



**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): 12/21/2020

ORM Number: SWL-2020-00374

Associated JDs: N/A

Review Area Location¹: State/Territory: Arkansas City: Bentonville County/Parish/Borough: Benton

Center Coordinates of Review Area: Latitude 36.34601 Longitude -94.23210

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- ☒ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

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

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³				
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination	
N/A.	N/A.	N/A.	N/A.	

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination	
Intermittent Tributary (Little Osage Creek Tributary 2)	707	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Intermittent tributary to Little Osage Creek; channel supports flow regime and morphologic features typical of intermittent channels within the region.

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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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	
E-1	800	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral channel that directs sheet flow as result of direct precipitation to the west, eventually diffusing to overland flow with no discernable channel.
E-2	456	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral channel (vegetated swale) that directs sheet flow to the west, eventually dissipating into wetland (W-2).
E-3	633	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral channel that directs sheet flow south.
W-1	0.12	acre(s)	(b)(1) Non-adjacent wetland.	Pond feature that supported hydrophytic vegetation. Feature was constructed in uplands with no connection to (a) (1) through (a)(3) waters.
W-2	0.03	acre(s)	(b)(1) Non-adjacent wetland.	Depressional wetland that ponds water from uplands, connected to non-regulated ephemeral channel (E-2).
W-3	0.017	acre(s)	(b)(1) Non-adjacent wetland.	Depressional wetland feature surrounded by uplands, no connection to (a)(1) through (a)(3) waters.
W-4	0.01	acre(s)	(b)(1) Non-adjacent wetland.	Depressional wetland that ponds water from uplands, connected to non-regulated ephemeral channel (E-3).

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.

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

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



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- ☒ Information submitted by, or on behalf of, the applicant/consultant: [Wetland Delineation for Poigai Subdivision, Bentonville, Benton County, Arkansas prepared by Habitat Architects dated September 2020.](#)
This information is sufficient for purposes of this AJD.
Rationale: [N/A.](#)
- ☐ Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- ☒ Photographs: [Aerial and Other: Provided in wetland delineation provided by applicant; photos collected during Corps site visit; Google Earth.](#)
- ☒ Corps site visit(s) conducted on: [December 21, 2020.](#)
- ☐ Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\).](#)
- ☒ Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- ☒ USDA NRCS Soil Survey: [Soil Survey of Benton County, Arkansas](#)
- ☒ USFWS NWI maps: [National Wetland Inventory Mapper website](#)
- ☒ USGS topographic maps: [Bentonville South, AR \(7.5-minute series\).](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS/WBD/NHD data/maps	HUC-11110103
USDA Sources	N/A.
NOAA Sources	N/A.
CorpsMap ORM Map Layers	Accessed December 17, 2020.
State/Local/Tribal Sources	N/A.
Other Sources	USACE Antecedent Precipitation Tool Version 1, findings provided by applicant for period Sept. 2020; accessed December 21, 2020 based on Corps site visit.

B. Typical year assessment(s): [Antecedent Precipitation Tool was utilized by applicant and provided in wetland delineation for period September 2020; findings: dry season, drier than normal. Accessed for period near Corps site visit in December 2020; findings: wet season, normal conditions.](#)

C. Additional comments to support AJD: [A site visit was conducted on December 21, 2020, and confirmed the findings of Habitat Architect's wetland delineation. Little Osage Creek Tributary 2 supports intermittent flow, evident by stream morphology and flow regime, and therefore, would be regulated as an \(a\)\(2\) water. Ephemeral channels E-1 through E-3 direct sheet flow from direct precipitation within the subject property; they are \(b\)\(3\) waters that would not be regulated under the NWPR. Wetland \(W-1\) is the remnant feature of a man-made pond constructed on uplands, that now supports a depression exhibiting hydrophytic vegetation. Wetlands W-2 and W-4 are small depressional features connected only by ephemeral channels and lack connection to regulated \(\(a\)\(1\) through \(a\)\(3\) waters\). Finally, Wetland \(W-3\) is as small depressional feature surrounded by uplands. These four wetland features \(W-1 through W-4\) were all non-adjacent wetlands, and therefore, would not be regulated under the NWPR.](#)