



**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): 7/16/2020
 ORM Number: NWK-2020-00538
 Associated JDs: N/A
 Review Area Location¹: State/Territory: Kansas City: Hays County/Parish/Borough: Ellis
 Center Coordinates of Review Area: Latitude 38.850992 Longitude -99.270583

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)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.



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
#1 Channelized tributary to Big Creek	700	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	<p>The review area contains approximately 700 linear feet of a channelized reach of an unnamed ephemeral stream channel. Aerial imagery from multiple years have been reviewed and provide no indication of continuous flows or extended inundation within the channel.</p> <p>A 13 July 2020, onsite review of the channelized stream from an area directly upstream of the area did not exhibit any indication of persistent flows. Upstream of Old Highway 40, the channel is 100% farmed and growing a corn crop. Downstream of Old Highway 40 the channel is a mowed grass swale with some areas of scour. Photographs are included in the administrative record. Further, aerial imagery shows that the unnamed ephemeral channel is also annually cultivated (cropland) downstream of the review reach which indicates that flows are infrequent and abbreviated consistent with an ephemeral flow regime.</p> <p>Reviewing aerial imagery dated 19 April 2020, 31 March 2018 and 8 September 2013 show a range of conditions from completely dry to wetted/saturation channel. Typical year assessments were generated using the Antecedent Precipitation Tool (APT) for these dates and all reports indicate normal conditions with April and March being during the wet season and September being during the dry season. No flows were observed on these dates, nor were flows observed on any other available aerial images reviewed in this determination (listed in Section III below).</p> <p>Because the reach does not exhibit any indicators of persistent and continuous flows, the channelized (ditched) segment is determined to be an ephemeral feature [(b)(3) exclusion].</p>

III. SUPPORTING INFORMATION

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.



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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: [8 July 2020 Jurisdictional Inquiry](#)
This information [is](#) sufficient for purposes of this AJD.
Rationale: [The information provided combined with the Corps review of other available resources, is sufficient to make an approved jurisdictional determination for the review area.](#)
- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial and Other: Google Earth Pro: 4/24/2016, 9/8/2013, 9/25/2011, 8/19/2010, 7/27/2010; and Digital Globe: 4/19/2020, 3/31/2018; Onsite view from Old Highway 40: 7/13/2020.](#)
- Corps site visit(s) conducted on: [July 13, 2020](#)
- 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: [Title\(s\) and/or date\(s\).](#)
- USFWS NWI maps: [Title\(s\) and/or date\(s\).](#)
- USGS topographic maps: [1:24K, Hays South](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	1:24K Hays South Topographic Quad Map
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	Onsite visit on July 13, 2020
State/Local/Tribal Sources	N/A.
Other Sources	Google Earth and Digital Globe aerial imagery (listed in "A" above).

B. Typical year assessment(s): [APT reports were generated for three aerial images. The findings are as follows:](#)

- [-April 19, 2020: Moderate Wetness, Wet Season = Normal Conditions \(no flows observed\).](#)
- [-March 31, 2018: Moderate Drought, Wet Season = Normal Conditions \(no flows observed\).](#)
- [-September 8, 2013: Normal PDSI, Dry Season = Normal Conditions \(no flows observed\).](#)

C. Additional comments to support AJD: [The channelized \(drainage ditch\) ephemeral stream does not meet intermittent flow criteria. The stream flows in direct response to precipitation runoff. Review of available resources indicate the stream meets the criteria of an ephemeral feature excluded from Section 404 Clean Water Act jurisdiction. All remaining land within the review area consists of uplands. An AJD map is attached.](#)