DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
180 FIFTH STREET EAST, SUITE 700
ST. PAUL MN 55101-1678

REPLY TO
ATTENTION OF
Operations
Regulatory (2007-1914-DJS)

FEB 07 2012

FEB 13 2012

Mr. Kevin Pierce
Hawkes Peat Company, Inc.
P.O. Box 14111
Grand Forks, North Dakota 58208

Dear Mr. Pierce:

This is in response to your request that the Corps of Engineers provide an Approved Jurisdictional Determination on the 520- acre property (Mercil Site), now owned by Hawkes Peat Company, Inc. The project site is located in Sec. 13, T. 157N., R. 44W., Marshall County, Minnesota.

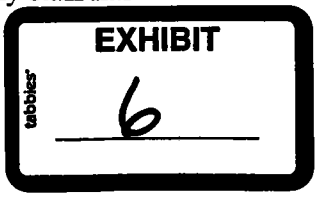
This letter contains an approved jurisdictional determination for your subject site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Mississippi Valley Division Office at the following address:

Administrative Appeals Review Officer
Mississippi Valley Division
P.O. Box 80 (1400 Walnut Street)
Vicksburg, MS 39181-0080
(601) 634-5821
(601) 634-5816 (fax)

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by

It is not necessary to submit an RFA form to the division office if you do not object to the determination in this letter

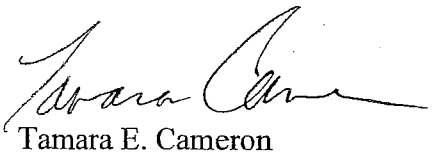
Please be aware that this determination **does not** specifically identify the limits of our jurisdiction on the Mercil Site. The attached Approved Jurisdictional Determination confirms that there are wetlands present and that they are waters of the U.S. and are subject to our jurisdiction under section 404 of the Clean Water Act (CWA). In this case, the limits of Federal jurisdiction would be established with a wetland delineation. As you are aware, my staff has



requested that you prepare and submit a wetland delineation for the Mercil Site. Once we have received the delineation, we can begin working towards verifying the limits of our jurisdiction.

Thank you for your cooperation with the U.S. Army Corps of Engineers regulatory program. If you have any questions, contact Mr. Dan Seemon in our St. Paul office at **(651) 290-5380**. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely,



Tamara E. Cameron
Chief, Regulatory Branch

Copy furnished:
Brian Ross, WSN w/enclosures

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL		
Applicant:Hawkes Peat Company, Inc.	File Number: 2007-1914-DJS	Date:2/7/2012
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/cecw/pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A. INITIAL PROFFERED PERMIT: You may accept or object to the permit.

• **ACCEPT**: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approve jurisdictional determinations associated with the permit.

• **OBJECT**: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B. .PROFFERED PERMIT: You may accept or appeal the permit.

• **ACCEPT**: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

• **APPEAL**: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C. PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D. APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

• **ACCEPT**: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

• **APPEAL**: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E. PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION

If you have questions regarding this decision and/or the appeal process you may contact:	If you only have questions regarding the appeal process you may also contact:
Mr. Dan Seemon U. S. Army Corps of Engineers, Regulatory Branch 180 Fifth Street East, Suite 700 St. Paul, Minnesota 55101-1678 Telephone (651) 290-5380	Administrative Appeals Review Officer Mississippi Valley Division P.O. Box 80 (1400 Walnut Street) Vicksburg, MS 39181-0080 (601) 634-5821 (601) 634-5816 (fax)

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

	Date:	Telephone number:
_____ Signature of appellant or agent.		

Section III.C. Significant Nexus Determination

Wetlands and streams are recognized as providing a number of important functions to downstream waters, both individually and cumulatively. These include maintenance of water quality, mitigation of storm and flood flows, maintenance of base flows, energy and nutrient export, pollutant and nutrient transformation and retention, and maintenance of wildlife habitat. The functions provided by the relevant reach and the nexus to the Red River are discussed in the following paragraphs.

Summary of Functions Provided by Wetlands in the Relevant Reach

The wetlands adjacent to the relevant reach of the tributary total approximately 590 acres. The wetlands are comprised of rich fen, aspen forest, willow swamp, and hardwood swamp vegetative communities. From a hydrogeomorphic classification perspective the wetlands are classified primarily as organic flats which are characterized as having a water regime dominated by precipitation while water loss is typically by overland flow and seepage to groundwater. Organic flats are also distinctive in that their elevation and topography are controlled by the vertical accretion of organic matter. Within the review area, Corps staff has confirmed that surface water flows from/through the wetland are generally to the south towards the Middle River. The surface elevations in the wetlands vary between 1,141 ft in the north to 1,134 ft in the south. The outlet of the wetlands is a man made surface ditch that carries flows to an unnamed tributary of the Middle River. Although the wetlands in the relevant reach are believed to function at a high level for all the functions considered[1], a few are called out for the significance of their relationship to the Red River.

The wetlands adjacent to the relevant reach of the tributary provide an important flood storage function. During a site investigation in June, 2011 Corps staff noted between 6 and 20 inches of standing water at various locations within and outside of the review area. The amount of surface water in the wetland decreased throughout the growing season, an indication that the wetland stores water early in the spring and summer. To estimate the potential surface water storage capacity of the wetlands in the relevant reach, the Corps utilized surface elevation data to conduct a coarse scale GIS based analysis. The analysis estimated that the wetland is able to provide over 200 acre-feet of storage.[2] This estimate does not consider the effects of vegetation, evapotranspiration, or the storage capacity of soils at the site. This potential storage is particularly important following spring runoff and following storm events when wetlands help to elongate the period during which water is released downstream thereby reducing the peak of the hydrograph in the Red River. This has an overall effect of reducing downstream flooding by holding water in these upper portions of the watershed. The importance of this storage function is recognized by the Middle-Snake-Tamarac Rivers Watershed District (Watershed District) who is responsible for protecting and maintaining the health of these watersheds including the reduction and/or prevention of flooding. One of the components of the Watershed District's management plan is to create and restore approximately 380 acres of wetlands in the Middle River watershed to assist in meeting their goal of a 20% reduction in peak flow from the watershed.

The wetlands in the relevant reach also trap sediments and transform and store pollutants and nutrients, which is important for downstream water quality. Wetlands located in the headwaters of stream channels, like those in the relevant reach, are the primary source of nutrients and organic carbon into the stream system. The nitrogen, phosphorus, and carbon cycling that occur in these wetlands, coupled with the surface flows and groundwater discharge to the tributary system is important to the productivity and

[1] Based on the high quality plant communities present and the undisturbed condition of the wetlands and adjacent uplands.

[2] A more detailed description of the methods for determining wetland storage is available in the administrative record.

health of the downstream receiving waters. These benefits are not limited to the intermediate waters between the relevant reach and the TNW but also to the Red River itself. Since the vast majority of stream miles and wetlands in the watershed are located in and along headwater streams the biogeochemical processing functions they provide are essential to maintaining water quality and aquatic habitat and, if present, eliminating identified impairments. Since nitrogen and phosphorus are both limiting in rich fens they often serve as nutrient sinks and prevent excess nutrient loading to downstream waters.

Summary of Functions Provided by the Tributary in the Relevant Reach

The relevant reach of the tributary is an unnamed first order stream that flows to the Middle River. The flow regime of the tributary is intermittent[3]. The tributary originates approximately 1,800 feet southeast of the review area. It flows approximately 1,500 feet southeast before merging with another first order stream and entering the Middle River. The drainage area is approximately 2.4 square-miles. The drainage area is relatively unaltered and consists predominantly of open space with smaller areas of agriculture, residential dwellings, and roads.

The physical and hydrologic functions of headwater streams are associated with the transfer of mass, momentum, energy, and organisms. The streams essentially function as conduits with the rate of transfer influenced by the flow characteristics of the stream including magnitude (discharge), frequency, duration, timing (seasonality of different flow regimes), and the rate of change (transition time between flows of given magnitudes). Flow in the unnamed tributary has not been quantitatively assessed and the only direct observations of the channel were made in December of 2011 at which time there was standing water in pools but no continuous flow. In northern Minnesota, it is expected that for this type of stream channel discharge and velocity would typically be highest in the spring (March and April) in response to snowmelt and precipitation. Stream flow would steadily decline through late April and May and would be expected to completely dissipate by sometime in June or July when evapotranspiration rates are highest. Flow may be observed periodically outside of this time frame in response to significant precipitation events.

In addition to the water in the channel, the tributary also transports energy, materials, and nutrients downstream. Indicators of this transport function were observed by the Corps during the December 2011 site inspection when leaves and woody debris were observed along the length of the stream. These materials are either broken down in the stream by decomposers in the channel to provide energy and nutrients for other biota or are carried further downstream where they are either broken down or provide structure that increases channel roughness and improves habitat. The transport of sediment, a pollutant of concern in the Middle and Snake Rivers, was not quantified for this determination. However, the contributions from the drainage area are not expected to be of concern based on land use. In addition, Corps staff did not observe any areas along the tributary during the 12/1/2011 field visit where the stream bank appears to be failing or eroding in excess of what normally would be observed on a stable first order stream. Therefore, the relevant reach is not expected to be a significant source of sediment to downstream receiving waters, a characteristic which is a benefit to the Middle, Snake, and Red Rivers.

There is no water quality data for the unnamed tributary. However, general inferences about potential pollutants can be made by evaluating the land use within, and upstream of, the drainage area of the relevant reach. The contributing area to the tributary is predominantly comprised of open space with limited agricultural usage (row crops and hay) and residential dwellings. In general, areas with limited

[3] The Corps has not quantitatively assessed the flow regime of the tributary but, based on the size of the drainage area, observed flow through the wetlands in June, and direct observations of what are believed to be groundwater supported pools in the stream channel, has preliminarily established that the stream has an intermittent flow regime.

impervious surfaces and agricultural use have better water quality and are less likely to have water quality impairments. As a result, the discharges from the relevant reach would be viewed as having a beneficial effect on the downstream TNW.

Recent investigations into the role of headwater streams in nutrient transformations have concluded that they play a large role in nutrient transformations. Although the majority of these studies have focused on perennial headwater streams the tributary in the relevant reach would be expected to provide these functions to some degree when downstream discharges are occurring. Headwater streams constitute up to 85% of total stream length within a drainage network, directly connect the upland and riparian landscape to the rest of the stream's ecosystem, and collect most of the water and dissolved nutrients from adjacent terrestrial ecosystems. Due to their large surface-to-volume ratios, small streams play an important role in regulating water chemistry. Despite their relatively small dimensions, they play a disproportionately large role in the uptake and transformation of inorganic nitrogen (Peterson et al. 2001). Headwater streams are also home to organisms that break down organic matter and release inorganic carbon and other nutrients that are utilized to support food webs further downstream. Decreased levels of inorganic carbon and other nutrients, limit plant growth further downstream, which in turn directly impact food availability for primary herbivores and those organisms that feed upon them.

The functions provided by the wetlands at the site must also be considered in a broader watershed context. In Marshall County, less than 50% of pre-settlement wetlands remain, a fact recognized by State and Federal regulatory agencies that regulate impacts to the remaining wetlands. The agencies have recognized that the cumulative loss of wetlands has had a detrimental effect on the integrity of the aquatic systems in the watershed and that the functions provided by those that remain are important to the downstream receiving waters including the Red River. Lastly, the Minnesota Center for Environmental Advocacy has identified the review area as a wetland and grassland conservation priority area in the Snake-Tamarac River watershed. This report is included in the Middle-Snake-Tamarac River Watershed Plan.

Significance of Functions Provided by the Relevant Reach to the Downstream TNW

The Red River is subject to frequent flood events. During the 10-year period between 2001 and 2010 the yearly peak streamflow at the USGS gage maintained in Drayton, North Dakota (located approximately 24 river miles downstream where the Snake River flows into the Red River) reached minor flood stage in 3 years, moderate flood stage in 2 years, and major flood stage in 3 years. Because the Red River valley is relatively flat, flood events often cover large areas of land. Flood damage reduction projects such as levees, diversions, ring dikes, and floodwalls have been undertaken or are planned by local, state, and federal agencies along numerous communities affected by Red River flooding. Additionally, the Middle-Snake-Tamarac Rivers Watershed District (Watershed District) identifies a goal of a 20% reduction in peak flow from the Middle River watershed in its Final Ten Year Watershed Management Plan. This plan includes creating and restoring approximately 380 acres of wetlands in the Middle River watershed to achieve the 20% reduction goal.

The Red River is listed as impaired for aquatic life and aquatic consumption (MPCA, 2010). The pollutants/stressors for these impairments are mercury and PCB in fish tissue and turbidity. The Middle River is listed as impaired for dissolved oxygen and turbidity and the Snake River is listed as impaired for fish bioassessments, dissolved oxygen, and turbidity. The Middle River and Snake River both flow to the Red River. The relevant reach of the tributary and its adjacent wetlands are likely not a contributing source of the listed impairments for the Red River, Snake River, or Middle River because of the frequency and duration of flows from tributary, the condition of the drainage area, and the size and extent of wetlands and their ability to transform and store sediment and pollutants.

The Red River is recognized as an important fishery. Common game fish species in the river include channel catfish, northern pike, smallmouth bass, sauger, and walleyes. The Red River is also the historical habitat of the lake sturgeon (*Acipenser fulvescens*), a species of special concern in Minnesota. As a result of over exploitation, construction of dams, and declines in water quality by the mid-1900s the species had largely been extirpated in the Red River. The MNDNR is working with several Federal and state agencies as well as the Canadian Government to return a viable population of lake sturgeon to the Red River. Improving water quality and restoring and or maintaining spawning habitat in the tributaries to the Red River, including the Middle River, are noted as important components of the MNDNR's long range plan.

The functions provided by the relevant reach of the tributary and its adjacent wetlands are important in maintaining the chemical, physical, and biological integrity of the Red River. The tributary is important for the transport of energy and nutrients to the Red River which helps maintain its aquatic communities and the maintenance of base flows. The approximately 590 acres of wetlands in the relevant reach provide an institutionally recognized important water storage function that helps reduce the impacts of flooding in the Red River. The wetlands also have the potential to retain excess nutrients and sediment which reduces the downstream contribution of these pollutants from the Middle River watershed. Based on these considerations, a significant nexus exists between relevant reach (comprised of the tributary and its adjacent wetlands) and the Red River of the North, a traditional navigable water.

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

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): 2/7/2012

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER:2007-01914-DJS, Hawkes Peat, Mercil Site

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Minnesota County/parish/borough: Marshall City: Newfolden

Center coordinates of site (lat/long in degree decimal format): Lat. 48.417373° N, Long. -96.272519° W.

Universal Transverse Mercator: Zone 16

Name of nearest waterbody: Unnamed tributary to the Middle River

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Red River of the North

Name of watershed or Hydrologic Unit Code (HUC): 09020309

☒ 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: 12/20/2011

☒ Field Determination. Date(s): 6/1/2011 & 12/1/2011

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. [*Required*]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      - ☐ TNWs, including territorial seas
      - ☐ Wetlands adjacent to TNWs
      - ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      - ☐ Non-RPWs that flow directly or indirectly into TNWs
      - ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      - ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      - ☒ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      - ☐ Impoundments of jurisdictional waters
      - ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: linear feet: width (ft) and/or acres.
      Wetlands: 155 acres.

   c. **Limits (boundaries) of jurisdiction** based on: **Not established at this time.**
      Elevation of established OHWM (if known):

2. **Non-regulated waters/wetlands (check if applicable):**[3]

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: .

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
Identify TNW: .

Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**
Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

(i) **General Area Conditions:**
Watershed size: 785 **square miles**
Drainage area: 2.4 **square miles**
Average annual rainfall: 21.2 inches
Average annual snowfall: 46.7 inches

(ii) **Physical Characteristics:**
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☒ Tributary flows through **2** tributaries before entering TNW.

Project waters are **30 (or more)** river miles from TNW.
Project waters are **1 (or less)** river miles from RPW.
Project waters are **30 (or more)** aerial (straight) miles from TNW.
Project waters are **1 (or less)** aerial (straight) miles from RPW.

[3] Supporting documentation is presented in Section III.F.
[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW[5]: The wetlands in the review area discharge to a man-made non-jurisdictional drainage feature that flows approximately 512 feet to an unnamed tributary to the Middle River. The tributary then flows to the Middle River a perennial tributary of the Red River, a navigable water of the U.S. (TNW).

Tributary stream order, if known: 1st.

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☒ Natural
☐ Artificial (man-made). Explain:
☐ Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

Average width: 10 feet

Average depth: 3 feet

Average side slopes: 3:1.

Primary tributary substrate composition (check all that apply):

☐ Silts	☒ Sands	☐ Concrete
☒ Cobbles	☒ Gravel	☐ Muck
☐ Bedrock	☒ Vegetation. Type/% cover: non-vegetated	
☐ Other. Explain:		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Natural erosion.

Presence of run/riffle/pool complexes. Explain: Flow in the channel was not observed during the December 1, 2011 site visit. The District was not able to determine if riffle/pool complexes were present in the tributary.

Tributary geometry: Meandering

Tributary gradient (approximate average slope): 1 %

(c) Flow:

Tributary provides for: Seasonal flow

Estimate average number of flow events in review area/year: Pick List

Describe flow regime: The District was only able to observe the tributary once on December 1, 2011. At that time, there was no surface flow in the channel but pools were observed sporadically throughout its length. These observations were made in the midst of a severe drought in this portion of Minnesota and suggest that there is a groundwater component to the flow in the channel. To further evaluate flow in the tributary the District utilized its seasonal stream evaluation protocol. In general, tributaries that have drainage areas in excess of one square mile typically meet the agency's definition of seasonal flow (continuous flow for at least three months). The drainage area for the unnamed tributary was determined to be 2.4 square miles or almost 2.5 times the threshold identified during the District's assessment of flow duration on first and second order tributaries. Given this information it is reasonable to conclude that the tributary has seasonal flow between ice out and mid-June. Flow may persist longer in years with normal precipitation if groundwater discharge is supplying flow to the tributary. However, additional site investigations would be required to confirm this contribution.

Other information on duration and volume: The owner of the property where the tributary is located has provided conflicting information regarding the duration of flow in the tributary. In an oral statement to Corps staff on December 1, 2011 he indicated that flow is present in the channel from ice out until mid June. In a written statement to Mr. Brian Ross of Widseth Smith Nolting he states that there is only flow in the tributary for 2.5 weeks and after large rain events. In light of these discrepancies the Corps has chosen not to rely on these statements for this JD.

[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Surface flow is: **Discrete and confined**. Characteristics:

Subsurface flow: **Unknown**. Explain findings: Pools in channel in December suggest groundwater discharge into the tributary but this contribution has not been confirmed.

☐ Dye (or other) test performed:

Tributary has (check all that apply):

☒ Bed and banks

☒ OHWM[6] (check all indicators that apply):

- ☒ clear, natural line impressed on the bank
- ☒ changes in the character of soil
- ☒ shelving
- ☐ vegetation matted down, bent, or absent
- ☒ leaf litter disturbed or washed away
- ☐ sediment deposition
- ☐ water staining
- ☐ other (list):
- ☐ the presence of litter and debris
- ☐ destruction of terrestrial vegetation
- ☐ the presence of wrack line
- ☒ sediment sorting
- ☐ scour
- ☐ multiple observed or predicted flow events
- ☒ abrupt change in plant community

☐ Discontinuous OHWM.[7] Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☒ High Tide Line indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other (list):

☒ Mean High Water Mark indicated by:

- ☐ survey to available datum;
- ☐ physical markings;
- ☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Surface flows were not observed in the tributary by Corps staff. The contributing area to the tributary is predominantly comprised of open space with limited agricultural usage (row crops and hay) and residential dwellings. Water quality has not been formaly assessed by the MPCA but is expected to be good based on adjacent land uses, amount of wetlands in the area, and buffers around the tributary.

Identify specific pollutants, if known: none known.

(iv) Biological Characteristics. Channel supports (check all that apply):

☒ Riparian corridor. Characteristics (type, average width): The tributary is buffered by a forested (deciduous) riparian corridor from its upstream origin downstream to the terminus at the Middle River. The riparian corridor increases in width moving from upstream to downstream along the tributary. The widths range from 5 feet (each side of the tributary) to approximately 300 feet (each side) near its confluence with the Middle River.

☐ Wetland fringe. Characteristics:

☐ Habitat for:

- ☐ Federally Listed species. Explain findings:
- ☐ Fish/spawn areas. Explain findings:
- ☐ Other environmentally-sensitive species. Explain findings:
- ☐ Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: The wetlands in the review total 145 acres

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

[7]Ibid.

Wetland type. Explain: According to the National Wetland Inventory the wetlands in the review area consist of 133 acres of palustrine emergent/scrub shrub, broad-leaved deciduous, saturated, organic soil (PEM/SS1Bg) and 12 acres of Palustrine scrub shrub, broad-leaved deciduous, saturated, organic soil (PSS1B). The vegetative communities at the site were also mapped as part of the Minnesota Department of Natural Resources, Minnesota County Biological Survey (MCBS). The MCBS effort identified four wetland plant community types in the review area: rich fen, aspen forest, tamarack swamp, and willow swamp. In June 2011, Corps staff completed a reconnaissance inspection of the wetlands in the review area, to among other things, conduct spot checks of the MCBS plant community type mapping. This investigation revealed that the rich fen is composed of the sedge subtype and the shrubby subtype, that the willow swamp was accurately mapped, and that the tamarack swamp mapped on the eastern portion of the site is really a hardwood swamp dominated by quaking aspen.

Wetland quality. Explain: The Mercil wetland complex (review area) is considered a Rich Fen (Minerotrophic) by the Minnesota Department of Natural Resources, with high vegetative biodiversity. During the June 2011 site inspection District staff noted observed that the wetlands within the review area had escaped significant alteration by activities such as grazing, cultivation and logging. As a result, the site appears to exist in a pre-European settlement condition and is correctly given an outstanding statewide biodiversity significance ranking by the MCBS. The exceptional quality of the wetlands in the review area is further enhanced by the high quality of the surrounding upland buffers and the unfragmented landscape of wetlands and uplands that represent one of the best examples of ridge and swale communities in Marshall County and northwestern Minnesota. A quantitative site-specific functional assessment has not been performed for the wetlands in the review area. However, District staff who are familiar with application of the Minnesota Routine Assessment Methodology (MnRAM) for evaluating wetland functional assessment have qualitatively assessed the suite of functions addressed by MnRAM and concluded that given the reference standard quality of the site they would expect it to rate high or exceptional for the full suite of functions. These include: vegetative diversity/integrity, maintenance of characteristic hydrology, flood attenuation, downstream water quality, wetland water quality, characteristic wildlife habitat structure, and maintenance of characteristic amphibian habitat.

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: Surface flows from the wetlands in the review area move south from 110th Avenue into the MNDNR Wildlife Management area and then into the man made drainage feature that discharges into the unnamed tributary. Although not verified, surface flows are believed to occur in response to snowmelt and precipitation and would most likely be present between March and June and after significant precipitation events in other portions of the growing season. This flow regime is best described as seasonal and intermittent.

Surface flow is: **Pick List**

Characteristics: At times during the year surface flow through the wetland can be described as overland sheet flow (March through June). Outside of this period, surface flows may be more confined to small channels that collect groundwater and precipitation and carry it south towards the unnamed tributary. The surface flow characteristics are best described as seasonal and intermittent.

Subsurface flow: **Unknown**. Explain findings: There has been no formal investigation of the subsurface flow from the wetlands. However, given the topographic gradient between the review area the unnamed tributary and the Middle River, it is reasonable to assume that shallow groundwater does generally move towards the south.

☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

☐ Directly abutting
☒ Not directly abutting
☒ Discrete wetland hydrologic connection. Explain: The review area creates an artificial boundary within a large continuous wetland that extends south towards the unnamed tributary and Middle River (see Figures 1 and 3) . The wetland is also divided by 110th Ave NW but water flows freely between the road through 2-24 inch culverts (the culverts are located approximately 50 yards apart). Surface water was observed at similar elevations on both sides of the road during the June 2011 site visit. Along the southern edge of this wetland an east-west oriented drainage feature was excavated to intercept surface flows from the wetland and direct them to the east. This drainage feature was constructed in wetlands and is still considered to meet the wetland criteria in the Corps 87 manual and applicable regional supplement. This wetland drainage feature connects with a man-made drainage feature excavated through uplands that directs flows from the wetland to the southeast. This drainage feature did not have a continuous ordinary high water mark and, therefore, is not considered to be a tributary. The man-made drainage feature carries water approximately 512 feet to the southeast where it discharges into the unnamed tributary and ultimately the Middle and Red Rivers. Thus, the wetlands in the review area are part of a large wetland covering several hundred acres that is adjacent to the unnamed tributary via a discrete surface hydrologic connection.
☐ Ecological connection. Explain:
☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW
Project wetlands are **30 (or more)** river miles from TNW.
Project waters are **30 (or more)** aerial (straight) miles from TNW.
Flow is from: **Wetland to navigable waters.**
Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:
Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: The chemical characteristics of the wetlands in the review area was not directly assessed and visual inspections of the water in the wetland provided no obvious indications of water quality impairments (surface water in the wetland appeared clear). However the wetland is categorized as a rich fen which indicates that pH levels are near neutral but nutrient poor. As discussed in the tributary section of this JD, the surrounding landscape is primarily undisturbed open space which typically results in good water quality.
Identify specific pollutants, if known: None known.

(iii) Biological Characteristics. Wetland supports (check all that apply):
☐ Riparian buffer. Characteristics (type, average width):
☒ Vegetation type/percent cover. Explain: 90 % rich fen consisting of a very diverse sedge dominated herbaceous litter and 10% aspen parkland consisting of quaking aspen, dogwood and a sedge dominated understory.
☐ Habitat for:
☐ Federally Listed species. Explain findings:
☐ Fish/spawn areas. Explain findings:
☐ Other environmentally-sensitive species. Explain findings:
☐ Aquatic/wildlife diversity. Explain findings:

3. Characteristics of all wetlands adjacent to the tributary (if any)
All wetland(s) being considered in the cumulative analysis: **Pick List**
Approximately (591) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

see discussion below

Summarize overall biological, chemical and physical functions being performed: The District has determined, based on the National Wetland Inventory, that there are 591 acres of wetlands adjacent to the relevant reach, including those within the review area (see Figure 3). While this approach likely underestimates the area of wetlands, a wetland delineation of the wetlands adjacent to the tributary and outside of the review area is not practical for this determination. The 591 acres are one continuous wetland that extends from the northern boundary of the drainage area of the relevant reach south towards the unnamed tributary (the wetland does not abut the unnamed tributary). Within this one wetland the NWI identifies six separate wetland types:

(***Estimated Wetlands Within Drainage Area)

Palustrine emergent/scrub shrub, broad-leaved deciduous, saturated, organic soil 328.4 acres
Palustrine scrub shrub, broad-leaved deciduous/emergent, saturated, organic soil 168.3 acres
Palustrine scrub shrub, broad-leaved deciduous/forested needle-leaved deciduous, saturated, organic soil 51.8 acres
Palustrine scrub shrub, broad-leaved deciduous, saturated 3.5 acres
Palustrine scrub shrub, broad-leaved deciduous, saturated, organic soil 38.7 acres
Palustrine unconsolidated bottom, intermittently exposed, excavated 0.4 acre

As discussed in the preceding section of the JD (addressing wetlands in the review area), the entire drainage area and the wetlands within it that are adjacent to the unnamed tributary exist in a mostly undisturbed pre-European settlement condition. In light of this, District staff has qualitatively assessed the functions these wetlands provide and concluded that the wetlands outside of the review area would also score exceptional or high for the suite of functions previously identified.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: See attached document titled "Section III.C. Significant Nexus Determination".

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☒ TNWs: linear feet width (ft), Or, acres.
   - ☒ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☒ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☒ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☒ Tributary waters: linear feet width (ft).
   - ☒ Other non-wetland waters: acres.
     Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - ☒ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☒ Tributary waters: linear feet width (ft).
   - ☒ Other non-wetland waters: acres.
     Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
   - ☒ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
   - ☒ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

[8]See Footnote # 3.

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: **250**acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
☒ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: **155** acres.

7. **Impoundments of jurisdictional waters.**[9]
As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
☐ Demonstrate that impoundment was created from "waters of the U.S.," or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

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):[10]
☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain:
☐ Other factors. Explain:

Identify water body and summarize rationale supporting determination:

Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters:
☐ Wetlands: acres.

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):

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).

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[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

☒ Lakes/ponds: acres.
☒ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

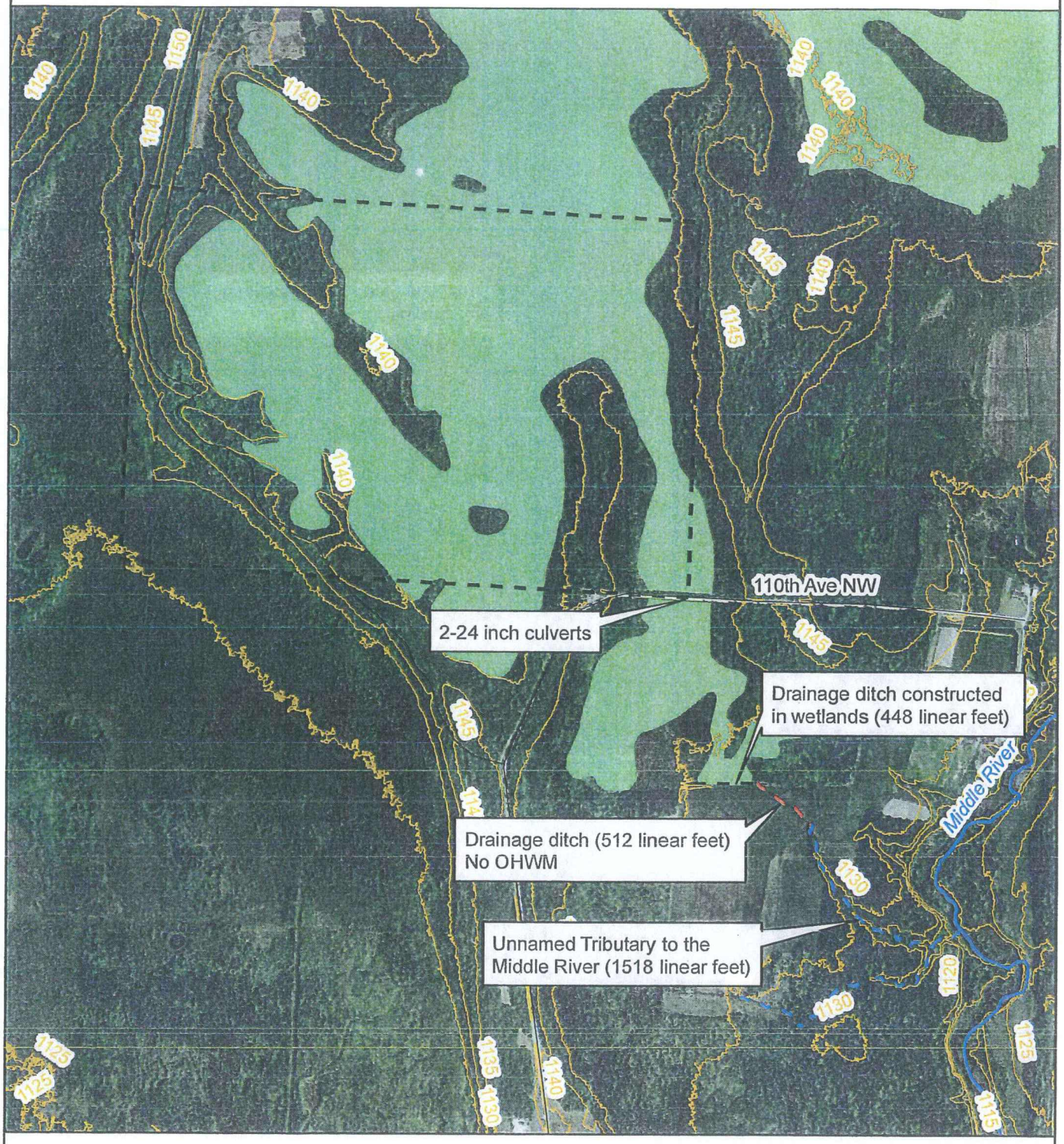
SECTION IV: DATA SOURCES.

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: .
☒ 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 NHD data.
☒ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name:1:24,000, Newfolden, Minnesota.
☒ USDA Natural Resources Conservation Service Soil Survey. Citation:Marshall County, Minnesota.
☒ National wetlands inventory map(s). Cite name:Newfolden, Minnesota.
☐ State/Local wetland inventory map(s): .
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date):Lidar, 2011, FSA 2010.
or ☐ Other (Name & Date): .
☐ Previous determination(s). File no. and date of response letter: .
☐ Applicable/supporting case law: .
☒ Applicable/supporting scientific literature:Mitch, W.J., Gosselink, J.G. (2000). Wetlands (Third ed.) New York: John Wilry & Sons Inc..
☒ Other information (please specify):Maps, JD determination, property owner statement and on-site photos submitted on behalf of the applicant on December 19, 2011, by Widseth, Smith and Nolting.

B. ADDITIONAL COMMENTS TO SUPPORT JD: Conclusions regarding Section III B.2 were reached with field review on June 1 and December 1, of 2011. These conclusions are therefore based on those site visits, knowledge of local stream morphology, geologic characteristics, and GIS review. Land use surrounding the relevant reach is predominantly agricultural, peat mining, with a smaller amount of residential. The functions of the wetlands adjacent to the relevant reach combined with the functions provided by the tributary results in a significant nexus to the Red River, a TNW. After reviewing and considering the data submitted by the applicant, the Corps rejects the applicant's position that the wetland review area is isolated. The Corps determination is that there is a significant nexus between the wetland review area and the Red River (TNW).

Mercil Property (MVP-2007-01914-DJS) Fig. 1



Legend

- Review Area
- Flow Path (DEM Derived)
- Stream (NHD)
- Estimated Wetland (NWI)

Overview of the Review Area

0 500 1,000 2,000 Feet

N

20112112BRC
Image Data: USDA NAIP, 2010

Mercil Property (MVP-2007-01914-DJS) Fig. 2

Legend

- Flow Path (DEM Derived)
- Stream (NHD)
- Estimated Wetland (NWI)

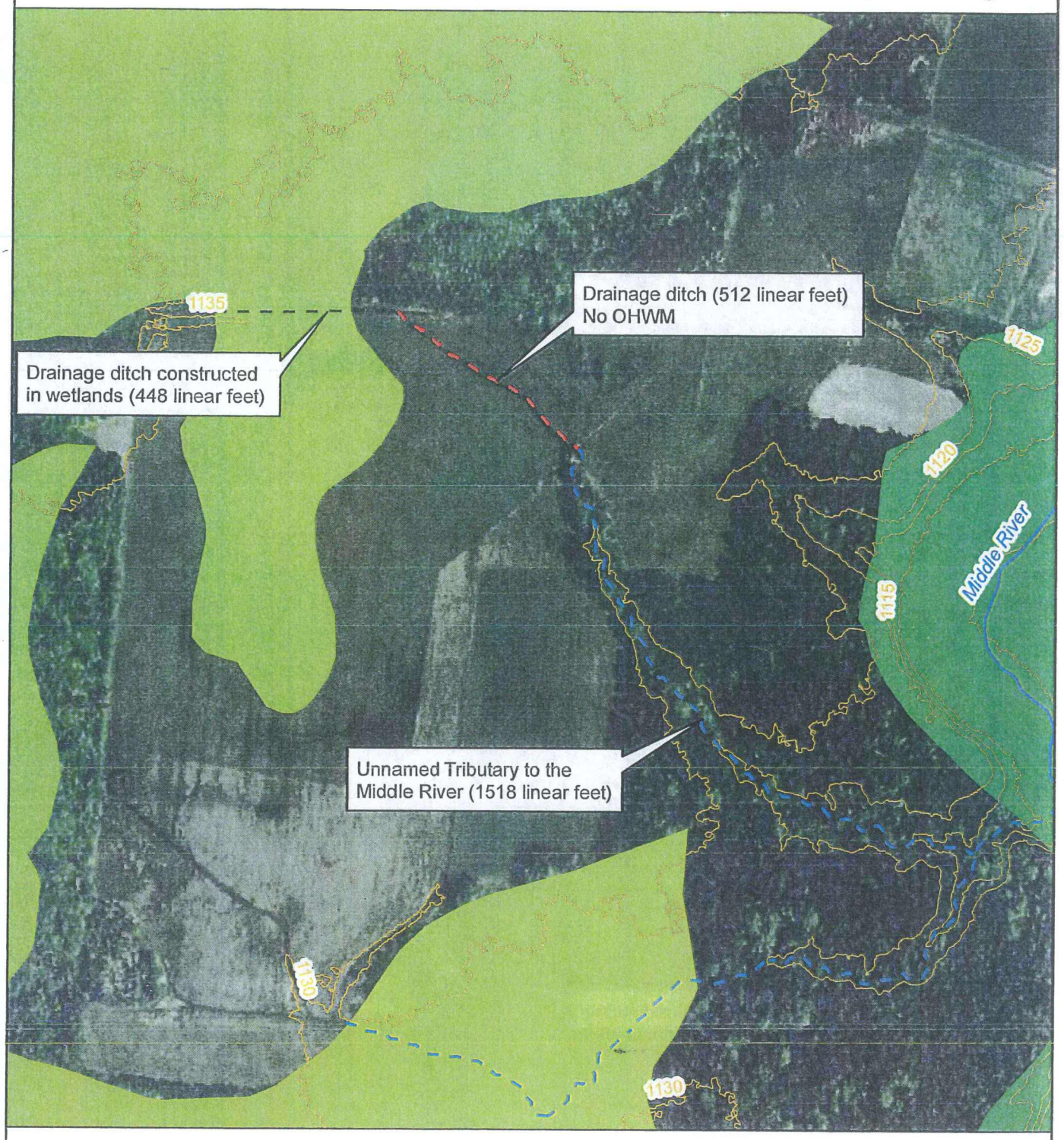
Unnamed Tributary of the Middle River

0 150 300 600 Feet

N

20112112BRC
Image Data: USDA NAIP, 2010

Mercil Property (MVP-2007-01914-DJS) Fig. 3



Legend

- Flow Path (DEM Derived)
- Stream (NHD)
- All Hydric Soil
- Partially Hydric Soil

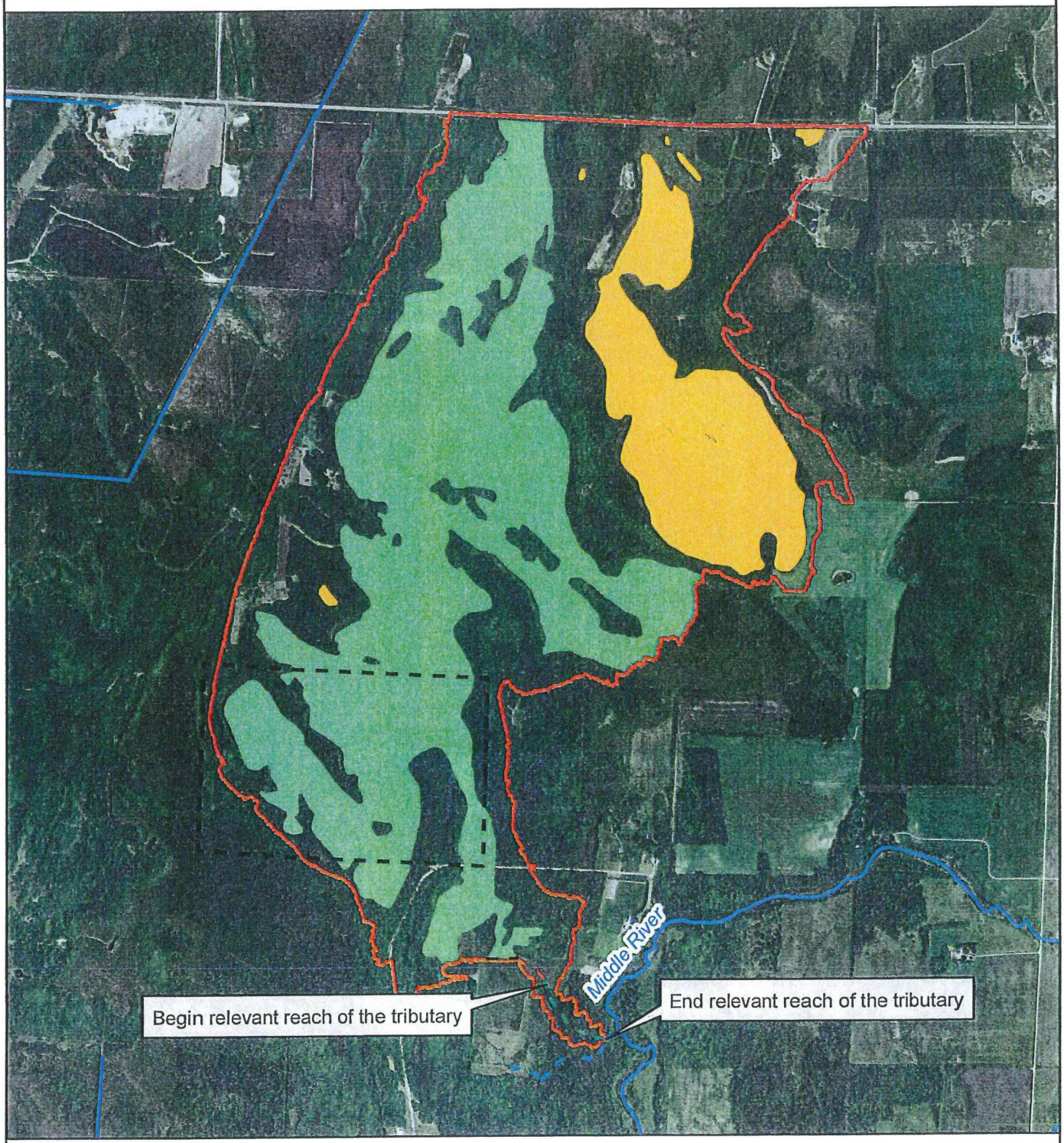
Unnamed Tributary of the Middle River

N

0 150 300 600 Feet

20112112BRC
Image Data: USDA NAIP, 2010

Mercil Property (MVP-2007-01914-DJS) Fig. 4



Estimated Wetlands Within Drainage Area

- Not Adjacent to Relevant Reach
- Adjacent to Relevant Reach
- Relevant Reach
- Upland Drainage Ditch
- Wetland Drainage Ditch
- Drainage Area

Relevant Reach of the Tributary and its Adjacent Wetlands

0 1,000 2,000 4,000 Feet

N

20112112BRC

Image Data: USDA NAIP, 2010