



**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): 7/20/2020  
 ORM Number: NWK-2013-00891  
 Associated JDs: N/A  
 Review Area Location<sup>1</sup>: State/Territory: Kansas City: Concordia County/Parish/Borough: Cloud  
 Center Coordinates of Review Area: Latitude 39.54870 Longitude -97.65245

**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)<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
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.

<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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**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>				
Exclusion Name	Exclusion Size		Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Ephemeral 1 (E1)	3723	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	E1 is an unnamed ephemeral drainage that has been largely shaped into a farmed swale. Aerial imagery clearly shows the feature lacks any indicators of continuous flows. Photo-32 of the applicant's June 2020 Wetland Delineation Report shows the ephemeral feature as a mostly farmed through drainageway at the bottom of the drainage reach within the review area. The fact that this drainage is continuously farmed indicates that it lacks sufficient duration of flow to constitute an intermittent regime.
Ephemeral 2 (E2)	1486	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	E2 is an unnamed ephemeral drainage that has been largely shaped into a grassed swale. Aerial imagery clearly shows the feature lacks any indicators of continuous flows. Photo-33 of the applicant's June 2020 Wetland Delineation Report shows the ephemeral feature as a smooth brome waterway. Review of aerial imagery indicates this drainage is dry and there is no evidence of continuous flows that would constitute an intermittent flow regime.
Ephemeral 3 (E3)	879	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	E3 is an ephemeral grassed swale consisting of smooth brome and buckbrush. Aerial imagery clearly shows the feature lacks any indicators of continuous flows. Photo-10 of the applicant's June 2020 Wetland Delineation Report shows the ephemeral feature as a grassed swale with no ordinary high water mark (OHWM). Review of available aerial imagery does not indicate any flows that would constitute an intermittent regime.
Ephemeral 4 (E4)	282	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	E4 is an ephemeral swale with slightly sloping topography and drains only 15 +/- acres of surface runoff into E3. Aerial imagery clearly shows the feature lacks any indicators of continuous flows and does not exhibit any indicator of an OHWM.
Ephemeral 5 (E5)	615	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	E5 is an ephemeral swale. Aerial imagery clearly shows the feature lacks any indicators of continuous flows. Photos-29, 30 and 31 of the applicant's June 2020 Wetland Delineation

<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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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
			Report shows the forested area without an indicator of an OHWM.
Ephemeral 6 (E6)	592	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. E6 is an unnamed ephemeral swale. Photos -2 through 6 of the applicant's June 2020 Wetland Delineation Report shows the grassed and forested area does not exhibit any indicators of an OHWM. The swale is located at the top of the watershed and lacks sufficient overland runoff to generate sufficient flow to establish and OHWM or provide anything other than ephemeral flows as a direct response to precipitation.

**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: [2020 Wetland Delineation Field Verification \(June 2020\)](#)

This information is sufficient for purposes of this AJD.

Rationale: [Onsite photographs of ephemeral features within the review area.](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial and Other: Google Earth Pro: 1991, 2003, 2005, 2012, 2019. Digital Globe: 2018. Onsite photographs: June 2, 2020.](#)
- Corps site visit(s) conducted on: [July 20, 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, USGS Concordia – KS QUAD Map](#)

**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="#">1:24K, USGS Concordia – KS QUAD Map</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="#">Corps site visit July 20, 2020.</a>
<a href="#">State/Local/Tribal Sources</a>	<a href="#">N/A.</a>
<a href="#">Other Sources</a>	<a href="#">Numerous aerial images available on Google Earth Pro &amp; Digital Globe aerial imagery.</a>

**B. Typical year assessment(s):** The Corps reviewed multiple aerial imagery sources with no flows observed within any of the ephemeral features. A typical year assessment was conducted using the Antecedent Precipitation Tool (APT) to determine if observations made for March 2, 2018, September 14, 2018 and June 2, 2020, are within the normal range of a typical year. The APT reports are included in the



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administrative record. The assessments generated the following findings:

June 2, 2020 – Dryer than Normal.

September 14, 2019 – Normal Conditions.

March 2, 2018 – Normal Conditions.

- C. Additional comments to support AJD:** This Approved Jurisdictional Determination (AJD) includes six (6) ephemeral features that are excluded under (b)(3) of the NWPR. These features lack sufficient flow frequency and duration to establish and maintain continuous OHWM. Further, no surface flows were observed within any of the aerial imagery reviewed. In addition, onsite reviews did not provide any evidence of continuous flows that would suggest intermittent flow regimes. The remainder of the AJD review area consists entirely of uplands. The attached map depicts the ephemeral features located within the JD review area.