

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): October 14, 2014.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: SWL, City of Fayetteville, Water Main Improvements, Kessler Mt. to Cato Springs Road, 2014-00336

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Arkansas County/parish/borough: Washington City: Fayetteville
Center coordinates of site (lat/long in degree decimal format): Lat. 36.030967 °, Long. -94.20697 °
Universal Transverse Mercator: 391258.70; 3988056.16

Name of nearest waterbody: Unnamed tributary to Cato Springs Branch

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: White River

Name of watershed or Hydrologic Unit Code (HUC): 11010001, Beaver Reservoir, Arkansas, Missouri

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request. *The review area covered by this Approved JD includes the water main improvement route for the current proposed project (8.5 acres). This includes the review area identified in the AJD for File No. 2014-00110, Fayetteville Regional Park, June 2014 that the water main pipeline route will cross.*

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: September 18, 2014

Field Determination. Date(s): September 5, 2014

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: TRIBUTARIES (TR) 1: 60 linear feet by 6 foot width; TR 2: 65 linear feet by 2 foot width; TR 4: 65 linear feet by 8 foot width; TR 5: 65 linear feet by 4 foot width; TR 6: 65 linear feet by 4 foot width.

Wetlands: WETLAND (WL) 1: 0.48 acres; WL 2: 0.01 acres. **NOTE: TR 5 & 6 and WL 1&2 were identified in a previous Approved Jurisdictional Determination (AJD) for File No: 2014-00110, Fayetteville Regional Park, June 25, 2014.**

c. Limits (boundaries) of jurisdiction based on: Established by OHWM

Elevation of established OHWM (if known):

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

2. **Non-regulated waters/wetlands (check if applicable):**³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: The potential jurisdictional area consisted of an upland drainage or swale that was identified in the Garver preliminary JD as an ephemeral stream that was not likely to be jurisdictional. This area does not meet the definition of waters of the United States or wetlands under the 1987 Corps of Engineers Wetlands Delineation Manual, Regional Supplements, appropriate guidance, and Department of the Army regulations.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**

Identify TNW:

Summarize rationale supporting determination:

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

(i) **General Area Conditions:**

Watershed size: 1,625,593 acres

Drainage area: 438 acres

Average annual rainfall: 45.5 inches

Average annual snowfall: 10.0 inches

(ii) **Physical Characteristics:**

(a) **Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through 3 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 5-10 aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: NO.

Identify flow route to TNW⁵: TR 1 (RPW) flows for 2,000 linear feet east-northeast where it enters TR 4 (RPW) that flows for 6,225 linear feet before entering Cato Springs Branch (RPW) northeast of the review area, Cato Springs

³ Supporting documentation is presented in Section III.F.

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Branch then flows into Town Branch (RPW), which then flows into the West Fork of the White River (RPW); which flows into the White River (TNW). TR 2 (RPW) is located approximately 400 feet south of TR 1, flows northeast for approximately 700 linear feet into TR 4. TR 5 (RPW) flows northeast for 2,983 linear feet into TR 4. TR 6 (RPW) flows for 860 linear feet into TR 5, which flows into TR4.

Tributary stream order, if known: First Order

(b) General Tributary Characteristics (check all that apply):

- Tributary is:** Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain: TR 1, 2, and 4 have culverts in their upper reaches and are crossed by the Kessler Mountain Water Tank Road.

Tributary properties with respect to top of bank (estimate):

Average width: TR 1: 6 feet; TR 2: 2 feet; TR 4: 8 feet; TR 5: 4 feet; TR 6: 4 feet.
 Average depth: TR 1: 2 feet; TR 2: 5 inches; TR 4: 8 inches; TR 5: 2 feet; TR 6: 2 feet.
 Average side slopes: TR 1-6: 2:1.

Primary tributary substrate composition (check all that apply):

- Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover:
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Minimal erosion during high flows.

Presence of run/riffle/pool complexes. Explain: None

Tributary geometry: Meandering

Tributary gradient (approximate average slope): 3%

(c) Flow:

Tributary provides for: Seasonal Flow

Estimate average number of flow events in review area/year: 20 (or greater)

Describe flow regime: Flows are generally greatest following normal rain or storm events.

Other information on duration and volume: Streams generally flow during winter and spring but are dry during summer and fall.

Surface flow is: Discrete and Confined Characteristics: Streams have obvious banks and OHWM's.

Subsurface flow: Unknown Explain findings:

- Dye (or other) test performed:

Tributary has (check all that apply):

- Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list):

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

- Discontinuous OHWM.⁷ Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction, (check all that apply):

- High Tide Line indicated by:
- oil or scum line along shore objects
 - fine shell or debris deposits (foreshore)
 - physical markings/characteristics
 - tidal gauges
 - other (list):
- Mean High Water Mark indicated by:
- survey to available datum;
 - physical markings;
 - vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Streams are typical of a seasonal intermittent stream that provides primarily upland runoff.

Identify specific pollutants, if known: Unknown

(iv) Biological Characteristics. Channel supports (check all that apply):

- Riparian corridor. Characteristics (type, average width): TR 1: Riparian zone vegetation includes eastern red cedar (*Juniperus virginiana*), blackjack oak (*Quercus marilandica*), winged elm (*Ulmus alata*), and tall fescue (*Schedonorus arundinaceus*). An estimated 60 linear feet of TR 1 occurs within the review area.

TR 2: Riparian zone vegetation includes eastern red cedar (*Juniperus virginiana*), winged elm (*Ulmus alata*), mockernut hickory (*Carya tomentosa*), Virginia wild rye (*Elymus virginicus*), common ragweed (*Ambrosia artemisiifolia*), goldenrod (*Solidago petiolaris*), greenbrier (*Smilax rotundifolia*), American beauty-berry (*Callicarpa americana*), and Asiatic dayflower (*Commelina communis*). An estimated 65 linear feet of TR 2 occurs within the review area.

TR 4: Riparian zone vegetation includes eastern red cedar (*Juniperus virginiana*), winged elm (*Ulmus alata*), mockernut hickory (*Carya tomentosa*), echinacea (*Echinacea purpurea*), Virginia wild rye (*Elymus virginicus*), Osage orange (*Maclura pomifera*), common ragweed (*Ambrosia artemisiifolia*), greenbrier (*Smilax rotundifolia*), Inland sea oats (*Chasmanthium latifolium*), American beauty-berry (*Callicarpa americana*), Selfheal (*Prunella vulgaris*), black locust (*Robinia pseudoacacia*), tall fescue (*Schedonorus arundinaceus*), and Perilla (*Perilla frutescens*). An estimated 65 linear feet of TR 4 occurs within the review area.

TR 5 and 6: Riparian zone vegetation includes eastern red cedar, false indigo (*Amorpha fruticosa*), green ash (*Fraxinus pennsylvanica*), northern red oak (*Quercus rubra*), common hackberry (*Celtis occidentalis*), greenbrier (*Smilax sp.*), multiflora rose (*Rosa multiflora*), plum (*Prunus americana*), tall false rye grass (*Schedonorus arundinaceus*), Queen Anne's lace (*Daucus carota*), and Bermuda grass (*Cynodon dactylon*). An estimated 65 linear feet of TR 5 and 65 linear feet of TR 6 occurs within the review area.

- Wetland fringe. Characteristics:

- Habitat for:

- Federally Listed species. Explain findings:
- Fish/spawn areas. Explain findings:
- Other environmentally-sensitive species. Explain findings:
- Aquatic/wildlife diversity. Explain findings: Streams provide habitat for micro- and macroinvertebrates.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: WL 1: 0.48 acres; WL 2: 0.01 acres.

Wetland type. Explain: WL 1 and 2 are emergent wetlands.

Wetland quality. Explain: WL 1 and 2 are low to moderate in function and services.

Project wetlands cross or serve as state boundaries. Explain: NO

(b) General Flow Relationship with Non-TNW:

Flow is: WL 1: Intermittent Flow; WL 2: intermittent Flow. Explain: WL 1 has a surface hydrologic connection with TR 6; WL 2 has a surface hydrologic connection with TR 5

Surface flow is: WL 1 and 2: Discrete and Confined

Characteristics: WL 1 and 2 has distinct bed and bank.

⁷Ibid.

Subsurface flow: Unknown Explain findings:

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are 5-10 river miles from TNW.

Project waters are 5-10 aerial (straight) miles from TNW.

Flow is from: Wetlands 1-4 are Wetland to Navigable Waters.

Estimate approximate location of wetland as within the 500-year or greater floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: water is fairly clear, and typical of wetlands, which receive their hydrology from upland Ozark streams primarily after storm events.

Identify specific pollutants, if known: runoff from forested uplands and pasturelands.

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

Riparian buffer. Characteristics (type, average width): Scrub- shrub, 10-foot width.

Vegetation type/percent cover. Explain: emergent vegetation 50%

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: WL 1 and 2 support limited habitat for micro- and macroinvertebrates and small aquatic species due to their depths.

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: 2

Approximately (0.49) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Yes	0.48		
Yes	0.01		

Summarize overall biological, chemical and physical functions being performed: Wetland 1 provides for minor flood retention, sedimentation, and limited nutrient supply for downstream waters of the United States.

C. **SIGNIFICANT NEXUS DETERMINATION (**SEE SECTION IV. B. FOR INFORMATION)**

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- TNWs: linear feet width (ft), Or, acres.
- Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
- Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: TR 4 is denoted on the AR-FAYETTEVILLE quadrangle as an intermittent stream. TR 1, 2, 5, and 6 are not shown on the AR-FAYETTEVILLE quadrangle but do exhibit indicators of water flow such as an OHWM.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 320 linear feet, 4 to 8 width (ft).
- Other non-wetland waters: acres.

Identify type(s) of waters:

3. **Non-RPWs⁸ that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.

Identify type(s) of waters:

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 - Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
 - Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: WL 1 and 2 are directly connected to the streams, TR 6 and 5 respectively, which flow through the wetlands.

Provide acreage estimates for jurisdictional wetlands in the review area: 0.49 acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

⁸See Footnote # 3.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain:
- Other factors. Explain:

Identify water body and summarize rationale supporting determination:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.

Identify type(s) of waters:

- Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in “*SWANCC*,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain:
- Other: (explain, if not covered above): The review area contains one upland swale (Identified as OW 3 in the Garver Wetland delineation). The swale has no defined bed, bank, or OHWM and is not connected to any other non-jurisdictional or jurisdictional waters.

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds:
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands:

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands:

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Garver: Wetland delineation dated August 29, 2014.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report. The Garver Wetland Delineation dated August 29, 2014 identified OW 3 as an ephemeral stream that was not likely jurisdictional. The swale (OW 3) as identified in this AJD was identified as an upland drainage and had no defined bed or bank or any indicators of seasonal flow. Therefore, it was not classified as an ephemeral stream but rather an upland swale that is non-jurisdictional.
- Data sheets prepared by the Corps:
- Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas: 11010001; Beaver Reservoir. Arkansas, Missouri
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 24K, AR-FAYETTEVILLE
- USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS-Web Soil Survey, Washington County, Arkansas 5/20/2014.
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps: Map 05143C0215F, Panel 215 of 575 (May 16, 2008)
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Garver Wetland Delineation (August 29, 2014); ARCGIS Regulatory Data (2014)
 or Other (Name & Date): Garver Wetland delineation photos (August 29, 2014).
- Previous determination(s). File no. and date of response letter: 2014-00110, June 25, 2014
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: The unnamed tributaries RPW (seasonal) identified in this AJD, identified as TR 1, 2, 4, 5 and 6 are jurisdictional due to their characteristics and significant connection with the following RPW (perennial) streams: Cato Springs Branch, Town Branch, West Fork of the White River, and the White River (TNW), all waters of the United States. These streams provide habitat for fish and wildlife species and nutrient material for downstream biological and chemical processes. As identified in the AJD for File No. 2014-00110, Fayetteville Regional Park, June 2014, wetlands WL 1 and 2 are seasonally connected to TR 6 and 5 respectively, and therefore provide flood retention and minor habitat for aquatic species. The jurisdictional wetlands and streams in this review area have the potential to impact the physical, chemical and biological integrity of the White River.

Jim Ellis
Project Manager

Date