



**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): 5/4/2021

ORM Number: MVP-2020-02309-BGO

Associated JDs: N/A

Review Area Location¹: State/Territory: Minnesota City: Nashua County/Parish/Borough: Grant County

Center Coordinates of Review Area: Latitude 46.035876 Longitude -96.326589

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.	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 The review area for this determination includes 40 roadside ditches labeled as Wetland Ditch 1A-1B, 2, 14, 15A-15B, 16C, 18, 23A-23B, 24A, 25A, 27A-27D, 28A-28B, 29A-29B, 30B-30C, 30F, 32A-32B, 37A, 37C-37D, 38A-38B, 39B, 40A-40B, 43A-43B, 45B, 50A-50C, and 51A and two public drainage ditches labeled as Judicial Ditch 6 and 11 on the attached figures labeled as 2020-02309-BGO GP&AJD Attachments, Pages 1-36 of 36. All the labels for these waters are crossed out (in red) on the attached figures.

Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland Ditch 1A-1B, 2, 14, 15A-15B, 16C, 18, 23A-23B, 24A, 25A, 27A-27D, 28A-28B, 29A-29B, 30B-30C, 30F, 32A-32B, 37A, 37C-37D, 38A-38B, 39B, 40A-40B, 43A-43B, 45B, 50A-50C, and 51A	1.28	acre(s)	(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).	Wetland Ditch 1A-1B, 2, 14, 15A-15B, 16C, 18, 23A-23B, 24A, 25A, 27A-27D, 28A-28B, 29A-29B, 30B-30C, 30F, 32A-32B, 37A, 37C-37D, 38A-38B, 39B, 40A-40B, 43A-43B, 45B, 50A-50C, and 51A were constructed in uplands to convey runoff from the adjacent roadway and are now linear wetlands that meet the definition of “ditch” under paragraph (c)(2). In addition, the ditches are not (a)(1) waters, are not relocated tributaries, are not constructed in a tributary, and are not constructed in an adjacent wetland. This was confirmed by reviewing aerial photography, national hydrography data, and the wetland delineation report. Based on this review, the assessed roadside ditches are not jurisdictional under the Navigable Waters Protection Rule (NWPR) because they meet the requirements of the exclusion for ditches under paragraph (b)(5).
Judicial Ditch 6 and 11	0.69	acre(s)	(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).	Judicial Ditch 6 and 11 are public drainage ditches that were constructed in uplands to convey water draining from surrounding agricultural lands. This was confirmed by reviewing historic aerial photography and topographic maps, soil survey data, and the wetland delineation report, which shows the drainage ditches were constructed in predominantly nonhydric soils and are not associated with any former or existing waterbodies. LIDAR-based elevation data was also reviewed and shows both ditches were constructed in areas with less relief than the natural and man-altered tributaries located along the project. Further indicating that both drainage ditches are entirely man-made and did not relocate a tributary. The ditches are not (a)(1) waters, are not relocated tributaries, are not constructed in a tributary, and are not

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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				constructed in an adjacent wetland. Based on this review, the assessed drainage ditches are not jurisdictional under the NWPR because they meet the requirements of the exclusion for ditches under paragraph (b)(5).
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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: [MnDOT SP 8404-47/TH 55 Joint Application Form, November 2020 and Wetland Delineation Report, April 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: 2017 FSA and Google Earth Imagery, 1991-2020 and Historic Aerial Photography 1949 and 1969](#)

☐ 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: [USFWS NWI of MN, 1974-1978](#)

☒ USGS topographic maps: [1:24k DRG – Wendell, 2003 and Historic Topographic Maps 1953 and 1975](#)

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	NHD – High Resolution – MN, 2015
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local wetland inventory maps	DNR NWI Update – MN, 2010-2018
Other Sources	2-Foot Contours Minnesota (LIDAR Service)

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

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