



**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): 5/27/2021

ORM Number: MVP-2021-00177-BGO

Associated JDs: N/A

Review Area Location¹: State/Territory: Minnesota City: Bagley County/Parish/Borough: Clearwater

Center Coordinates of Review Area: Latitude 47.347463 Longitude -95.382309

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 eight wetlands labeled as Wetlands 1-2, 17-18, 19-20, and 21-22, and four roadside ditches labeled as Wetland Ditch 5-7 and 13 on the attached figures labeled as 2021-00177-BGO AJD Attachments, Pages 1-31 of 31. All the labels for these waters are also highlighted in yellow on the attached figures.

| Exclusion Name | Exclusion Size | | Exclusion ⁵ | Rationale for Exclusion Determination |
|--|----------------|---------|------------------------------|--|
| Wetlands 1-2, 17-18, 19-20, and 21-22 See Appendix C2, Page 1 and 6-8 | 1.23 | acre(s) | (b)(1) Non-adjacent wetland. | <p>Wetlands 1 and 2 are two separate wetland areas that are connected by a culvert located under Trunk Highway (TH) 92. Both wetlands are surrounded by uplands and do not have a direct hydrologic surface connection to downstream waters.</p> <p>Wetlands 17 and 18 are two separate wetland areas that are connected by a culvert located under TH 92. Both wetlands are surrounded by uplands and do not have a direct hydrologic surface connection to downstream waters.</p> <p>Wetlands 19 and 20 are two separate wetland areas that are connected by a culvert located under TH 92. Both wetlands are surrounded by uplands and do not have a direct hydrologic surface connection to downstream waters.</p> <p>Wetlands 21 and 22 are two separate isolated wetland basins located on both sides of TH 92. Both wetlands are surrounded by uplands and do not have a direct hydrologic surface connection to downstream waters.</p> <p>This was documented in the delineation that was completed for the project site and confirmed by reviewing the enclosed national wetland inventory, hydric soil, and topographic mapping for the project site. The assessed wetlands do not abut jurisdictional waters, are not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and are not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. Based on this review, the assessed wetlands are not jurisdictional under the Navigable Waters</p> |

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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| | | | | |
|--|------|---------|--|--|
| | | | | Protection Rule (NWPR) because they meet the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). |
| Wetland Ditch 5-7 and 13 See Appendix C2, Page 3, 5-6 | 0.87 | 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 5-7 and 13 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 ditches are not jurisdictional under the NWPR because they meet the requirements of the exclusion for ditches under paragraph (b)(5). |

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 1506-41/TH 92 Zerkel Wetland Delineation Report, November 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 1991-2015](#)
- ☐ 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: [USA Soil Survey \(USDA Service\)](#)
- ☒ USFWS NWI maps: [USFWS NWI of MN, 1974-1978](#)
- ☒ USGS topographic maps: [USGS Topographic Quads \(USA Topo Maps\)](#)

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 | National Hydrography Dataset (USGS Service) |
| 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](#)



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