



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): 08-MAR-2021

ORM Number: SWT-2019-00564 (reconsideration based on new information)

Associated JDs: July 15, 2020, SWT-2019-00564

Review Area Location<sup>1</sup>:

State/Territory: OK City: Broken Arrow County/Parish/Borough: Tulsa County

Center Coordinates of Review Area: Latitude 35.98775 Longitude -95.84633

**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
2019-00564, IP-1 (Dec 31, 2020 Revised Delineation)	0.85 acres	(a)(3) Lake/pond or impoundment of a jurisdictional water contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Evaluation of Antecedent Precipitation Tool (APT) results, BEACON delineation reports, on-site observations, USGS topographic maps, and Google Earth aerial imagery, supports that IP-1 contributes surface water flow to the Arkansas River in a typical year. The Arkansas River becomes, north of Muskogee, a navigable water subject to Section 10 of

<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 independent 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.

<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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			the Rivers and Harbors Act of 1899. IP-1 flows via an unnamed tributary to Haikey Creek. Haikey Creek flows to the Arkansas River. This surface water flows continuously during certain times of the year and more than in direct response to precipitation. During the February 9, 2021 Corps site visit, flow was observed from IP-1, under APT normal conditions; and, based on an evaluation of all available information, it has been determined that IP-1 meets the conditions of 33 CFR Part 328.3(c)(6).
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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

**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
2019-00564, IP-2 (Dec 31, 2020 Revised Delineation)	0.1 acres	(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)	Evaluation of APT results, BEACON delineation reports, on-site observations, USGS topographic maps, USDA soil survey information, and Google Earth aerial imagery, supports that IP-2 does not contribute surface water flow to the Arkansas River in a typical year. IP-2 is connected to WW-2. IP-2 is not inundated by flooding from a jurisdictional water in a typical year.
2019-00564, IP-3 (Dec 31, 2020 Revised Delineation)	0.1 acres	(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)	Evaluation of APT results, BEACON delineation reports, on-site observations, USGS topographic maps, USDA soil survey information, and Google Earth aerial imagery, supports that IP-3 does not contribute surface water flow to the Arkansas River in a typical year. IP-3 is connected to WW-3, and these features are in turn surrounded by uplands, restricting downstream connectivity to non-channelized sheetflow. IP-3 is not inundated by flooding from a jurisdictional water in a typical year.
2019-00564, WW-1 (Dec 31, 2020 Revised Delineation)	600 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Evaluation of APT results, BEACON delineation reports, on-site observations, USGS topographic maps, USDA soil survey information, and Google Earth aerial imagery, supports that WW-1 is an ephemeral feature which experiences surface water flowing or pooling only in direct response to precipitation.
2019-00564, WW-2 (Dec 31, 2020 Revised Delineation)	85 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Evaluation of APT results, BEACON delineation reports, on-site observations, USGS topographic maps, USDA soil survey information, and Google Earth aerial imagery, supports that WW-2 is an ephemeral feature which experiences surface water flowing or pooling only in direct response to precipitation.
2019-00564, WW-3 (Dec 31, 2020 Revised)	395 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Evaluation of APT results, BEACON delineation reports, on-site observations, USGS topographic maps, USDA soil survey information, and Google Earth aerial

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<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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Delineation)			imagery, supports that WW-3 is an ephemeral feature which experiences surface water flowing or pooling only in direct response to precipitation.
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**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: BEACON Environmental Assistance Corporation, *Wetland and Waterway Investigation, Elysian Fields Residential Group, LLC, Tulsa County, Oklahoma*, dated September 2019, and BEACON Environmental Assistance Corporation, additional information *Associated with the Elysian Fields Residential Development, by Capital Homes Residential Group*, dated December 31, 2020. This information is sufficient for purposes of this AJD.

\_\_\_\_\_ Data sheets prepared by the Corps:

Photographs: Google Earth Aerial Imagery (1995-2020)

Corps Site visit(s) conducted on: February 9, 2021

Previous Jurisdictional Determinations (AJDs or PJDs): July 15, 2020, SWT-2019-00564

Antecedent Precipitation Tool: provide detailed discussion in Section III.B.

\_\_\_\_\_ USDA NRCS Soil Survey:

\_\_\_\_\_ USFWS NWI maps:

USGS topographic maps: USGS 1:24000-scale Quadrangle for Leonard, OK, 1957.

**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.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

**B. Typical year assessment(s):** APT results were obtained for November 18, 2020, which is the date which BEACON Environmental Assistance Corporation, revisited the project site; the result was a normal value of 13. APT results were obtained for February 9, 2021, which is the date USACE conducted a site visit; the result was a normal value of 14. APT results were also obtained for February 22, 2020, which is the date soil boring data was obtained; the result was a normal value of 13. Evaluation of these APT results, the information in the BEACON delineation reports, on-site observations, USGS topographic maps, and multiple years of historical Google Earth aerial imagery (1995-2019), supports that IP-1 contributes surface water flow to the Arkansas River in a typical year. However, this evaluation also supports that IP-2, IP-3, WW-1, WW-2, and WW-3 do not contribute surface water flow to the Arkansas River in a typical year.

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- C. **Additional comments to support AJD:** Additional information, dated December 31, 2020, was received in which BEACON Environmental Assistance Corporation revised their previous delineation finding of intermittent for WW-1, to a finding of ephemeral. The additional information included soil borings and analysis which found that upward migration of groundwater does not contribute to flow in the ephemeral feature WW-1. During the February 9, 2021 Corps site visit, no flow was observed at WW-1, supporting the ephemeral finding. However, flow was observed from IP-1, under APT normal conditions; and, based on an evaluation of all available information, it has been determined that IP-1 meets the conditions of 33 CFR Part 328.3(c)(6).

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