



**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): 8/4/2020

ORM Number: NWK-2020-00417

Associated JDs: N/A

Review Area Location¹: State/Territory: KS City: Porterville County/Parish/Borough: Bourbon

Center Coordinates of Review Area: Latitude 37.7048 Longitude -94.9897

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
NWK-2020-00417 W1	0.05	acre(s)	(b)(1) Non-adjacent wetland.	The review area contains approximately 0.05 acres of emergent wetlands located along an ephemeral tributary; however, the ephemeral stream is outside the review area. Aerial imagery from the last 10 years shows no sign that the wetland is adjacent to an (a)(1) – (3) water. This wetland is approximately 0.75 miles from the nearest potential intermittent stream channel and approximately 1100 feet outside the mapped Flood Hazard Zone A. Topo maps indicate that the drainage on which this wetland is located begins approximately 600' upslope from the review area. Therefore, flooding from a potential (a)(1) – (3) water will never inundate this wetland in a typical year or otherwise.

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: [Burns & McDonnell Wetland Delineation Report dated 5/18/2020](#)
This information is sufficient for purposes of this AJD.
Rationale: [N/A](#)
- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
- Photographs: [Aerial and Other: Maps and Photos included in the above mentioned report; various Google Earth Pro and Digital Globe imagery \(see below\)](#)
- 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: [available in the wetland delineation report](#)
- USFWS NWI maps: [USFWS NWI compiled in 1980s](#)
- USGS topographic maps: [1:24,000 Hepler-KS 2018](#)

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.

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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Data Source (select)	Name and/or date and other relevant information
State/Local/Tribal Sources	N/A.
Other Sources	Other aerial imagery resources: Google Earth Pro (various images between 1991 and 2017); Digital Globe (Mar 2020 and Aug 2018)

B. Typical year assessment(s): Using the APT, typical year assessments were analyzed for the following available aerial imagery: 3/6/2020, 8/31/2018, 10/15/2017, & 1/22/2015; and for site photos from the wetland delineation report taken 5/12/2020. 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 images as follows:

5/12/2020 – Wetter than normal. These on-site photos of the wetland show saturated conditions as evidenced by standing water in the wetland.

3/6/2020 – Normal conditions. In this aerial image, ephemeral pools are visible in the off-site stream channel and saturated conditions are visible in the wetland, but no flowing water was observed.

8/31/2018 – Normal conditions. In this aerial image, the off-site channel is dry with no indication of saturated soils within the wetland.

10/15/2017 – Wetter than normal. This aerial image shows no discernable saturation visible within the review area.

1/22/2015 – Drier than normal. This aerial image shows no saturation visible within the wetland area.

Summary: There is no indication that this wetland located along the ephemeral stream has a surface connection to an (a)(1)-(3) water in a typical year. It is also clear that the stream only flows in direct response to precipitation and is therefore ephemeral and would not itself be a jurisdictional water.

C. Additional comments to support AJD: Approximately 60 acres drain to the review area. The wetland is situated along an ephemeral stream channel in the upper reaches of the drainage area. In addition, the wetland’s location would not allow for inundation by an (a)(1)-(3) water and does not meet the definition of an (a)(4) adjacent wetland. The entire wetland is approximately 0.1 acres in size, but it straddles the property/review area boundary; therefore, only the portion of the wetland within the review area is included in this JD (0.05 acres). In addition, the ephemeral stream channel is located just east (outside) of the review area; therefore, this JD does not include the ephemeral stream. The wetland is the only aquatic resource within the review area; the remaining area is dry land.