

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

MVP-2024-00521-MWM

August 6, 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> 2024-00521-MWM. 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.

<sup>&</sup>lt;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>&</sup>lt;sup>2</sup> 33 CFR 331.2.

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

<sup>&</sup>lt;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 2, 0.11 acre. Non-jurisdictional.
- ii. Wetland 3, 0.03 acre. Non-jurisdictional.
- iii. Wetland 4, 0.05 acre. Non-jurisdictional.
- iv. Wetland 6, 0.28 acre. Non-jurisdictional.
- v. Wet Ditch 1, 0.05 acre. Excluded water, not a Water of the US.
- vi. Wet Ditch 2, 0.21 acre. Excluded water, not a Water of the US.
- vii. Wet Ditch 3, 0.01 acre. Excluded water, not a Water of the US.
- viii. Wet Ditch 4, 0.01 acre. Excluded water, not a Water of the US.
- ix. Wet Ditch 5, 0.07 acre. Excluded water, not a Water of the US.

## 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 6194 (September 8, 2023))
- c. Sackett v. EPA, 598 U.S., 143 S. Ct. 1322 (2023)
- 3. REVIEW AREA. The review area is limited to the aquatic resources identified above in Section 1.a and on the attached figures labeled 2024-00521-MWM on figures 3 and 4 of 4. The review area is located in Section 25, Township 120 North, Range 23 West in Hennepin County, Minnesota.
- 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
- 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

<sup>&</sup>lt;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.

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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

## 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

<sup>&</sup>lt;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.

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>

The features within the review area include Wet Ditch 1-5, which are excluded features. The features fit under the definition of a b(3) excluded water (ditch) as they were created by excavating dry land and the features drain only dry land and they don't carry relatively permanent flow, nor are they relocated tributaries.

The features are all wet ditches located on placed fill for the construction of the linear feature they are adjacent to, either Territorial Road, County State Aid Highway (CSAH) 81, or a railroad track. Wet Ditch 1 is along Territorial Road, Wet Ditch 2, 3, and 4 are along CSAH 81, and Wet Ditch 5 is along a railroad line between CSAH 81 and Territorial Road.

In a review of recent aerial photos from 2015-2018, 2020, and 2022, water is not visible in the ditch of Wet Ditch 1. The ditch is visible on Lidar imagery. The National Wetland Inventory (NWI) does not identify a mapped aquatic feature in the area of Wet Ditch 1. Additionally, the USA Soils Map Units and USA Soils Hydric Class layers on the National Regulatory Viewer (NRV) identify the area of Wet Ditch 1 as containing partially hydric soils (1-25%) concluding that this feature was constructed in dry land.

In a review of aerial photos, CSAH 81 was built between 1953 and 1957. Prior to construction, USGS topographic maps from 1909 and 1932 do not identify wetlands or a topographic drainage feature within the area of Wet Ditch 2, 3, and 4 or near those areas. Aerial photos from 1947 and 1953 do not show wetland signatures nor drainage features along the location where the ditches would have been cut. Following construction, a USGS topographic map from 1959 continues not to identify wetlands or a topographic drainage feature in the area of the aforementioned aquatic resources.

The Wetland Delineation Report identified gravel within the fill of Wet Ditch 5. USGS topographic maps from 1909, 1932, nor 1959 identify a wetland or drainage feature in the area of Wet Ditch 5. The National Wetland Inventory (NWI) does not identify a mapped aquatic feature near Wet Ditch 5. Additionally, the USA Soils Map Units and USA Soils Hydric Class layers on the National Regulatory Viewer (NRV) identify the area of Wet Ditch 5 as containing partially hydric soils (1-25%) concluding that this feature was constructed in dry land.

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

In conclusion, Wet Ditch 1-5 each meet the definition of a (b)(3) excluded ditch as they were created by excavating dry land, drain only dry land, and the features don't carry relatively permanent flow, nor are they relocated tributaries. Thus, these features are 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).

The features within the review area, Wetlands 2-4 and 6, are not a TNW, territorial sea, nor interstate water and therefore are not (a)(1) waters. These wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or jurisdictional (a)(3) tributary and are not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. The nearest tributary is Rush Creek (M-062-004), located approximately 1.0 mile south of Wetland 2. No public watercourse or basin are within the review area.

The boundary of Wetlands 3, 4, and 6 are fully captured within the wetland delineation boundary. The Wetland Delineation Report did not identify a culvert within or around these aquatic resources. A review of Lidar imagery from NRV confirms that the resources do not extend beyond the review area. 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.

Wetland 2 continues to the east beyond the delineation boundary. In a review of recent aerial photos from 2013-2023, potential signatures of wetland presence is contained within the center of the farm field and does not continue to a confined topographic feature. Additionally, USGS topographic maps from 2013, 2016, 2019, and 2022 do not show a topographic change in the area of Wetland 2. However, the MN Contours – 2 ft layer on the NRV shows a depression closely following the boundary in the Wetland Delineation Report that is approximately 2 feet lower than the surrounding landscape. 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 (a)(4) adjacent wetland.

Considering the information above, these features have been determined to each be a non-jurisdictional feature and not subject to Section 404 of the CWA.

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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. Wetland Delineation Report prepared by WSB (Chaldelia Browne) on November 8, 2023.
  - Layers accessed on the National Regulatory Viewer include USA Soils Map Units, USA Soils Hydric Class, National Wetland Inventory (NWI), MN Contours – 2 ft, and MNDNR Hillshade – 2016.
  - c. USGS Topographic Maps from 1909, 2016, 2019, and 2022.
  - d. Topographic Maps from 1909, 1932, 1959, 2013, 2016, 2019, 2022 and aerial photos from 1947, 1953, and 1957 accessed on Historic Aerials by Netroline.
  - e. Aerial photos from 1945 and 1967 accessed on Minnesota Historical Aerial Photographs Online.
  - f. Google Earth Pro images from 1991, 2003-2006, 2009-2023.
- 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.



MINN. PROJECT NO.:

XXXX (XXX)

## GOVERNING SPECIFICATIONS

THE 2020 EDITION OF THE MINNESOTA DEPARTMENT OF TRANSPORTATION "STANDARD SPECIFICATIONS FOR CONSTRUCTION" SHALL GOVERN.

ALL TRAFFIC CONTROL DEVICES SHALL CONFORM TO THE LATEST EDITION OF THE MINNESOTA MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES, INCLUDING THE LATEST EDITION OF THE FIELD MANUAL FOR TEMPORARY TRAFFIC CONTROL ZONE LAYOUTS.

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THIS PLAN CONTAINS 186 SHEETS.

ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS AND ORDINANCES WILL BE COMPLIED WITH IN THE CONSTRUCTION OF THIS PROJECT.

## WSD

DESIGN ENGINEER: 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 STATE OF MINNESOTA.

PRINTED NAME: ANDREW J. PLOWMAN, PE 



CITY PROJECT 1409 COUNTY PROJECT 2021000 SP 238-136-001

SHEET NO. 1 OF148 SHEETS



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## **CO 81 RURAL SECTION**



# FAST PATH ANALYSIS





-	ASI	$\neg A \mid H$		ALYSIS	
Approach	Curve	Radius	Speed	Relative Speed Differential	Distance to Crosswal
Northbound	R1	134	22.8	7.5	
	R2	122	20.2	4.9	
	R3		28	12.7	56
	R4	57	15.3	0.0	
	R5	98	20.2	4.9	
Southbound	R 1	138	23.1	7.8	
	R2	95	18.4	3.2	
	R3		27	11.7	58
	R4	57	15.3	$\bigcirc$ . $\bigcirc$	
	R5	1 1 1	21.2	5.9	
Westbound	R 1	122	22.0	6.7	
	R2	98	18.6	3.4	
	R3		27	11.7	60
	R4	57	15.3	0.0	
	R5	79	18.6	3.3	
Eastbound	R 1	128	22.4	7.1	
	R2	100	18.8	3.5	
	R3		27	11.7	56
	R4	57	15.3	0.0	
	R5	82	18.9	3.6	

1. R3 IS CALCULATED USING R2 OR R4 SPEED + ACCELERATION TO CROSSWALK 2. RELATIVE SPEED DIFFERENTIAL IS FROM MINIMUM SPEED (TYP. R4) WITHIN ROUNDABOUT 3. RELATIVE SPEED DIFFERENCE SHOULD BE IN THE RANGE OF NO MORE THAN 10-15 MPH, ACCORDING TO NCHRP REPORT 672: ROUNDABOUTS AN INFORMAL GUIDE: SECOND EDITION





Wetland Impacts Fletcher Lane Improvements SP 238-137-002

City of Rogers, Minnesota

1 OF 2 SHEETS



SP 238-137-002

City of Rogers, Minnesota

2

SHEETS