



**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): 7/13/2020
 ORM Number: NWK-2020-00548
 Associated JDs: N/A
 Review Area Location¹: State/Territory: Kansas City: Marysville County/Parish/Borough: Marshall
 Center Coordinates of Review Area: Latitude 39.8497 Longitude -96.7631

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
- 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)²

§ 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): ³			
(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.

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

² 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.

³ 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.



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

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Tributary to Hop Creek	100	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	<p>The review area reach consists of approximately 100 linear feet of an unnamed tributary to Hop Creek. The reach within the review area has been manipulated in the past with the construction of several farm ponds up stream and the construction of a grassed waterway immediately downstream.</p> <p>This ephemeral tributary does not provide sufficient flow duration to constitute sustained flows during wet or dry seasons. This tributary only exhibits ephemeral flow in direct response to precipitation runoff. A review of multiple years of aerial imagery provided no indications of an intermittent flow regime.</p> <p>No ponding or pooling of water in low areas of the ephemeral stream channel could be observed in aerial photographs. The only ponding of water that was observed was found at the lower end of the grassed waterway, however this feature appears to be a residual pool associated with a flash runoff event.</p> <p>In addition to the review of aerial photographs, the Corps ran a typical year analysis for the tributary utilizing the “Antecedent Precipitation Tool (APT)” for the project area. The APT indicated that the period of July 26, 2019 had a “Wetter than Normal” condition while the May 9, 2018 time period indicated “Normal Conditions”. Given the lack of documented continuous flow and pooling during a typical year analysis, the Corps has determined that the unnamed tributary to Hop Creek exhibits ephemeral flows during a typical year and therefore, meets the exclusion criteria of (b)(3).</p>

⁴ 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.

⁵ 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.



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

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: [Application received on July 12, 2020](#)

This information **is** sufficient for purposes of this AJD.

Rationale: [N/A](#)

- Data sheets prepared by the Corps: [N/A](#)
- Photographs: [Aerial: Digital Globe aerial imagery dated July 26, 2019 and May 9, 2018](#)
- Corps site visit(s) conducted on: [N/A](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [N/A](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [N/A](#)
- USFWS NWI maps: [N/A](#)
- USGS topographic maps: [Hanover SE, 1:24,000 Quad, USGS](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	Google Earth Photo dated October 13, 2019, June 29, 2019, October 19, 2014

B. Typical year assessment(s): [The Antecedent Precipitation Tool \(APT\) 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 indicated that the period of July 26, 2019 had a “Wetter than Normal” condition while the May 9, 2018 time period indicated “Normal Conditions”.](#)

C. Additional comments to support AJD: [The tributary exhibits an ephemeral flow regime. Immediately downstream of the AJD review area, the tributary exhibits a discontinuous OHWM through the constructed grassed waterway. No indications of pooling or of intermittent flow can be observed within or immediately upstream of the review area. Given the lack of continuous flows and the break in OHWM connectivity to downstream waters; it has been determined that the tributary within the AJD review area is nonjurisdictional.](#)