

**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): September 3, 2019**

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER:** Bad River Band of Lake Superior Chippewa, Birch Hill WWTF, MVP-2019-01311-WMS

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Wisconsin County/parish/borough: Ashland County City:

Center coordinates of site (lat/long in degree decimal format): Lat. 46.51399° N, Long. -90.55393° W.

Universal Transverse Mercator: 15

Name of nearest waterbody: Vaughn Creek

Name of watershed or Hydrologic Unit Code (HUC): 04010302

- ☒ 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:  
☒ Field Determination. Date(s): August 21, 2019

**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):<sup>1</sup>**

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

**A site review on August 21, 2019 revealed several small wetlands situated in a upland/wetland mosaic located in a forested area adjacent to an existing wastewater treatment facility. The review area for this jurisdictional determination is approximately 1-acre in size and consists of approximately 8 small wetlands located within small depressional areas in the landscape, totaling an estimated 0.25-acre.**

**The soils in the review area are mapped Sultz Sand (647-C). The Sultz series consists of very deep, well drained soils on outwash plains, lake plains, outwash terraces, and lake terraces. They formed in deep sandy outwash underlain by stratified loamy, or loamy and sandy, alluvium or lacustrine deposits. The site review did not reveal any culverts on the adjacent Birch Hill Road or other off-site hydrologic connections. The closest surface water is an intermittent tributary approximately 1,000 feet away that flows into Vaughn Creek, a perennial stream over 2 miles away from the review area as identified on the USGS topo map. The small wetlands are located in small depressional areas that do not have a surface or shallow subsurface connection to Vaughn Creek or other waters of the United States (WOUS). Based upon information gathered, Corps staff determined that the wetlands within the review area are wholly surrounded by uplands and lack a surface connection to a WOUS. The wetlands do not support a link to interstate or foreign commerce because they are not known to be used by interstate or foreign travelers for recreation or other purposes; they do not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and they are not known to be used for industrial purposes for interstate or foreign commerce. Therefore, the wetlands in the review area have been determined to be non-jurisdictional under the Clean Water Act because the wetlands lack connections and/or relationships sufficient to serve as a basis for jurisdiction.**

<sup>1</sup> Supporting documentation is presented in Section III.F.

### **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):

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: **0.25** 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:
- ☐ 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, Cedar**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Ashland County Soil Survey**
- ☐ National wetlands inventory map(s). Cite name:
- ☒ State/Local wetland inventory map(s): **Wisconsin Wetland Inventory**
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is:      (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☐ Aerial (Name & Date):  
or ☒ Other (Name & Date): **Site photos August 21, 2019**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify):

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** The wetlands do not support a link to interstate or foreign commerce because they are not known to be used by interstate or foreign travelers for recreation or other purposes; they do not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and they are not known to be used for industrial purposes for interstate or foreign commerce. Therefore, the wetlands in the review area have been determined to be non-jurisdictional under the Clean Water Act because the wetlands lack connections and/or relationships sufficient to serve as a basis for jurisdiction.