



**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): 6/29/2020
 ORM Number: NWK-2011-00222
 Associated JDs: NWK-2011-00222 (Preliminary JD dated 2/23/2011)
 Review Area Location¹: State/Territory: Kansas City: near Monument County/Parish/Borough: Logan
 Center Coordinates of Review Area: Latitude 39.10577 Longitude -101.069677

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.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
#1 - Unnamed tributary to Middle Branch Hackberry Creek	2500	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	<p>The review reach consists of approximately 2,500 linear feet of an unnamed tributary to Middle Branch Hackberry Creek. The reach within the review area has been highly manipulated since 2011 due to ongoing construction activity associated with the enlargement of an existing farm pond and the reshaping of the unnamed tributary itself.</p> <p>The tributary exhibits ephemeral flow in direct response to precipitation runoff. Multiple onsite visits have been made to the review area and continuous flows which would indicate an intermittent flow regime have not been observed.</p> <p>Ponding and pooling of water in low areas and within an artificial impoundment have been observed; however, these feature appear to be residual pools associated with flash runoff events.</p> <p>Logan County, Kansas is located within a semi-arid region receiving an average of 19-inches of rainfall per year.</p> <p>Review of multiple years of aerial imagery indicates that the stream does not provide sufficient flow duration to constitute sustained flows during wet or dry seasons.</p> <p>Immediately below the JD review area, the tributary exhibits a discontinuous ordinary high water mark (OHWM). Area of a scoured channel, with OHWM indicators are separated by upland vegetated swales. This indicates that the tributary lacks flow durations to establish and maintain a continuous OHWM and is indicative of ephemeral flow.</p> <p>Approximately 1.5 miles downstream of the JD review area the tributary crosses County Road 330. During a 23 June 2020, onsite review no</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.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			<p>functional culvert was observed as it appears that flows are allowed to pass over the roadway. This indicates that the duration of flows are insufficient for the county road department to maintain and/or install a serviceable culvert. Inference can be made that flows are abbreviated.</p> <p>Onsite reviews by the Corps of Engineers (June 2020 and September and May 2019) did not result in any observed flow. Photographs of the tributary and discontinuous OHWM are provided in the attached supporting materials.</p> <p>In addition, to the on-the-ground photographs, the Corps ran a typical year analysis for the tributary utilizing the “Antecedent Precipitation Tool (APT)” for each of the three site visits listed above. The APT indicates that the June 2020 visit occurred during “Drier than Normal” conditions while the September and May visits occurred during “Normal” conditions.</p> <p>Given the lack of documented continuous flow conditions during a normal year and lack of a continuous OHWM below the JD review area, the Corps has determined that the unnamed tributary to Middle Hackberry Creek exhibits ephemeral flows during a typical year and therefore, meets the exclusion criteria of (b)(3).</p>
#2 - Impoundment of unnamed tributary to Middle Branch Hackberry Creek	1.9	acre(s)	<p>(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> <p>The JD Review area contains a 1.9 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 Middle Branch Hackberry Creek is ephemeral,</p>



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			<p>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>

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: **Title(s) and date(s)**
This information **Select.** sufficient for purposes of this AJD.
Rationale: **N/A or describe rationale for insufficiency (including partial insufficiency).**
- Data sheets prepared by the Corps: **Title(s) and/or date(s).**
- Photographs: **Other: Onsite photographs: May 6, 2019; September 6, 2019 and June 23, 2020**
- Corps site visit(s) conducted on: **February 17, 2011; February 23, 2011; October 19, 2011; May 6, 2019; August 2, 2019; September 6, 2019; June 23, 2020**
- Previous Jurisdictional Determinations (AJDs or PJDs): **PJD – February 23, 2011**
- 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: **USGS 1:24K, Monument-KS**

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	USGS 1:24K Topo Map (Monument QUAD)
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	Seven onsite visits (dates provided above)
State/Local/Tribal Sources	N/A.
Other Sources	Numerous aerial imagery resources :Google Earth Pro (1991, 2002, 2003, 2004, 2005, 2006, 2008, 2010, 2012, 2014 & Digital Globe (2018, 2019). Continuous flow or inundated channel were not observed in any of the above images.

B. Typical year assessment(s): In addition, to the onsite visits, the Corps ran a typical year analysis for the tributary utilizing the “Antecedent Precipitation Tool (APT)” for the most recent site visits (May & September 2019 and June 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 indicates that the



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

June 2020 visit occurred during “Drier than Normal” conditions while the September and May visits occurred during “Normal” conditions.

- C. Additional comments to support AJD:** The tributary exhibits an ephemeral flow regime. The impoundment is located on the ephemeral tributary. Immediately downstream of the JD review area, the tributary exhibits a discontinuous OHWM (upland breaks), with areas of upland vegetated swales or bed and bank features. Numerous aerial imagery resources have been reviewed, such as Google Earth Pro (1991, 2002, 2003, 2004, 2005, 2006, 2008, 2010, 2012, 2014 & Digital Globe (2018, 2019), with all images showing a lack of continuous flow and/or inundated channel. Given the lack of continuous flows and the break in OHWM connectivity to downstream waters; it is determined that the tributary and its impoundment with the JD Review area are nonjurisdictional.