

**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):** April 6, 2022

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** CESWL-RD, Holloway Road Development, SWL-2022-00074

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Arkansas County/parish/borough: Benton City: Centerton

Center coordinates of site (lat/long in degree decimal format): Lat. 36.3424°, Long. -94.2930°

Universal Transverse Mercator: NAD 83/UTM Zone 15, 4022702.05 Northing, 384012.73 Easting

Name of nearest waterbody: Little Osage Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 11110103 (Illinois)

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
- 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: March 30, 2022

Field Determination. Date(s): March 28, 2022

**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 and are not “*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):<sup>1</sup>**

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively Permanent Waters<sup>2</sup> (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: Tributary 1 (Intermittent Reach), 824 linear feet: 4 width (ft) and/or acres; Tributary 2, 245 linear feet: 10 width (ft); Tributary 3, 239 linear feet, 15 width (ft); Ephemeral 1, 82 linear feet: 1 width (ft); and Tributary 1 Ephemeral Reach, 315 linear feet: 2 width (ft).

Wetlands: Pond 2, 0.03 acre.

**c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual and OHWM**

Elevation of established OHWM (if known):

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

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: Two man-made ponds constructed in uplands are located within the review area, Pond 3, located in the central portion of the subject property and Pond 1 located in south-central portion of the subject property. Both ponds lack a hydrologic connection to regulated waters and are geographically isolated.

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

<sup>2</sup> 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).

<sup>3</sup> Supporting documentation is presented in Section III.F.

**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 waterbody<sup>4</sup> 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: 38.9 square miles

Drainage area: 580.7 acres

Average annual rainfall: 47 inches

Average annual snowfall: 9 inches

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through 4 tributaries before entering TNW.

Project waters are 30 (or more) river miles from TNW.

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

Project waters are 30 (or more) 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: N/A.

Identify flow route to TNW<sup>5</sup>: Tributaries 1-3 and Ephemeral 1 flow to Little Osage Creek (RPW), to Osage Creek, to Illinois River (TNW).

Tributary stream order, if known: Tributaries 1-3: 2<sup>nd</sup> Order; Ephemeral 1: 1<sup>st</sup> Order

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

**Tributary is:**  Natural

Artificial (man-made). Explain:

Manipulated (man-altered). Explain:

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

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

<sup>5</sup> 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.

Average width: Tributary 1: 4 feet; Tributary 2: 10 feet; Tributary 3: 15 feet; Ephemeral 1: 1 foot; Tributary 1 Ephemeral Reach: 2 feet.

Average depth: Tributary 1: 0.5 feet; Tributary 2: 1 foot; Tributary 3: 1.5 feet; Ephemeral 1: 0.25 feet; Tributary 1 Ephemeral Reach: 0.5 feet.

Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- |   |  |                                   |
|---|--|-----------------------------------|
| <input checked="" type="checkbox"/> Silts   | <input type="checkbox"/> Sands                     | <input type="checkbox"/> Concrete |
| <input checked="" type="checkbox"/> Cobbles | <input checked="" type="checkbox"/> Gravel         | <input type="checkbox"/> Muck     |
| <input type="checkbox"/> Bedrock            | <input type="checkbox"/> Vegetation. Type/% cover: |                                   |
| <input type="checkbox"/> Other. Explain:    |  |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Tributaries 1-3 and Ephemeral 1 relatively stable, some erosion noted on all three tributaries due to lack of or narrow riparian zone.

Presence of run/riffle/pool complexes. Explain: Tributaries 1-3 all support riffle/run/pool communities typical of seasonal streams in the Ozark uplands. Due to ephemeral condition of Ephemeral 1, it primarily lacked run/riffle/pool complexes.

Tributary geometry: Meandering

Tributary gradient (approximate average slope): <0.02%

### Tributaries 1-3

(c) Flow:

Tributary provides for: Seasonal Flow

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

Describe flow regime: Tributary 1 supports seasonal flow with obvious groundwater influence within a “gaining” section of stream. Tributaries 2 and 3, both larger channels with a greater headwater catchment, were seasonal intermittent channels that appear to support continual flow during wet seasons.

Other information on duration and volume: Aerial photography (Google Earth) suggests that Tributaries 1-3 support surface flow during winter-early summer. No information available on volume.

Surface flow is: Discrete and Confined Characteristics: Channel hydrology generally confined, although Pond 2 supports a discrete hydrologic connection to Tributary 1.

Subsurface flow: Unknown Explain findings:

- Dye (or other) test performed:

Tributary has (check all that apply):

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Bed and banks  |   |
| <input checked="" type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply): |   |
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank            | <input checked="" type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil                                | <input type="checkbox"/> destruction of terrestrial vegetation        |
| <input type="checkbox"/> shelving  | <input type="checkbox"/> the presence of wrack line                   |
| <input type="checkbox"/> vegetation matted down, bent, or absent                         | <input type="checkbox"/> sediment sorting                             |
| <input type="checkbox"/> leaf litter disturbed or washed away                            | <input type="checkbox"/> scour  |
| <input checked="" type="checkbox"/> sediment deposition                                  | <input type="checkbox"/> multiple observed or predicted flow events   |
| <input type="checkbox"/> water staining  | <input type="checkbox"/> abrupt change in plant community             |
| <input type="checkbox"/> other (list):   |   |
| <input type="checkbox"/> Discontinuous OHWM. <sup>7</sup> Explain:                       |   |

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

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

### Ephemeral 1 and Ephemeral Reach of Tributary 1

(c) Flow:

<sup>6</sup>A 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.

<sup>7</sup>Ibid.

Tributary provides for: Ephemeral Flow

Estimate average number of flow events in review area/year: 11-20

Describe flow regime: The ephemeral reach of Tributary 1 supports ephemeral flow in direct response to storm events.

Ephemeral 1, located downstream of Pond 1, supports flow following storm events that create discharge from pond, likely up to 2-3 days following storm events.

Other information on duration and volume: Aerial photography (Google Earth) and a Corps site suggests that Ephemeral 1 and Ephemeral Reach of Tributary 1 support flow immediately following storm events. No information available on volume.

Surface flow is: Discrete and Confined Characteristics: Channel hydrology generally confined, although Ephemeral 1 supports low banks and a discrete connection to Pond 2.

Subsurface flow: Unknown Explain findings:

- Dye (or other) test performed:

Tributary has (check all that apply):

- Bed and banks

- OHWM<sup>8</sup> (check all indicators that apply):

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input checked="" type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil                     | <input type="checkbox"/> destruction of terrestrial vegetation        |
| <input type="checkbox"/> shelving   | <input type="checkbox"/> the presence of wrack line                   |
| <input checked="" type="checkbox"/> vegetation matted down, bent, or absent   | <input type="checkbox"/> sediment sorting                             |
| <input type="checkbox"/> leaf litter disturbed or washed away                 | <input checked="" type="checkbox"/> scour                             |
| <input checked="" type="checkbox"/> sediment deposition                       | <input type="checkbox"/> multiple observed or predicted flow events   |
| <input type="checkbox"/> water staining                                       | <input type="checkbox"/> abrupt change in plant community             |
| <input type="checkbox"/> other (list):  |   |

- Discontinuous OHWM.<sup>9</sup> Explain:

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

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

### (iii) Chemical Characteristics:

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

Explain: Water is generally clear, and overall appeared to support moderately good water quality. Urban influence on headwaters of channels noted with erosion issues, further exacerbated by narrow riparian zone. Turbidity was noted in Tributary 1 likely due to livestock using channel as water source.

Identify specific pollutants, if known: No specific pollutants, but assumed pollutants from urban/residential landuse would include petroleum, nutrients, pesticides/herbicides, and other pollutants commonly associated with urban and residential areas.

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

- Riparian corridor. Characteristics (type, average width): Narrow riparian corridor associated with Tributaries 1-3; supporting species such as: blackberry (*Rubus* sp.), broom sedge (*Andropogon virginicus*), hackberry (*Celtis occidentalis*), and Osage orange (*Maclura pomifera*).
- Wetland fringe. Characteristics:
- Habitat for:
- Federally Listed species. Explain findings: The narrow riparian corridor associated with Tributary 2 and 3 supports a few trees that could be suitable roost sites for federally listed bat species.
  - Fish/spawn areas. Explain findings: Small species of fish, such as *Gambusia affinis*, were observed in Tributary 3 during the Corps site visit. Overall, doesn't appear to support a diversity of fish, due to seasonal flow regime.
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings: The tributaries and associated riparian corridors likely support semi-aquatic and aquatic species, such as frogs, salamanders, various aquatic and terrestrial insects, birds, small mammals, and large mammals (white-tail deer).

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

<sup>8</sup>A 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.

<sup>9</sup>Ibid.

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: Pond 2: 0.03 acre

Wetland type. Open-water feature (man-made pond). Explain: A man-made pond supporting open-water habitat.

Wetland quality. Poor quality. Explain: Man-made pond that supports low functions and values, primarily flood storage.

Low functions and values in regard to wildlife habitat.

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

(b) General Flow Relationship with Non-TNW:

Flow is: Ephemeral Flow Explain: An ephemeral channel exits pond that provides a hydrologic connection to Tributary 1 (an intermittent channel).

Surface flow is: Discrete

Characteristics: Pond discharges into Tributary 1 (intermittent channel) during storm events.

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: An ephemeral channel (Ephemeral 1) exits the pond and connects directly to Tributary 1.

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are 30 (or more) river miles from TNW.

Project waters are 30 (or more) aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 100 - 500-year 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: Generally turbid water, pond is occasionally used by livestock as water source.

Identify specific pollutants, if known: Elevated levels of nutrients, evident by algae blooms.

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

Riparian buffer. Characteristics (type, average width): Narrow riparian buffer consists of following species: hackberry, Osage orange, and blackberry.

Vegetation type/percent cover. Explain: Open water, with the exception of sparse colonies of *Juncus effusus* near pond banks.

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings: Pond could support sunfish, bass, etc. from landowner stocking, although due to small size, likely supports a poor fishery.

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: Pond likely supports all life stages of frogs and salamanders, in addition to semiaquatic reptiles such as water snakes (*Nerodia* spp.). In addition, birds (especially herons, possibly occasional transient waterfowl) may use the pond for foraging. Small and large mammals could use as a water source.

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

All wetland(s) being considered in the cumulative analysis: 1

Approximately (0.03) 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>
Pond 2	No	0.03		

Summarize overall biological, chemical and physical functions being performed: Ponds provides minimal capacity for flood storage, and minor functions for chemical processes (carbon cycle, etc.). Provides poor quality habitat for wildlife.

**C. SIGNIFICANT NEXUS DETERMINATION**

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: Pond 2 and Ephemeral 1 (discharges from Pond 2), function to reduce a relatively small amount of pollutants and Pond 2 provides limited flood storage. The ephemeral reach of Tributary 1 likely transfers pollutants/nutrients downstream, due to direct connection to intermittent tributaries that flow into the Osage Creek watershed. Both ephemeral channel reaches and Pond 2 provide low quality habitat for aquatic species and low quality habitat for species utilizing the narrow riparian zone. Nutrients from the surrounding farmland are most likely transferred to the downstream watershed, supporting foodwebs for aquatic organisms, although it would be considered a minor contribution in the overall watershed. Pond 2, the ephemeral reach of Tributary 1, and Ephemeral 1 all support a direct hydrologic connection to downstream waters in the greater Illinois River (TNW) watershed, exhibiting a physical, chemical and biological contribution to the watershed.
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: Tributaries 1-3 were all flowing during Corps site visit, and supported a variety of aquatic life, including small fish (*Gambusia affinis*). They channels supported well-defined bed/banks and flow is evident in several years of record on aerial photography (Google Earth).

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

  - Tributary waters: Tributary 1, 824 linear feet: 4 width (ft) and/or acres; Tributary 2, 245 linear feet: 10 width (ft); and Tributary 3, 239 linear feet, 15 width (ft).
  - Other non-wetland waters: acres.

Identify type(s) of waters:
3. **Non-RPWs<sup>10</sup> 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):

<sup>10</sup>See Footnote # 3.

Tributary waters: Ephemeral 1: 82 linear feet: 1 width (ft); Tributary 1 Ephemeral Reach: 315 linear feet: 2 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:

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

**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: 0.03 acres.

**7. Impoundments of jurisdictional waters.<sup>11</sup>**

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):<sup>12</sup>**

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):

<sup>11</sup> To complete the analysis, refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>12</sup> 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.

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: Pond 1: 0.29 acres and Pond 3: 0.09 acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

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: acres.

#### **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: Approved Jurisdictional Determination Request: Holloway Road Development, Centerton, Arkansas by Crafton Tull dated February 22, 2022. Crafton Tull provided a revised map on March 30, 2022, following Corps site visit on March 28, 2022.
- 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.
- Data sheets prepared by the Corps:
- Corps navigable waters’ study:
- U.S. Geological Survey Hydrologic Atlas: NHD data referenced on Regulatory Viewer (March 2022); HUC 8:11110103 (Illinois); HUC 12: 111101030302 (Little Osage Creek)
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Centerton, AR (1: 24K)
- USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey of Benton County, Arkansas (1977); Soils maps/lists also provided by Crafton Tull in wetland delineation report.
- National wetlands inventory map(s). Cite name: NWI maps provided by Crafton Tull in wetland delineation report (February 2022).
- State/Local wetland inventory map(s):
- FEMA/FIRM maps: Flood Map 05007C0235K
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Google Earth (1994-2021); Maps also provided by Crafton Tull in wetland delineation.
- or  Other (Name & Date): Site photos provided by Crafton Tull in wetland delineation and site photos collected during Corps site visit (March 2022).
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** Tributary 1 transitions from an ephemeral channel with an OHWM to a seasonal intermittent channel in the southern portion of the subject property. Tributaries 2 and 3, both seasonal intermittent channels, are located in the southern portion of the subject property. In addition, a man-made pond and associated ephemeral channel (Ephemeral 1) are hydrologically connected to Tributary 1. These features would all be regulated as waters of the United States. Two additional features, Pond 1 and Pond 3, both man-made ponds constructed in uplands, are geographically isolated and would not be regulated as waters of the United States. A Corps site visit, conducted on March 28, 2022, confirmed the location and status of the aquatic features within the subject property.

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David Rupe  
Project Manager

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April 6, 2022  
Date