



**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: 2016-04331-CLJ

Associated JDs: 2016-04331-CLJ 20151113 AJD, November 13, 2018

Review Area Location¹: State/Territory: MN City: N/A County/Parish/Borough: Pennington

Center Coordinates of Review Area: Latitude 48.01718 Longitude -96.41503

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.	

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.	

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.	

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination	
Wetland 40	0.79	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland 40 is directly abutting the Black River. The Black River is a perennial tributary to the Red Lake

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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Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
			River which is a tributary to the Red River of the North.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland 12	0.3	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 12 abuts a waterway that is ephemeral and is not a relocated perennial or intermittent tributary.
Wetland 23	0.05	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 23 is a wetland formed in the bottom of a ditch that is has ephemeral flow and is not a relocated perennial or intermittent tributary.
Wetland 26a	0.28	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 26a is not adjacent to an A1-A3 water and abuts a ditch that is not a relocated tributary or constructed within an A1-A4 water.
Wetland 29b	2.6	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 29b is not adjacent to an A1-A3 water and abuts a ditch that is not a relocated tributary or constructed within an A1-A4 water.
Wetland 35b	0.27	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 35b is not adjacent to an A1-A3 water and abuts a ditch that is not a relocated tributary or constructed within an A1-A4 water.
Wetland 36b	0.25	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 36bb is not adjacent to an A1-A3 water and abuts a ditch that is not a relocated tributary or constructed within an A1-A4 water.
Wetland 37	0.24	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 29b is not adjacent to an A1-A3 water and has no hydrologic connection to an A1-A3 water.

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: [Aquatic Resources Delineation Report – Black River Diversion Ditches 11/6/2018](#)

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 and Other: 1939, 1959, 1991, 2003, 2006, 2008, 2009, 2010, 2011, 2012, 2015 Aerial Photographs, site photos within delineation, street view images from Bing and Google Earth.](#)

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

☒ Previous Jurisdictional Determinations (AJDs or PJDs): [2016-04331-CLJ 20151113 AJD, November 13, 2018.](#)

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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- ☐ Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- ☒ USDA NRCS Soil Survey: [Web Soil Survey in delineation](#)
- ☒ USFWS NWI maps: [NWI Maps within delineation](#)
- ☒ USGS topographic maps: [25K DRG](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS/WBD/NHD data/maps	High Resolution Flow Line
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): [Antecedent precipitation data was assessed for the following year aerial photos: 1939, 1959, 1991, 2003, 2006, 2008, 2009, 2010, 2011, 2012, 2015. Normal, wet, or dry conditions were determined using "Three-Prior-Month Method for Evaluating Antecedent Precipitation" tool available on Minnesota State Climatology Office website. Normal monthly precipitation for the site was based on the period-of-record statistics between 1981 through 2010. Normal, wet, or dry conditions are determined by weighing the precipitation data from the three months prior to the date of interest with the length of time since the precipitation contributed to the water budget. Photo dates with "normal" precipitation were considered to be "typical" years. This data was used to assess whether the waterways adjacent to wetlands 12 and 23 have perennial or intermittent flow within a typical year. The waterways had no visible surface water in 7/7 typical \(normal\) years, 2/3 wet years and the 1 dry year reviewed.](#)

C. Additional comments to support AJD: [N/A](#)