



**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): 8/27/2020
 ORM Number: NWK-2020-00571-1
 Associated JDs: N/A
 Review Area Location¹: State/Territory: Kansas City: N/A County/Parish/Borough: Jackson
 Center Coordinates of Review Area: Latitude 39.4534 Longitude -95.9293

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)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
Ephemeral #2	757	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Onsite reviews conducted by the consultant on April 1, 2020, and the Corps of Engineers on August 25, 2020, did not result in any observable stream flow within the channel. Stream flows were observed by the Corps of Engineers within the channel on August 3, 2020, however this was due to a short duration release of water from ponds #2 and #3 that occurred as the result of a significant rain event that occurred in the 24 hour period prior to 0700 hours on July 31, 2020. A discharge of flows from Ponds #2 and #3 is only expected after significant rain events and for a short duration of time. Photographs of the tributary are provided in the attached supporting materials as well as in the consultant report dated July 2020. The Corps has determined that this unnamed tributary to Soldier Creek exhibits ephemeral flows during a typical year and therefore, meets the exclusion criteria of (b)(3).
Pond #2	0.23	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 JD Review area contains a 0.23-acre impoundment of an excluded ephemeral stream ((b)(3)).</p> <p>The impoundment appears to capture flows during precipitation and runoff events. Ponding of water above the embankment is dependent upon abbreviated flow events that are in direct correlation with precipitation and runoff.</p> <p>The ponded area of the impoundment is highly variable based on precipitation and runoff which is evidence that intermittent flow is absent during a typical year. As the unnamed tributary to Soldier Creek is ephemeral, so too is the impoundment and duration of ponding.</p> <p>The Corps has determined that the impoundment meets the criteria of a (b)(8) excluded water.</p>

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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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Pond #3	0.84 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 JD Review area contains a 0.84-acre impoundment of an excluded ephemeral stream ((b)(3)).</p> <p>The impoundment appears to capture flows during precipitation and runoff events. Ponding of water above the embankment is dependent upon abbreviated flow events that are in direct correlation with precipitation and runoff.</p> <p>The ponded area of the impoundment is highly variable based on precipitation and runoff which is evidence that intermittent flow is absent during a typical year. As the unnamed tributary to Soldier Creek is ephemeral, so too is the impoundment and duration of ponding.</p> <p>The Corps has determined that the impoundment meets the criteria of a (b)(8)</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: [Wetland Delineation and Jurisdictional Assessment report dated July 2020](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A](#)

Data sheets prepared by the Corps: [N/A](#)

Photographs: [Aerial: Google Earth aerial imagery dated April 13, 2019 and May 5, 2020](#)

Corps site visit(s) conducted on: [August 3, 2020 and August 25, 2020](#)

Previous Jurisdictional Determinations (AJDs or PJDs): [N/A](#)

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

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

USFWS NWI maps: [N/A](#)

USGS topographic maps: [USGS 1:24K Soldier Creek NW](#)

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	Record of Climatological Observations
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	Community Collaborative Rain, Hail & Snow Network



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B. Typical year assessment(s):

Typical year assessments were conducted for the stream identified as Ephemeral #2 based on onsite observations, photographs, aerial images and rainfall data. The Corps ran a typical year analysis for the tributary utilizing the “Antecedent Precipitation Tool (APT)”. The APT indicates that the April 1, 2020, site visit occurred during “Drier than Normal” conditions, the August 3, 2020 and the August 25, 2020, site visits occurred during “Normal” conditions. During the August 25, 2020, site visit, no pooling of water in low areas within the channel was observed. These findings are consistent with a stream flowing only in direct response to precipitation.

Rainfall data was collected utilizing the “Community Collaborative Rain, Hail & Snow Network” for stations KS-JA-5 located 8.1 miles SSE of Soldier Kansas and station KS-JA-3 located 6.8 miles W of Mayetta Kansas. Station KS-JA-5 is located 1.75 miles south and Station KS-JA-3 is located 9.75 miles south southeast of the project site. According to the 2 reporting stations, station KS-JA-5 report 1.77 inches and station KS-JA-3 reported 2.53 inches of rainfall during the reporting period of 0700 (July 30) to 0700 (July 31).

C. Additional comments to support AJD: Only Ephemeral #2, Pond #2 and Pond #3 were evaluated as part of this Approved Jurisdictional Determination.