

SPECIAL PUBLIC NOTICE

**CHARLESTON DISTRICT, CORPS OF ENGINEERS
69A Hagood Avenue
Charleston, South Carolina 29403**

REGULATORY DIVISION

July 13, 2020

**CHARLESTON DISTRICT REGULATORY UPDATE - COVID 19 AND NAVIGABLE WATERS
PROTECTION RULE**

The purpose of this notice is to provide a brief update on the current operational status of the Charleston District's Regulatory Division.

1. COVID-19 UPDATE. The number of COVID-19 cases continues to rise in South Carolina, therefore, the Charleston District Regulatory Division is still operating in a maximized telework status and all offices are currently closed to the public. We have made great strides processing actions electronically and working virtually to include hosting and participating in virtual meetings. Recently, we received approval from the District Engineer to begin conducting site visits on a case-by-case basis. Please reach out to project managers far enough in advance to accommodate coordination and scheduling. The ability to review a site or project in the field is critical to our program, so your cooperation in following COVID-19 safety measures is greatly appreciated. We are asking that all site visits be conducted under social distancing protocols, and a mask be worn when appropriate. Please minimize the number of individuals that attend any site visits and take steps ensure everyone stays healthy, see attached.

2. NAVIGABLE WATERS PROTECTION RULE. The NWPR was implemented on June 22, 2020, defining waters of the United States. Attached you will find our internal NWPR Approved JD Form (AJD) and Guidebook for the Form. The forms can also be found on the USACE Headquarters webpage: https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/juris_info/

In order to expedite our review of your AJD, you are encouraged to fill out the form and include it with each AJD submittal. However, use of the form is not a requirement. The link to the form and guidance has been posted to our District website on the JD page. Please continue to monitor the page for updates or additional information. If you have any questions regarding current or previous delineations or determinations that may warrant a review under the NWPR, please contact your project manager.

Additional information regarding the NWPR can be found by visiting the following website:
<https://www.epa.gov/nwpr>

The summertime heat is on, so please stay hydrated! If you have any updates to the consultant email distribution list, please let us know.

Sincerely,

Travis Hughes
Division Chief, Regulatory
Charleston District

Stop the Spread of Germs

Help prevent the spread of respiratory diseases like COVID-19.



Stay at least 6 feet (about 2 arms' length) from other people.



Cover your cough or sneeze with a tissue, then throw the tissue in the trash and wash your hands.



When in public, wear a cloth face covering over your nose and mouth.



Do not touch your eyes, nose, and mouth.



Clean and disinfect frequently touched objects and surfaces.



Stay home when you are sick, except to get medical care.



Wash your hands often with soap and water for at least 20 seconds.



cdc.gov/coronavirus

2/20/20 - May 12, 2020 (1) 6: 88



INTERIM APPROVED JURISDICTIONAL DETERMINATION FORM USER MANUAL – NAVIGABLE WATERS PROTECTION RULE

This user manual provides detailed instructions to the Corps for how to complete the interim Navigable Waters Protection Rule (NWPR)¹ Approved Jurisdictional Determination (AJD) Form (hereinafter “the AJD Form”). The AJD Form and this user manual do not provide any new guidance or policy regarding the NWPR, nor do they establish which aquatic resources are subject to Clean Water Act (CWA) or Rivers and Harbors Act of 1899 (RHA) jurisdiction as that is accomplished by the NWPR itself. In addition, the AJD Form and this user manual do not raise any novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in Executive Orders 12866 or 13891 as neither document changes Regulatory program policies. Rather, the AJD Form and this user manual together comprise an administrative implementation tool used by the Corps to provide a means to document the jurisdictional status of waters within a review area² as part of completing an AJD. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

The AJD Form should be used to document the jurisdictional status of all waters³ within a review area. The AJD Form should include as an attachment at least one map/figure depicting the boundary of the review area; the location, name, and jurisdictional status of all the waters in the review area; and in most cases, the lateral limits of those waters.

The AJD Form does not currently communicate or interact with ORM2. Information entered on the AJD Form for each water (such as name, size, and criteria) should be identical to the aquatic resource information entered in ORM2. The ORM2 aquatic resources upload spreadsheet remains available for uploading large numbers of waters to ORM2. Refer to the ORM2 Homepage for the latest version of the upload spreadsheet and for instructions on how to enter data into ORM2.

The AJD Form and this associated user manual are for interim use. The Corps may re-evaluate both and provide any necessary changes in a revised interim or final AJD Form and user manual.

PROCEDURAL NOTES:

All fillable sections in the AJD Form are designed to automatically expand to accommodate the information selected or entered. Locations that allow text entry or selection from a drop-down list are displayed with blue text. When entering data, click directly on the blue text to reveal the

¹ The Navigable Waters Protection Rule was published in the Federal Register on 21 April 2020 and became effective on 22 June 2020 (see 85 FR 22250).

² The term “review area” refers to the geographic boundary under review for determination of federal Section 10 Rivers and Harbors Act of 1899 (RHA) and/or Section 404 Clean Water Act jurisdiction. The review area for an AJD may consist of an entire parcel of land, or a portion of a parcel.

³ For purposes of this user manual, the term “water(s)” refers to commonly understood waters like rivers, streams, lakes, ponds, impoundments, and wetlands. The term “water(s)” also refers to water features that are being evaluated for jurisdiction, such as ditches, swales, stormwater ponds, and areas being assessed for wetland presence.



dropdown box or to begin entering text. Also note that when copying text from one table cell to another, select only the text, not the entire cell, as selecting the entire cell will cause formatting problems. Where a field is not used, leave the blue “N/A” text in place.

Each water being evaluated for jurisdiction within the review area requires a numerical size with a unit of measurement. Enter the size in the appropriate column on each table and select the appropriate unit of measure from the drop-down list. Generally, use acres for wetlands and open waters, and linear feet for streams or other linear features (e.g., ditches). Exercise discretion where appropriate to use a different unit of measure than those described.


General instructions for completing the tables in Section II of the AJD Form:

Each table in Section II comes pre-loaded with one row, but there are occasions where additional rows must be added to accommodate a review area that contains multiple waters of the same type. Note that all necessary rows should be generated prior to entering data.

To add a row to a table, copy the data entry row (the row with blue text) and paste it below the table. Directions to accomplish this are provided in the example below.


EXAMPLE: A review area contains a total of five adjacent wetlands, or (a)(4) waters. To accommodate the data, four additional rows are needed in the (a)(4) table. This can be done by following these instructions:

1. Place the cursor and click to the left of the row to be copied (outside the table border). This should highlight the entire row:



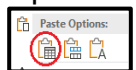

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

2. Press CTRL+C (or right click and select copy from the drop-down list), then place the cursor and click in the white space just below the table:



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.

Press CTRL+V to insert the next row, or right click and from the “Paste Options” menu, select “Keep Original Table Formatting” as shown in this image:

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.
N/A.	N/A.	N/A.	N/A.	N/A.

The table now contains one additional data entry row.



- To add more rows, continue to press CTRL+V (or right click and from the “Paste Options” menu, select “Keep Original Table Formatting”) as many times as needed to generate the correct number of rows.

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.
N/A.	N/A.	N/A.	N/A.	N/A.
N/A.	N/A.	N/A.	N/A.	N/A.
N/A.	N/A.	N/A.	N/A.	N/A.
N/A.	N/A.	N/A.	N/A.	N/A.



The table now contains four additional data entry rows to accommodate the five (a)(4) waters in the example review area. Repeat the process as many times as necessary to generate the appropriate number of rows. If more than the necessary number of rows is created, click outside of the table border and to the left of the unneeded row(s) to highlight the row as depicted in step “1,” then right click and select “delete rows.”

General instructions for completing the table in Section III.A. of the AJD Form (when necessary):

The table in Section III.A. comes pre-loaded with several drop-down lists from which various data sources may be chosen. Since multiple sources cannot be selected from a single drop-down list, there are occasions where additional rows will be necessary to accommodate multiple sources within a single drop-down list. Note, all necessary rows should be generated prior to entering data.

To add a row to the table, copy the selected row and paste it below the table. Directions to accomplish this are provided in the example below.

EXAMPLE: Three USACE data sources were used in the evaluation of an AJD. To accommodate the data, two additional “USACE Sources” rows are needed in the table.

- Place the cursor and click to the left of the row to be copied (outside the table border). This should highlight the entire row:

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



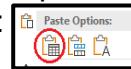


1. Press CTRL+C (or right click and select copy from the drop-down list), then place the cursor and click in the white space just below the table:

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.



2. Press CTRL+V to insert the next row, or right click and from the “Paste Options” menu, select “Keep Original Table Formatting” as shown in this image:



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.
USACE Sources	N/A.



The table now contains one additional “USACE Sources” row.

3. To add more rows, continue to press CTRL+V (or right click and from the “Paste Options” menu, select “Keep Original Table Formatting”) as many times as needed to generate the correct number of rows.

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.
USACE Sources	N/A.
USACE Sources	N/A.



The table now contains two additional data entry rows to accommodate the three total USACE sources described in the example. The process can be repeated as many times as necessary to generate the appropriate number of rows. If more than the necessary number of rows is created, click outside of the table border and to the left of the unneeded row(s) to highlight the row as depicted in step “1,” then right click and select “delete rows.”



DETAILED AJD FORM INSTRUCTIONS: For clarity, the following sections are organized with headings that are consistent with those found on the AJD Form itself.

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): This is the date the AJD is finalized by a person with authority to do so (e.g., district chief or project manager with delegated authority). This date should match the ORM2 end date for the AJD, the date on the AJD transmittal letter, and the date on the Notification of Administrative Appeal Options and Process Form.

ORM Number: Enter the ORM2 identification number in the designated format. Districts may add an optional identifier (such as project manager initials or field office identifier) at their discretion.

Associated JDs: This interim AJD Form is designed to document the jurisdictional status of all of the waters within a review area on a single form. There may be circumstances where waters in a review area are documented on multiple AJD forms or a combination of AJD and Preliminary Jurisdictional Determination forms. List any other associated jurisdictional determinations (JD) (either preliminary or approved) for this review area, and/or those associated with off-site locations such as mitigation sites. If there are no associated JDs, delete all but the “N/A” portion of the blue text. Associated JDs often have the same ORM number. Where the associated JDs have the same ORM number, an identifier or sequence number of some kind should always be added to the ORM number to distinguish them from each other. An example of sequencing might look like: HQS-2020-00001-MSW-MITSITE; or HQS-2020-00001-MSW-JD01, HQS-2020-00001-MSW-JD02, etc.

Review Area Location: Reference the location of the review area in terms of the approximate center of the review area, regardless of size (including linear projects). The review area may consist of an entire parcel of land, or a portion of a parcel, and should be clearly marked on any plans or maps accompanying the AJD Form.

- *State/Territory:* Enter the name of the state or territory where the center of the review area is located. Abbreviations are acceptable, but not necessary.
- *City:* Enter the name of the city closest to the center of the review area. Abbreviations are not recommended.
- *County/Parish/Borough:* Enter the county/parish/borough name where the center of the review area is located. Abbreviations are not recommended.
- *Center coordinates of review area:* Enter approximate coordinates of the center of the review area, in decimal degree format. Example: 38.89917, -77.01743. There is no requirement for the number of digits, but generally five decimal digits provides accuracy within about 4 feet of the actual location.



II. FINDINGS

A. Summary: Check all the boxes in this section that apply to the portion of the review area addressed by the AJD Form. At least one box from the list in Section II.A. must be selected. The four boxes and associated instructions are:

*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).*⁴ Only check this box when there are no waters of any kind within the entire review area. When this box is checked, include a rationale in the space provided to support the conclusion that the entire review area does not contain any waters of any kind and then skip to Section III of the AJD Form. If this box is checked, no other boxes in Section II.A. should be checked. If there are any waters in the review area, whether jurisdictional or non-jurisdictional, do not check this box. In this case, select one or more of the other boxes within Section II.A. and complete the corresponding tables in Section(s) II.B., II.C., and/or II.D.

There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area: Check this box when there are “navigable waters of the United States” within RHA jurisdiction, as defined by 33 CFR 329, within the review area. When this box is checked, complete the corresponding table in Section II.B.

There are “waters of the United States” within Clean Water Act jurisdiction within the review area: Check this box when there are waters within the review area that meet the definition of one of the categories of “waters of the United States” within CWA jurisdiction, as defined by 33 CFR 328.3. When this box is checked, complete all appropriate tables in Section II.C.

There are waters or water features excluded from Clean Water Act jurisdiction within the review area: Check this box when there are waters excluded from CWA jurisdiction as defined by 33 CFR 328.3 within the review area. When this box is checked, complete the corresponding table in Section II.D.

B. Rivers and Harbors Act of 1899 Section 10: Complete this section when *navigable* waters of the United States (i.e., waters subject to RHA jurisdiction as defined by 33 CFR 329) are found in the review area. In order to use the AJD Form to document the jurisdictional status of a navigable water in the review area, the navigable water must be subject to the ebb and flow of the tide or be included on the district’s list of Section 10 navigable waters.⁵ If the navigable water is not subject to the ebb and flow of the tide or is not included on the district’s list of Section 10 navigable waters, a Section 10 navigability determination must be completed. Complete this Section 10 RHA navigability determination following the procedures outlined in 33 CFR 329.14, and do not use the AJD Form to document the determination.

⁴ The NWPR definition of “upland” can be found at paragraph (c)(14) and is not synonymous with dry land (see 85 FR 22339).

⁵ Refer to 33 CFR 329.16 Use and Maintenance of Lists of Determinations.



Rivers and Harbors Act of 1899 Section 10 (§ 10)

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

§ 10 Name: Each water should have a unique name. Assign names consistent with the maps and drawings in the administrative record (AR) and consistent with the aquatic resource names used in ORM2.

In coastal regions, a tributary may flow perpendicularly into tidal waters such that a reach⁶ extends both above and below the mean high water (MHW) of a § 10 water. A single tributary reach would normally be documented as a single water; however, in this circumstance and for documentation purposes of § 10 waters, describe the portion of the tributary reach below the MHW as part of that § 10 water on the § 10 table. For CWA purposes, describe the portion of the same tributary reach below the high tide line (HTL) as part of the (a)(1) water on the (a)(1) table, and the portion of the same tributary reach above the HTL as a separate water on the (a)(2) table of the AJD Form.

The upstream limit (i.e., the head of navigation) of a non-tidal § 10 water may also lie along the same tributary reach. When this occurs within the review area, for documentation purposes of § 10 waters, describe the portion of the tributary reach below the head of navigation as part of that § 10 water on the § 10 table. For CWA purposes, describe the portion of the same tributary reach below the head of navigation as a separate water on the (a)(1) table and the portion of the same tributary reach above the head of navigation as a separate water on the (a)(2) table of the AJD Form.

When a wetland lies entirely below the MHW or ordinary high water mark (OHWM) of the § 10 water, the wetland should be described as part of that § 10 water. Alternatively, a wetland can also span the MHW or OHWM associated with a § 10 water. While this is a single wetland, for documentation purposes of § 10 waters, describe the portion of the wetland below the MHW or OHWM of the § 10 water as part of that § 10 water on the § 10 table. For CWA purposes in the context of a § 10 water, the portion of the wetland above the MHW of the § 10 water should be described as a separate water on either the (a)(1) table (for tidal waters that also lie below the HTL) or the (a)(4) table (for the non-tidal portion of the wetland that extends above the OHWM or HTL).

Note that in most cases, a § 10 water is also a traditional navigable water (TNW) and jurisdictional under the CWA.⁷ In this circumstance, the same water described on the RHA § 10 table should also be described as a TNW on the (a)(1) table in Section II.C. of the AJD Form. There may be instances where a § 10 water meets one of the exclusions in (b)(2) through

⁶ A reach is described in the preamble to the NWPR as a section of a stream or river along which similar hydrologic conditions exist, such as discharge, depth, area, and slope. In general, a reach can be any length of a stream or river, but for implementation purposes, that length is bounded by similar flow characteristics (85 FR 22290).

⁷ There are circumstances where a navigable water of the United States subject to the RHA may not be jurisdictional under the CWA. Examples include where a specific event or action has occurred, rendering a navigable water or a portion thereof no longer subject to CWA, or when a navigable water or a portion thereof also meets one of the NWPR exclusions such that it is not jurisdictional under the CWA. In these circumstances, the water would remain subject to the RHA, but the portion subject to the NWPR exclusion would not be a TNW for purposes of CWA jurisdiction.



(b)(12) of the NWPR such that the water is excluded from CWA jurisdiction. In that circumstance, the same water described on the RHA § 10 table should also be described as an excluded water for CWA purposes in the exclusions table in Section II.D. of the AJD Form.

Section 10 Criteria: Select the criterion from the drop-down list that applies to the subject water. If the water meets multiple criteria, select the strongest criterion from the list and discuss it, along with all other applicable criteria in the rationale section.

Rationale for Section 10 Determination: When the AJD includes a delineation of the limits (boundaries) of jurisdiction, discuss in the rationale which OHWM indicator(s), MHW indicator(s), and/or baseline determination were used to determine the lateral limits for each water entered in this section of the AJD Form. While not relevant in determining the lateral limits of the § 10 water, also include the wetland delineation methods (1987 Wetlands Delineation Manual and Regional Supplements) used to determine the boundary of any wetlands within the § 10 water. Based on the criterion selected for a specific water, include the following information in the corresponding rationale:

- *RHA Tidal water is subject to the ebb and flow of the tide:* A rationale and information supporting that the water is tidally influenced, or
- *RHA Non-tidal water is on the district's Section 10 waters list:* A reference to the water on the district's Section 10 navigable waters list.

C. Clean Water Act Section 404: Complete the relevant table(s) in this section for each category of waters of the United States (i.e., waters subject to CWA jurisdiction) found within the review area. Note that multiple categories of waters of the United States and multiple waters within a specific category can be documented on the AJD Form. Completion of the appropriate table(s) is required in order to document the Corps' basis for jurisdiction. When the AJD includes a delineation of the limits (boundaries) of jurisdiction, discuss in the rationale which OHWM indicator(s), HTL indicator(s), baseline determination, and/or wetland delineation methods (1987 Wetlands Delineation Manual and Regional Supplements) were used to determine the lateral limits for each water entered in this section of the AJD Form.

Territorial Seas and Traditional Navigable Waters ((a)(1) waters):				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

(a)(1) Name: Each water should have a unique name. Assign names consistent with the maps and drawings in the AR and consistent with the aquatic resource names used in the ORM2 aquatic resource data.

In coastal regions, where the same tributary reach extends perpendicularly below the HTL and/or MHW, the different portions of the same reach should be documented separately. As previously discussed, for documentation purposes of § 10 waters, describe the portion of the tributary reach below the water MHW line of the § 10 as part of that § 10 water on the § 10 table. For CWA purposes, describe the portion of the same tributary reach below the HTL as part of the (a)(1) water on the (a)(1) table, and the portion of the same tributary reach above the HTL as a separate water on the (a)(2) table of the AJD Form.



The upstream limit of a TNW may also lie along the same tributary reach. When this occurs within the review area, for documentation purposes, describe the portion of the tributary reach below the head of navigation as part of that § 10 water on the § 10 table. For CWA purposes, describe the portion of the same tributary reach below the upstream limit of the non-tidal TNW as a separate water on the (a)(1) table and the portion of the same tributary reach above the upstream limit of the non-tidal TNW as a separate water on the (a)(2) table of the AJD Form.

A wetland may be located both above and below the OHWM or HTL of that (a)(1) water and documentation of these wetlands will be determined by whether the (a)(1) water is tidally influenced or is also a non-tidal § 10 water. Where the (a)(1) water is subject to the ebb and flow of the tide or is a non-tidal § 10 water, describe the portion of the wetland below the HTL or the OHWM as part of that (a)(1) water on the (a)(1) table, and the portion of the wetland above the HTL or the OHWM as a separate water on the (a)(4) table. Where the (a)(1) water is not subject to the ebb and flow of the tide and is not otherwise a § 10 water, the wetland in its entirety should be described as a separate water with a different name than the (a)(1) water and should be described as an abutting wetland in the (a)(4) table.

Where a wetland lies entirely below the OHWM or HTL of the (a)(1) water, describe it as part of that (a)(1) water and not as a separate water on the (a)(4) table. A wetland may also be located entirely above, but touching (i.e., abutting) the lateral limits of that (a)(1) water. In this circumstance, the wetland is a separate water with a different name than the (a)(1) water and should be described as an abutting wetland in the (a)(4) table. Finally, describe a non-abutting wetland as a separate water with a different name in either the (a)(4) table or the table associated with excluded waters in Section II.D. on the AJD Form.

(a)(1) Criteria: Select the criterion from the drop-down list that applies to the subject water. If the water meets multiple criteria, select the strongest criterion from the list and discuss it, along with all other applicable criteria in the rationale section.

Rationale for (a)(1) Determination. Based on the criterion selected for a specific water, include the following information in the corresponding rationale:

- *(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act - RHA*
Tidal water is subject to the ebb and flow of the tide: Provide a discussion supporting that the water is tidally influenced or a reference to the water on the district's Section 10 navigable waters list.
- *(a)(1) Water is currently used, was used in the past, or may be susceptible to use in interstate or foreign commerce (CWA Section 404 only):*
 - Refer to the district's relevant, previously completed stand-alone TNW (Section 404) determination,⁸ or
 - Provide a case-specific TNW determination. A case-specific TNW determination is associated with a specific AJD request, expires with the

⁸ 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.



specific AJD, and cannot be referenced to support future AJDs. A case-specific TNW determination is also associated with a particular review area and does not establish upstream or downstream limits of navigability for the TNW. A case-specific TNW determination that is made as part of an AJD is an appealable action under 33 CFR 331. Where the review area includes a water determined to be a TNW through a case-specific TNW determination, include in the rationale a statement that, “This AJD includes a case-specific TNW (Section 404 navigable-in-fact) determination on a water which has not previously been determined to be a TNW with a stand-alone TNW determination.” Documentation supporting a case-specific TNW determination can be lengthy. Therefore, it is recommended that the AJD Form include such documentation in either Section III.C, or as an attachment to the AJD Form. Clearly indicate in the rationale where the case-specific TNW determination is documented on the AJD Form. Follow applicable guidance to complete the case-specific TNW determination.

- (a)(1) *Territorial Seas*: Discuss that the water is located between the baseline (i.e., the line of ordinary low water along that portion of the coast) and seaward a distance of three miles from that baseline.⁹ Alternatively, the rationale may reference a map which illustrates the location of the review area relative to the baseline and the three mile distance. Describe what is depicted on the map to provide a basis for the determination.
- (a)(1) *A federal court has determined the water is navigable in fact under federal law*: Refer to the court decision(s) and how it applies to the subject water.

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.	N/A.

(a)(2) *Name*: Each water should have a unique name. Assign names consistent with the maps and drawings in the AR and consistent with the aquatic resource names used in ORM2. Describe each tributary reach within the review area with a single, unique name. For example, if a perennial tributary becomes intermittent and then ephemeral and then perennial again, describe it as four separate reaches (e.g., perennial reach #1, intermittent reach, ephemeral reach, perennial reach #2) and thus three separate waters on the tributary table and one water on the excluded table. Where a reach includes a ditch that meets the definition of an (a)(2) water, describe the ditch as part of that reach and not as a separate water on the tributary table.

A single tributary reach may extend below the HTL and/or MHW as well as below the upstream limit of a § 10 and/or TNW. For documentation purposes of § 10 waters, describe the portion of the tributary reach below the § 10 water MHW or the upstream limit of the § 10 water (i.e., the head of navigation) as part of that § 10 water on the § 10 table. For CWA purposes, describe the portion of the same tributary reach below the HTL or the upstream limit of the non-tidal TNW as part of the (a)(1) water on the (a)(1) table. Finally, describe the portion of the same tributary

⁹ For additional information, see also 33 CFR 328.4 and 33 CFR 329.12.



reach above the HTL or upstream limit of the non-tidal TNW as a separate water on the (a)(2) table of the AJD Form.

Where a wetland lies entirely below the OHWM of the (a)(2) water, describe it as part of that (a)(2) water and not as a separate water on the (a)(4) table. A wetland may also be located both above and below the OHWM of that (a)(2) water, or may be located entirely above, but touching (i.e., abutting) the OHWM of that (a)(2) water. In these circumstances, the wetland is a separate water with a different name than the (a)(2) water and should be described as an abutting wetland in the (a)(4) table. Describe a non-abutting wetland as a separate water in either the (a)(4) table or the table associated with excluded waters in Section II.D. on the AJD Form.

(a)(2) Criteria: Select the criterion from the drop-down list that applies to the subject water.

Rationale for (a)(2) Determination: An assessment that a river, stream, or similar naturally occurring surface water channel contributes surface water flow to an (a)(1) water in a typical year, is perennial or intermittent, and flows as such in a typical year may require the use of multiple data sources, some of which may be time-dependent data sources. Time-dependent data sources may be point-in-time data sources (i.e., data sources that represent the conditions at a specific location on a specific date such as an aerial photograph or data collected during a site visit), or period-of-time data sources (i.e., data sources that represent the conditions at a specific location over a period of time). Conduct an assessment for all appropriate time-dependent data sources of whether the conditions observed represent those found in a typical year and document the assessment in Section III.B. of the AJD Form. Support the conclusion that a water meets the tributary definition with a discussion of all appropriate data sources using a weight of evidence approach. Incorporate the results of each typical year assessment conducted in Section III.B. that is relevant to that water and document the discussion in the rationale section for each specific water in this section of the AJD Form. Based on the criterion selected for a specific water, include the following information in the corresponding rationale:

- The name of the nearest downstream (a)(1) water (i.e., territorial sea or TNW) to which the water directly or indirectly flows. Where this (a)(1) water is outside the review area, provide evidence in the rationale section to support that this is an (a)(1) water.¹⁰
- Describe the flow path between the subject water and the nearest downstream (a)(1) water and discuss how the subject water contributes surface water flow to the (a)(1) water in a typical year (note that it is often beneficial to include a figure in the AR that illustrates this flow path).
- Describe that the subject water has intermittent or perennial flow (consistent with the (a)(2) criteria selected) and support that it flows as such in a typical year.
- Clearly identify any known natural or artificial non-jurisdictional features (e.g., channelized non-jurisdictional surface water features, culverts, tunnels, debris piles, boulder fields, etc.) along the flow path within the review area. It is not expected that every non-jurisdictional feature will be identified along the flow path outside the review

¹⁰ If this evidence involves a case-specific TNW determination, follow the instructions for documenting a case-specific TNW determination found in Section II.C., “*Rationale for (a)(1) Determination*,” of this user manual.



area. Exercise discretion to determine when this is necessary (e.g., a known ephemeral water lies along the flow path or the requestor specifically points out a feature and asks the district to address it). Identify the type of non-jurisdictional feature and discuss how the feature does not sever the jurisdictional status of the subject water. Note that a subject water would be excluded where a feature exists along the flow path that does not provide a surface water connection to an (a)(1) water in a typical year. In this case, the subject water should be described in Section II.D. of the AJD Form.

- o Where a ditch is determined to comprise all or part of the reach of a tributary within the review area, discuss that it meets the definition of “ditch,” and that the ditch either relocated a tributary, was constructed in the tributary, or was constructed in an adjacent wetland and continues to meet the flow conditions of the tributary definition.

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.

(a)(3) Name: Each water should have a unique name. Assign names consistent with the maps and drawings in the AR and consistent with the aquatic resource names used in ORM2. Where a wetland lies entirely below the OHWM of the (a)(3) water, describe it as part of that (a)(3) water and not as a separate water on the (a)(4) table. A wetland may also be located both above and below the OHWM of that (a)(3) water, or may be located entirely above, but touching (i.e., abutting) the OHWM of that (a)(3) water. In these circumstances, the wetland is a separate water with a different name than the (a)(3) water and should be described as an abutting wetland in the (a)(4) table. Also, describe a non-abutting wetland as a separate water in either the (a)(4) table or the table associated with excluded waters in Section II.D. on the AJD Form.

(a)(3) Criteria: Select the criterion from the drop-down list that applies to the subject water. If the water meets multiple criteria, select the strongest criterion from the list and discuss it, along with all other applicable criteria in the rationale section.

Rationale for (a)(3) Determination: An assessment that a standing body of open water contributes surface water flow to an (a)(1) water in a typical year, or is inundated by flooding from an (a)(1), (2), or (3) water in a typical year may require the use of multiple data sources, some of which may be time-dependent data sources. Time-dependent data sources may be point-in-time data sources (i.e., data sources that represent the conditions at a specific location on a specific date), or data sources that represent conditions at a specific location over a period of time (i.e., period-of-time data sources). Conduct an assessment for all appropriate time-dependent data sources of whether the conditions observed represent those found in a typical year and document the assessment in Section III.B. of the AJD Form. Support the conclusion that a water meets the definition of an (a)(3) water with a discussion of all appropriate data sources using a weight of evidence approach. Incorporate the results of each typical year assessment conducted in Section III.B. that is relevant to that water and document the discussion in the rationale section for each specific water in the (a)(3) table. Based on the criterion selected for a specific water, the corresponding rationale must also include the following information:



- *(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:*
 - The name of the nearest downstream (a)(1) water to which the water directly or indirectly flows. Where this (a)(1) water is outside the review area, provide evidence in the rationale section to support that this is an (a)(1) water.¹¹
 - Describe the flow path between the subject water and the nearest downstream (a)(1) water. Clearly identify any known natural or artificial, non-jurisdictional features (e.g., channelized non-jurisdictional surface water features, culverts, tunnels, debris piles, boulder fields, etc.) along the flow path within the review area. It is not expected that every non-jurisdictional feature will be identified along the flow path outside the review area. Exercise discretion to determine when this is necessary (e.g., a known ephemeral water lies along the flow path or the requestor specifically points out a feature and asks the district to address it). Identify the type of non-jurisdictional feature and discuss how the feature does not sever the jurisdictional status of the subject water. Finally, discuss how the subject water contributes surface water flow to the (a)(1) water in a typical year (note that it is often beneficial to include a figure in the AR that illustrates this flow path). Note that a subject water would be excluded where a feature exists along the flow path that does not provide a surface water connection to an (a)(1) water in a typical year. In this case, the subject water should be described in Section II.D. of the AJD Form.
 - Where the subject water is an impoundment of a jurisdictional water, discuss in the rationale section (or Section III.C. if additional space is needed) how the impounded water was jurisdictional as an (a)(1), (2), (3), or (4) water at the time it was impounded.
- *(a)(3) Lake/pond or impoundment of a jurisdictional water inundated by flooding from an (a)(1)-(a)(3) water in a typical year:*
 - Discuss how the subject water is inundated by flooding from an (a)(1), (2), or (3) water in a typical year. Where the (a)(1), (2), or (3) water is within the review area, reference the name of the water and the location of the associated discussion on the AJD Form. Where the (a)(1), (2), or (3) water lies outside the review area, discuss in Section III.C. of the AJD Form how that water meets the definition of an (a)(1), (2), or (3) water.¹²
 - Where the subject water is an impoundment of a jurisdictional water, provide a discussion in the rationale section to support that the impounded water was a jurisdictional (a)(1), (2), (3), or (4) water at the time it was impounded.

¹¹ If this evidence involves a case-specific TNW determination, follow the instructions for documenting a case-specific TNW determination found in Section II.C., “*Rationale for (a)(1) Determination*,” of this user manual.

¹² Where the source of the inundation is from an (a)(1) water, the rationale should include a reference to the stand-alone or case-specific TNW determination. If a case-specific TNW determination is involved, follow the instructions for documenting a case-specific TNW determination found in Section II.C., “*Rationale for (a)(1) Determination*,” of this user manual.



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.

(a)(4) Name: Each water should have a unique name. Assign names consistent with the maps and drawings in the AR and consistent with the aquatic resource names used in ORM2. Where a wetland lies entirely below the HTL or OHWM of the (a)(1) water or the OHWM of the (2) or (3) water, describe it as part of that (a)(1), (2), or (3) water and not as a separate water on this (a)(4) table. Generally, describe a wetland that is abutting an (a)(1), (2), or (3) water as a separate water in this (a)(4) table. Also, describe a wetland that does not abut an (a)(1), (2), or (3) water as a separate water in either this (a)(4) table or the table associated with excluded waters in Section II.D. on the AJD Form.

(a)(4) Criteria: Select the criterion from the drop-down list that applies to the subject water. If the water meets multiple criteria, select the strongest criterion from the list and discuss it, along with all other applicable criteria in the rationale section.

Rationale for (a)(4) Determination: An assessment that a wetland meets the conditions of an (a)(4) water may require the use of multiple data sources, some of which may be time-dependent data sources. Time-dependent data sources may be point-in-time data sources (i.e., data sources that represent the conditions at a specific location on a specific date), or data sources that represent the conditions at a specific location over a period of time (i.e., period-of-time data sources). Conduct an assessment for all appropriate time-dependent data sources of whether the conditions observed represent those found in a typical year and document the assessment in Section III.B. of the AJD Form. Support the conclusion that a wetland meets the conditions of an (a)(4) water with a discussion of all appropriate data sources using a weight of evidence approach. Incorporate the results of each typical year assessment conducted in Section III.B. that is relevant to that water and document the discussion in the rationale section for each specific water in this section of the AJD Form. Based on the criterion selected for a specific water, the corresponding rationale must also include the following information:

- *(a)(4) Wetland abuts an (a)(1)-(a)(3) water:*
 - Discuss that the wetland abuts (i.e., touches) at least one point or side of an (a)(1), (2), or (3) water.
 - Where the (a)(1), (2), or (3) water is within the review area, reference the name of the water and the location of the associated discussion regarding its jurisdictional status on the AJD Form. Where the (a)(1), (2), or (3) water lies outside the review area, include a discussion in Section III.C. of the AJD Form to support that the water meets the conditions of an (a)(1), (2), or (3) water and is therefore jurisdictional.¹³
- *(a)(4) Wetland inundated by flooding from an (a)(1)-(a)(3) water in a typical year:*
 - Discuss that the wetland is inundated by flooding from an (a)(1), (2), or (3) water in a typical year.

¹³ Where the water the wetland abuts is an (a)(1) water, the rationale should include a reference to the stand-alone or case-specific TNW determination. If a case-specific TNW determination is involved, follow the instructions for documenting a case-specific TNW determination found in Section II.C., “*Rationale for (a)(1) Determination*,” of this user manual.



- Where the (a)(1), (2), or (3) water is within the review area, reference the name of the water and the location of the associated discussion regarding its jurisdictional status on the AJD Form. Where the (a)(1), (2), or (3) water lies outside the review area, include a discussion in Section III.C. of the AJD Form to support that the water meets the conditions of an (a)(1), (2), or (3) water and is therefore jurisdictional.¹⁴
- (a)(4) *Wetland separated from an (a)(1)-(a)(3) water only by a natural feature:*
 - Discuss how the wetland is separated from an (a)(1), (2), or (3) water by only a single natural barrier (e.g., berm, bank, dune, or similar natural feature). Include in this discussion a description of the type of barrier, support that the barrier is natural, and describe the location of the barrier relative to the wetland and the (a)(1), (2), or (3) water.
 - Where the (a)(1), (2), or (3) water is within the review area, reference the name of the water and the location of the associated discussion on the AJD Form. Where the (a)(1), (2), or (3) water lies outside the review area, include a discussion in Section III.C. of the AJD Form to support that the water meets the conditions of an (a)(1), (2), or (3) water and is therefore jurisdictional.¹⁵
- (a)(4) *Wetland separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetland and the (a)(1)-(a)(3) water in a typical year:*
 - Discuss how the wetland is separated from an (a)(1), (2), or (3) water only by an artificial structure that allows for a direct hydrologic surface connection to the (a)(1), (2), or (3) water in a typical year. Include in this discussion a description of the type of artificial structure that separates the wetland from the (a)(1), (2), or (3) water (e.g., road, levee, artificial berm), the type of artificial feature (e.g., culvert, flood gate, pump) that allows for a direct hydrologic surface connection between the wetland and the (a)(1), (2), or (3) water in a typical year, the location of the artificial structure relative to the wetland and the (a)(1), (2), or (3) water, and the location of the direct hydrologic surface connection relative to the artificial structure, the wetland, and the (a)(1), (a)(2), or (a)(3) water.
 - Where the (a)(1), (2), or (3) water is within the review area, reference the name of the water and the location of the associated discussion regarding its jurisdictional status on the AJD Form. Where the (a)(1), (2), or (3) water lies outside the review area, include a discussion in Section III.C. of the AJD Form to support that the water meets the conditions of an (a)(1), (2), or (3) water and is therefore jurisdictional.¹⁶

¹⁴ Where the source of the inundation is from an (a)(1) water, the rationale should include a reference to the stand-alone or case-specific TNW determination. If a case-specific TNW determination is involved, follow the instructions for documenting a case-specific TNW determination found in Section II.C., “*Rationale for (a)(1) Determination*,” of this user manual.

¹⁵ Where the water the wetland is physically separated from is an (a)(1) water, the rationale should include a reference to the stand-alone or case-specific TNW determination. If a case-specific TNW determination is involved, follow the instructions for documenting a case-specific TNW determination found in Section II.C., “*Rationale for (a)(1) Determination*,” of this user manual.

¹⁶ Where the water the wetland is physically separated from is an (a)(1) water, the rationale should include a reference to the stand-alone or case-specific TNW determination. If a case-specific TNW determination is involved, follow the instructions for documenting a case-specific TNW determination found in Section II.C., “*Rationale for (a)(1) Determination*,” of this user manual.



D. Excluded Waters or Features

Paragraph (b) of the NWPR codifies twelve exclusions from the definition of “waters of the United States.” All waters that do not meet the definition of an (a)(1), (2), (3), or (4) water are excluded under (b)(1). In addition, the NWPR includes the (b)(2) through (12) exclusions to provide for more specificity and regulatory certainty, recognizing that a water may be excluded under (b)(1) and also meet the conditions of an exclusion under (b)(2) through (12). Waters that meet the conditions of an (a)(1), (2), (3), or (4) water, but also meet the conditions of one or more of the (b)(2) through (b)(12) exclusions, are excluded from the definition of “waters of the United States.” The evaluation of whether the (b)(5) ditch exclusion applies includes determining whether the ditch satisfies the conditions of paragraph (a)(1) or (2) or is constructed in waters identified in paragraph (a)(4) and satisfies the conditions of paragraph (c)(1).

For AJD Form documentation purposes, complete the determination that a water is excluded from CWA jurisdiction by first using one of the (b)(2) through (b)(12) exclusions that best describes the water. A water that does not meet the conditions of one of the (b)(2) through (b)(12) exclusions and is not an (a)(1), (2), (3), or (4) water will be an excluded water under paragraph (b)(1). There may be circumstances where, based on the existing record and available information, this order is not followed as it will be more efficient to exclude a water under (b)(1) instead of evaluating the water according to a (b)(2) through (b)(12) exclusion.

Additionally for AJD Form documentation purposes, there may be circumstances where a subject water meets one or more (b)(2) through (b)(12) exclusions and also meets the (b)(1) exclusion. Where the requestor specifically asks for a (b)(1) evaluation or it is efficient for the district to perform a (b)(1) evaluation, conduct an assessment to determine if a subject water that meets a (b)(2) through (b)(12) exclusion also meets the (b)(1) exclusion, and document that assessment in the rationale for the (b)(2) through (b)(12) exclusion.

For example, an ephemeral artificial pond constructed in upland could meet the (b)(1), (b)(3), and (b)(8) exclusions. For documentation purposes, identify the water as excluded pursuant to (b)(3) or (b)(8) and provide a rationale that the water was excluded based on being an ephemeral feature or artificial pond constructed or excavated in upland, whichever is more appropriate based on the existing record and available information. If the requestor specifically asks that the district also address whether the ephemeral artificial pond constructed in upland would also be excluded by the (b)(1) exclusion or it is efficient for the district to do so, provide documentation in the rationale column for the subject water that it is also excluded by the (b)(1) exclusion.

Individually identify excluded waters in the AJD review area and provide a rationale to demonstrate the waters meet one of the exclusions. The exception to this is when excluded waters are not surface water features or are transient features on the landscape that are difficult to document due to their non-permanent nature. For example, paragraph (b)(2) refers to groundwater located below the surface of the ground. It is not expected that the district will identify or document groundwater unless the requestor specifically asks the district to do so during the evaluation process. When specifically requested, the district will only document that



non-jurisdictional groundwater may be below the surface of the review area and not confirm the actual presence or location of the subsurface groundwater.

Other exceptions to documenting an excluded water in the review area include certain ephemeral features such as rills and pools in paragraph (b)(3) and directional sheet flow in paragraph (b)(4). While these features may be present on the surface in a review area during certain times of year, there may not be any physical indication or observable geographic features to identify these features during other times of the year. Therefore, the district need not identify these features on the AJD Form unless a requestor specifically asks the district to do so, or the district elects to do so on a case-by-case basis.

Several exclusions refer to upland which the NWPR defines at paragraph (c)(14). The definition of “upland” includes land areas that under normal circumstances do not satisfy all three wetland factors and do not lie below the OHWM or HTL of a jurisdictional water. Where an exclusion refers to a water constructed or excavated in upland or in non-jurisdictional waters, the exclusion applies only to waters that were constructed or excavated wholly in upland or non-jurisdictional waters. The determination that an excluded water was constructed or excavated wholly in upland or in non-jurisdictional waters is based on a review of available evidence and in consideration of jurisdiction based on the definitions in the NWPR. Note that an excluded water can connect to (i.e., interface with) a jurisdictional water and still be considered constructed or excavated wholly in upland or in non-jurisdictional waters.

An excluded water may in some circumstances provide a surface water connection between upstream and downstream jurisdictional waters; however, it would remain non-jurisdictional as an excluded water.

Excluded waters ((b)(1) – (b)(12)):				
Exclusion Name	Exclusion Size		Exclusion	Rationale for Exclusion Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Exclusion Name: Each excluded water should have a unique name. Assign names consistent with the maps and drawings in the AR and consistent with the aquatic resource names used in ORM2.

Wetlands may develop within the confines of the excluded water. In this case, the water and wetlands are excluded. Generally, for documentation purposes, describe the excluded water and wetland as a single water and describe the presence of wetlands within the lateral limits of the excluded water in the rationale of the excluded water.

Exclusion: Paragraph (b) of the NWPR codifies twelve exclusions from the definition of “waters of the United States.” 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 and are described in the “*Rationale for Exclusion Determination*” section below. These four sub-categories are not new exclusions but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



Select the exclusion from the drop-down list first using one of the (b)(2) through (b)(12) exclusions that best describes the subject water. Describe a water that does not meet the conditions of one of the (b)(2) through (b)(12) exclusions and is not an (a)(1), (2), (3), or (4) water as an excluded water under paragraph (b)(1). As a reminder, there may be circumstances where this order is not followed as it will be more efficient to exclude a water under the (b)(1) exclusion instead of evaluating the water as a (b)(2) through (b)(12) exclusion.

Rationale for Exclusion Determination: An assessment that a water meets one of the exclusions in (b)(1) through (b)(12) may require the use of multiple data sources, some of which may be time-dependent data sources. Time-dependent data sources may be point-in-time data sources (i.e., data sources that represent the conditions at a specific location on a specific date), or data sources that represent the conditions at a specific location over a period of time (i.e., period-of-time data sources). If it is required in the consideration of the exclusion, conduct an assessment for all appropriate time-dependent data sources of whether the conditions observed represent those found in a typical year and document the assessment in Section III.B. of the AJD Form. Support the conclusion that a water meets an exclusion with a discussion of all appropriate data sources using a weight of evidence approach. Incorporate the results of each typical year assessment conducted in Section III.B. that is relevant to that water and document the discussion in the rationale section for each specific water in this section of the AJD Form.

When the AJD includes a delineation of the limits (boundaries) of jurisdiction and the boundaries are relevant to a particular exclusion, discuss in the rationale which indicator(s) and/or methods were used to determine the lateral limits for that exclusion entered in this section of the AJD Form.

Based on the exclusion selected for a specific water, the corresponding rationale must also consider the following information:

- *(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year:* Natural lakes and ponds, and impoundments of jurisdictional waters that lack a direct or indirect surface water connection to downstream (a)(1) waters in a typical year and are not inundated by flooding by an (a)(1), (2) or (3) water in a typical year are not jurisdictional according to this specific type of (b)(1) exclusion for documentation purposes. Provide a discussion supporting the subject water is a natural lake or pond, or an impoundment of a jurisdictional water that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year and is not inundated by flooding from an (a)(1), (2) or (3) water in a typical year. Note that this sub-category of the (b)(1) exclusion is not a new exclusion but is simply an administrative addition to aid in distinguishing this specific type of water from other types of waters excluded under (b)(1). This sub-category is purely administrative in nature and remains a (b)(1) exclusion as defined by the NWPR.



- *(b)(1) Non-adjacent wetland:* Wetlands that meet the definition of paragraph (c)(16) and are not (a)(4) waters are not jurisdictional according to this specific type of (b)(1) exclusion for documentation purposes. Provide a discussion supporting the subject water does not meet the definition of “adjacent wetlands.” Note that this sub-category of the (b)(1) exclusion is not a new exclusion but is simply an administrative addition to aid in distinguishing this specific type of water from other types of waters excluded under (b)(1). This sub-category is purely administrative in nature and remains a (b)(1) exclusion as defined by the NWPR.
- *(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year:* Surface water channels, such as perennial or intermittent losing streams, that do not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year are not jurisdictional under this specific type of (b)(1) exclusion for documentation purposes. Provide a discussion supporting the conclusion that the subject water does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year. Note that this sub-category of the (b)(1) exclusion is not a new exclusion but is simply an administrative addition to aid in distinguishing this specific type of water from other types of waters excluded under (b)(1). This sub-category is purely administrative in nature and remains a (b)(1) exclusion as defined by the NWPR.
- *(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) sub-categories:* Describe a water that does not meet the other sub-categories of (b)(1) exclusions, and is not an (a)(1), (2), (3), or (4) water as non-jurisdictional under this specific type of (b)(1) exclusion for documentation purposes. In the discussion, describe the conditions of the relevant (a)(1), (2), (3), or (4) water that the subject water does not satisfy. If documentation is lengthy, include the rationale in either Section III.C. or as an attachment to the AJD Form. Note that this sub-category of the (b)(1) exclusion is not a new exclusion but is simply an administrative addition to aid in distinguishing this specific type of water from other types of waters excluded under (b)(1). This sub-category is purely administrative in nature and remains a (b)(1) exclusion as defined by the NWPR.
- *(b)(2) Groundwater, including groundwater drained through subsurface drainage systems:* It is not expected that the district will identify or document groundwater found below the surface of the review area unless specifically requested to do so during the evaluation process. When specifically requested, the district will only document that groundwater may exist below the surface of the review area and not confirm the actual presence or location of the subsurface groundwater. A (b)(2) exclusion no longer applies to water at the point where the groundwater discharges to the surface.
- *(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool:* It is not expected that the district will identify or document every ephemeral water, such as rills and pools, in the review area unless a requestor specifically asks the district to do so, or the district elects to do so on a case-by-case basis. Channelized ephemeral



features, such as an ephemeral stream or gully, should be identified. Provide a discussion supporting the determination that the water meets the definition of “ephemeral” in paragraph (c)(3).

- *(b)(4) Diffuse stormwater run-off over upland or directional sheet flow over upland:* It is not expected that the district will identify or document every instance of diffuse stormwater run-off and directional sheet flow over upland in the review area unless specifically requested to do so during the evaluation process. Provide a discussion supporting the determination that the water does not convey channelized surface flow.
- *(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1):* A water that meets the definition of “ditch” and is not an (a)(1) or (a)(2) water, or is not constructed in an (a)(4) water is excluded according to the (b)(5) exclusion. A ditch that is constructed in an (a)(4) water is excluded according to the (b)(5) exclusion where the ditch itself does not meet the conditions of (c)(1) and has no more than ephemeral flow conditions. Provide a discussion supporting the determination that the water meets the definition of “ditch” at (c)(2). In addition, describe how the water does not relocate a tributary, is not constructed in a tributary, and is not constructed in an adjacent wetland. For an excluded ditch constructed in an (a)(4) water, provide a discussion supporting that the ditch itself does not meet the conditions of an adjacent wetland and does not satisfy the flow conditions of the tributary definition. Ditches should be excluded using the (b)(5) exclusion unless they serve as a component of another excluded water (e.g., they are part of a waste treatment system).
- *(b)(6) Prior converted cropland:* A water that meets the definition of “prior converted cropland” in paragraph (c)(9) is excluded according to the (b)(6) exclusion. Provide a discussion supporting that the water meets the definition of “prior converted cropland” and that it is not abandoned. The record must include the certified prior converted cropland designation from the USDA or a Corps determination that the water meets the definition of “prior converted cropland” in paragraph (c)(9) and is excluded according to the (b)(6) exclusion. To determine that the land has not been abandoned, document the relevant information from USDA and/or other federal or state agencies, as well as other sources of information from the landowner/operator. Note that abandoned prior converted cropland is not necessarily subject to CWA jurisdiction; it must first have wetlands that meet the definition of (c)(16) and then be evaluated under paragraphs (b) and (a). In cases where it is determined that the area has been abandoned and in order to determine the water’s jurisdictional status, the water would need to be evaluated to determine if it falls under one of the other paragraph (b)(2) through (12) exclusions. If the water does not fall under one of the other exclusions, it would then have to be evaluated to determine if it satisfies the definition of any of the paragraph (a) waters in order for the water to be determined jurisdictional. If it does not meet the definition of any of the paragraph (a) waters, it is excluded under the (b)(1) exclusion.



- *(b)(7) Artificially irrigated area, including fields flooded for agricultural production, that would revert to upland should application of irrigation water to that area cease:* An artificially irrigated area for the purposes of agricultural production is excluded according to the (b)(7) exclusion if the area would revert to upland if the irrigation ceases. Provide a discussion supporting the determination that the area is artificially irrigated and would revert to upland in the absence of the artificial irrigation.
- *(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):* The exclusion includes a diverse range of artificial lakes, ponds, and certain impoundments constructed or excavated in upland or in non-jurisdictional waters, and the examples in the regulatory text of water storage reservoirs, stock watering ponds and the like are not an exclusive list of excluded (b)(8) waters. An artificial lake or pond is excluded according to the (b)(8) exclusion if it was constructed or excavated wholly in upland or in non-jurisdictional waters and it is not an impoundment that meets the conditions of (c)(6). Provide a discussion supporting the determination that the water is an artificially constructed lake or pond and was constructed or excavated in upland or non-jurisdictional waters. Provide a discussion supporting the determination that the water is not an impoundment of a jurisdictional water meeting the conditions of paragraph (c)(6).
- *(b)(9) Water-filled depression constructed/excavated in upland/non-jurisdictional water incidental to mining/construction or pit excavated in upland/non-jurisdictional water to obtain fill/sand/gravel:* A water must have been constructed or excavated in upland or non-jurisdictional waters for these specific mining or construction activities to qualify for the (b)(9) exclusion. If the water is no longer used for the original purpose for which it was created (i.e., the construction or mining activities that created the water have permanently ceased), the exclusion no longer applies. In that circumstance, in order to determine the water's jurisdictional status, the water would need to be evaluated to determine if it falls under one of the other paragraph (b)(2) through (12) exclusions. If the water does not fall under one of the other exclusions, it would then have to be evaluated to determine if it satisfies the definition of any of the paragraph (a) waters in order for the water to be determined jurisdictional. If it does not meet the definition of any of the paragraph (a) waters, it is excluded under the (b)(1) exclusion. Provide a discussion supporting the determination that the water was constructed or excavated in upland or non-jurisdictional waters for these specific activities and that the mining or construction activity is ongoing.
- *(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff:* The exclusion covers a diverse range of stormwater control features to convey, treat, infiltrate, or store stormwater runoff constructed or excavated in upland or in non-jurisdictional waters. A ditch that is part of a stormwater system and meets the conditions of paragraph (a)(2) is not excluded under (b)(10). Provide a discussion supporting the determination that the water was constructed in upland or non-jurisdictional waters to convey, treat, infiltrate, or store stormwater run-off.



- *(b)(11) Groundwater recharge, water reuse, or a wastewater recycling structure constructed or excavated in upland or in a non-jurisdictional water:* The exclusion covers a diverse range of groundwater recharge, water reuse, and wastewater recycling structures constructed or excavated in upland or in non-jurisdictional waters. Provide a discussion supporting the determination that the water was constructed in upland or non-jurisdictional waters as a groundwater recharge, water reuse, or wastewater recycling structure.
- *(b)(12) Waste treatment system:* A water that meets the definition of a “waste treatment system” in paragraph (c)(15) is excluded according to the (b)(12) exclusion. This exclusion applies only to waste treatment systems constructed in accordance with the requirements of the CWA and to all waste treatment systems constructed prior to the 1972 CWA amendments. If a waste treatment system is abandoned or otherwise ceases to serve the treatment function for which it was designed, this exclusion no longer applies. In that circumstance, in order to determine the water’s jurisdictional status, the water would need to be evaluated to determine if it falls under one of the other paragraph (b)(2) through (11) exclusions. If the water does not fall under one of the other exclusions, it would then have to be evaluated to determine if it satisfies the definition of any of the paragraph (a) waters in order for the water to be determined jurisdictional. If it does not meet the definition of any of the paragraph (a) waters, it is excluded under the (b)(1) exclusion. Provide a discussion supporting the determination that the water meets the definition of a “waste treatment system” constructed in accordance with the requirements of the CWA or that it was constructed prior to the 1972 CWA amendments and the system continues to serve the treatment function for which it was designed. Include any relevant documentation, such as a section 402 permit, to support this discussion.

SECTION III. SUPPORTING INFORMATION

Section III.A.: This section provides a list of the data sources used to support the AJD. Information used to support the AJD should be accurate and reliable. Provide conclusions made from the referenced data sources in the appropriate section(s) of the AJD Form and in Sections III.B. and III.C. when necessary.

Maps, aerial photography, soil surveys, watershed studies, scientific literature, previous JDs for the review area, local development plans, and similar information may be used to support AJDs. The boxes provided do not represent an all-inclusive list of all possible sources of information but attempt to incorporate the information that is most commonly used. Check all the boxes that identify the data used to support the AJD and provide titles and dates as described. Note that non-site specific, publicly-available information does not need to be included in the AR itself; however, any references to publicly-available information must be specific enough that it can be reproduced at a later date. While not required, it is recommended that a copy of the cover page and/or specific pages from the publicly-available document(s) (including maps) used to support the AJD be included in the AR.



Additional information for select sections is as follows:

Information submitted by, or on behalf of, the applicant/consultant: Provide the title(s) and date(s) of map(s), delineation report(s), data sheet(s), and/or other supporting information generated/supplied by the applicant or consultant. Example: “ABC delineation report, dated 1/1/2020,” or “Revised Wetland Determination Data Sheets – Arid West Region, dated 2/12/2020.” Identify information received without a date using the date it was received. Select “is,” “is not,” or “is and is not” from the drop-down list. In this context:

- *is* - means that the district has determined the entirety of the information provided by or on behalf of the applicant accurately reflects the district’s conclusions on the AJD.
- *is not* – means that the district disagrees with all of the submitted information. If “*is not*” is selected, provide a rationale describing why it was determined to be unacceptable and what information was used to supplement the missing information and/or address the incorrect information.
- *is and is not* – means that the district has determined a portion of the information submitted by or on behalf of the applicant is acceptable, and a portion of the information is not. Provide a rationale here explaining what information (including specific data sheets, as necessary) was not acceptable and why, then describe what information was used to supplement the missing information and/or address the incorrect information.

Data sheets prepared by the Corps: Enter title(s) and date(s) of data sheets prepared by the district. The district will prepare data sheets either in the absence of data sheets provided by the applicant/consultant, or to replace some or all of the data sheets submitted where the Corps has determined they were insufficient to support the conclusions in the AJD. Where it is determined that data sheets (i.e., *Information submitted by or on behalf of the applicant/consultant*) are insufficient, this entry will typically be checked and district data sheets provided in the AR and referenced here.

Photographs: Select one and provide title(s) and date(s) of each (e.g., month/year, or day/month/year where possible).

- *Aerial* – Aerial photographs can come from sources such as Google Earth, MapQuest, Bing, and others.
- *Other* – Other photographs are any non-aerial photos, which could be site photos provided by the applicant or consultant or taken by Corps staff during a site visit. Other could also refer to images such as a Google Street View screen capture.
- *Aerial and other* – When both aerial and other photographs are used, provide title(s) and date(s) of all.



Corps site visit(s) conducted on: If a site visit was conducted by district staff, check the box and provide the date(s) when site visit(s) occurred. If no site visit occurred, or was not conducted by district staff (e.g., consultant or other federal agency) leave the box unchecked and either leave the blue text as-is or enter N/A.

Previous Jurisdictional Determinations (AJDs or PJDs): If previous JDs are associated with all or a portion of the review area, enter ORM number(s) and date(s) of each one.

Antecedent Precipitation Tool: If the Antecedent Precipitation Tool (APT) was used in a typical year assessment, check this box and provide a detailed discussion in Section III.B.

Other data sources used to aid in this determination: Use this table to capture sources used that are not listed next to the check boxes in this section. The source categories in the table are provided in an effort to minimize the length of the AJD Form. Copy specific rows as necessary by following the instructions found in the Procedural Notes section of this user manual.

Section III.B.: Typical Year Assessment(s)

This section will be used to discuss each relevant data source and whether the observations made from that data source were representative of those that would occur in a typical year. Time-dependent data sources may be point-in-time data sources (i.e., data sources that represent the conditions at a specific location on a specific date), or period-of-time data sources (i.e., data sources that represent the conditions at a specific location over a period of time). Some data sources may be generic and not attributed to a point in time or a period of time (e.g. a USGS topographic quadrangle map). While it is not possible to perform a typical year assessment on that generic data source, the generic data source may still be used as part of a typical year assessment conducted on a time-dependent data source and discussed in this section. Other observations made from these generic data sources should not be addressed in this section.

For each point-in-time data source, describe the results of the corresponding APT report or other appropriate tool(s), and how those results led to a conclusion that the measurements or observations made were reflective of normal climatic conditions, or whether they were indicative of conditions that were wetter or drier than normal. The discussion should clearly identify the name of the report(s) generated by the APT or other tool(s), the climatic variables which were considered, the periodic range (normally the three 30-day periods preceding the observation date) used as part of the typical year assessment, and a discussion supporting why that periodic range is appropriate. Additionally, identify the geographic region(s) used as part of the typical year assessment and include a supporting discussion of why that geographic region is appropriate. Furthermore, the discussion should address whether the assessment deviated from the 30th to 70th percentile of precipitation totals for the periodic range used, and if so, why. Finally, indicate when a method other than the APT is used for the typical year assessment and provide a discussion to support the use of an alternate methodology.

Where the time-dependent data source is not either a point-in-time or a period-of-time data source, discuss what tool(s) or resource(s) were used to determine that the observations made



in the time-dependent data source were representative of those that would occur in a typical year.

Section III.C: Additional Comments to Support AJD

This section is used to provide any additional information to support the conclusions made in the AJD. If complex site conditions are present, clarify extenuating conditions in this section. Include a detailed discussion of any of the entries on the AJD Form that require further clarification and/or that cannot fit in the space provided for the rationale.



**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): [Select](#).
 ORM Number: (e.g. [HQS-2020-00001-MSW](#)).
 Associated JDs: [N/A or ORM numbers and identifiers \(e.g. HQS-2020-00001-MSW-MITSITE\)](#).
 Review Area Location¹: State/Territory: [Enter](#). City: [Enter](#). County/Parish/Borough: [Enter](#).
 Center Coordinates of Review Area: Latitude [Decimal Degrees](#). Longitude [Decimal Degrees](#).

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
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: **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: **Select. Title(s) and/or date(s).**
- Corps site visit(s) conducted on: **Date(s).**
- 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: **Title(s) and/or date(s).**

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): **N/A or provide typical year assessment for each relevant data source used to support the conclusions in the AJD.**

C. Additional comments to support AJD: **N/A or provide additional discussion as appropriate.**

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.