique and highly modified conditions present in the MN iron range require a field review to evaluate the jurisdictional status of the remnant or developed aquatic resources found within former mining sites and infrastructure. Based on a review of maps, aerial photos, and other available information, it appeared the highest potential for possible surface water connections from the Canisteo #2 basin to jurisdictional waters of the U.S. was to the north or northeast of the facility. The Corps performed a field review of the Canisteo #2 basin on September 30, 2013. During the field review, the Corps examined locations where exterior surface water features or connections might be located. The review involved the examination of any apparent low-elevation points outside of the surrounding dike where signs of discharge, readily-apparent seepage, or surface water flow may exist; the Corps examined the entire crest and the toe of the exterior dike in high priority locations; and, the Corps looked for any relic overflow or discharge pipes in the dike. The dikes surrounding Canisteo #2 are approximately 50-100

[3] Supporting documentation is presented in Section III.F.

feet above most of the surrounding terrain. Utilizing GIS and LiDAR information, the width of the north dike was determined to be approximately 220 feet at the base. The width of the west dike is approximately 140 feet. No pipes were found or observed in any of the dikes, no discharge locations or evidence of discharges were observed, and no apparent seepage flows were observed along the dike or near the dike. There were no surface water connections found connecting aquatic resources within the basin to wetlands and waters outside the basin. The National Hydrography Dataset and topographic map indicated a waterway existed on the north side of Basin #2 with its origination or headwater located within the current basin area. During the site visit, there was not a defined channel or waterway or flowage in that location on the north side of the basin. However, there appears to be a large beaver dam located approximately 1,500 feet northwest of the north basin berm that has impounded water, creating approximately 8 acres of open water wetland or pond. At its nearest point, the pond is approximately 250 feet north of the north berm of Basin #2.

Wetlands number 1, 2, 17, 18, 19, 20, 21, 22: These wetlands are all found on the exterior of the tailings basins existing in this area. These wetlands are all assocated with or adjacent to constructed features including multiple railroad beds, roads, ditches, isolated excavations, or depressions created due to disposal of mine waste or construction of mining infrastructure. All of these wetlands were examined and found to be isolated from any connection to downstream jurisdictional wetlands or waters of the U.S. There are multiple upland breaks and obstructions existing on the landscape that isolate these wetlands from downstream waters of the U.S. The general slope of the land is either westerly towards W18 or southeasterly towards the Canisteo mine pit lake. (The jurisdictional status of the Canisteo mine pit lake was reviewed in October 2008 and determined to be non-jurisdictional under the Clean Water Act.) In the event any water did actually flow out of wetlands W17, 18 or 21, it would eventually reach a deep (approximately 25') constructed basin approximately 480 feet southwest of W18 on the west side of a gravel road. There is no outlet from this basin and no indication that water ponds here with any frequency.

All of the reviewed subject wetlands (1, 2, 17, 18, 19, 20, 21, 22) located outside the tailings basins, and all the aquatic resources present within the Canisteo #2 tailing basin system have been determined to be nonjurisdictional under the CWA because they lack a link to interstate commerce sufficient to serve as a basis for jurisdiction .

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
   Identify TNW: .

   Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
Watershed size: **Pick List**
Drainage area: **Pick List**
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: .
Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☐ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
Average width: feet
Average depth: feet
Average side slopes: **Pick List.**

Primary tributary substrate composition (check all that apply):
☐ Silts ☐ Sands ☐ Concrete
☐ Cobbles ☐ Gravel ☐ Muck
☐ Bedrock ☐ Vegetation. Type/% cover:
☐ Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .
Presence of run/riffle/pool complexes. Explain: .
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:
Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime: .
Other information on duration and volume: .

Surface flow is: **Pick List.** Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .
☐ Dye (or other) test performed: .

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary has (check all that apply):

- ☐ Bed and banks
- ☐ OHWM[6] (check all indicators that apply):
  - ☐ clear, natural line impressed on the bank
  - ☐ changes in the character of soil
  - ☐ shelving
  - ☐ vegetation matted down, bent, or absent
  - ☐ leaf litter disturbed or washed away
  - ☐ sediment deposition
  - ☐ water staining
  - ☐ other (list):
  - ☐ the presence of litter and debris
  - ☐ destruction of terrestrial vegetation
  - ☐ the presence of wrack line
  - ☐ sediment sorting
  - ☐ scour
  - ☐ multiple observed or predicted flow events
  - ☐ abrupt change in plant community
- ☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- ☐ High Tide Line indicated by:
  - ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gauges
  - ☐ other (list):
- ☐ Mean High Water Mark indicated by:
  - ☐ survey to available datum;
  - ☐ physical markings;
  - ☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: .

Identify specific pollutants, if known: .

(iv) Biological Characteristics. Channel supports (check all that apply):

- ☐ Riparian corridor. Characteristics (type, average width): .
- ☐ Wetland fringe. Characteristics: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is**:** **Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

- ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain: .
  - ☐ Ecological connection. Explain: .
  - ☐ Separated by berm/barrier. Explain: .

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

[7]Ibid.

(d) Proximity (Relationship) to TNW
Project wetlands are **Pick List** river miles from TNW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Flow is from: **Pick List.**
Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:
Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .
Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):
☐ Riparian buffer. Characteristics (type, average width): .
☐ Vegetation type/percent cover. Explain: .
☐ Habitat for:
☐ Federally Listed species. Explain findings: .
☐ Fish/spawn areas. Explain findings: .
☐ Other environmentally-sensitive species. Explain findings: .
☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)
All wetland(s) being considered in the cumulative analysis: **Pick List**
Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   ☐ TNWs: linear feet width (ft), Or, acres.
   ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   ☐ Tributary waters: linear feet width (ft).
   ☐ Other non-wetland waters: acres.
   Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   ☐ Tributary waters: linear feet width (ft).
   ☐ Other non-wetland waters: acres.
   Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
   ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

[8] See Footnote # 3.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.**[9]
As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
☐ Demonstrate that impoundment was created from "waters of the U.S.," or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

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):[10]
☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
☐ Wetlands: acres.

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): **The subject wetland areas have developed within a mine tailing disposal facility or in isolated basins and ditches as a result of manmade obstructions and landscape alterations. Any wetlands within the Canisteo #2 tailings basin and wetlands 1, 2, 17, 18, 19, 20, 21 and 22 have been determined to be nonjurisdictional under the CWA because they lack a link to interstate commerce sufficient to serve as a basis for jurisdiction.**

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: total 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.

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[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

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: LiDAR hillshade, topographic, multiple historic aerial photos, wetland delineations.
- ☒ 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: List of RHA Section 10 waters.
- ☒ 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: 1:24,000, MN-BOVEY.
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: WebSoilSurvey.
- ☒ National wetlands inventory map(s). Cite name: ArcGIS.
- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date):1947, 1949, 1981, 1989, 2003, 2010, 2011.
  or ☒ Other (Name & Date):onsite photos 5/17/12, 8/22/12, 11/28/12, 9/30/13.
- ☐ Previous determination(s). File no. and date of response letter: .
- ☐ Applicable/supporting case law: .
- ☐ Applicable/supporting scientific literature: .
- ☒ Other information (please specify): Delineation review and confirmation by State and local wetland officials.

B. ADDITIONAL COMMENTS TO SUPPORT JD: The wetland and aquatic resources developed within the Canisteo #2 mine tailing disposal facility with the discharge of mine tailings and process water. With cessation of mining and the discharge, the water levels have dropped to current levels. The tailings basin has not been actively used for mine waste disposal and process water reuse since 1979. Any wetlands that have developed within the Canisteo mine tailing basin system have been determined to be nonjurisdictional under the CWA because they lack a link to interstate commerce sufficient to serve as a basis for jurisdiction. Wetlands number 1, 2, 17, 18, 19, 20, 21, 22 are all located on the exterior of area tailings basins. These wetlands are assocated with constructed landscape features including railroad beds, roads, ditches, isolated excavations, and depressions created due to disposal of mine waste, or construction of mining infrastructure. All of these wetlands were examined and found to be isolated from any connection to downstream jurisdictional wetland or waters of the U.S. There are multiple upland breaks and obstructions existing on the landscape that isolate these wetlands from downstream waters of the U.S. All of these subject wetlands have been determined to be nonjurisdictional under the CWA because they lack a link to interstate commerce sufficient to serve as a basis for jurisdiction. .