



**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): 9/25/2020

ORM Number: MVP-2020-01390-SSC

Associated JDs: N/A

Review Area Location¹: State/Territory: MN City: Rosewood Township County/Parish/Borough: Chippewa

Center Coordinates of Review Area: Latitude 45.042686 Longitude -95.730367

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 or describe rationale.
- ☐ 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				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Private Ditch	1,013	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 nearest a(2) water is Dry Weather Creek, approximately 0.40 miles to the south of the Private Ditch. Historic Aerial Imagery from 1938 was viewed and did not show this private ditch feature. In addition, historic USGS topographic maps do not distinguish this region as wetland. The feature was constructed in uplands and did not relocate a tributary. In addition, in consideration of aerial imagery and site photographs there is not sufficient evidence to suggest it carries intermittent or perennial flow. The feature is a ditch with ephemeral flow and created in uplands. Therefore, this water is not a water of the U.S. under the Navigable Waters Protection Rule.
Unnamed Tributary 1	1,997	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	The unnamed tributary, connects to a(2) water Dry Weather Creek, south of 10th Street NW. The tributary is evident in historical aerial imagery from 1938 and 1955 as well as on USGS topographic maps. A typical year assessment using the Antecedent Precipitation Tool and USGS Stream Stats data was used to determine the flow regime of Unnamed Tributary 1, discussed below. The applicant provided site photos that showed no or minimal flow in the stream bed as well as vegetation growing within the stream bed. After weighing all of the evidence, Unnamed Tributary 1 is determined to only have surface water present immediately after a precipitation event and is therefore ephemeral.

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: [Site photos from May 17, 2017 and September 10, 2020](#)

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: MHAPO Images 1938, 1955; Google Earth Imagery 1991-2015](#)

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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- ☐ Corps site visit(s) conducted on: [Date\(s\)](#).
- ☐ Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\)](#).
- ☒ Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- ☐ USDA NRCS Soil Survey: [Title\(s\) and/or date\(s\)](#).
- ☒ USFWS NWI maps: [viewed 9/14/2020](#)
- ☒ USGS topographic maps: [Gracelock SW, MN 1958 USGS map](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Stream stats	Viewed August 26, 2020
USDA Sources	N/A.
NOAA Sources	N/A.
CorpsMap ORM Map Layers	NHD
Other state/local data (specify)	Chippewa County GIS
Other Sources	N/A.

B. Typical year assessment(s): The applicant and SWCD supplied site photos that were taken on May 17, 2017 and September 10, 2020. Chippewa County GIS pictometry was also utilized to view imagery from April 23, 2016 and May 11, 2020. The APT generated output for the 3 months prior to May 17, 2017 and May 11, 2020 which was drier than normal conditions, the photos from these time points show no or minimal flow in the stream bed. The May 17, 2017 site photos show a minimal amount of water accumulation. The APT output and climatological data reported 0.8 inches of rainfall the day prior to the photos (May 16, 2017). The APT generated output for the 3 months prior to April 23, 2016 and September 10, 2020 had normal conditions. Both dates show no or minimal flow in the stream bed. The channel is also growing in with vegetation at all timepoints. The drainage area from the USGS Stream Stats report was 0.6 square miles and the flow-duration statistics flow reported a value of 0.00877 ft³/s for the 99 percent duration, these readings can be indicators of less than intermittent flow, or ephemeral flow. These findings are consistent with a stream flowing only in direct response to precipitation and is therefore ephemeral.

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