



Regulatory Program

APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in the Approved Jurisdictional Determination Form User Manual.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): January 03, 2019

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): MVP-2016-01739-MMJ

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Minnesota

County/parish/borough: Hennepin

City: Rogers

Center coordinates of site (lat/long in degree decimal format): Lat. 45.169666, Long. -93.520685.

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: November 07, 2018.

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:

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Office concurs with data sheets/delineation report.. Title/Date: CSAH 81 & CR 13 Delineation Report, dated May 25, 2016.

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:

USGS maps. Scale & quad name and date: 1:24k – MN - Rogers.

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, 2010-2016.

FEMA/FIRM maps. Citation:

Photographs: Aerial. Citation: 2017 FSA. 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.

- (a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters or TNW).
- **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.
- (a)(2): All interstate waters, including interstate wetlands.
- **Complete Spreadsheet Tab “(a)(2)” - Required**
- (a)(3): The territorial seas.
- **Complete Spreadsheet Tab “(a)(3)” - Required**
- (a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.
- **Complete Spreadsheet Tab “(a)(4)” - Required**
- (a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Spreadsheet Tab “(a)(5)” - Required**
- (a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.
- **Complete Spreadsheet Tab “(a)(6)” - Required**
- Bordering/Contiguous.
Neighboring:
- (c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.
- (c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.
- (c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.
- (a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **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**
- 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.
- (a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **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**
- 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.

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 distributary 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 contains six roadside ditches labeled as Wetlands 1, 2, 4, 5, 6 & 7 that are highlighted in yellow on the attached figures and listed on the tables labeled MVP-2016-01739-MMJ CSAH 81 & CR 13 Intersection Reconstruction AJD Attachments, Pages 1-4 of 4. The features are labeled as wetlands, but they are constructed linear ditches. The total size of non-jurisdictional ditches is approximately 2,850 linear feet (0.69 acre). 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 dated May 2016. 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).

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.

Waters_Name	Cowardin_Code	HGM_Code	Meas_Type	Amount	Units	Waters_Type	Latitude	Longitude	Local_Waterway
Linear Ditch 1 (Wetland 1)	R6		Linear	600	FOOT	EXCLDB3I	45.16946	-93.52063	
Linear Ditch 2 (Wetland 2)	R6		Linear	500	FOOT	EXCLDB3I	45.16846	-93.51848	
Linear Ditch 3 (Wetland 4)	R6		Linear	100	FOOT	EXCLDB3I	45.1689	-93.52166	
Linear Ditch 4 (Wetland 5)	R6		Linear	200	FOOT	EXCLDB3I	45.16748	-93.52148	
Linear Ditch 5 (Wetland 6)	R6		Linear	450	FOOT	EXCLDB3I	45.16876	-93.51988	
Linear Ditch 6 (Wetland 7)	R6		Linear	1000	FOOT	EXCLDB3I	45.16784	-93.51766	

EXCLUDED WATERS OR FEATURES		
Linear Ditch 1	(b)(3)(i) Exclusion Criteria	Rationale for (b) Excluded feature and Additional Discussion.
Linear Ditch 1 (Wetland 1)	(b)(3)(i) Ditch Type A-Ephemeral ditch that is not a relocated tributary or excavated in a tributary	Constructed feature that only exhibits ephemeral flow and is not a relocated tributary or excavated in a tributary. Linear Ditch 1 is approximately 600 linear feet (0.14 acre) in size.
Linear Ditch 2 (Wetland 2)	(b)(3)(i) Ditch Type A-Ephemeral ditch that is not a relocated tributary or excavated in a tributary	Constructed feature that only exhibits ephemeral flow and is not a relocated tributary or excavated in a tributary. Linear Ditch 2 is approximately 500 linear feet (0.10 acre) in size.
Linear Ditch 3 (Wetland 4)	(b)(3)(i) Ditch Type A-Ephemeral ditch that is not a relocated tributary or excavated in a tributary	Constructed feature that only exhibits ephemeral flow and is not a relocated tributary or excavated in a tributary. Linear Ditch 3 is approximately 100 linear feet (0.008 acre) in size.
Linear Ditch 4 (Wetland 5)	(b)(3)(i) Ditch Type A-Ephemeral ditch that is not a relocated tributary or excavated in a tributary	Constructed feature that only exhibits ephemeral flow and is not a relocated tributary or excavated in a tributary. Linear Ditch 4 is approximately 200 linear feet (0.02 acre) in size.
Linear Ditch 5 (Wetland 6)	(b)(3)(i) Ditch Type A-Ephemeral ditch that is not a relocated tributary or excavated in a tributary	Constructed feature that only exhibits ephemeral flow and is not a relocated tributary or excavated in a tributary. Linear Ditch 5 is approximately 450 linear feet (0.12 acre) in size.
Linear Ditch 6 (Wetland 7)	(b)(3)(i) Ditch Type A-Ephemeral ditch that is not a relocated tributary or excavated in a tributary	Constructed feature that only exhibits ephemeral flow and is not a relocated tributary or excavated in a tributary. Linear Ditch 6 is approximately 1,000 linear feet (0.30 acre) in size.