



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
ST. PAUL DISTRICT OFFICE
332 MINNESOTA STREET SUITE E1500
ST. PAUL MINNESOTA 55101-1323

CEMVP-RD

May 22, 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023),¹ MVP-2025-00452-JST MFR 1 of 1²

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.³ AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.⁴

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the 2023 Rule as amended,

¹ While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00452-JST

as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
 - Wet Ditch 1 (0.55 acre), non-jurisdictional
 - Wet Ditch 2 (0.02 acre), non-jurisdictional

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)
- d. "Memorandum To The Field Between The U.S. Department Of The Army, U.S. Army Corps Of Engineers And The U.S. Environmental Protection Agency Concerning The Proper Implementation Of 'Continuous Surface Connection' Under The Definition Of 'Waters Of The United States' Under The Clean Water Act" (March 12, 2025)

3. REVIEW AREA. The review area for this determination includes two wet ditches, as identified in Section 1(a) of this MFR and shown on the attached figures labeled MVP-2025-00452-JST Project Figures – Page 1-3 of 3.

- a. Project Area Size (in acres): 3.92 acres
- b. Location Description: The project/review area is located in Section 17, Township 118 North, Range 43 West, Lac qui Parle County, Minnesota.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 45.029560 Longitude: -96.062790
- d. Nearest City or Town: Cerro Gordo Township
- e. County: Lac qui Parle
- f. State: Minnesota

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00452-JST

- g. Other associated Jurisdictional Determinations (including outcomes):
There are no other AJDs associated with this review area.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A⁶
 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
 6. SECTION 10 JURISDICTIONAL WATERS⁷: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁸
N/A
 7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed. N/A

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) 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.

⁷ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁸ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00452-JST

- a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
- b. The Territorial Seas (a)(1)(ii): N/A
- c. Interstate Waters (a)(1)(iii): N/A
- d. Impoundments (a)(2): N/A
- e. Tributaries (a)(3): N/A
- f. Adjacent Wetlands (a)(4): N/A
- g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁹

The aquatic resources identified as Wet Ditch 1 (0.05 acre) and Wet Ditch 2 (0.02 acre) are linear roadside drainage ditches constructed in upland and draining only upland. This determination is supported by the NRCS hydric soils layer which indicates that the area is mapped within mostly non-hydric soils. The National Hydrography Dataset (NHD) and National Wetlands Inventory (NWI) also do not show any features overlapping with Wet Ditch 1 and Wet Ditch 2. A review of historic Google Earth Aerial imagery also does not show the features carrying a relatively permanent flow. Historic aerial imagery collected from the Minnesota Historical Aerial Photographs Online (MNHAPPO) database indicate that these features were constructed in conjunction with the road development to store stormwater runoff. A review of the US Geological Service 3DEP Hillshade, DEM, and MNDNR 2-foot contour maps shows that these features are located within depressional areas in higher elevations, indicating these features were constructed in uplands. These features were constructed as a stormwater drainage feature to convey runoff from the roadway. Based on a review of desktop resources, Wet Ditch 1 and Wet Ditch 2 are linear roadside drainage ditches constructed in upland, draining only upland, and do not carry a relatively

⁹ 88 FR 3004 (January 18, 2023)

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00452-JST

permanent flow of water. Therefore, these aquatic resources have been determined to be Paragraph (b)(3) excluded ditches and are not subject to Section 404 of the Clean Water Act (CWA).

- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

N/A

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

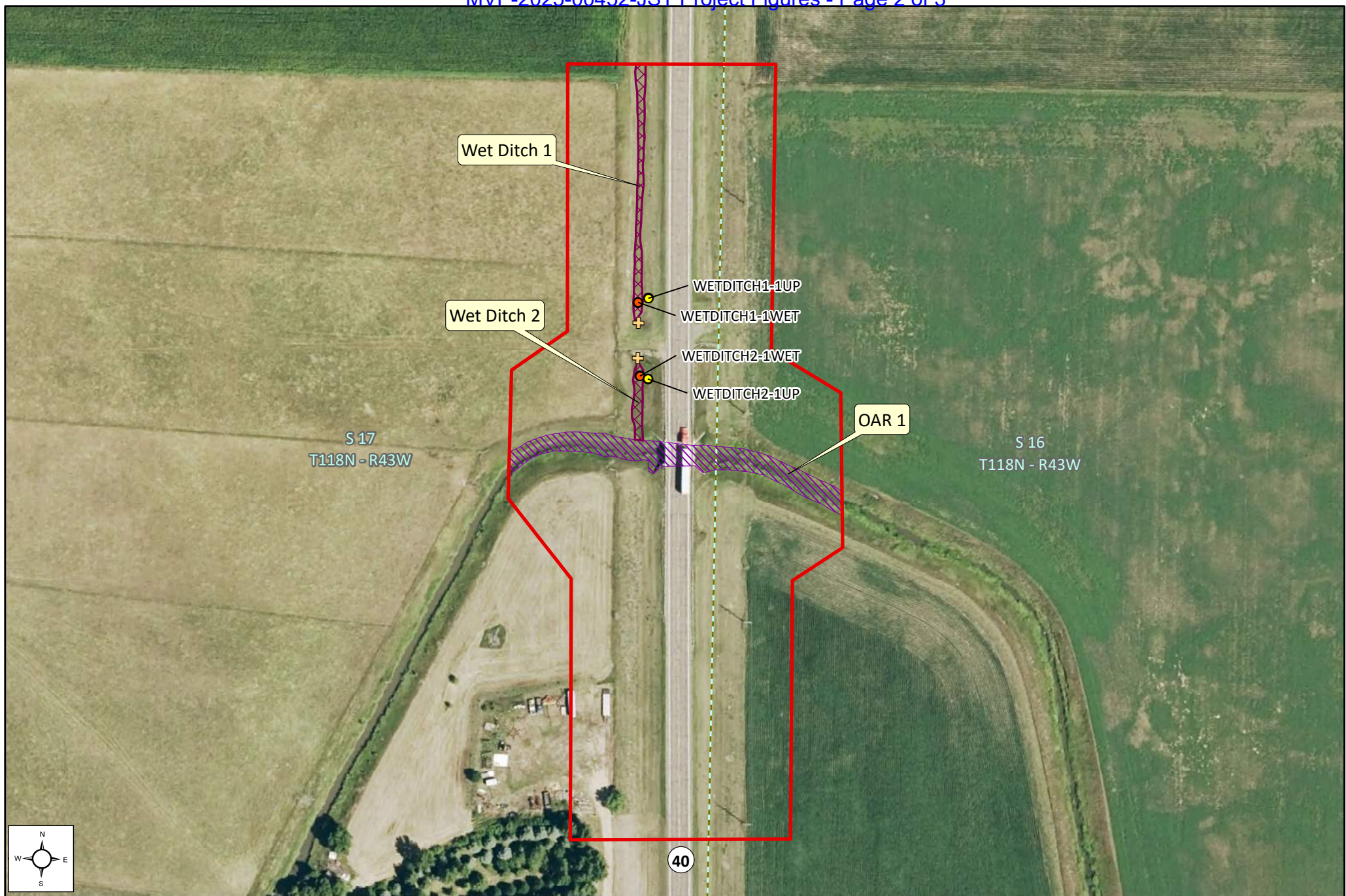
- a. Minnesota Regulatory Viewer: 3DEP Hillshade Layer, MNDNR 2-foot contour layer, US Geological Service 3DEP Digital Elevation Model (DEM) and NHD layers, and USFWS NWI layer.
- b. MNHAPO historic aerial imagery dated 1938 and 1961.
- c. Google Earth aerial imagery dated 2010 and 2019.
- d. Aquatic Resource Delineation Report of SP 3701-91 prepared by KLJ Engineering dated October 2024.

10. OTHER SUPPORTING INFORMATION. N/A

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

Figure 1, Project Location Map





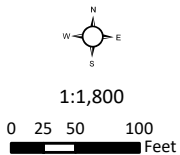
Document Path: K:\Projects\State\MN\DOT\2302-00438_Wetland Delineation for District 8\Enviro\#8_SP 3701-91\Wetland Delineation\GIS\2302_00438_18_SP3701_91_Aquatic_6AquaResources.mxd










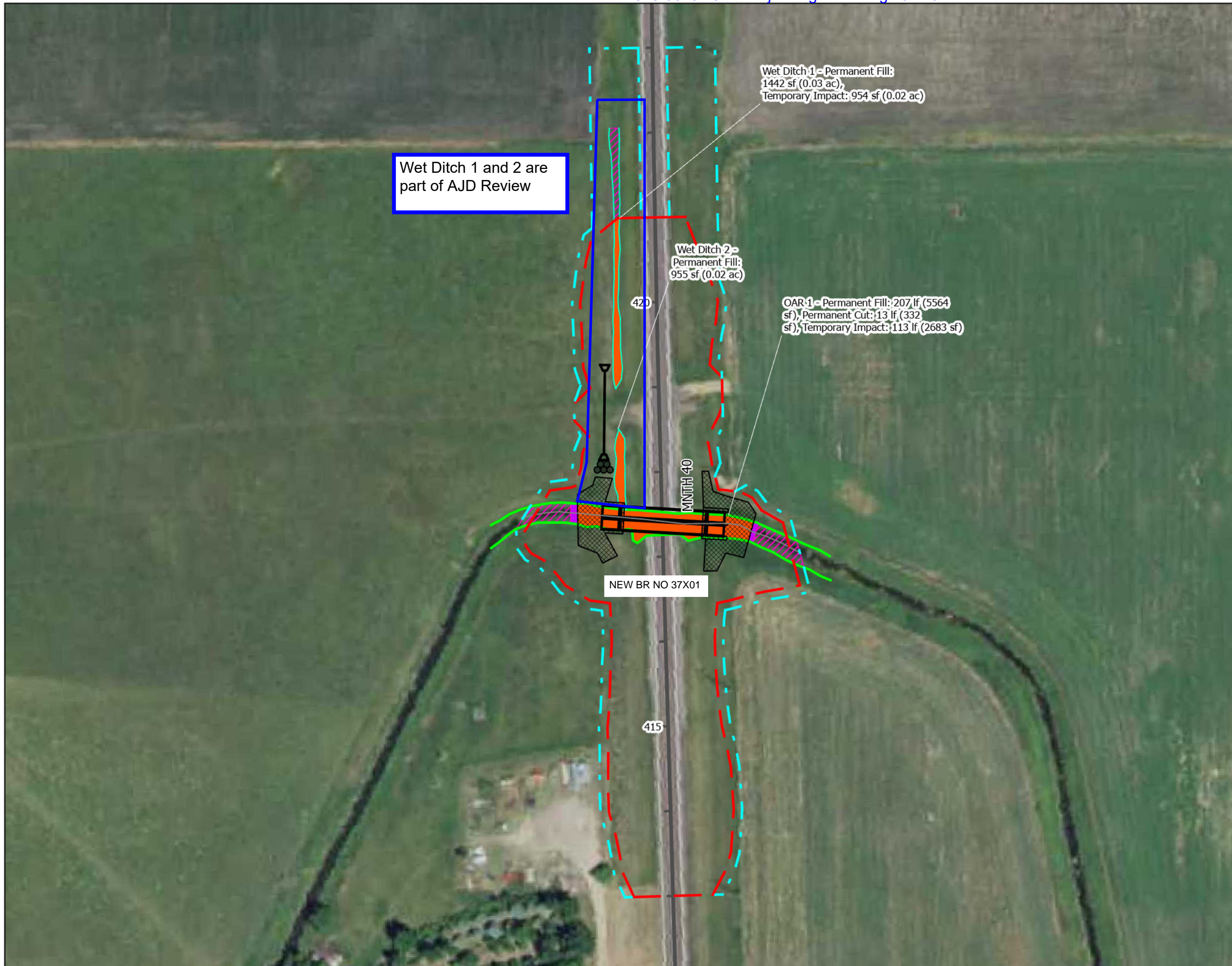

Data Source: US Fish and Wildlife, State of MN, & KLJ
 Imagery: ©2023 USDA-FSA-NAIP
 KLJ Project Number: 2302-00438
 Date Created: 10/24/2024 | Created By: JDP

**SP3701-91 Bridge Replacement
 Aquatic Resource Delineation
 Lac qui Parle County, MN**

Aquatic Resources



 Study Area	 Other Aquatic Resource
 Culvert	 Section Line
 Upland Test Hole	
 Wetland Test Hole	
 Wet Ditch	



Wet Ditch 1 and 2 are part of AJD Review

Wet Ditch 1 - Permanent Fill: 1442 sf (0.03 ac), Temporary Impact: 954 sf (0.02 ac)

Wet Ditch 2 - Permanent Fill: 955 sf (0.02 ac)

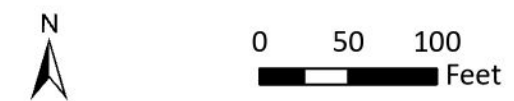
OAR-1 - Permanent Fill: 207 lf (5564 sf), Permanent Cut: 13 lf (332 sf), Temporary Impact: 113 lf (2683 sf)



Legend

- Construction Limit
- Limit of Disturbance
- Riprap
- Stream Impact Length
- Wetland Delineation**
- OAR (County Ditch No. 4)
- Wet Ditch
- Wetland Impacts**
- Cut
- Fill
- Temporary

**Wetland Impacts - Plan View
S.P. 3701-91 (TH 40)
Cerro Gordo Township
Lac Qui Parle, Minnesota**



Source: MnGEO WMS 2021 Statewide Aerial

