This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION
A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 02/01/2018

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2011-03458-MMJ; Kinder Morgan/Dakota Bulk Terminal Facility (Wetland 2)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
   State: MN    County/parish/borough: Dakota    City: South St. Paul
   Center coordinates of site (lat/long in degree decimal format): Lat. 44.87335° N, Long. -93.02010° W
   Universal Transverse Mercator: X: 498412.16, Y: 4968881.14
   Name of nearest waterbody: Minnesota River
   Name of watershed or Hydrologic Unit Code (HUC): 07010206
   □ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
   □ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
   □ Office (Desk) Determination. Date: January 30, 2018
   □ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS
A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.: N/A

2. Non-regulated waters/wetlands (check if applicable):¹
   □ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain: The review area includes two wetland features, labeled Wetland 2 (W-2) and Wetland 4 on the enclosed figures, but this Approved Jurisdictional Determination (AJD) is only for W-2. W-2, approximately 0.12 acre in size, developed as a result of excavation in a previously non-wetland/upland area, and it is not a jurisdictional waters of the U.S. (WOUS) under Section 404 of the CWA. The area around W-2 was likely historically wetland, but it was filled and leveled around 1993 during development of Kinder Morgan’s 3M/Dakota Bulk Terminal processing facility immediately to the west, at which point this area became non-wetland. The approximately 1 acre area around W-2 was excavated in 2014 in order to dry dredge spoil from the harbor, to facilitate construction/industry activities at the terminal. The dry spoil was later removed and the excavated area was subsequently left idle, as confirmed by the historic aerials that were submitted with the wetland delineation for this project. This allowed wetland characteristics to develop within the lowest elevations of the pit where water would pond. However, the purpose of the excavation was not to restore or create wetland at this location, it was created incidental to ongoing construction and dredging activities on the property. Staff from Kinder Morgan recently indicated that dredging operations are ongoing on the property, depending on need, and they could potentially fill the W-2 area with dredged material in the future. The non-jurisdictional determination for W-2 was completed pursuant to the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), which states that the Corps does not generally consider the following to be waters of the U.S.:“Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States.”

¹ Supporting documentation is presented in Section III.F.
SECTION III: CWA ANALYSIS
A. TNWs AND WETLANDS ADJACENT TO TNWs: N/A
B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY): N/A
C. SIGNIFICANT NEXUS DETERMINATION: N/A
D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY): N/A
E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY): N/A
F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):
   - If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
   - Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
     - Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
     - Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain:
       - Other (explain, if not covered above): W-2, approximately 0.12 acre in size, was created on dryland incidental to ongoing construction/dredging activities on the Kinder Morgan property.

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
   - Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
   - Lakes/ponds: acres.
   - Other non-wetland waters: acres. List type of aquatic resource: .
   - Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):
   - Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
   - Lakes/ponds: acres.
   - Other non-wetland waters: acres. List type of aquatic resource: .
   - Wetlands: acres.

SECTION IV: DATA SOURCES.
A. SUPPORTING DATA. Data reviewed for JD (check all that apply) - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
   - Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Tetratech
   - Data sheets prepared/submitted by or on behalf of the applicant/consultant.
     - Office concurs with data sheets/delineation report.
     - Office does not concur with data sheets/delineation report.
   - Data sheets prepared by the Corps:
     - Corps navigable waters’ study:
     - U.S. Geological Survey Hydrologic Atlas:
       - USGS NHDA data.
       - USGS 8 and 12 digit HUC maps.
     - U.S. Geological Survey map(s). Cite scale & quad name: 1:24 k MN - Inver Grove Heights
     - USDA Natural Resources Conservation Service Soil Survey. Citation: Dakota Co.
     - National wetlands inventory map(s). Cite name: historic and 2014
     - State/Local wetland inventory map(s):
     - FEMA/FIRM maps:
     - 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
     - or Other (Name & Date):
   - Previous determination(s). File no. and date of response letter:
   - Applicable/supporting case law:
   - Applicable/supporting scientific literature:
B. ADDITIONAL COMMENTS TO SUPPORT JD: According to the preamble to the Corps 1986 regulations W-2, referenced above and shown on the attached figures, is not waters of the U.S. (WOUUS) and is not regulated under Sec. 404 of the CWA.
Figure 1 - Project Location
Dakota Bulk Terminal
925 Hardman Avenue
South St. Paul, Dakota County, MN

Source: Map adapted from ArcGIS Map Server USA Topos - 24k: Inver Grove Heights, Saint Paul East, Lake Elmo and Saint Paul Park (1993)
Figure 2 - National Wetlands Inventory

Dakota Bulk Terminal
925 Hardman Avenue
South St. Paul, Dakota County, MN

Source: Map adapted from Bing Map Server and U.S. Fish and Wildlife Service National Wetlands Inventory.

Freshwater Emergent Wetland
Freshwater Forested/Shrub Wetland
Freshwater Pond
Riverine

Assessment Area
Dakota Bulk Terminal Property

0 125 250 375 500 Feet
Figure 3 - Public Waters Inventory
Dakota Bulk Terminal
925 Hardman Avenue
South St. Paul, Dakota County, MN

Source: Map adapted from Bing Map Server and Minnesota Department of Natural Resources Public Waters Inventory.
Figure 5 - Wetland Survey Results
Dakota Bulk Terminal
925 Hardman Avenue
South St. Paul, Dakota County, MN

Source: Map adapted from Bing Map Server and Minnesota Department of Natural Resources 2-foot elevation contours.