



**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): [7/23/2021](#)
 ORM Number: [SWG-2020-00638](#)
 Associated JDs: [N/A](#)
 Review Area Location¹: State/Territory: [Texas](#) City: [Liverpool](#) County/Parish/Borough: [Brazoria](#)
 Center Coordinates of Review Area: Latitude [29.301032](#) Longitude [-95.193135](#)

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](#)
- 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
Mustang Bayou 1	1,000	linear feet	RHA Non-tidal water is on the district's Section 10 waters list	Persimmon Bayou is listed on the Galveston District Navigable Waters List and includes a 1.3-mile common channel with Mustang Bayou.

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
Mustang Bayou 1	1,000	linear feet	(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.	Persimmon Bayou is listed on the Galveston District Navigable Waters List and includes a 1.3-mile common channel with Mustang Bayou.

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
Mustang Bayou 2	22,693	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	This feature is a naturally occurring perennial surface water channel that contributes surface water flow to an (a)(1) water, Persimmon/Mustang Bayou, in a typical year. This part of Mustang Bayou is immediately above and flows directly into the Traditionally Navigable Waters (TNW) portion of Persimmon/Mustang Bayou. Water is visible in this portion of Mustang Bayou in all the Google Earth aerial photos.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size		(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

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

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Man-Made Pond 1	320	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	The pond is man-made, constructed for a water storage reservoir and is not an impoundment of a jurisdictional water. Therefore, the (c)(6) condition is irrelevant.
Man-Made Pond 2	340	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake	The pond is man-made, constructed for a water storage reservoir and is not an impoundment of a jurisdictional water. Therefore, the (c)(6) condition is irrelevant

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
			or pond is not an impoundment of a jurisdictional water that meets (c)(6).	
Man-Made Pond 3	102	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	The pond is man-made, constructed for a water storage reservoir and is not an impoundment of a jurisdictional water. Therefore, the (c)(6) condition is irrelevant.
Man-Made Ditch 1	9,625	linear feet	(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).	Canal is a man-made feature that is artificially filled with water via a pump station for distribution to agricultural and industrial clients. The canal was constructed from uplands and is not a re-routed tributary and does not flow into an (a)(1) water.
Man-Made Ditch 2	11,010	linear feet	(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).	Canal is a man-made feature that is artificially filled with water via a pump station for distribution to agricultural and industrial clients. The canal was constructed from uplands and is not a re-routed tributary and does not flow into an (a)(1) water.

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: [Freese and Nichols, Inc.](#) 24 August 2020

This information is sufficient for purposes of this AJD.

Rationale: [N/A](#)



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- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
- Photographs: [Aerial: Google Earth 1938-2020](#)
- Corps site visit(s) conducted on: [N/A](#)
- 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: [Brazoria County WebSoil Survey](#)
- USFWS NWI maps: [Brazoria County USFWS NWI Map](#)
- USGS topographic maps: [N/A](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	Mustang Bayou, Texas Quadrangle Maps 1963, 2010, and 2019
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	ORM for Historical review
State/Local/Tribal Sources	N/A.
FEMA/FIRM maps	FEMA NFHL Panels 48039C0305K Eff 12/30/2020, 48167C0375G Eff 8/15/2019, and 48039C0320K Eff 12/30/2020; and 48039C0315K Eff 12/30/2020

B. Typical year assessment(s): [Freese and Nichols conducted a desk top review on 30 July 2020.](#) According to the Antecedent Precipitation Tool (APT), the hydrologic conditions on the day of [Freese and Nichols, desk top review](#) were wetter than normal (15). [Freese and Nichols based information off of Google Earth Images listed below \(Agents Aerial\) with those analysis by the USACE.](#)

Date	WETS	APT	Season	PDSI	Preceding 72 hr Rainfall
31 December 1943 (USACE Aerial)	14	Normal	Wet	Mild wetness	~1"
31 December 1968 (USACE Aerial)	13	Normal	Wet	Mild Wetness	<1"
14 January 1995 (USACE Aerial)	13	Normal	Wet	Moderate Wetness	~1"
15 January 1995 (Agents Aerial)	15	Normal	Wet	Moderate Wetness	~1"
31 January 2004 (USACE Aerial)	14	Normal	Wet	Mild Wetness	~2"
15 December 2004 (Agents Aerial)	15	Above	Wet	Severe Wetness	~1.5"
15 February 2010 (Agents Aerial)	16	Above	Wet	Moderate Wetness	2"
15 Novemebr 2015 (Agents Aerial)	14	Above	Wet	Severe Wetness	~1"
21 March 2018 (USACE Aerial)	11	Below	Wet	Moderate Wetness	0
15 Auguat 2020 (Agents Aerial)	15	Above	Dry	Mild Drought	<1"



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Water was seen in Mustang Bayou on all aerial photographs analysed. The man made ponds can be seen starting in 1969.

C. Additional comments to support AJD: [N/A](#)