



**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): 4/1/2021

ORM Number: MVP-2002-01626-MJB

Associated JDs: 2004-161089-DAS

Review Area Location<sup>1</sup>: State/Territory: MN City: Byron County/Parish/Borough: Olmsted

Center Coordinates of Review Area: Latitude 44.05023 Longitude -92.64640

**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)<sup>2</sup>**

§ 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): <sup>3</sup>				
(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.

<sup>1</sup> Map(s)/figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> 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.

<sup>3</sup> 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.



**U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE**

**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>				
Exclusion Name	Exclusion Size		Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Wetland B	0.75	acre(s)	(b)(9) Water-filled depression constructed/excavated in upland/non-jurisdictional water incidental to mining/construction or pit excavated in upland/non-jurisdictional water to obtain fill/sand/gravel.	This exclusion states: water-filled depressions constructed or excavated in upland or in non-jurisdictional waters incidental to mining or construction activity, and pits excavated in upland or in nonjurisdictional waters for the purpose of obtaining fill, sand, or gravel. This wetland was created as a result of construction and excavation wholly within upland area for the installation of a sewage pipe. The construction activity broke through a water-restricting layer. As the water table is relatively high at the project table, the underground water rose to the surface where excavation and construction activity took place. The site had a wetland delineation completed prior to the construction activity and a letter from the Corps stating the work was completed in upland. While material was placed after install of the sewage pipe, the water table continued to be able to rise to create conditions suitable for a wetland, in the location of construction activity as the water-restricting layer was no longer in place. This wetland is excluded under NWPR as it was created in upland and was for the purpose of construction activities. The intent of the rule is to exclude waters that were created in upland for construction activities or those that meet the definition of a ditch (exclusion (b)(5)). This feature meets the intent of both definitions, as a linear feature created in upland. In addition, this feature is not an (a)(1) water, is not a relocated tributary, is not constructed in a tributary, and is not constructed in an adjacent wetland. This was confirmed by reviewing previous wetland delineations and Corps decisions at the project site, and national hydrography data. Based on this review, the assessed feature is not jurisdictional under the NWPR because it meets the requirements of the exclusion for water-filled depressions created in upland.

**III. SUPPORTING INFORMATION**

<sup>4</sup> 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.

<sup>5</sup> 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.



**U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE**

**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: [Application dated March 17, 2021 and follow up information received March 24, 2021](#)

This information is sufficient for purposes of this AJD.

Rationale: [Description of the construction activity that occurred and an explanation on the hydrology effects that resulted.](#)

- ☐ Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
- ☐ Photographs: [Select. Title\(s\) and/or date\(s\)](#).
- ☐ Corps site visit(s) conducted on: [Date\(s\)](#).
- ☒ Previous Jurisdictional Determinations (AJDs or PJDs): [2004-161089-DAS and a letter on the construction of the sewer pipe](#)
- ☐ Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- ☒ USDA NRCS Soil Survey: [Olmsted Count Soil Survey](#)
- ☒ USFWS NWI maps: [USFWS National Wetland Inventory](#)
- ☒ USGS topographic maps: [1:24K Bryon](#)

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
<a href="#">USGS Sources</a>	<a href="#">National Hydrography Dataset</a>
<a href="#">USDA Sources</a>	<a href="#">N/A.</a>
<a href="#">NOAA Sources</a>	<a href="#">N/A.</a>
<a href="#">USACE Sources</a>	<a href="#">Previous USACE letter on 2004-161089-DAS</a>
<a href="#">State/Local/Tribal Sources</a>	<a href="#">MN TOPO state topography information</a>
<a href="#">Other Sources</a>	<a href="#">N/A.</a>

**B. Typical year assessment(s):** [N/A](#)

**C. Additional comments to support AJD:** [This AJD is specific to Wetland B, the linear feature created in upland as a result of contruction activities related to the sewer pipe install. This AJD does not address the jursidictional status of any other water in the project area or adjacent or abutting the linear feature, Wetland B.](#)