



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
1616 CAPITOL AVENUE
OMAHA, NE 68102-4901

February 18, 2021

Ms. Jodi Bruno
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, KS 66219

Dear Ms. Bruno:

The enclosed information is forwarded in accordance with the January 19, 1989 *Memorandum of agreement between the Department of the Army and the Environmental Protection Agency Concerning Federal Enforcement for the Section 404 Program of the Clean Water Act* (1989 MOA).

The U.S. Army Corps of Engineers Omaha District received a complaint regarding a residential development project located within waters of the United States. The activity is located in an unnamed tributary of the Little Nemaha River, Section 11, Township 8 North, Range 8 East, Lancaster County, Nebraska (lat. 40.682275°, long.-96.498598°).

Nebraska Department of Environment and Energy (NDEE) reported a possible unauthorized fill on 9.9.2020, as well as an anonymous neighbor (9.30.2020) reported that a contractor was working in an unnamed tributary to the Little Nemaha River and removing mature trees.

A roadside investigation was conducted on 9.20.2020 and 11.5.2020 due to lack of access to the site. The Corps has determined that an unauthorized discharge of dredged material has occurred in waters of the United States.

The neighbor provided photos that are attached to this document on 9.9.2020 and 9.30.2020. The photo provided on 9.30.2020 showed a person working in the channel, shoveling a trench so that water could flow through the area that had been graded and showing fill material redistributed through the channel. A Corps employee drove by site on 9.20.2020 and took photos, work was currently underway. During a Corps site visit on 11.5.2020, it was apparent that work had taken place within the channel making the channel deeper and wider. Trees have been removed. Silt fence was installed perpendicular to the channel, damming/restricting flow. All the photos described above are attached to the Unauthorized Activity Investigation Report Form. Multiple calls have gone unanswered, certified mail with notice of potential violation was not received (October 2, 2020), a second letter with notice of violation was sent regular

mail with no response (January 21, 2020). All the photos described above are attached to the Unauthorized Activity Investigation Report Form.

A Notice of Violation dated October 2, 2020 was sent to Mr. Mark Schmidt by certified mail and is the person responsible for the alleged discharge. We are submitting the following information for EPA's enforcement action:

1. Lead Enforcement Agency Identification Form
2. Violation Determination Memorandum
3. Investigation Report (location map, site photos, activity details, impacts)
4. Jurisdictional Information
5. Correspondence and Communication (relevant letters and discussions)

Please review and evaluate, and notify me if the U.S. Environmental Protection Agency will act as the lead enforcement agency for this case. If you have questions or need to obtain the original case file for EPA enforcement usage, please contact Keith Simmons, Regulatory Project Manager, at 402-896-0896 or by e-mail at timothy.k.simmons@usace.army.mil.

Sincerely,



John Moeschen
Nebraska State Program Manager

cc:

USACE Omaha District Office (Hatileberg)
NDEE (Pauley)

LEAD ENFORCEMENT AGENCY IDENTIFICATION

The purpose of this form is to document the lead enforcement agency designation in accordance with the "Memorandum of Agreement (MOA) Between the Department of the Army and the Environmental Protection Agency (EPA) Concerning Federal Enforcement of the Section 404 Program of the Clean Water Act" dated January 19, 1989.

I. INFORMATION

1. Corps File Number: NWO-2020-01770-WEH
2. Location (section, Township, Range): The activity occurred within an unnamed tributary of the Little Nemaha River, approximately centered at Latitude 40.682221°, Longitude -96.498659°, within Section 11, Township 11 North, Range 8 East, in Lancaster County, Nebraska.
3. Landowners: EVERGREEN DEVELOPMENT INC
4. Violators: Mark Schmidt
5. Contractors: Mark Schmidt
6. Date Violation Occurred: Fall of 2020
7. Date of Investigation & Corps Investigators: August 30, 2020 and November 5, 2020; Keith Simmons, John Moeschen, Lauren Uhlig
8. Description of Unauthorized Activities: Unauthorized work including fill in Waters of the U.S., destruction of wetlands, no BMPs in place for water quality (sediment in the channel), mature trees were removed (potential ESA issue).
9. Classification from Part III. D(1):
 - a. Repeat Violator(s)
 - b. Flagrant Violator
 - c. Particular Case EPA May Request
 - d. Corps Recommends Administrative Penalty
10. Completed Inspection Report and Jurisdictional Determination Attached
11. RAMS Database Query Results for Owner/Operator Attached: N/A

12. Corps Recommendations for Resolution: Voluntary restoration/fine.

II. EPA DETERMINATION

() EPA will act as lead enforcement agency.

() EPA declines the lead enforcement agency role and refers the matter back to the Corps pursuant to Part III. D(2) of the MOA. EPA's recommendations are:

If applicable:

EPA requested additional time (date, time, Corps contact):

EPA requested additional information (date, time, Corps contact, type of info):

III. JOINT ENFORCEMENT STRATEGY (if applicable)

Corps Lead:

EPA Lead:

IV. CERTIFICATION (must be completed)

	Corps Representative	EPA Representative
Signature/Date		
Name/Title		

Please Note this is a Discoverable Document when completed. If the individual has legal representation please provide a draft of this document to OC.

MEMORANDUM FOR RECORD

SUBJECT: Violation Determination

1. Responsible Party / Owner and Contact Information:

Mark Schmidt
2625 SW 12th Street
Lincoln, Nebraska 68522

2. Project Location: The activity is located within an unnamed tributary of the Little Nemaha River, Section 11, Township 8 North, Range 8 East, Lancaster County, Nebraska (lat. 40.682275°, long.-96.498598°).

3. Description of the alleged Unauthorized Activity or alleged Non-compliance violation:

Nebraska Department of Environment and Energy (NDEE) reported a possible unauthorized fill on 9.9.2020, as well as an anonymous neighbor (9.30.2020) reported that a contractor was working in an unnamed tributary to the Little Nemaha River and removing mature trees.

A roadside investigation was conducted on 9.20.2020 and 11.5.2020 due to lack of access to the site. The Corps has determined that an unauthorized discharge of dredged material has occurred in waters of the United States.

The neighbor provided photos that are attached to this document on 9.9.2020 and 9.30.2020. The photo provided on 9.30.2020 showed a person working in the channel, shoveling a trench so that water could flow through the area that had been graded and showing fill material redistributed through the channel. A Corps employee drove by site on 9.20.2020 and took photos, work was currently underway. During a Corps site visit on 11.5.2020, it was apparent that work had taken place within the channel making the channel deeper and wider. Trees have been removed. Silt fence was installed perpendicular to the channel, damming/restricting flow. All the photos described above are attached to the Unauthorized Activity Investigation Report Form. Multiple calls have gone unanswered, certified mail with notice of potential violation was not received (October 2, 2020), a second letter with notice of violation was sent regular mail with no response (January 21, 2020).

4. Violation Elements:

Elements of a Section 404 Violation:

A. Discharge of dredged or fill material (33 CFR 323.2): A bulldozer was used to push earthen material through the channel, reshaping the channel (changing the bottom elevation and location) and filling/excavating fringe wetlands.

Please Note this is a Discoverable Document when completed. If the individual has legal representation please provide a draft of this document to OC.

B. Into Waters of the United States (33 CRR 328): The unnamed tributary to the Little Nemaha River is an intermittent channel. The tributary is a natural occurring surface water channel that contributes surface water flow to an (a)(1) water in a typical year through one or more paragraph (a)(2)–(4) waters. This tributary is intermittent in a typical year. The Antecedent Precipitation Tool (APT) was used to identify typical years of hydrology with available aerals. Water was observed in the channel during typical years as well as drier than typical years.

C. From a point source: Earth moving equipment grading material through the channel and abutting wetlands.

D. By any person(s): Mark Schmidt

E. Without authorization: Not authorized.

F. Date the discharge occurred: September 2020

Elements of a Section 10 Violation:

A. Obstruction or alternation: N/A

B. Of a Navigable Water of the U.S.: N/A

C. Without authorization. N/A

Non-compliance:

A. Terms/conditions of permit violated and sufficiently serious to require enforcement action: N/A

5. Determination of Violation or Non-compliance:

A violation does exist. The responsible parties will not respond to phone calls or letters sent in the mail bot certified mail and regular mail. The responsible party will be notified the action has been sent to EPA Region 7.

Unauthorized fill activities have been recorded within a jurisdictional water.

6. Initial Recommendation for Resolution of Unauthorized Activity or Non-Compliance

Please Note this is a Discoverable Document when completed. If the individual has legal representation please provide a draft of this document to OC.

Unauthorized Activities (33 CFR 326.3):

- A. No further action is recommended because:
- B. Voluntary restoration may be completed by eliminating current detrimental impacts to the satisfaction of the Corps, at which point no further action will be required. This may occur through:
- C. The activity may be exempt from Section 404 regulation if the activity is modified as follows:
- D. The activity may be authorized by an after-the-fact authorization if the activity is modified as follows and/or additional measures are taken such as:
- E. The enforcement action should be referred to Jodi Bruno because: the violator will not respond to phone calls, certified mail, or regular mail.

Non-compliance Violations (33 CFR 326.4):

- A. No further action is recommended because:
- B. The violation may be resolved through mutual agreement and brought into compliance by voluntary restoration or through a permit modification. This may occur through:
- C. It is unlikely an agreeable solution can be reached. It is recommended that the Corps consider suspension/revocation procedures (33 CFR 325.7(c)) or it is recommended that we coordinate with Office of Counsel and Department of Justice to pursue legal action:

PREPARED BY:

Keith Simmons
Keith Simmons, Project Manager

Date: 2.19.2021

APPROVED BY:

John Moeschen

Date: 2/19/2021

CE NWO-OD- R-NE

File Number, NWO-2020-01770

Please Note this is a Discoverable Document when completed. If the individual has legal representation please provide a draft of this document to OC.

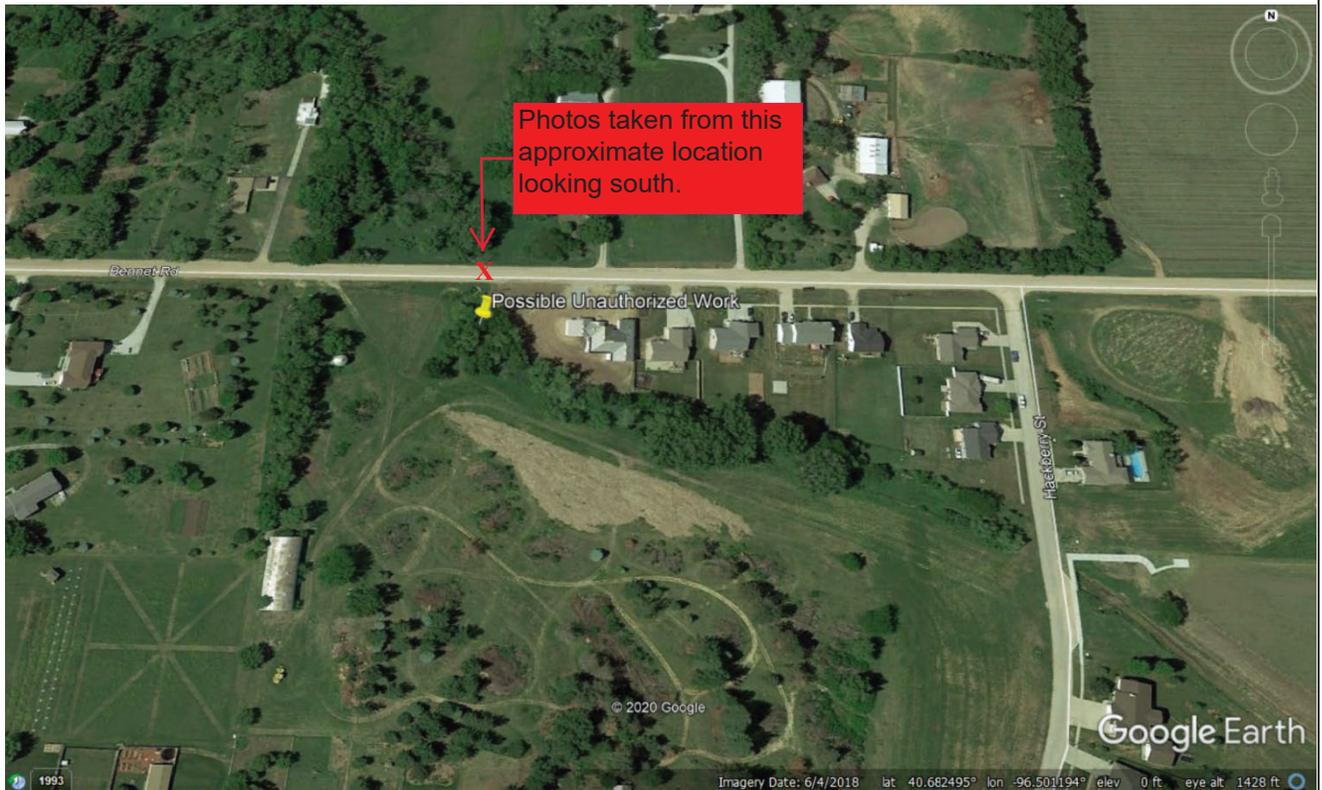
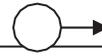
John Moeschen, State Program Manager

Unauthorized Activity Investigation Report Form
NOT FOR RELEASE UNDER FOIA
Omaha District Regulatory

INSPECTOR:		DATE: 2.18.2021	TIME:
REASON FOR INSPECTION			
<input checked="" type="checkbox"/> Suspected unauthorized discharge (initial inspection)		<input type="checkbox"/> Reported violation	
<input type="checkbox"/> Repeat inspection for verification of violation		<input type="checkbox"/> Review of compliance with AO, Consent	
<input type="checkbox"/> Decree Restoration inspection		<input type="checkbox"/> Other:	
METHOD OF INSPECTION:			
<input type="checkbox"/> On-site <input type="checkbox"/> Boat <input type="checkbox"/> Aircraft <input checked="" type="checkbox"/> Adjacent property <input type="checkbox"/> Other:			
SITE LOCATION		Township: 8 North	
State: Nebraska			
County: Lancaster		Range: 8 East	
Nearest Town: Bennet		Section: 11	
Latitude: 40.682275°		Longitude: -96.498598°	
USGS/NWI Map Name: USGS 1:24K Quad Name Palmyra			
Name of water body or adjacent water body and description of work location: Unnamed Tributary to the Little Nemaha River and abutting wetlands.			
LANDOWNER/ALLEGED VIOLATOR		PARTY/CONTRACTOR	
Name: EVERGREEN DEVELOPMENT INC Attn: MARK T SCHMIDT		Name: Mark Schmidt	
Address: 2625 SW 12 ST		Address: 2625 SW 12th Street	
Town: LINCOLN		Town: Lincoln	
State: NE Zip: 68522		State: Nebraska Zip: 68522	
Phone: 402-560-2850		Phone: 402-560-2850	
WITNESSES		OTHER PARTIES	
Name:		Name:	
Address:		Address:	
Town:		Town:	
State:		State:	
Phone:		Phone:	
PERSONS PRESENT AT INSPECTION			
Name	Affiliation	Phone	
Keith Simmons	USACE	402.896.0896	
Lauren Uhlig	USACE	402.896.0896	
John Moeschen	USACE	402.896.0896	
PERMIT HISTORY; PRIOR KNOWLEDGE OF 404 REQUIREMENTS			
Permit issued? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Date: N/A Number:			
<input type="checkbox"/> Nationwide permit or exemption presumed to apply			
<input type="checkbox"/> Permit not sought; apparent knowledge of requirements			
<input checked="" type="checkbox"/> Permit not sought; knowledge of requirements unknown			

DESCRIPTION OF WORK		
<input checked="" type="checkbox"/> Discharge of fill material <input type="checkbox"/> Discharge of dredged material Describe approximate area of total impact (filled, flooded, excavated, destroyed, degraded): Greater than 200 linear feet of channel impacted, as well as abutting wetlands can be observed from Bennet Road, there is likely more aquatic resources impacted that cannot be observed.		
Narrative description of discharge activity: NDEE (9.9.2020) as well as an anonymous neighbor (9.30.2020) reported that a contractor was working in an unnamed tributary to the Little Nemaha River and removing mature trees. The neighbor provided a photo of a person working in the channel, shoveling a trench so that water can flow through the area that had been graded through, showing fill material redistributed through the channel dated 9.30.2020. The neighbor provided photos that are attached to this document on 9.9.2020 and 9.30.2020. A Corps employee drove by site on 9.20.2020 and took photos, work was currently underway. During the Corps site visit on 11.5.2020, it was apparent that work had taken place within the channel making the channel deeper and wider. Trees have been removed. Silt fence was installed perpendicular to the channel, damming/restricting flow. All the photos described above are apart of the Corps Memo dated 11.5.2020 and is attached.		
Stated reason for discharge (purpose & need): Violator will not answer phone calls or respond to certified mail.		
Approx. Start Date: August 2020	Stop Work Date: Unknown	% Complete: 100%
Composition of discharged material (e.g. asphalt, concrete, rock, car bodies, sediment): Earthen fill in greater than 200 linear feet of channel and abutting wetlands.		
Type of vehicle/equipment used during discharge activity: Dozer, skidloader, and trackhoe can be seen in attached Memo dated 11.5.2020 .		
Description of Waterbody: Unnamed tributary to the Little Nemaha River and abutting wetlands.		
Apparent Function(s) of Waterbody: Wildlife habitat, wetland filtering of pollutants.		
Criteria Met for Jurisdictional Wetlands:		
Hydrophytic Vegetation: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Hydric Soils: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Hydrology: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
ENVIRONMENTAL IMPACTS AND HARM		
Describe the significance of the impacts (improper fill material, wildlife habitat, water quality, endangered species): Unauthorized work including fill in Waters of the U.S., destruction of wetlands, no BMPs in place for water quality (sediment in the channel), mature trees were removed (potential ESA issue).		
Interim protection measures needed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
RESULT OF INSPECTION		
<input checked="" type="checkbox"/> Apparent Unpermitted Discharge <input type="checkbox"/> Prevention of Potential Violation <input type="checkbox"/> No Apparent Violation; No Discharge <input type="checkbox"/> No Apparent Violation; Discharge Permitted or Exempt <input type="checkbox"/> Noncompliance with Terms of AO or CD <input type="checkbox"/> Apparent Compliance with AO or CD		

Insert Location Map with permit from RAMS screen capture or other source. The map should show photo locations and arrow of photo direction. Use a minimum of 3 photos.



1

Insert Digital or scanned photos with captions beside each

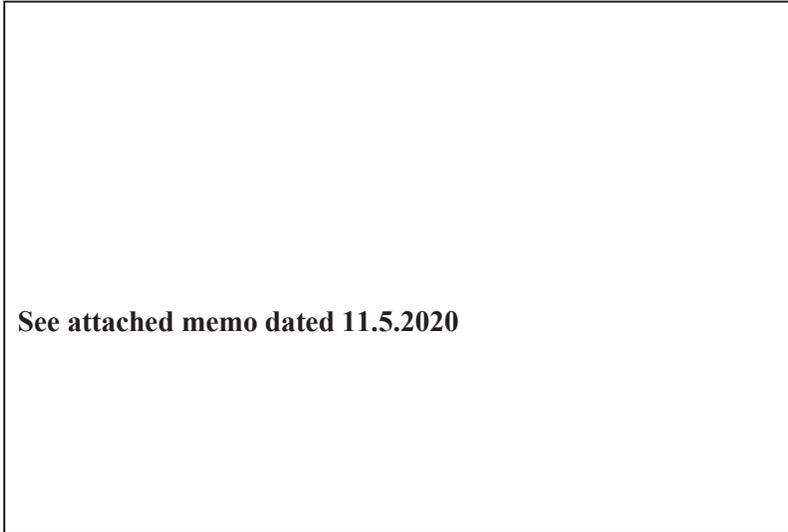


Figure 1 Looking downstream at completed project Photo Date
____/____/____

See attached memo dated 11.5.2020

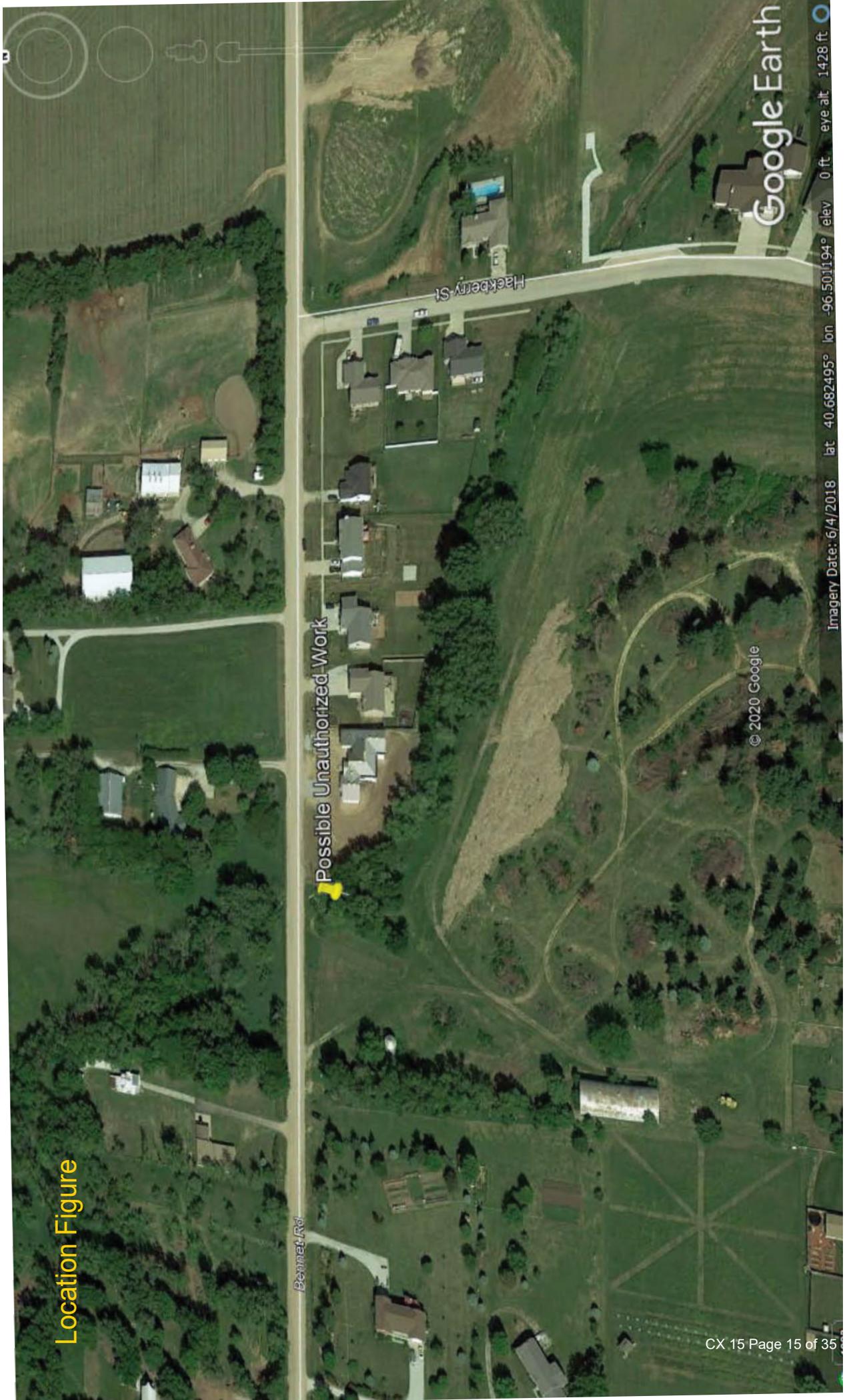


Figure 2 Looking upstream from mid section of project Photo Date
____/____/____



Figure 3 Looking upstream from end of project Photo Date ____/____/____

Location Figure



© 2020 Google

Google Earth

Imagery Date: 6/4/2018 lat: 40.682495° lon: -96.501194° elev: 0 ft eye alt: 1428 ft



**US Army Corps
Of Engineers**
Omaha District

Memo to File

ORM#: NWO-2020-01770-WEH (Schmidt, Fill, Lancaster County)

DATE: 11.5.2020

SUMMARY: Site Visit

Corps project managers visited the site to investigate a potential violation. The Corps PM did not have permission to access the site, the potential violation was observed a location north of the site, from Bennet Road. It was apparent that work had been done in the channel without a permit.



View looking south at channel after unpermitted activity. Bottom elevation of channel appears to be deeper than what was there before work occurred. 11.5.2020



View looking SE at channel after unpermitted activity. Appears silt fence is placed perpendicular to the channel damming the water flow. 11.5.2020



View looking north at same channel, but north of Bennet Road for reference. 11.5.2020

Project Manager: Keith Simmons

Date: 11.5.2020



Photo provided by my anonymous neighbor reporting violation looking south from Bennet Road. This photo shows fill material along the banks of the channel. 9.8.2020



Photo provided by my anonymous neighbor reporting violation looking south from Bennet Road. This photo shows hydrophytic vegetation in the background and fill material placed on the bank of the channel. 9.8.2020



Photo provided by my anonymous neighbor reporting violation looking south from Bennet Road. This photo shows no BMPs and working being conducted along the westside of the channel. 9.8.2020



Photo provided by my anonymous neighbor reporting violation looking south from Bennet Road. This photo shows no BMPs and working being conducted along the channel. It appears there is fill material placed on both sides of the channel. 9.8.2020



Photo provided by anonymous complainant. This photo was taken a September 30, 2020. A person seen working in the stream, shoveling a channel so that water can flow through the area that he has excavated. 9.30.2020



Corps employee drove by the site on 9.21.2020. Extensive work had been completed to the channel and abutting wetlands. No BMPs were in place.



Corps employee drove by the site on 9.21.2020. Equipment was still on site. No BMPs were in place.



**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): **DRAFT**

ORM Number: **NWO-2020-01770-WEH**

Associated JDs: **N/A**

Review Area Location¹: State/Territory: **Nebraska** City: **Bennet** County/Parish/Borough: **Lancaster**

Center Coordinates of Review Area: Latitude **40.682237°** Longitude **-96.498609°**

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
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
Unnamed Tributary to Little Nemaha River	900	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
			The tributary is a natural occurring surface water channel that contributes surface water flow to an (a)(1) water in a typical year through one or more paragraph (a)(2)–(4) waters. This tributary is intermittent in a typical year. The Antecedent Precipitation Tool (APT) was used to identify typical years of hydrology with available aerials. Water was observed in the channel during typical years as well as drier than typical years.

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**

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

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

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination	
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: *N/A*
This information *is* sufficient for purposes of this AJD.
Rationale: *N/A*
- Data sheets prepared by the Corps: *N/A*
- Photographs: *Aerial and Other: Google Earth imagery years: 1993-2019, Corps site visit photos November 5, 2020*
- Corps site visit(s) conducted on: *November 5, 2020*
- Previous Jurisdictional Determinations (AJDs or PJDs): *N/A*
- Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: *https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx, Google Earthlayer, 2.9.2021*
- USFWS NWI maps: *https://www.fws.gov/wetlands/data/Mapper.html, Google Earth layer, 2.9.2021*
- USGS topographic maps: *www.earthpoint.us/ Google Earth layer, 2.9.2021*

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	USGS 1:24K Quad Name Palmyra https://www.epa.gov/waterdata/nhdplus-national-hydrography-dataset-plus 102400060203 Headwaters Little Nemaha River 1024000602 Headwaters Little Nemaha River 10240006
USDA Sources	<i>N/A.</i>
NOAA Sources	<i>N/A.</i>
USACE Sources	<i>N/A.</i>
State/Local/Tribal Sources	<i>N/A.</i>
Other Sources	<i>N/A.</i>

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.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

- B. Typical year assessment(s):** Google Earth imagery for 1993-2019 and Corps site visit from November 2020 were utilized to support a typical year assessment of the intermittent channel and abutting wetlands. Google Earth aerial imagery, years 1999, 2002, 2005, 2007, 2010, and 2012, and the November 2020 site visit exhibited indications of surface water/flow present within the channel that would support the channel has intermittent flow in a typical year (all other years had distorted imagery of the channel was covered by leafed out vegetation, primarily cottonwood trees). The aerial photos from 1999, 2002, 2005, 2007, 2010, and 2012 all showed surface water present within the channel, the Corps' Antecedent Precipitation Tool (APT) indicated that 1999, 2002, 2005, 2012, and 2020 were drier than normal years or normal year / "typical years" and all had surface water/flow present. The APT classified 2020 as a "Drier than Normal" conditions. Precipitation average for the site visit and the 3 previous months are as follows: August 2020 precipitation was within the 30 year average and is considered a typical month, September 2020 had less precipitation than the 30 year average and is considered a dry month, October 2020 had less precipitation than the 30 year average and is considered a dry month, and November 2020 (site visit) had less precipitation than the 30 year average and is considered a dry month and water was still observed flowing in the channel. Based on the above information the channel has surface water flow more than in direct response to precipitation and does support intermittent flow in a drier than typical year.
- C. Additional comments to support AJD:** During the Corps' site visit (November 2020), no wetland characteristics were observed in the channel due to grading activities, however photos of the site during the grading activity shows fringe wetlands located along the channel.



Bennet Rd

Schmidt Unauthorized Fill



Haekberry St

© 2021 Google

Google Earth

Imagery Date: 6/4/2018 lat 40.683162° lon -96.500461° elev 0 ft eye alt 1144 ft





**DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NEBRASKA REGULATORY OFFICE
8901 SOUTH 154TH STREET, SUITE 2
OMAHA, NEBRASKA 68138-3635**

October 2, 2020

Regulatory Branch
Nebraska Regulatory Program
Corps No. NWO- 2020-01770-WEH

Mr. Mark Schmidt
2625 Southwest 12th Street
Lincoln, Nebraska 68522

Dear Mr. Schmidt:

This letter is a request for additional information regarding a possible unauthorized activity in waters of the United States without the Department of the Army (DA) authorization. The U.S. Army Corps of Engineers (Corps) is conducting an investigation to determine if a violation exists. The activity occurred within an unnamed tributary of the Little Nemaha River, approximately centered at Latitude 40.682221°, Longitude -96.498659°, within Section 11, Township 11 North, Range 8 East, in Lancaster County, Nebraska.

It appears that fill material has been pushed into the channel of the unnamed tributary of the Little Nemaha River using a bulldozer and a track hoe. See attached Figure showing the location of the activities.

The Corps is responsible for administering Section 404 of the Clean Water Act (33 USC 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403). These Federal laws are designed to protect against water pollution, restore and maintain the chemical, physical, and biological integrity of the Nation's waters, and to safeguard our Nation's navigable waters by prohibiting any work that may affect the course, location, condition, or capacity of a Navigable water of the United States. The Corps implementing regulations for these statutes are published in the *Code of Federal Regulations* at 33 CFR Parts 320 through 332. Information on our regulatory program can be obtained at our website: <http://www.nwo.usace.army.mil/Missions/Regulatory-Program/>

We request that you contact our office within 15 days of receiving this letter to discuss this matter and provide additional information that you feel would be pertinent. If you have any questions, please contact me at 402-896-0896 and/or timothy.k.simmons@usace.army.mil and refer to file number NWO-2020-01770-WEH.

Sincerely,

A handwritten signature in black ink that reads "John Moeschen". The signature is written in a cursive style with a large, looping initial "J".

John Moeschen
Nebraska State Program Manager

Attachment

cc:
NDEE (Pauley)



Possible Unauthorized Work

Bennet Rd

Heakberry St

© 2020 Google

Google Earth

Imagery Date: 6/4/2018 lat: 40.682495° lon: -96.501194° elev: 0 ft eye alt: 1428 ft



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NEBRASKA REGULATORY OFFICE
8901 SOUTH 154TH STREET, SUITE 2
OMAHA, NEBRASKA 68138-3635

January 21, 2020

Regulatory Branch
Nebraska Regulatory Program
Corps No. NWO- 2020-01770-WEH

Mr. Mark Schmidt
2625 Southwest 12th Street
Lincoln, Nebraska 68522

Dear Mr. Schmidt:

This letter is a request for additional information regarding a possible unauthorized activity in waters of the United States without the Department of the Army (DA) authorization. The U.S. Army Corps of Engineers (Corps) is conducting an investigation to determine if a violation exists. The activity occurred within an unnamed tributary of the Little Nemaha River, approximately centered at Latitude 40.682221°, Longitude -96.498659°, within Section 11, Township 11 North, Range 8 East, in Lancaster County, Nebraska.

It appears that fill material has been pushed into the channel of the unnamed tributary of the Little Nemaha River using a bulldozer and a track hoe. See attached Figure showing the location of the activities.

The Corps is responsible for administering Section 404 of the Clean Water Act (33 USC 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403). These Federal laws are designed to protect against water pollution, restore and maintain the chemical, physical, and biological integrity of the Nation's waters, and to safeguard our Nation's navigable waters by prohibiting any work that may affect the course, location, condition, or capacity of a Navigable water of the United States. The Corps implementing regulations for these statutes are published in the *Code of Federal Regulations* at 33 CFR Parts 320 through 332. Information on our regulatory program can be obtained at our website: <http://www.nwo.usace.army.mil/Missions/Regulatory-Program/>

We request that you contact our office within 15 days of receiving this letter to discuss this matter and provide additional information that you feel would be pertinent. If you have any questions, please contact me at 402-896-0896 and/or timothy.k.simmons@usace.army.mil and refer to file number NWO-2020-01770-WEH.

Sincerely,

A handwritten signature in black ink that reads "John Moeschen". The signature is written in a cursive style with a large, looping initial "J".

John Moeschen
Nebraska State Program Manager

Attachment

cc:
NDEE (Pauley)



Google Earth

Imagery Date: 6/4/2018 lat: 40.682495° lon: -96.501194° elev: 0 ft eye alt: 1428 ft

Possible Unauthorized Work

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