



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

12 March 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),¹ [MVP-2024-00214-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.² 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.³

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

1. SUMMARY OF CONCLUSIONS.

¹ 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.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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 W-01, non-jurisdictional \(b\)\(3\) 0.23-acre](#)
 - ii. [Wetland W-02, non-jurisdictional \(b\)\(3\) 0.03-acre](#)
 - iii. [Wetland WD-01, non-jurisdictional \(b\)\(3\) 0.10-acre](#)
 - iv. [Portion of Wetland W-03, non-jurisdictional \(b\)\(3\) 0.03-acre](#)
 - v. [Wetland W-04, non-jurisdictional \(a\)\(5\) 0.10-acre](#)

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 57 acres in size and consists of a urban study area along the south bank of the Rainy River and Highway 11. The review area is identified by the red polygon and red circled review area on the attached figures. The approximate center of the review area is located at 48.602254 N, -93.395349 W near the city of International Falls, in Koochiching County, Minnesota.](#)

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [\[N/A\]](#)⁵

⁵ 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 WATERS⁶: 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 10.⁷ [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](#)

⁶ 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.

⁷ 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.

- 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).⁸ The review area contains 4 wetlands that meet the 33 CFR 328.3(b)(3) Certain Ditches exclusion. These wetlands were excavated wholly in uplands, drain only uplands, and do not contain relatively permanent flow. These manmade ditches were created to convey precipitation runoff from Highway 11 to the main culvert in wetland W-03 that outlets into the Rainy River. The easterly portion of W-03 along Highway 11 meets the exclusion and is circled in red on the attached Figure 5.
- 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 1 wetland that is considered not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule. This wetland is not a TNW, territorial sea, or interstate water and therefore is not (a)(1) water. The wetland delineation, topographical maps, Google Earth, and the National Regulatory Viewer indicate that this wetland does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and is not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. The wetlands is surrounded by upland with no natural or constructed outlet. There are no ditches, swales, pipes, or culverts that connect this wetland to a downstream jurisdictional water. This wetland is a non-tidal wetland that does not have a continuous surface connection to a relatively permanent jurisdictional water and as such does not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetland; therefore, this wetland is not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.

⁸ 88 FR 3004 (January 18, 2023)

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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 March 1, 2024.](#)
 - b. [Wetland Delineation, Stantec Consulting Services Inc., January 2024.](#)
 - c. [National Regulatory Viewer Lidar, Digital Elevation Model, and Soils data.](#)
 - d. [Google Earth historical imagery.](#)

10. OTHER SUPPORTING INFORMATION.


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.



1

Client/Project	193806560
Snow-Kriech Architects	
GSA International Falls LPE	
Wetland Delineation	

N



0 1,000 2,000 Feet
(At original document size of 11x17)
1:24,000

 Study Area

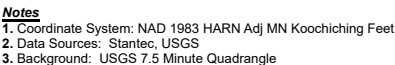
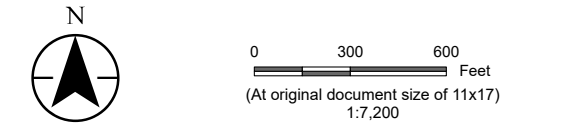


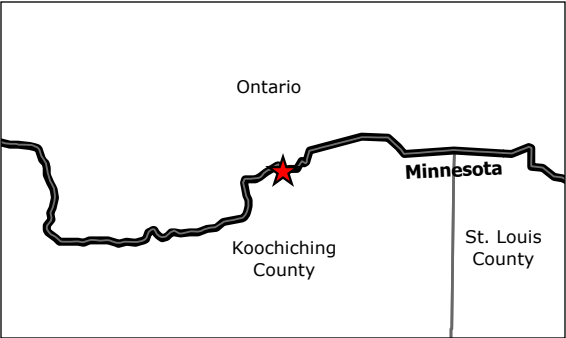


Figure No.
3
Title
MN Protected & Public Waters

Client/Project
Snow-Kriech Architects
GSA International Falls LPE
Wetland Delineation
193806560
Project Location
T71N, R24W, S27, 34 & 35
International Falls, Koochiching Co., MN
Prepared by KJM on 2023-10-26



- Legend
- Study Area
 - Public Watercourses
 - ~ Public Water Watercourse
 - Public Waters Basins



Notes
1. Coordinate System: NAD 1983 UTM Zone 15N
2. Data Sources: Stantec, MnDOT, MnDNR
3. Background: 2020 Koochiching Co.



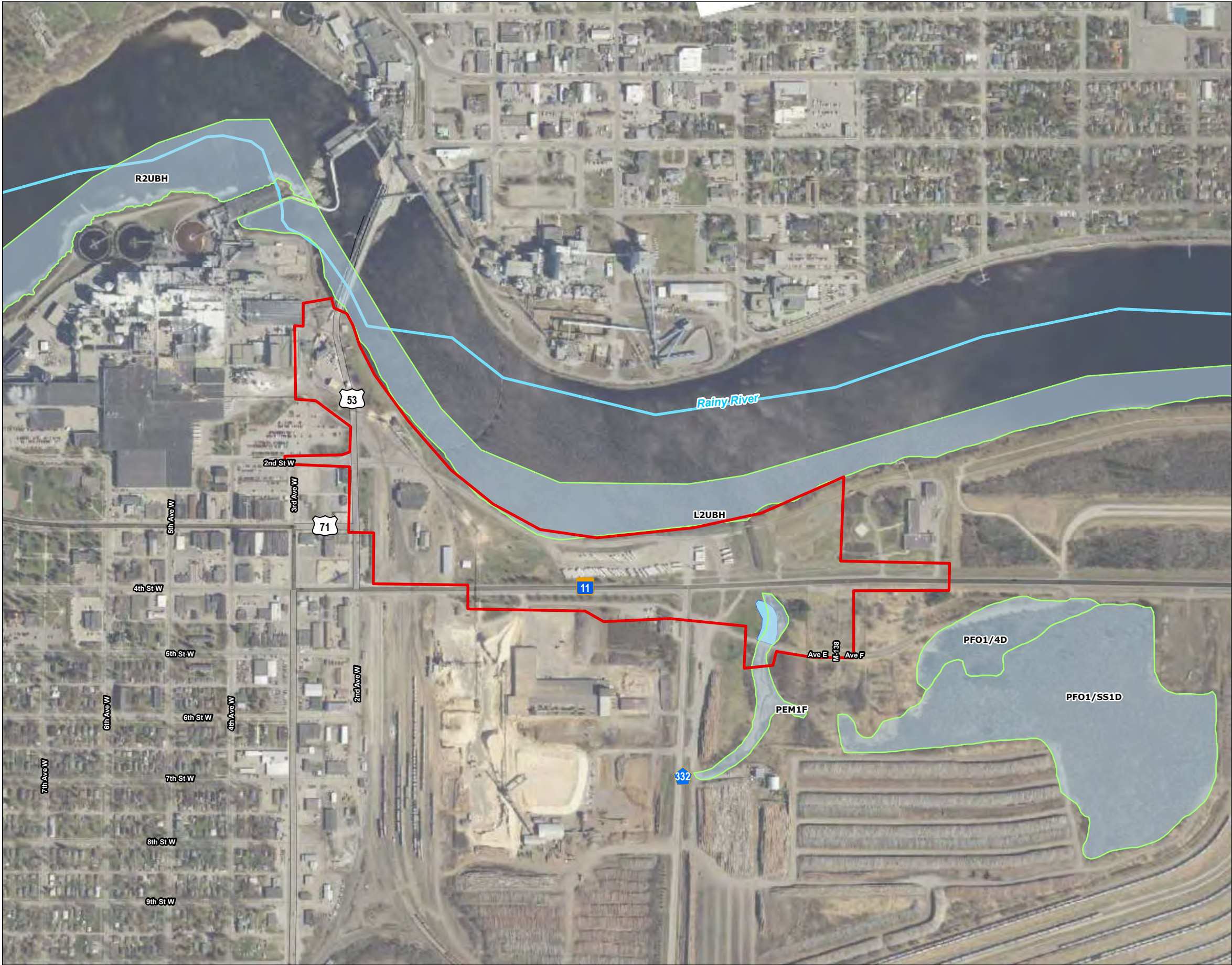


Figure No.
4

Title
National Wetlands Inventory and National Hydrography Dataset

Client/Project
Snow-Krielich Architects
GSA International Falls LPE
Wetland Delineation

Project Location
T71N, R24W, S27, 34 & 35
International Falls, Koochiching Co., MN

193806560

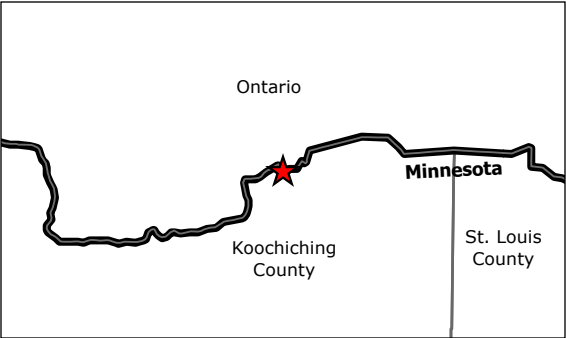
Prepared by KJM on 2023-10-26

N

0 300 600 Feet
(At original document size of 11x17)
1:7,200

Legend

- Study Area
- National Wetlands Inventory Feature
- National Hydrography Dataset
- Stream
- Waterbody



Notes

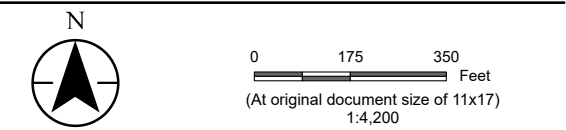
1. Coordinate System: NAD 1983 HARN Adj MN Koochiching Feet
2. Data Sources: Stantec, USGS, MnDOT, MnDNR
3. Background: 2020 Koochiching Co.



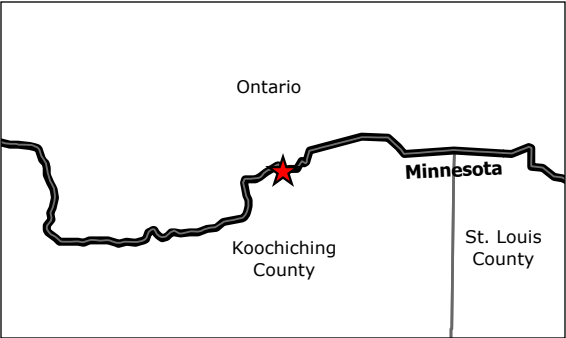


Figure No.
5
Title
Field Collected Data

Client/Project
Snow-Kriech Architects
GSA International Falls LPE
Wetland Delineation
193806560
Project Location
T71N, R24W, S27, 34 & 35
International Falls, Koochiching Co., MN
Prepared by KJM on 2023-10-26



- Legend
- ▲ Culvert
 - Ⓢ Sample Point
 - Photo Location
 - ~ Contours (2ft)
 - Top of Bank
 - Delineated Wetland Area
 - Study Area



Notes
1. Coordinate System: NAD 1983 HARN Adj MN Koochiching Feet
2. Data Sources: Stantec, MnDOT, MnDNR
3. Background: 2020 Koochiching Co.

