



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

MVP-RD

30 May 2024

**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),<sup>1</sup> [MVP-2014-03410-ARC MFR 1 of 1](#)

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.<sup>2</sup> 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.<sup>3</sup>

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),<sup>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

**1. SUMMARY OF CONCLUSIONS.**

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<sup>1</sup> 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.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> 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.

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- 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).
  - i. [Wetland 1, non-jurisdictional \(a\)\(5\) 13.25 acres](#)
  - ii. [Wetland 2W, non-jurisdictional \(a\)\(5\) 4.21 acres](#)
  - iii. [Wetland 3, non-jurisdictional \(a\)\(5\) 3.82 acres](#)
  - iv. [Wetland 3C, non-jurisdictional \(a\)\(5\) 0.03-acre](#)
  - v. [Wetland 4, non-jurisdictional \(a\)\(5\) 2.96 acres](#)

## 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 [61954](#) (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. \_\_, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. [The review area is approximately 67 acres in size and consists of wetlands located between the Canisteo, West Hill, and the Lind mine pits and the Prairie River. The review area is identified by the red polygon and red circled review areas on the attached figures. The approximate center of the review area is located at 47.27782 N, -93.46861 W near the city of Coleraine, in Itasca County, Minnesota.](#)
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [\[N/A\]](#)<sup>5</sup>

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<sup>5</sup> 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.

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [N/A](#)
6. SECTION 10 JURISDICTIONAL WATERS<sup>6</sup>: 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.<sup>7</sup> [\[N/A\]](#)
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.
  - 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](#)

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<sup>6</sup> 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.

<sup>7</sup> 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.

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- 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).<sup>8</sup>

- 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).

[The review area contains 5 wetlands that are considered non jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule, see individual features list in Section 1.a. above. These wetlands are not TNWs, territorial seas, or interstate waters and therefore are not \(a\)\(1\) waters. The wetland delineation, topographical maps, Google Earth, and the National Regulatory Viewer indicate that these wetlands do not physically abut a relatively permanent paragraph \(a\)\(2\) impoundment or a jurisdictional \(a\)\(3\) tributary and are not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. These wetlands are either surrounded by berms, mine roads, former trails, or CSAH 61. There are no ditches, swales, pipes, or culverts that connect these wetlands to downstream jurisdictional waters. These wetlands are non-tidal wetlands that do not have a continuous surface connection to a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as \(a\)\(4\) adjacent wetlands; therefore, these wetlands are not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.](#)

- 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. [Office evaluation conducted April 22, 2024.](#)

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<sup>8</sup> 88 FR 3004 (January 18, 2023)



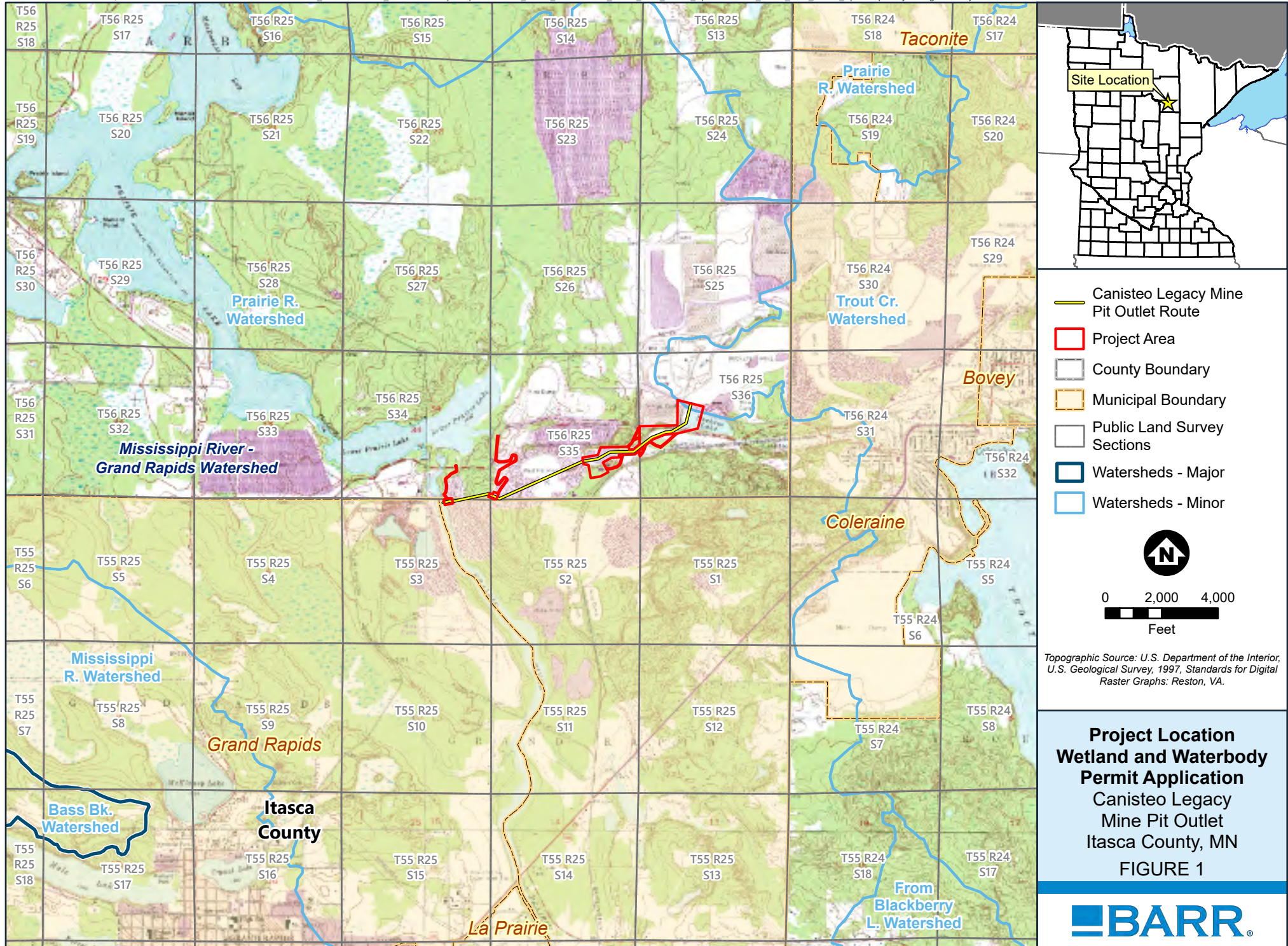
## MVP-RD

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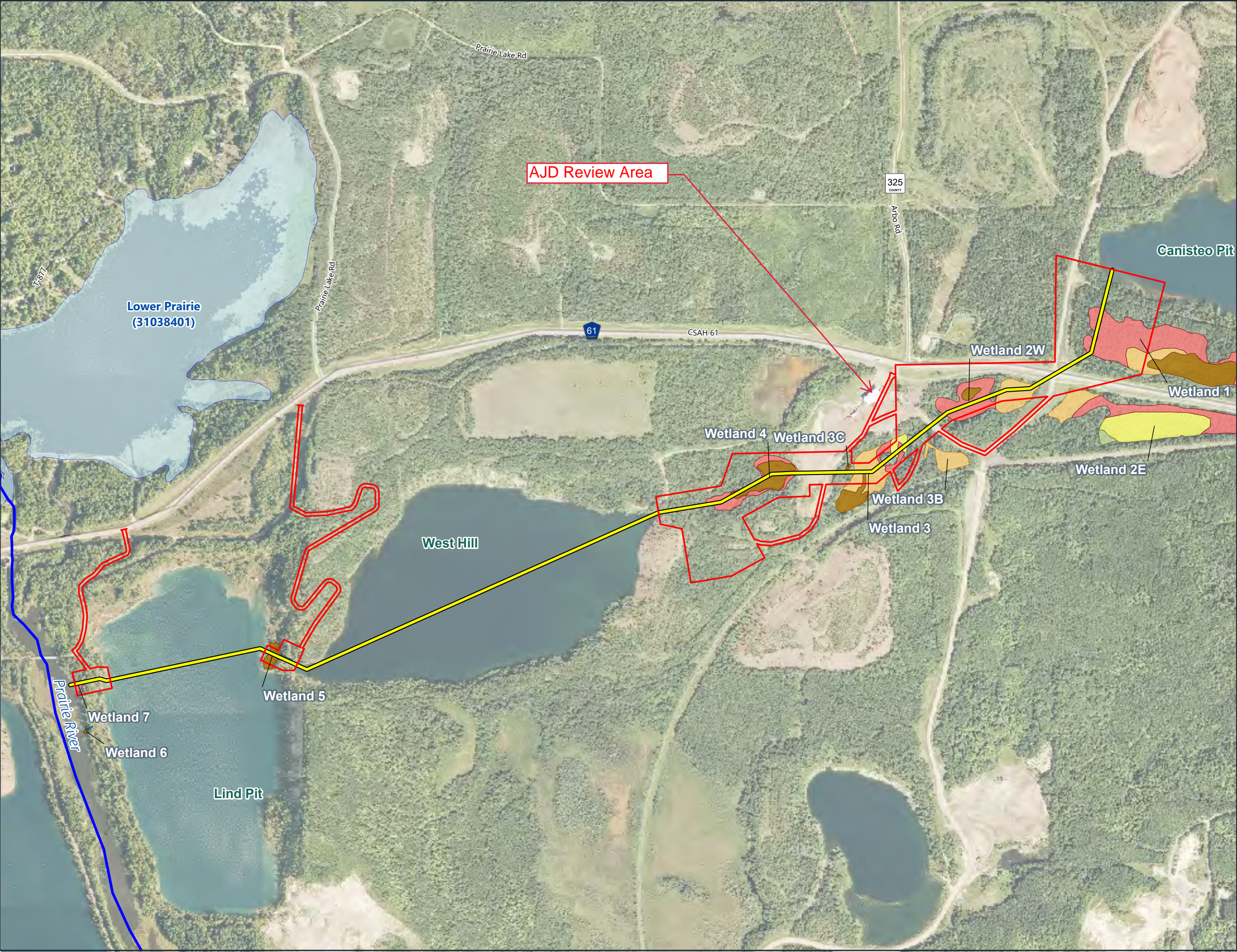
- b. [Wetland Delineation, Barr Engineering Company, 2021. Barr Engineering Application and AJD Request, April 2024.](#)
- c. [National Regulatory Viewer Lidar, Digital Elevation Model, and Soils data.](#)
- d. [Google Earth historical imagery.](#)

10. OTHER SUPPORTING INFORMATION. [The Corps previously issued an Approved Jurisdictional Determination for Wetlands 3 and 4 on June 20, 2020, under the now vacated Navigable Waters Protection Rule. Wetland 1 is a remnant of the former Buckeye Lake which was excavated and drained for use as a tailings basin overflow. When mining ceased in the late 1950s, a wetland formed in the depressional area over the tailings.](#)

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.







Canisteo Legacy Mine Pit Outlet Route

Project Area

Public Watercourses

Public Water Watercourse

Public Ditch/Altered Natural Watercourse

Public Waters Basins

Wetland Delineation 2021

Dominant Eggers & Reed (1997)

Wetland Community Type

Fresh (wet) Meadow

Shrub Swamp

Coniferous Bog

Deep Marsh; Shallow Marsh

Hardwood Swamp

Riverine



0 1,000 2,000  
Feet

Imagery: NAIP 2023 Itasca County

**Water Resources  
Wetland and Waterbody  
Permit Application**  
Canisteo Legacy Mine Pit Outlet  
Itasca County, MN

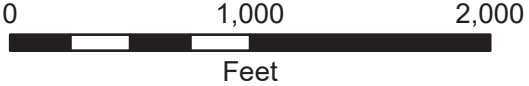
FIGURE 2







- Canisteo Legacy Mine Pit Outlet Route
- Project Area
- Delineated Wetlands
- LiDAR 10 Foot Contours
- 10 Foot Contour
- 50 Foot Contour



Imagery: 2023 Itasca County NAIP & 2011 LiDAR Hillshade

**Topography  
Wetland and Waterbody  
Permit Application**  
Canisteo Legacy Mine Pit Outlet  
Itasca County, MN

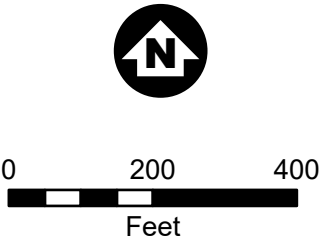
FIGURE 4







- Canisteo Legacy Mine Pit Outlet Route
- Project Area
- Access Road
- Channel Slope
- Ditch/Connection Weir
- Rip Rap
- Wetland Delineation 2021
- Dominant Eggers & Reed (1997) Wetland Community Type
- Deep Marsh; Shallow Marsh
- Hardwood Swamp
- Riverine



Imagery: NAIP 2023 Itasca County

**Project Design  
Wetland and Waterbody  
Permit Application**  
Canisteo Legacy Mine Pit Outlet  
Itasca County, MN

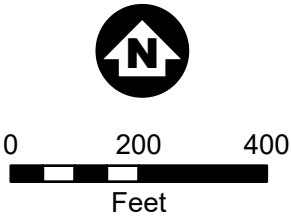
FIGURE 5A







- Project Area
- Canisteo Legacy Mine Pit Outlet Route
- Incidental Wetlands
- Delineated Wetlands
- Wetland Impact
  - Temporary
  - Permanent

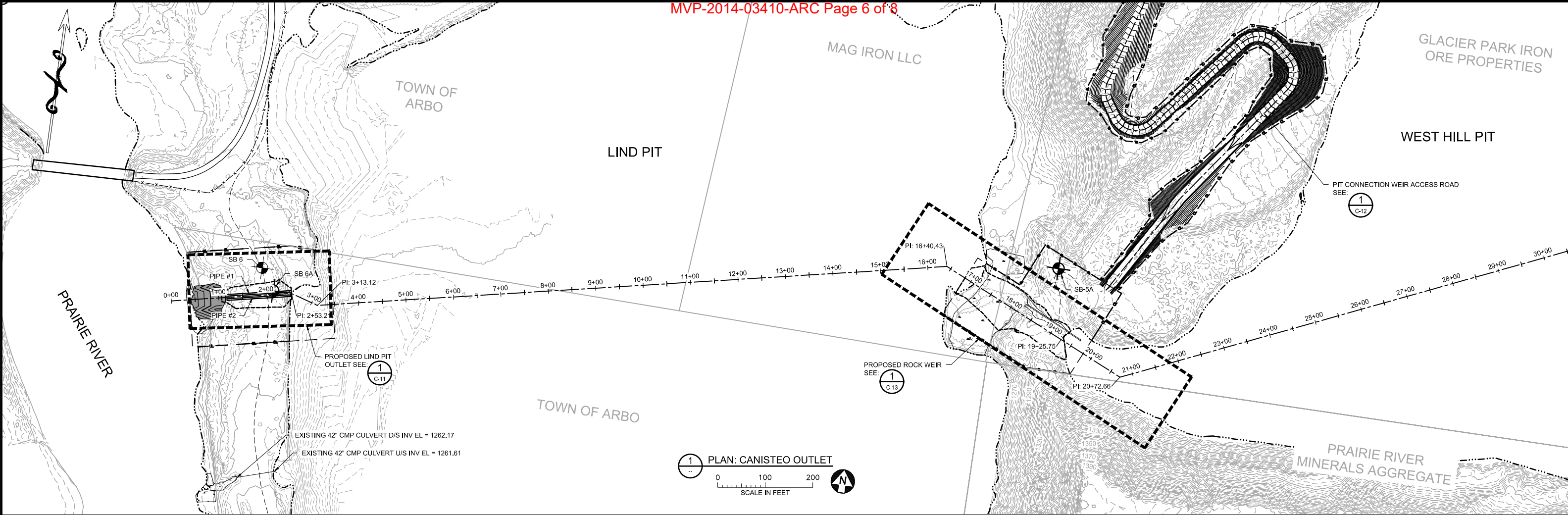


Imagery: NAIP 2023 Itasca County

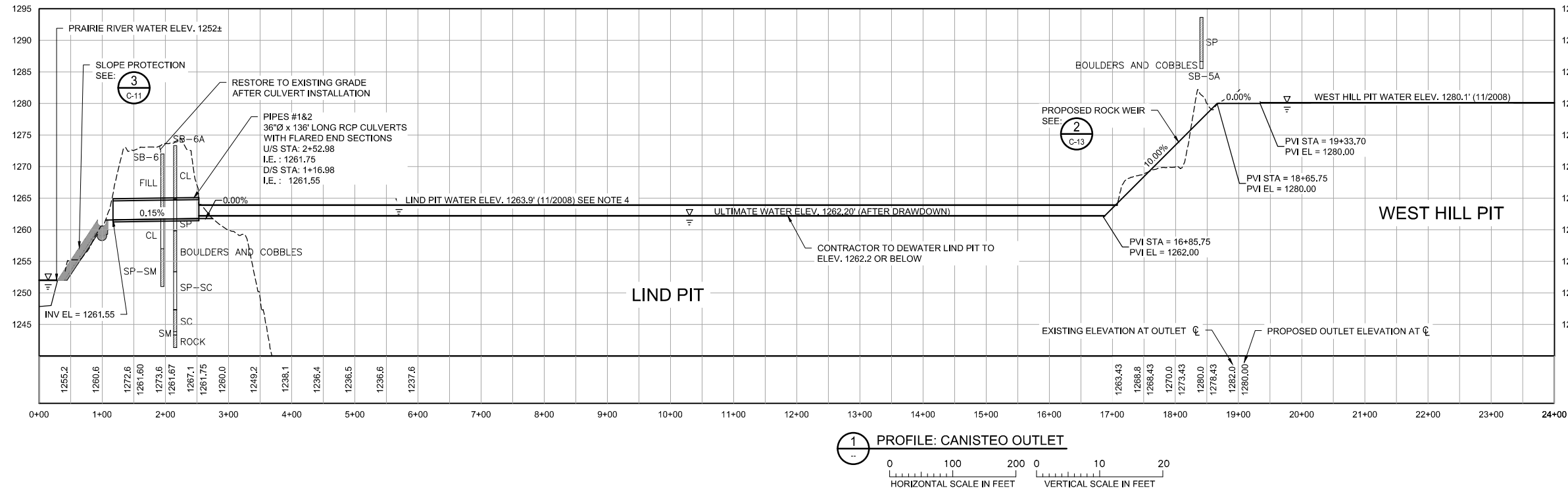
**Wetland Impacts and Jurisdiction**  
**Wetland and Waterbody Permit Application**  
Canisteo Legacy Mine Pit Outlet  
Itasca County, MN  
**FIGURE 9A**







1 PLAN: CANISTEO OUTLET



1 PROFILE: CANISTEO OUTLET

- NOTES:
1. WETLANDS SHOWN FIELD DELINEATED BY BARR IN FALL OF 2021.
  2. LAYOUT BASED ON LIDAR OBTAINED FROM THE U.S. GEOLOGICAL SURVEY. SURVEY COMPLETED IN 2023. MAPPING BASED ON THE FOLLOWING DATUM:  
-VERTICAL DATUM: TWO FOOT CONTOUR INTERVAL BASED ON NORTH AMERICAN VERTICAL DATUM OF 1988  
-HORIZONTAL DATUM: MINNESOTA STATE PLANE COORDINATE SYSTEM, NORTH ZONE, NAD 83/96
  3. CONTRACTOR SHALL CLEAR AND GRUB TREES AND BRUSH AS NEEDED WITHIN THE PROPOSED LEASE AREAS.
  4. CONTRACTOR SHALL VERIFY WATER ELEVATIONS PRIOR TO CONSTRUCTION ACTIVITY.

- LEGEND
- SOIL BORING, SB
  - CONE PENETRATION TEST, CPT
  - OUTLET ALIGNMENT CENTERLINE
  - EXISTING TREELINE
  - WETLANDS
  - EXISTING FENCE
  - OVERHEAD ELECTRIC LINE
  - PERMANENT EASEMENT AREA
  - TEMPORARY EASEMENT AREA
  - SECTION LINE
  - EXISTING 10' MAJOR CONTOUR
  - EXISTING 2' MINOR CONTOUR
  - CONSTRUCTION LIMITS

ISSUED  
FOR BID  
NOT FOR CONSTRUCTION

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**m**  
**DEPARTMENT OF  
NATURAL RESOURCES**

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the state of Minnesota.  
Name: *John M. Mase*  
Lic. Number: 25080 Date: 4/08/2024

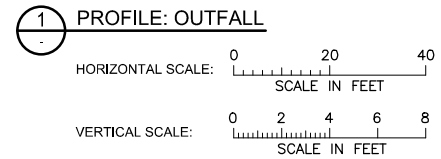
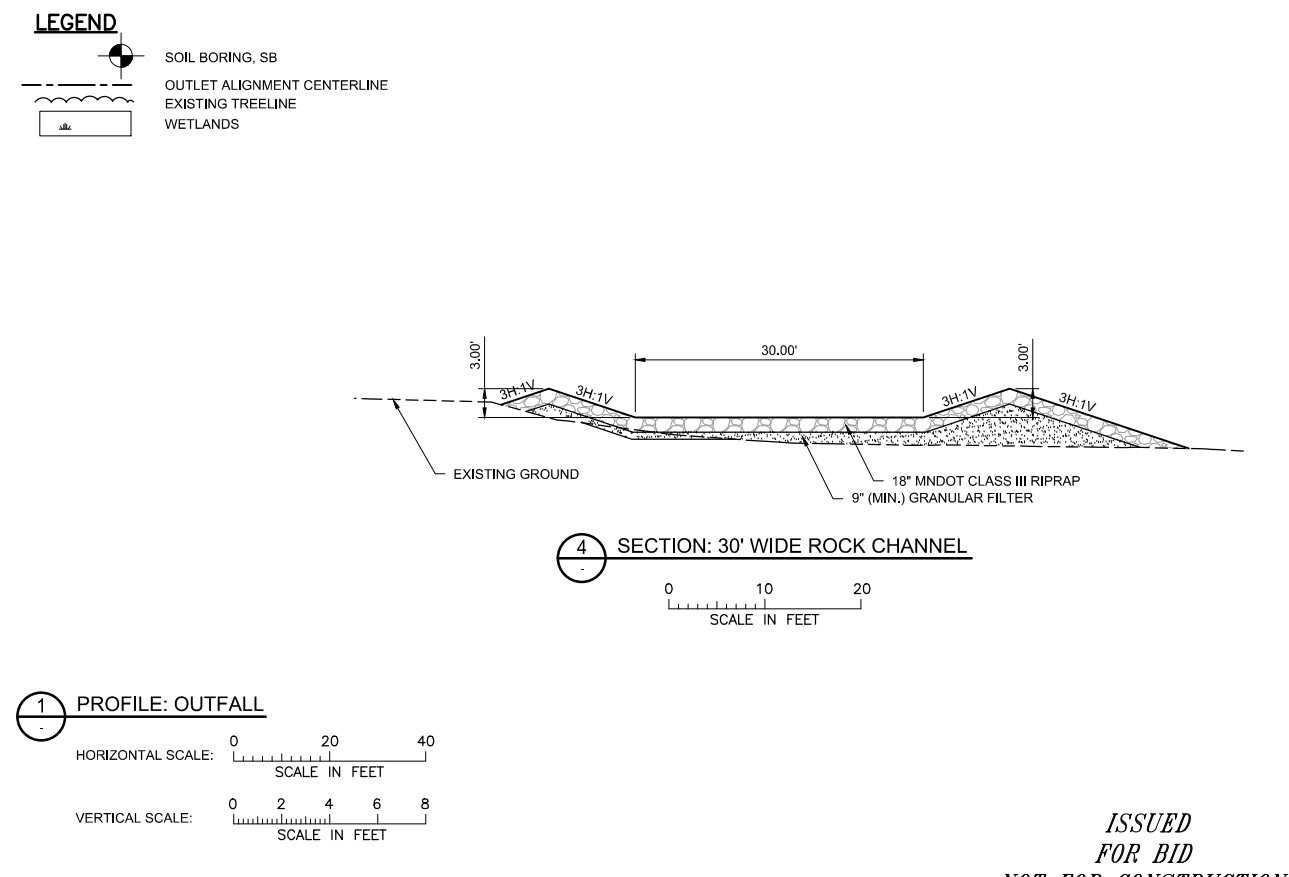
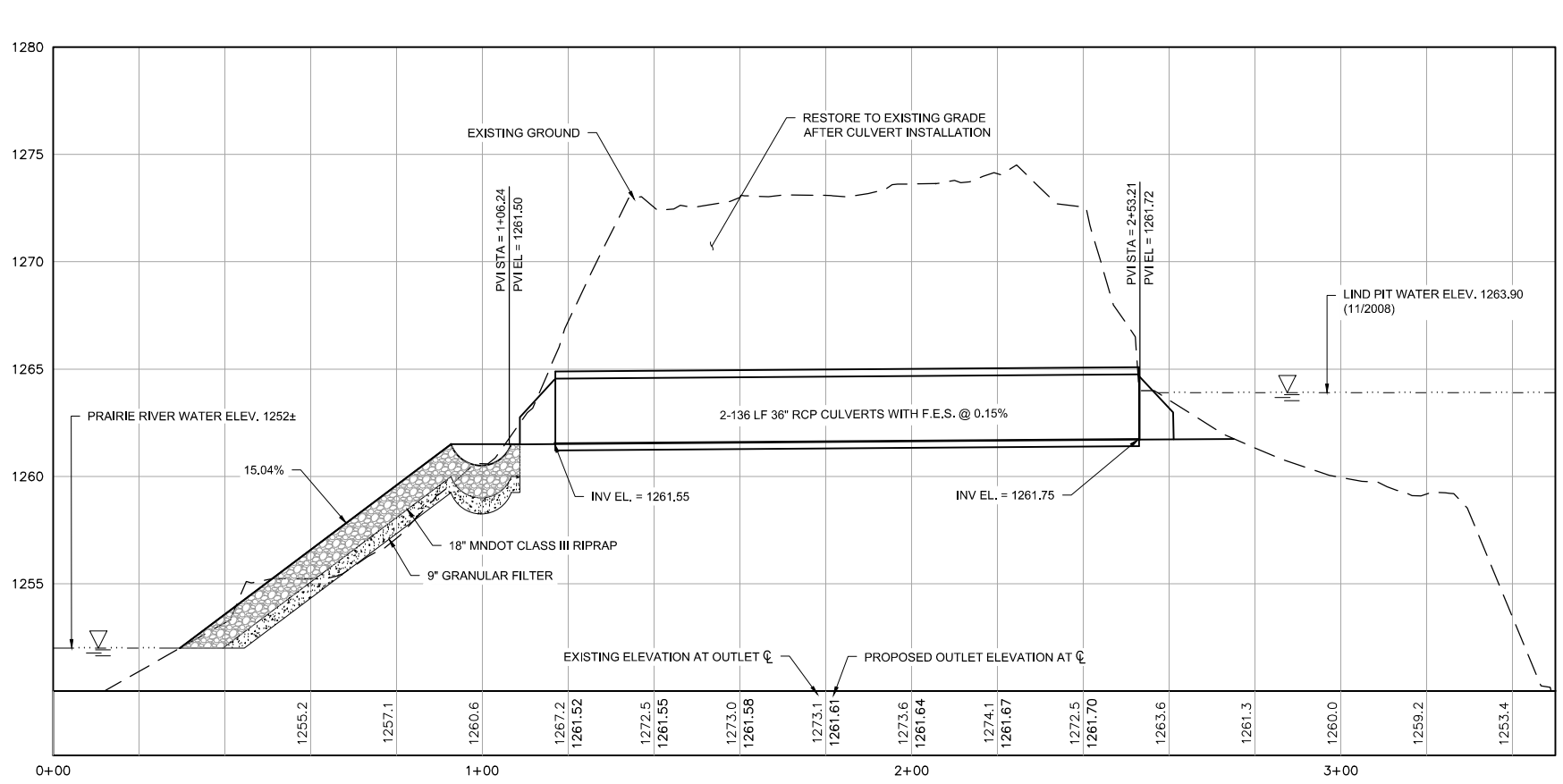
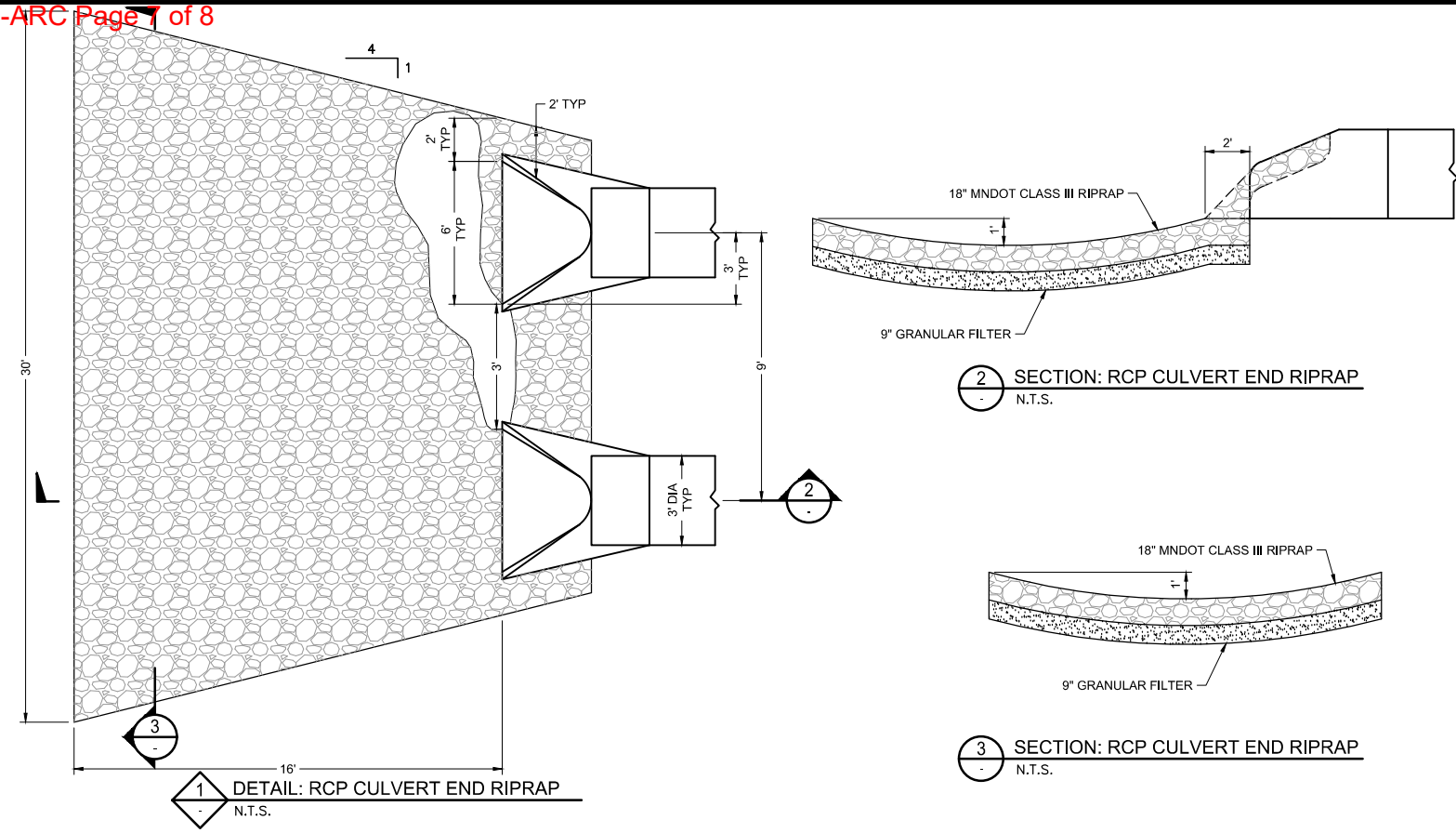
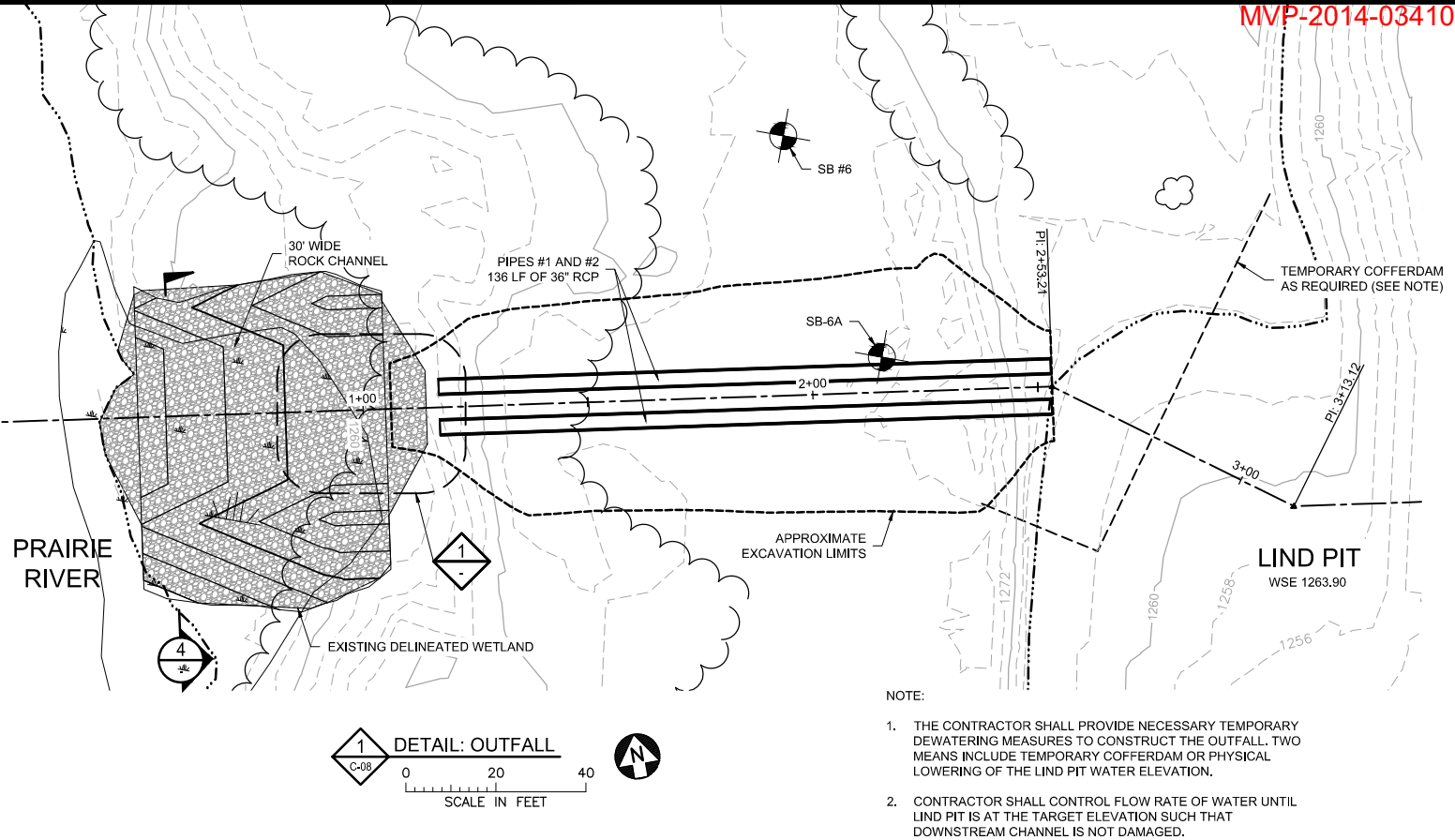
**Canisteo Legacy Mine Pit Outlet**  
**Canisteo Mine**  
Division of Lands and Minerals  
Itasca County Near Coleriane  
Section: 34,35,36 Township: 56N Range: 25W

Revisions	
Date	By

Plan & Profile	
Survey:	Designed: JMM3 2/5/24
Drawn: GSJ 2/5/24	Drawn: GSJ 2/5/24
Checked: JMM3 2/5/24	Checked: JMM3 2/5/24
Horz. datum: NAD 83 (96 ADJ)	Vert. datum: NAVD 88

Sheet: **C-08**  
CC2: 81018  
File #: MIN0007.00.35.05  
Site #: R2900448





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**m**  
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**NATURAL RESOURCES**

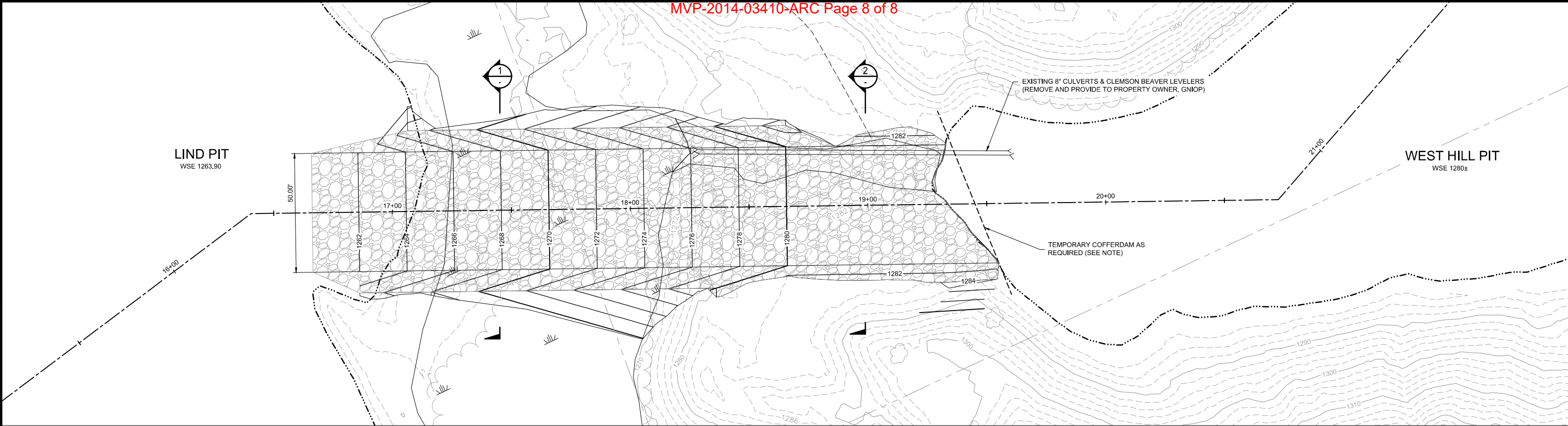
I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the state of Minnesota.  
Name: *John M. M...*  
Lic. Number: 25080 Date: 4/08/2024

**Canisteo Legacy Mine Pit Outlet**  
**Canisteo Mine**  
Division of Lands and Minerals  
Itasca County Near Coleraine  
Section: 34,35,36 Township: 56N Range: 25W

Revisions	
Date	By

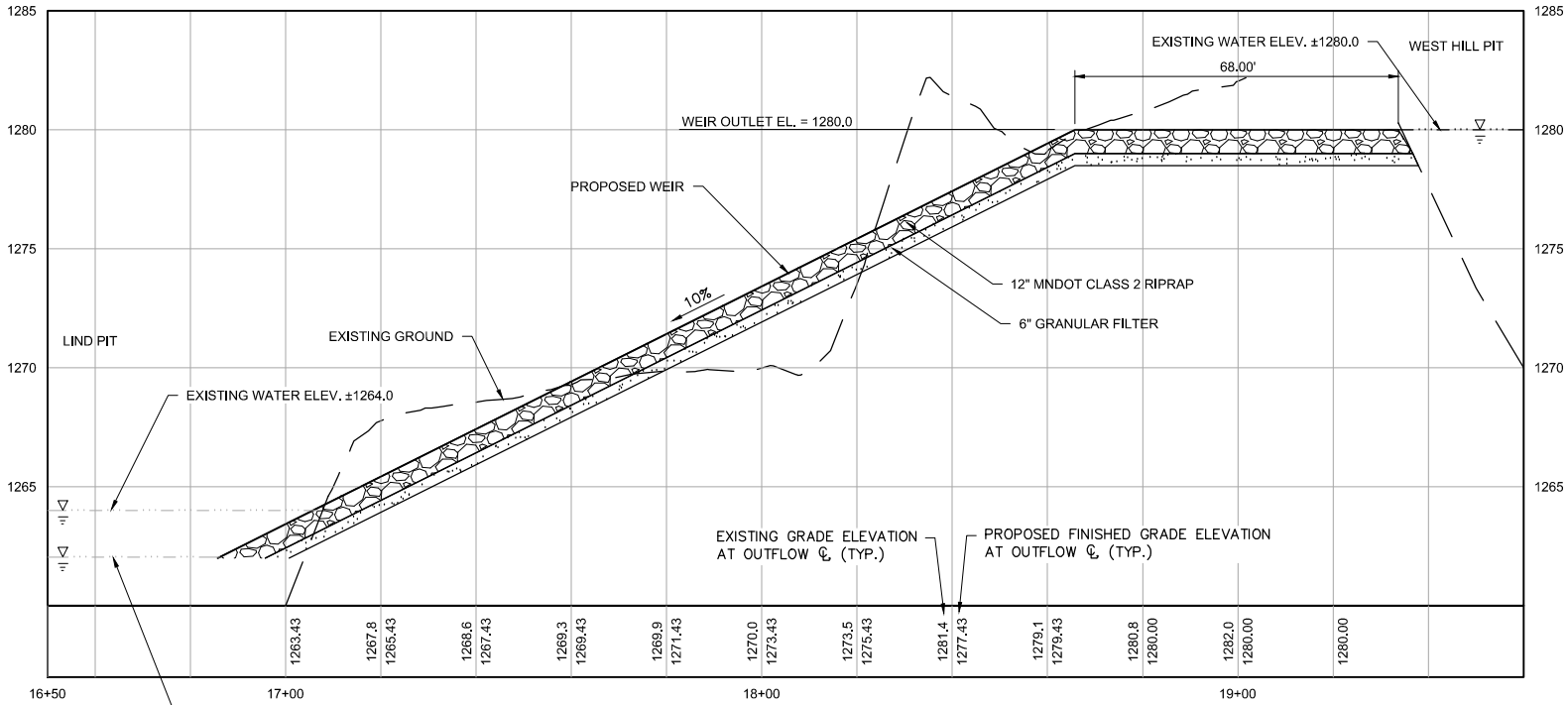
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Drawn: GSJ 2/5/24  
Checked: JMM3 2/5/24  
Horz. datum: NAD 83 (96 ADJ) Vert. datum: NAVD 88

Sheet: **C-11**  
CC2: 81018  
File #: MIN0007.00.35.05  
Site #: R2900448

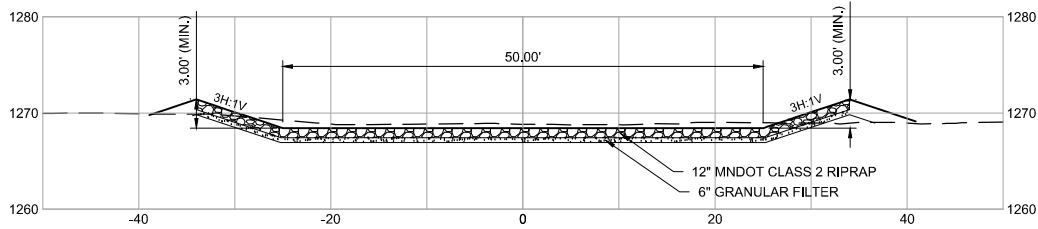


1  
C-08  
DETAIL: WEST HILL OUTLET WEIR  
0 20 40  
SCALE IN FEET

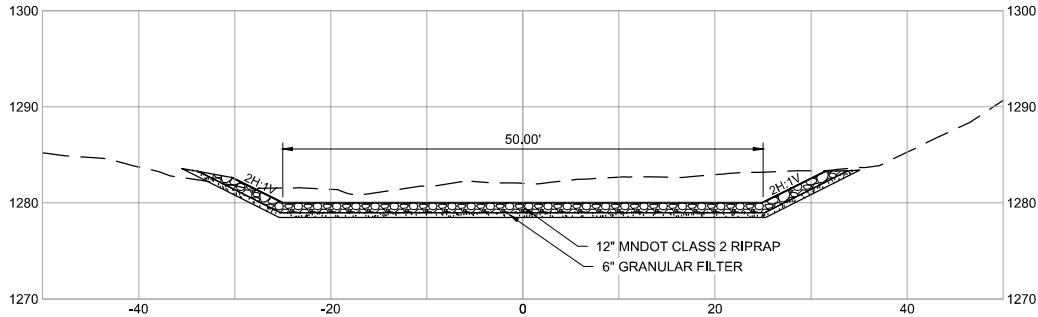
NOTE:  
THE CONTRACTOR SHALL PROVIDE NECESSARY TEMPORARY DEWATERING MEASURES TO CONSTRUCT THE WEIR. TWO MEANS INCLUDE TEMPORARY COFFERDAM OR PHYSICAL LOWERING OF THE WEST HILL PIT WATER ELEVATION.



1  
PROFILE: WEST HILL OUTLET WEIR  
0 20 40  
HORIZONTAL SCALE: SCALE IN FEET  
0 4 8  
VERTICAL SCALE: SCALE IN FEET



1  
SECTION: WEST HILL OUTLET WEIR  
0 10 20  
SCALE IN FEET



2  
SECTION: WEST HILL OUTLET WEIR  
0 10 20  
SCALE IN FEET

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**m**  
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NATURAL RESOURCES

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Name: *John M. Mase*  
Lic. Number: 25080 Date: 4/08/2024

**Canisteo Legacy Mine Pit Outlet**  
**Canisteo Mine**  
Division of Lands and Minerals  
Itasca County Near Coleraine  
Section: 34,35,36 Township: 56N Range: 25W

**Revisions**  
Date By

**West Hill Outlet Detail**  
Survey: Designed: JMM3 2/5/24  
Drawn: GSJ 2/5/24  
Checked: JMM3 2/5/24  
Horz. datum: NAD 83 ('96 ADJ) Vert. datum: NAVD 88

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