



**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): 10/9/2020
 ORM Number: SWF-2019-00075
 Associated JDs: N/A
 Review Area Location¹: State/Territory: Texas City: Bertram County/Parish/Borough: Burnet
 Center Coordinates of Review Area: Latitude 30.692222 Longitude -98.077778

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
SWF-2019-00075 (intermittent)	2000 linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Downstream (a)(1) water: Brazos River Flow path from subject water to downstream (a)(1) water: Subject tributary leads to Oatmeal Creek, which leads to the South Fork San Gabriel River, which leads to the San Gabriel River, which leads to the Brazos River. Subject water has: Intermittent flow (i.e. flowing water continuously during certain times of the year and more than a direct response to precipitation) Known natural or artificial non-jurisdictional features: 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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Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
			Ditch within the review area?: 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.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
SWF-2019-00075 (ephemeral)	1280 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Downstream (a)(1) water: Brazos River Flow path from subject water to downstream (a)(1) water: Subject feature leads to unnamed tributary, which leads to Oatmeal Creek, which leads to the South Fork San Gabriel River, which leads to the San Gabriel River, which leads to the Brazos River. Subject water has: Ephemeral flow (i.e. flowing water only in direct response to precipitation) Known natural or artificial non-jurisdictional features: N/A Ditch within the review area?: 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: **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: **Aerial: Google Earth: 20150313, 20150528, 20170130, 20171124**
- Corps site visit(s) conducted on: **20190926**
- 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).**

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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- USFWS NWI maps: [Title\(s\) and/or date\(s\)](#).
- USGS topographic maps: [Bertram 1:24K Quad](#)

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): Five APT reports were produced which align with the Google Earth dates and the Corps site visit date identified in Section III (A). In conjunction with Google Earth and the Corps Site Visit, the Antecedent Precipitation Tool (APT) reports the following: 1.) Surface water is visible in the tributary named 'SWF-2019-00075 (intermittent)' via Google Earth on the following dates, 20150313 and 20150528. The APT concludes those dates and the three 30-day periods prior were 'wetter than normal' and not indicative of a typical year. 2.) Surface water is also visible in the tributary named 'SWF-2019-00075(intermittent)' via Google Earth on the following dates, 20170130 and 20171124. The APT concludes those dates and the three 30-day periods prior were 'normal', which is indicative of a typical year. 3.) Surface water was not observed within the tributary named 'SWF-2019-00075 (intermittent)' during the site visit on 20190926. The exception to that was surface water was observed within the constructed impoundment. The APT concludes that date and the three 30-day periods prior were 'drier than normal' and the area was experiencing a 'mild drought' and not indicative of a typical year. Lastly, no surface water has been visible in the feature named 'SWF-2019-00075 (ephemeral)' either via aerial photography or the site visit. In conclusion, using the dates (20170130 and 20171124) that represent a 'normal' typical year (i.e. when precipitation and other climatic variables are within the normal periodic range), 'SWF-2019-00075 (intermittent)' would be considered an (a)(2) water as an intermittent tributary under the Navigable Waters Protection Rule (NWPR), while 'SWF-2019-00075 (ephemeral)' would be considered an ephemeral feature and excluded from the Clean Water Act.

C. Additional comments to support AJD: This AJD is in response to the landowners request following the construction of a potentially unauthorized impoundment located on the tributary named 'SWF-2019-00075 (intermittent)' above. The impoundment is not included in this AJD review since determining jurisdiction prior to the construction is what's relevant.