SECTION I: BACKGROUND INFORMATION
A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 19, 2019

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): MVP-2019-01167-BGO

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: Minnesota  County/parish/borough: Olmsted  City: Stewartville
Center coordinates of site (lat/long in degree decimal format): Lat. 43.8851, Long. -92.4882.
Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: ☑ attached in report/map titled .
☐ Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different JD form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1): .

D. REVIEW PERFORMED FOR SITE EVALUATION:
☑ Office (Desk) Determination Only. Date: December 17, 2019.
☐ Office (Desk) and Field Determination. Office/Desk Date(s):  Field Date(s): .

SECTION II: DATA SOURCES
Check all that were used to aid in the determination and attach data/maps to this JD form and/or references/citations in the administrative record, as appropriate.
☑ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: MnDOT SP 5509-84/I-90 and TH 63 Joint Application Form, May 2019 – Revised November 2019.
☑ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☐ Office does not concur with data sheets/delineation report. Summarize rationale and include information on revised data sheets/delineation report that this JD form has relied upon: . Revised Title/Date: .
☐ Data sheets prepared by the Corps. Title/Date: .
☐ Corps navigable waters study. Title/Date: .
☐ CorpsMap ORM map layers. Title/Date: .
☐ USGS Hydrologic Atlas. Title/Date: .
☑ USGS, NHD, or WBD data/maps. Title/Date: NHD – High Resolution – MN, 2015.
☐ USGS 8, 10 and/or 12 digit HUC maps. HUC number: .
☐ USDA NRCS Soil Survey. Citation: .
☐ USFWS National Wetlands Inventory maps. Citation: USFWS NWI of MN, 1974-1978.
☐ State/Local wetland inventory maps. Citation: DNR NWI Update – MN, 2010-2018.
☐ FEMA/FIRM maps. Citation: .
☐ Photographs: ☑ Aerial. Citation: 2017 FSA and MN Historical Aerial Photographs from 1940 and 1953. or ☐ Other. Citation: .
☐ LiDAR data/maps. Citation: .
☐ Previous determinations. File no. and date of jurisdictional determination letter: .
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☐ Other information (please specify): .
SECTION III: SUMMARY OF FINDINGS

Complete Spreadsheet Tab “Aquatic Resources” – Required for All AJDs

A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:

☐ “navigable waters of the U.S.” within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

- List water(s) and area/length within review area – Required:

*NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: “waters of the U.S.” within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. Check all that apply.

- Complete Spreadsheet Tab “(a)(1)” - Required
  - This JD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

- Complete Spreadsheet Tab “(a)(2)” - Required
  - Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.

- Complete Spreadsheet Tab “(a)(3)” - Required
  - Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.

- Complete Spreadsheet Tab “(a)(4)” - Required
  - Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.

- Complete Spreadsheet Tab “(a)(5)” - Required
  - Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.

- Complete Spreadsheet Tab “(a)(6)” - Required
  - Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.

- Complete Spreadsheet Tab “(a)(8)” - Required
  - Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.

- Complete Spreadsheet Tab “(c)(2)(i)” - Required
  - Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.

- Complete Spreadsheet Tab “(c)(2)(ii)” - Required
  - Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.

- Complete Spreadsheet Tab “(c)(2)(iii)” - Required
  - Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.

- Complete Spreadsheet Tab “(a)(7)” for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. – Required

- Complete Spreadsheet Tab “(a)(8)” for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. – Required

C. NON-WATERS OF THE U.S. FINDINGS:

Check all that apply.

☐ The review area is comprised entirely of dry land.
Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- Complete Spreadsheet Tab “NonWaters-No SigNex”. Attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. – Required

- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.

Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- Complete Spreadsheet Tab “NonWaters-No SigNex”. Attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. – Required

- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.

Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):

- Complete Spreadsheet Tab “NonWaters-Excluded” - Required

- (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.
- (b)(2): Prior converted cropland.
- (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
- (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
- (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).
- (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.
- (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.
- (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.¹
- (b)(4)(iv): Small ornamental waters created in dry land.¹
- (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.
- (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.¹
- (b)(4)(vii): Puddles.¹
- (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.¹
- (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.¹
- (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distirbutionary structures built for wastewater recycling.

- Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).

- Complete Spreadsheet Tab “NonWaters-Other” - Required

D. ADDITIONAL COMMENTS TO SUPPORT JD: The review area for this determination is limited to the boundaries of nine roadside ditches labeled as Resources 2, 9, 10, 13, 14, 16, 19, 20, and 22, and one stormwater control feature labeled as Resource 21 on the attached figures and tables labeled MVP-2019-01167-BGO MnDOT SP 5509-84/I-90-TH 63 AJD Attachments, Pages 1-8 of 8. The total area of non-jurisdictional waters/features is approximately 9.76 acres.

The ditches are constructed features that are not relocated tributaries, are not excavated in a tributary, and do not convey perennial or intermittent flow. This was confirmed by reviewing aerial photography, national hydrography data, and the wetland delineation report. Based on this review, the evaluated ditches are not jurisdictional under the 2015 Clean Water Rule because they meet the terms of paragraph (b)(3)(i).

Resource 21 is located within the westbound interchange ramps of Interstate 90 (I-90) and Trunk Highway (TH) 63, which was constructed in dry land by the Minnesota Department of Transportation in the 1970’s to convey, treat, or store stormwater within the interchange. This was confirmed by reviewing aerial photography and topographic maps.

¹ In many cases these excluded features will not be specifically identified on the approved JD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.
from 1940-1972, which shows the stormwater control feature was constructed where a large farmstead was located prior to the construction of I-90. The historic aerial photographs also show existing TH 63 intersecting with a local roadway at this location. Based on this review, the evaluated stormwater control features are not jurisdictional under the 2015 Clean Water Rule because they meet the terms of paragraph (b)(6).