



**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): 9/10/2020
 ORM Number: NWK-2020-501
 Associated JDs: N/A
 Review Area Location¹: State/Territory: KANSAS City: N/A County/Parish/Borough: MIAMI
 Center Coordinates of Review Area: Latitude 38.55851 Longitude -94.80653

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
P-1, Tributary of South Wea Creek	5500 linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	The stream channel has well-defined ordinary high water mark features and stream characteristics indicating more than seasonal or intermittent flow. This tributary drains approximately 1100 acres of land within and up-slope of the reviewed project site. The channel bed has an average width of 10 feet and is depicted on USGS topographic maps as a blue-line stream. Three intermittent stream channels located within the project site having evidence of more than ephemeral flow drain into this main stream traversing the project site from east to

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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Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
				west. The observed condition of flow and volume of flow during both of the site visits in January and June of 2020, supports a determination of perennial classification for this stream.
I-1, Tributary of South Wea Creek	1248	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	This tributary contributes flow to a perennial stream channel. It exhibits both bed and bank features and drains approximately 260 acres of land. Flow was observed by the consultant during the 31 January 2020 site visit. A typical year assessment was conducted to evaluate observed conditions during site visits on 31 January 2020. The site conditions were wetter than normal at the time of the January 2020 observation but drier than normal during the June 2020 observation. The observed condition with evidence of flow on 29 June 2020 supports a determination of intermittent flow for this stream that is more than just in direct response to rainfall. See Section IIIB of this form.
I-2, Tributary of South Wea Creek	1438	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	This tributary contributes flow to a perennial stream channel. It exhibits both bed and bank features and drains approximately 30 acres of land. Flow was observed by the consultant during the 31 January 2020 and 29 June 2020 site visits. A typical year assessment was conducted to evaluate observed conditions during site visits on 31 January and 29 June 2020. The site conditions were wetter than normal at the time of the January 2020 observation but drier than normal during the June 2020 observation. The observed condition with evidence of flow on 29 June 2020 supports a determination of intermittent flow for this stream that is more than just in direct response to rainfall. See Section IIIB of this form.
I-3, Tributary of South Wea Creek	449	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	This tributary contributes flow to a perennial stream channel. It exhibits both bed and bank features and drains approximately 225 acres of land. Flow was observed by the consultant during the 31 January 2020 and 29 June 2020 site visits. A typical year assessment was conducted to evaluate observed conditions during site visits on 31 January and 29 June 2020. The site conditions were wetter than normal at the time of the January 2020 observation but drier than normal during the June 2020 observation. The observed condition with evidence of flow on 29 June 2020 supports a determination of intermittent flow for this stream that is more than just in direct response to rainfall. See Section IIIB of this form.



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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.	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.	N/A.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
E-1	1365	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	The drainage area of this channel is limited to the area within a portion of the project area and begins on the north at 311th Street. This tributary was observed during the 29 June 2020 site visit and contained no water or flow at that time. A typical year assessment was conducted to evaluate the duration of flow within the stream (see Section III.B). It is determined that conditions were wetter than normal at the time of the January site visit and it is expected water would only flow during and immediately after rainfall. The observed condition and the APT analysis supports a determination of Ephemeral classification for this feature.
OW-1	.29	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).	This pond was not constructed within the location of a historic drainage way. The pond was likely constructed for agricultural purposes and would be a preamble water. This pond is not considered to be a jurisdictional water of the United States.
OW-2	.26	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-	This pond was not constructed within the location of a historic drainage way. The pond was likely constructed for agricultural purposes and would be a preamble water. This pond is

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
			jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	not considered to be a jurisdictional water of the United States.
OW-3	.54	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).	This pond was not constructed within the location of a historic drainage way. The pond was likely constructed for agricultural purposes and would be a preamble water. This pond is not considered to be a jurisdictional water of the United States.
N/A.	N/A.	N/A.	N/A.	N/A.

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: [Bowen Ranch Delineation Report, Habitat Architects, dated February 2020.](#)

This information is sufficient for purposes of this AJD.

Rationale: [Report was complete.](#)

Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)

Photographs: [Aerial and Other: Imagery and other web-based contour data. Google Earth Pro Aerial Photography 1990-2019, Consultant landscape photography dated 31 January 2020 and Corps landscape photography dated 29 June 2020.](#)

Corps site visit(s) conducted on: [29 June 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: [Paola East, KS](#)

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.



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Data Source (select)	Name and/or date and other relevant information
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

- B. Typical year assessment(s):** The tributaries were observed during both wetter than normal conditions (January 2020 consultant site visit) and drier than normal conditions, (29 June 2020 Corps site visit). The ephemeral feature on the site (E-1) contained no water or flow during either visit. A typical year assessment was conducted to evaluate observed conditions observed on the site within the stream channels. It was wetter than normal at the time of the January site visit and the APT analysis supports a determination of Ephemeral classification for feature E-1. The 29 June observed conditions of flow within tributary channels P-1, I-1, I-2 and I-3 and the APT analysis of drier than normal conditions at that time of observation supports a determination of perennial flow for feature P-1 and intermittent flow for features I-1, I-2 and I-3.
- C. Additional comments to support AJD:** The consultant delineation report included a stream feature identified as I-3 flowing to the perennial stream channel on the site, (P-1) at the western extent of the project site. This stream was identified as intermittent in nature and 788 linear feet in length but because it is located outside the project site boundary, it was not further considered.