

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** September 30, 2021

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER:** MVP-2021-01347-ARC

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: MN County/parish/borough: St. Louis City: Hoyt Lakes

Center coordinates of site (lat/long in degree decimal format): Lat. 47.62022° N, Long. -92.0825° W.

Universal Transverse Mercator:

Name of nearest waterbody:

Name of watershed or Hydrologic Unit Code (HUC): 4010201

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

☒ Office (Desk) Determination. Date: September 20, 2021

☒ Field Determination. Date(s): September 14, 2021

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There are no “*navigable waters of the U.S.*” within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There are no “*waters of the U.S.*” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

**1. Waters of the U.S.: N/A**

**2. Non-regulated waters/wetlands (check if applicable):<sup>1</sup>**

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **The aquatic resource that was assessed, Wetland SML-1, is located on the north side of Spring Mine Lake located within the previous LTV Steel mine site, owned by Cliff's Erie, LLC and transferred to Poly Met Mining Inc., approximately 6.5 miles north of Hoyt Lakes, Minnesota. Wetland SML-1 directly abuts Spring Mine Lake, which is an ore mine pit that was mined in the 1920's. The lake used to have an overflow stream connection to the north and northeast which was the headwaters of Spring Mine Creek. However, in the 1970's and 1980's stockpiles 5031, 5027S, and 5026S were established within 5,000 linear feet of the Spring Mine Creek channel. This shortened the length of the creek and re-routed the surface water drainage to the west, severing the surface connection downstream.**

Sometime between 1991 and 2003 a ditch was constructed through Wetland SML-1 for the dewatering of Pit 5NW west and into the former LTVSMC Tailings Basin, via pumping. There is a large topographical rise between Pit 5NW and Wetland SML-1 and does not contain any surface or groundwater connection. The ditch now conveys water from Wetland SML-1 and Spring Mine Lake to the west into another wetland along the east side of a haul road and has one outlet through a culvert into the former LTVSMC Tailings Basin. Pictures were taken of the culvert on August 10, 2021 that showed no flow or water within the vicinity of the culvert. This was verified on September 14, 2021 when Regulatory reviewed the site.

The tailings basin is a closed depression surrounded by high ground or dams with active dam safety permits. The water enters Cell 1E, which has a variable elevation but cannot exceed an elevation 11 feet below the top of the dam or closer than 200 feet from the dam crest, pursuant to Poly Met Mining, Inc.'s dam safety permit #1981-2100 Condition 22. The desktop and field review concluded no signs of surface or subsurface hydrologic connectivity or ecological connectivity to downstream waters or navigable waters of the United States since the tailings basin is contained with no outflow.

<sup>1</sup> Supporting documentation is presented in Section III.F.

We have reviewed available desktop resources such as aerial photography, LIDAR derived elevation models and contours, flow path information, and stream and wetland mapping to make an approved isolated determination of the wetland. We determined that the wetland has no hydrologic or ecologic connection to a Navigable water of the U.S.

The nearest tributary with a connection to a TNW is approximately 5,000 feet to the east and is Spring Mine Creek that was cutoff by the placement of the large stockpiles. Stream maps show a flow path through the constructed ditch leading west to the tailings basin, but the flow path ends in the tailings basin since it's a closed system with no outflow. The aquatic resource within the review area is not known to be used by interstate or foreign travelers for recreation or other purposes; and is not known to be used for industrial purposes by industries in interstate commerce. The aquatic resource is geographically isolated and does not support a link to interstate or foreign commerce. Therefore the resource in the review area, is not a water of the United States.

### **SECTION III: CWA ANALYSIS**

A. TNWs AND WETLANDS ADJACENT TO TNWs: N/A

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY): N/A

C. SIGNIFICANT NEXUS DETERMINATION: N/A

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY): N/A

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY): N/A

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☒ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - ☒ Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
- ☐ Other (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams):      linear feet      width (ft).
- ☐ Lakes/ponds:      acres.
- ☐ Other non-wetland waters:      acres. List type of aquatic resource:      .
- ☒ Wetlands: 37 acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams):      linear feet,      width (ft).
- ☐ Lakes/ponds:      acres.
- ☐ Other non-wetland waters:      acres. List type of aquatic resource:      .
- ☐ Wetlands:      acres.

### **SECTION IV: DATA SOURCES.**

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Barr Engineering Wetland Delineation July 2021, Barr Engineering AJD request, Barr Engineering response to USACE comments
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☒ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps:

- ☐ Corps navigable waters' study:
- ☒ U.S. Geological Survey Hydrologic Atlas:
  - ☒ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☐ U.S. Geological Survey map(s). Cite scale & quad name:
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☒ National wetlands inventory map(s). Cite name:
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date):MnGEO WMS service (multiple photos)  
or ☐ Other (Name & Date):
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify):National Regulatory Data Viewer

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** The 37 acre aquatic resource has one outflow that leads to a closed off tailings basin that does not have an outlet to a downstream water. We performed a site visit with the agent and reviewed the available desktop resources such as aerial photography, LiDAR derived elevation models and contours, flow path information, and stream and wetland mapping to aid in making an approved isolated determination of the resource. We determined that the aquatic resource's connection to a TNW was severed prior to 1981 by the placement of three large stockpiles within 5,000 feet of Spring Mine Creek, leaving the resource without a hydrologic connection to a Traditional Navigable Water of the United States.