



**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): 7/30/2020

ORM Number: NWK-2020-00544

Associated JDs: NA

Review Area Location¹: State/Territory: Kansas City: Hays County/Parish/Borough: Ellis

Center Coordinates of Review Area: Latitude 38.896130 Longitude -99.306168

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 Pit Pond constructed in uplands	0.25	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	<p>The 0.25 acre pit pond was constructed or resulted as part of an old borrow pit for the construction of Interstate Highway 70. The existing pond was connected to a drainage ditch by a 60-foot (#2) drainage ditch constructed wholly in the uplands (see below).</p> <p>Aerial imagery from 1991 to 2011 clearly shows the area where the upland pit pond has been enhanced and developed as part of a public recreational park and fishing pond between 2012 and 2013.</p>
#2 Drainage Ditch constructed in uplands	60	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	<p>The 60-foot drainage ditch was constructed in the uplands to provide water to a pit pond that was initially established as part of a quarry operation but later enhanced for a recreational park water feature.</p> <p>The ditch reach within the review area conveys flows from a longer reach of ditch that conveys flows from Chetolah Creek.</p> <p>Aerial imagery from 1991 to 2011 clearly shows that the area where the ditch was constructed was entirely upland. The ditch appears to have been constructed with the development and enhancement of the pit pond between 2012 and 2013.</p>

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: [Jurisdictional Determination request with project map submitted on July 10, 2020.](#)

This information is sufficient for purposes of this AJD.

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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Rationale: *N/A*

- Data sheets prepared by the Corps: *Title(s) and/or date(s)*.
- Photographs: *Aerial: 1991, 2002, 2003, 2004, 2005 Google Earth Pro (pre construction imagery)*
- Corps site visit(s) conducted on: *July 13, 2020 and July 29, 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 North*

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
<i>USGS Sources</i>	<i>USGS Topo Map – Hays North 1:24K</i>
<i>USDA Sources</i>	<i>N/A.</i>
<i>NOAA Sources</i>	<i>N/A.</i>
<i>USACE Sources</i>	<i>N/A.</i>
<i>State/Local/Tribal Sources</i>	<i>N/A.</i>
<i>Other Sources</i>	<i>Digital Globe imagery showing current (2019 & 2018) aerial imagery. Google Earth Pro 1991, 1992, 2005, 2011, 2013</i>

B. Typical year assessment(s): *N/A*

C. Additional comments to support AJD: *The 0.25 acre pit pond was initially constructed in the uplands as part of a borrow site for the construction of I-70. In 2012 or 2013, a ditch was constructed across the uplands to convey water into the pond which was enhanced and further developed for public recreation. The ditch meets the (b)(5) exclusion criteria and the pond meets the (b)(8) exclusion criteria. All other areas within the defined AJD review area (as shown on map) consist of uplands.*