



**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): 7/17/2020  
 ORM Number: NWK-2008-943  
 Associated JDs: Prior AJD on this parcel, NWK-2008-943, dated 20 August 2008  
 Review Area Location<sup>1</sup>: State/Territory: KS City: Olathe County/Parish/Borough: Johnson  
 Center Coordinates of Review Area: Latitude 38.816153 Longitude -94.858738

**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)<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
Intermittent Tributary 1	4865 linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	In 2008, the Corps published an AJD, dated 20 August 2008, determining that this waterbody was a non-relatively permanent water that provides for ephemeral flow. Based on new information, and under the definitions found within the new Navigable Waters Protection Rule, the Corps has determined that this waterbody is an intermittent tributary.  This tributary contains a silt bed and defined banks. The average width is approximately 3 feet, and the average depth is 1.5 feet as measured from the top

<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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Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
			<p>of the tributary bank to the tributary bed. The tributary has a meandering geometry. An OHWM is present, and indicators include a clear natural line impressed on the bank, vegetation absent within the tributary bed and multiple observed flow events. The Jurisdictional Assessment Report prepared by Terra Technologies in May 2008 states that the drainage area for this tributary is 450 acres. The Corps measured the drainage area of this tributary more conservatively at approximately 300 acres. The entirety of this tributary is identified within National Wetland Inventory as an intermittent tributary (R4SBC) and the entire tributary is shown as a blue line stream on topographic maps.</p> <p>Flow: Terra Technologies' May 2008 Jurisdictional Assessment contains photographs of the intermittent tributary 1, all taken 30 April 2008. A continuous stream of water is present throughout the tributary in photographs 1 – 9. You can see rippling water flowing in Photograph 9 of this jurisdictional assessment, at the confluence of intermittent tributary 1 and intermittent tributary 2. The use of the Corps' Antecedent Precipitation Tool (APT) show that conditions were "wetter than normal" over the 90 days prior to 30 April 2008. The last notable rainfall in the area prior to 30 April 2008 was 0.52 inches of rain on 23 April 2008.</p> <p>The Corps performed a site visit on 30 June 2020. The APT show that conditions were "normal" over the 90 days prior to 30 June 2020. The last notable rainfall in the area prior to 30 June 2020 was 2.16 inches on 27 June 2020. The Corps observed a continuous stream of flowing water throughout the entirety of the tributary.</p> <p>Water is shown throughout the length of the tributary in the following years of Google Earth Pro aerial photograph where the vegetation is thin enough to show the tributary: 2/2002, 4/2002, 5/2002, 2/2004, 2/2006, 3/2006, 2/2008, 3/2015, 3/2016 &amp; 4/2018. Available Google Earth Pro aerial photography range from 1991 to 2018. Approximately half of the Google Earth Pro aerials contain aerials where the tributary was not visible under vegetation.</p> <p>Based on the available information, which includes</p>



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(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
				<p>multiple observed flow events and aerials depicting water throughout the length of the tributary, intermittent tributary 1 is determined to contain surface water flowing continuously during certain times of the year and more than in direct response to precipitation.</p> <p>Intermittent tributary 1 flows northward into intermittent tributary 2, then into Cedar Creek and then into the Kansas River (A-1 water).</p>
Intermittent Tributary 2	1102	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	<p>This waterbody is determined to be an intermittent tributary.</p> <p>This tributary contains a silt and stone bed, as well as defined banks. The average width is approximately 12 feet, and the average depth is approximately 5 feet as measured from the top of the tributary bank to the tributary bed. The tributary has a meandering geometry. An OHWM is present, and indicators include a clear natural line impressed on the bank, vegetation absent within the tributary bed and multiple observed flow events. The Jurisdictional Assessment Report prepared by Terra Technologies in May 2008 states that the drainage area for this tributary is 700 acres.</p> <p>Flow: Water from Intermittent tributary 1 flows into Intermittent tributary 2. The evidence of water flow provided above for intermittent tributary 1 also applies to Intermittent tributary 2. It is determined that Intermittent tributary 2 contains surface water flowing continuously during certain times of the year.</p> <p>Intermittent tributary 2 flows into Cedar Creek which then flows into the Kansas River (A-1 water).</p>

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.	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.	N/A.

**D. Excluded Waters or Features**



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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>				
Exclusion Name	Exclusion Size		Exclusion <sup>5</sup>	Rationale for Exclusion Determination
N/A.	N/A.	N/A.	N/A.	

**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: [Terra Technologies Jurisdictional Assessment Report May 2008](#)

This information is **not** sufficient for purposes of this AJD.

Rationale: [This jurisdictional assessment need to be supported by more relevant information.](#)

Data sheets prepared by the Corps: [None](#)

Photographs: [Aerial and Other: 30 April 2008 & 30 June 2020 landscape photography; Google Earth Pro aerials 1990 - 2018](#)

Corps site visit(s) conducted on: [30 June 2020](#)

Previous Jurisdictional Determinations (AJDs or PJDs): [20 August 2008 AJD](#)

Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

USDA NRCS Soil Survey: [N/A](#)

USFWS NWI maps: [USFWS NWI Wetland Mapper, retrieved 30 June 2020](#)

USGS topographic maps: [USGS Earth Point Topographic Map for Google Earth, retrieved 15 July 2020](#)

**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="#">NRCS Wets Table and Monthly precipitation data, April 2008 &amp; June 2020</a>

**B. Typical year assessment(s):** [Flowing water was observed within the tributaries on 30 April 2008 and 30 June 2020. The antecedent precipitation tool determined that conditions in 2008 were wetter than normal in the past 90 days prior to 30 April 2008 – however it did not rain significantly recently prior to 30 April 2008. There were only trace amounts of rainfall recorded near the project area according to NRCS weather data. The antecedent precipitation tool determined that conditions in 2020 were normal in the past 90 days prior to 30 June 2020 – however the site visit was conducted following a 2.16 inch rainfall event on 27 June 2020. Both observations of the tributary were done at times where the site was more likely to contain water. The determination that the two on-site waterbodies are intermittent was made by taking into](#)

<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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account the wet conditions during the site visit, in combination with the multiple years of water shown within the tributaries via aerial photography and large drainage area for both tributaries.

- C. Additional comments to support AJD:** This 230-acre review area is located adjacent to W 175th Street and S Hedge Lane, Section 21, Township 14 south, Range 23 east, city of Olathe, Johnson County, Kansas.