



**U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE**

**I. ADMINISTRATIVE INFORMATION**

Completion Date of Approved Jurisdictional Determination (AJD): 7/1/2020

ORM Number: NWK-2020-00509

Associated JDs: N/A

Review Area Location<sup>1</sup>: State/Territory: Kansas City: near Burwick County/Parish/Borough: Nemaha

Center Coordinates of Review Area: Latitude 39.972928 Longitude -95.836051

**II. FINDINGS**

**A. Summary:** Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

**B. Rivers and Harbors Act of 1899 Section 10 (§ 10)<sup>2</sup>**

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

**C. Clean Water Act Section 404**

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): <sup>3</sup>			
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):			
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.

<sup>1</sup> Map(s)/figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

<sup>3</sup> A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>				
Exclusion Name	Exclusion Size		Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Unnamed tributary to Rock Creek	850	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	<p>The review reach consists of 850 linear feet of a first order, unnamed tributary to Rock Creek. The reach within the review area has 160 acres of drainage above the property. The tributary exhibits ephemeral flow in direct response to precipitation runoff.</p> <p>The stream currently flows from south to north across a grass pasture within the review reach. Based upon reviews of multiple aerial images, tributary flows have moved with areas of scoured channel and areas of vegetated swale, or bed/bank features throughout the pasture. This discontinuous OHWM indicates that flows are not continuous in sufficient durations to establish and maintain an OHWM throughout the review reach.</p> <p>The tributary at this location exhibits a 7-foot drop (nearly 2% slope) which results in flash flows from the rolling topography of the small drainage area above the site.</p> <p>Review of multiple years of aerial imagery do not show continuous flow or inundation throughout the 850-foot review reach.</p> <p>In addition, the Corps evaluated date specific aerial images from Digital Globe (September 23, 2017, September 22, 2018, and November 2, 2019) and Google Earth (April 1, 2016 and September 2, 2013) and ran a typical year analysis for the tributary utilizing the “Antecedent Precipitation Tool (APT).” A summary of APT analysis is provided in Section (III)(B) below.</p> <p>Given the lack of documented continuous flow conditions during a normal year and lack of a continuous OHWM within the JD review area, the Corps has determined that the unnamed tributary exhibits ephemeral flows during a typical year and therefore, meets the exclusion criteria of (b)(3).</p>

<sup>4</sup> Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

<sup>5</sup> Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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**III. SUPPORTING INFORMATION**

**A. Select/enter all resources** that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

- Information submitted by, or on behalf of, the applicant/consultant: [Title\(s\) and date\(s\)](#)  
This information [Select](#). sufficient for purposes of this AJD.  
Rationale: [N/A or describe rationale for insufficiency \(including partial insufficiency\)](#).
- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
- Photographs: [Select](#). [Title\(s\) and/or date\(s\)](#).
- Corps site visit(s) conducted on: [Date\(s\)](#).
- Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\)](#).
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Web Soil Survey accessed 6/30/2020](#)
- USFWS NWI maps: [NWI Mapper accessed 6/30/2020](#)
- USGS topographic maps: [1:24K; Sabetha – KS QUAD](#)

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
<a href="#">USGS Sources</a>	<a href="#">N/A.</a>
<a href="#">USDA Sources</a>	<a href="#">N/A.</a>
<a href="#">NOAA Sources</a>	<a href="#">N/A.</a>
<a href="#">USACE Sources</a>	<a href="#">N/A.</a>
<a href="#">State/Local/Tribal Sources</a>	<a href="#">N/A.</a>
<a href="#">Other Sources</a>	<a href="#">N/A.</a>

**B. Typical year assessment(s):** The Corps ran a typical year analysis for the tributary utilizing the “Antecedent Precipitation Tool (APT)” for the following available aerial imagery: 11/2/2019; 9/22/2018; 9/23/2017; 4/1/2016; and 9/2/2013. The APT analysis determines if the date-specific observation falls within the normal periodic range for the geographic area based on a rolling thirty-year period. The APT generated the following conditions rating for each of the aerial images as follows:  
 11/2/2019 – “Wetter than Normal”. Saturated conditions present, but no continuous flows within the review area are observed.  
 9/22/2018 – “Wetter than Normal”. Saturated conditions present but continuous flows are indiscernible.  
 9/23/2017 – “Drier than Normal”. No flows. Discernible OHWM is absent.  
 4/1/2016 – “Normal Conditions”. No flows. Weak OHWM remote signatures.  
 9/2/2013 – “Normal Conditions”. No flows. Discernible OHWM is absent.  
 Summary: When evaluating the “normal” and “wetter than normal” conditions imagery, there is inconsistent evidence for continuous flows necessary to confirm an intermittent flow regime. The stream within the review reach (850 linear feet) appears to lack continuous flows. Flows appear to be abbreviated and ephemeral as evidence by the lack of a continuous OHWM and discernible flows on aerial imagery.

**C. Additional comments to support AJD:** Given the steep slope of the tributary, small drainage area (130 acres) and the lack of a continuous OHWM within the reach, it is determined that the stream exhibits an ephemeral flow regime during a typical year. As such, the stream is determined to be an excluded (b)(3) feature (nonjurisdictional). Supporting materials are included in the administrative record.