



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

MVP-2024-00123-JMK (SAP 073-612-023)

12 April 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-2023-01033-JMK 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.

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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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-00123-JMK

1. SUMMARY OF CONCLUSIONS.

- 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
  - ii. Wetland 2, non-jurisdictional
  - iii. Wetland 4, non-jurisdictional
  - iv. Wetland 6, non-jurisdictional
  - v. Wetland 11, non-jurisdictional

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 61964 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. \_\_\_, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area for this determination includes 5 roadside ditches, as identified in Section 1(a) of this MFR and on the attached figures labeled 2024-00123-JMK Figures 2, 7, 10 and 13 of 20. The review area is located at 45.4737 N, -94.6095 W in the Cities of St. Martin, Zion and Munson, Stearns County, Minnesota. There are no other JDs associated with the review area.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A

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6. SECTION 10 JURISDICTIONAL WATERS<sup>5</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>6</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
  - g. Additional Waters (a)(5): N/A

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<sup>5</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>6</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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## 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>7</sup>

- Wetland 1 (0.05 acre), Wetland 2 (0.03 acre), Wetland 4 (420 square feet) Wetland 6 (287 square feet) and Wetland 11 (223 square feet) within the review area are linear roadside drainage ditches constructed in upland and drain only upland based on a review of the US Geological Service 3DEP DEM and Hillshade maps; 2016 MNDNR Hillshade map; MNDNR 2-foot contour maps; NWI maps; and NHD data. Recent aerial photos do not show relatively permanent flow in the aforementioned aquatic resources. Based on the desktop resources reviewed Wetland 1, 2, 4, 6, and 11 are linear roadside drainage ditches constructed in upland, drain only upland, and do not carry a relatively permanent flow of water. Therefore, Wetland 1, 2, 4, 6, and 11 have been determined to be Paragraph (b)(3) excluded ditches and not subject to Section 404 of the Clean Water Act (CWA).

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). N/A

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. Joint Application Form for Activities Affecting Water Resources in Minnesota, Project CSAH 12 SAP 073-612-023 dated January 22, 2024.
- b. Minnesota Regulatory Viewer: 2016 MNDNR Hillshade layer, MNDNR 2-foot contour layer, US Geological Service 3DEP Digital Elevation Model (DEM) and Hillshade layers, NHD layers, and USFWS NWI layer.

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<sup>7</sup> 88 FR 3004 (January 18, 2023)

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10. OTHER SUPPORTING INFORMATION. N/A

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.

# MINNESOTA DEPARTMENT OF TRANSPORTATION COUNTY OF STEARNS

**CONSTRUCTION PLAN FOR GRADING, AGG. BASE, MILLING, PM BITUMINOUS, CURB & GUTTER, SIDEWALK, STRIPING, TOPSOIL & TURF EST.**

LOCATED ON CSAH 12 BETWEEN SOUTHEAST CITY LIM. ST. MARTIN AND 2260' S. OF CR 111 NEAR RICHMOND (GEOGRAPHIC DESCRIPTION)  
FROM A PT. 2353' NE OF THE E1/4 COR. SEC. 35, T124N, R32W TO A PT. 1023' SW OF THE SE COR. SEC. 35, T124N, R32W (LEGAL DESCRIPTION)

STATE AID PROJECT NO. 073-612-023  
GROSS LENGTH 34810 FEET 6.593 MILES  
BRIDGES-LENGTH \_\_\_\_\_ FEET \_\_\_\_\_ MILES  
EXCEPTIONS-LENGTH \_\_\_\_\_ FEET \_\_\_\_\_ MILES  
NET LENGTH 34810 FEET 6.593 MILES

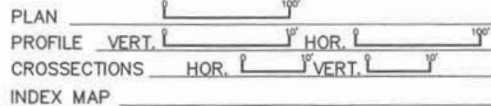
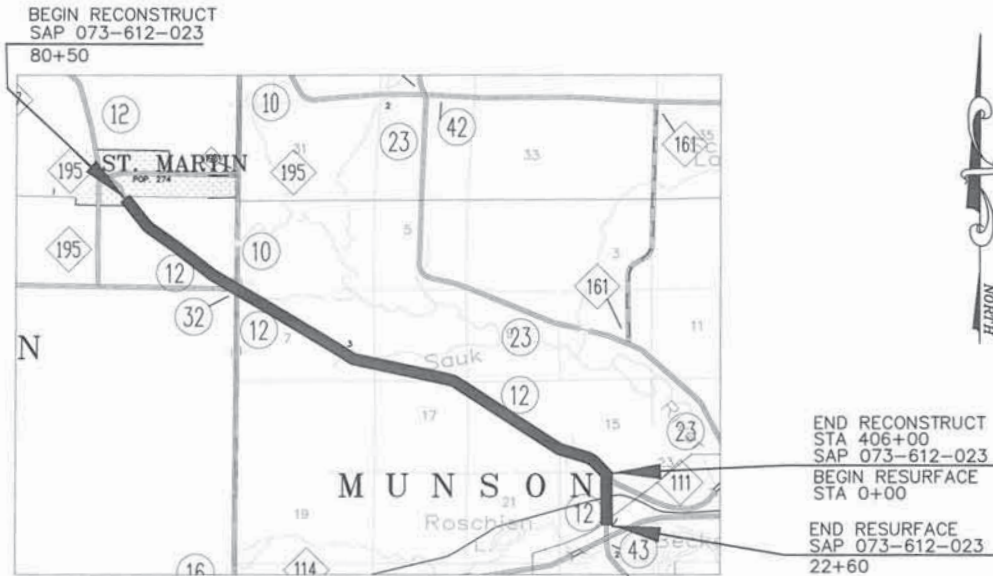
### PLANS SYMBOLS

STATE LINE	-----
COUNTY LINE	-----
TOWNSHIP OR RANGE LINE	-----
SECTION LINE	-----
QUARTER LINE	-----
SIXTEENTH LINE	-----
RIGHT-OF-WAY LINE	-----
SLOPE EASEMENT	-----
PRESENT RIGHT-OF-WAY LINE	-----
CONTROL OF ACCESS LINE	-----
PROPERTY LINE (Except Land Lines)	-----
VACATED PLATTED PROPERTY	-----
TEMPORARY SLOPE EASEMENT	-----
CORPORATE OR CITY LIMITS	-----
TRUNK HIGHWAY CENTER LINE	-----
RETAINING WALL	-----
RAILROAD	-----
RAILROAD RIGHT-OF-WAY LINE	-----
RIVER OR CREEK	-----

BUILDING (One Story Frame)	-----
F-FRAME	-----
S-STONE	-----
B-BRICK	-----
IRON PIPE OR ROD	-----
MONUMENT (Stone, Concrete, or Metal)	-----
WOODEN HUB	-----
GRAVEL PIT	-----
SAND PIT	-----
BORROW PIT	-----
ROCK QUARRY	-----

### UTILITIES SYMBOLS

POWER POLE LINE	-----
TELEPHONE OF TELEGRAPH POLE LINE	-----
JOINT TELEPHONE AND POWER ON POWER POLES	-----
ON TELEPHONE POLES	-----
ANCHOR	-----
STEEL TOWER	-----
STREET LIGHT	-----
PEDESTAL (Telephone Cable Terminal)	-----
GAS MAIN	-----
WATER MAIN	-----
CONDUIT	-----
TELEPHONE CABLE IN CONDUIT	-----
ELECTRIC CABLE IN CONDUIT	-----
ELECTRIC MANHOLE	-----
BURIED TELEPHONE CABLE	-----
BURIED ELECTRIC CABLE	-----
AERIAL TELEPHONE CABLE	-----
SEWER (Sanitary or Storm)	-----
SEWER MANHOLE	-----



MN PROJ. NO. \_\_\_\_\_

**GOVERNING SPECIFICATIONS**  
The 2020 edition of the Minnesota Department of Transportation "Standard Specifications for Construction" Shall Govern

### INDEX

SHEET NO. 1	TITLE SHEET
SHEET NO. 2-3	ESTIMATED QUANTITIES
SHEET NO. 4	CONSTRUCTION NOTE & STANDARD PLATES
SHEET NO. 5-7	TABULATION OF QUANTITIES
SHEET NO. 8-14	TYPICAL SECTIONS
SHEET NO. 15	STRIPING DETAILS
SHEET NO. 16	STRIPING TABULATIONS
SHEET NO. 17-27	EXISTING UTILITIES
SHEET NO. 28-32	SWPPP
SHEET NO. 33-41	EROSION CONTROL DETAILS
SHEET NO. 42-44	EROSION TABULATIONS
SHEET NO. 45-68	EROSION CONTROL PLAN
SHEET NO. 69-71	DETOUR LAYOUT
SHEET NO. 72	DETOUR LAYOUT SIGN TABULATIONS
SHEET NO. 73	TEMP. SQ. TUBE GR. MOUNTED SIGN PL.
SHEET NO. 74	LIGHTING
SHEET NO. 75	INFILTRATION DETAILS
SHEET NO. 76-102	PLAN AND PROFILE
SHEET NO. 103-118	EARTHWORK QUANTITIES
SHEET NO. 119-191	CROSS SECTIONS

THIS PLAN CONTAINS 191 SHEETS

### DESIGN DESIGNATION

	<u>CSAH 12</u>
SIGMA N18 =	340,871
R-VALUE =	20
AADT (YR. 2024) =	1368
AADT (YR. 2044) =	1778
HCADT =	5.9%
TON DESIGN =	10
PARKING LANES	
SHOULDER WIDTH =	6'
LANES =	2-12"
FUNC. CLASS. =	MAJOR COLLECTOR
REQUIRED GE. =	20.0"
DESIGN G.E. =	21.0"

Design Speed 55 M.P.H. STA. 80+50 TO 406+00 (RURAL) RECONSTRUCTION  
STA. 0+00 TO 22+60 (RURAL) RECONDITIONING

Based On Stopping Sight Distance  
Height Of Eye 3.5' Height Of Object 2.0'

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE OF THE STATE OF MINNESOTA.

APPROVED: \_\_\_\_\_ LIC. NO. 41633 DATE \_\_\_\_\_  
JODI L. TEICH  
STEARNS COUNTY ENGINEER

REVIEWED FOR COMPLIANCE WITH STATE AID RULES/POLICY \_\_\_\_\_ DATE \_\_\_\_\_

DISTRICT STATE AID ENGINEER: \_\_\_\_\_ DATE \_\_\_\_\_  
APPROVED FOR STATE AID FUNDING: \_\_\_\_\_ DATE \_\_\_\_\_

FOR STATE AID ENGINEER \_\_\_\_\_



## WETLAND IMPACTS

PERMANENT WETLAND IMPACTS (FILL)



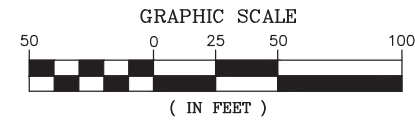
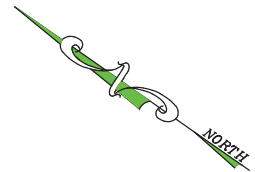
TEMPORARY WETLAND IMPACTS



WETLAND #1 - TYPE 2 FWM/WET DITCH WITH RCG AND SMART WEED  
 PERMANENT IMPACTS: 2435 SQFT (.05 ACRES) INCIDENTAL (WET DITCH)

WETLAND #2 - TYPE 2 FWM WITH RCG AND SEDGE  
 PERMANENT IMPACTS: 1347 SQFT (.03 ACRES)  
 TEMPORARY IMPACTS: 1895 SQFT (.04 ACRES)

WETLAND #12 - TYPE 2 FWM SEDGE AND RCG  
 PERMANENT IMPACTS: 176 SQFT  
 TEMPORARY IMPACTS: 1402 SQFT (.03 ACRES)



AQUATIC RESOURCE



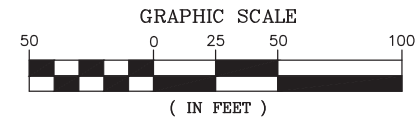
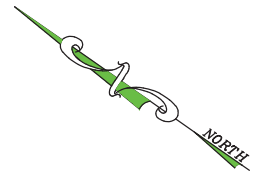
### WETLAND IMPACTS

PERMANENT WETLAND IMPACTS (FILL)



WETLAND #4 - TYPE 1 CROP STRESS  
PERMANENT IMPACTS: 28 SQFT  
TEMPORARY IMPACTS: 392 SQFT

TEMPORARY WETLAND IMPACTS



AQUATIC RESOURCE





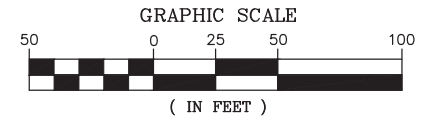
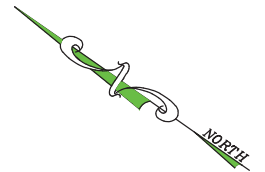
### WETLAND IMPACTS

PERMANENT WETLAND IMPACTS (FILL)



WETLAND #6 - TYPE 2 FWM WITH RCG WET DITCH  
PERMANENT IMPACTS: 287 SQFT INCIDENTAL WET DITCH

TEMPORARY WETLAND IMPACTS



AQUATIC RESOURCE



### WETLAND IMPACTS

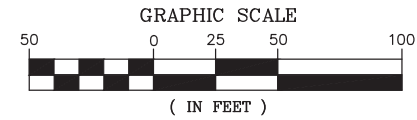
PERMANENT WETLAND IMPACTS (FILL)



TEMPORARY WETLAND IMPACTS



WETLAND #11 - TYPE 2 FWM WITH RCG WET DITCH DRAIN TILE SUPPLIES WATER  
PERMANENT IMPACTS: 46 SQFT INCIDENTAL WET DITCH  
PERMANENT IMPACTS: 177 SQFT INCIDENTAL WET DITCH



AQUATIC RESOURCE