



**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): 1/20/2021

ORM Number: SWL 2018-00324-2

Associated JDs: N/A

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

Center Coordinates of Review Area: Latitude 36.363872 N Longitude -94.192196 W

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
Int-02	1352 linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Intermittent channel (silt, vegetated substrate) supporting an ordinary high water mark (~5.5' width) that provides flow to an UT of McKisic Creek during a typical year. Elk River watershed (HUC 11070208).
Int-03	690 linear feet	(a)(2) Intermittent tributary	Intermittent channel (riprap substrate) supporting an ordinary high water mark (~7' width) that provides

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

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

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



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Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
			contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	flow to an UT of McKisic Creek during a typical year. Elk River watershed (HUC 11070208).
Int-04	1283	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Intermittent channel (silt, gravel, vegetated substrate) supporting an ordinary high water mark (~6' width) that provides flow to an UT of McKisic Creek during a typical year. Elk River watershed (HUC 11070208).

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

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland-C	~0.16	acre(s)	(a)(4) Wetland separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetland and the (a)(1)-(a)(3) water, in a typical year.	Wetland C is located in the northwest portion of the project area and consisted of a forested wetland system that was directly connected by a road culvert crossing of SE 5th St. to an intermittent channel (Int-03) during a typical year. Elk River watershed (HUC 11070208).
N/A.	N/A.	N/A.	N/A.	N/A.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Int-01	~1556	linear feet	(b)(10) Stormwater	Intermittent, heavily channelized, urban stormwater control channel (silt, vegetated

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

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



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
			control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff.	substrate) that discharges into a storm culvert prior to exiting the project area to an undetermined location.
Eph-01	~1570	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral channel (silt, vegetated substrate) supporting an ordinary high water mark (~5' width) that provides stormwater runoff to an UT to Osage Creek. Illinois River watershed (Hydrologic Unit Code [HUC] 11110103).
Eph-02	~220	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral channel (silt, vegetated substrate) supporting an ordinary high water mark (~3' width) that provides stormwater runoff to an UT to Osage Creek. Illinois River watershed (Hydrologic Unit Code [HUC] 11110103).
Eph-03	~278	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral channel (silt, vegetated substrate) supporting an ordinary high water mark (~3' width) that provides stormwater runoff to Int-01, a heavily channelized, urban stormwater control channel (silt, vegetated substrate) that discharges into a storm culvert prior to exiting the project area to an undetermined location.
Eph-04	~586	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral channel (silt, vegetated substrate) supporting an ordinary high water mark (~3' width) that provides stormwater runoff to Int-01, a heavily channelized, urban stormwater control channel (silt, vegetated substrate) that discharges into a storm culvert prior to exiting the project area to an undetermined location.
Eph-05	~274	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral swale (silt, vegetated substrate) which does not support an ordinary high water mark that discharges stormwater runoff into a storm culvert prior to exiting the project area to an undetermined location.
Eph-06	~486	linear feet	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or	Ephemeral swale (silt, vegetated substrate) which does not support an ordinary high water mark that discharges stormwater runoff into a storm culvert prior to exiting the project area to an undetermined location.



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REGULATORY PROGRAM
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NAVIGABLE WATERS PROTECTION RULE**

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination	
		store stormwater runoff.		
Eph-07	~1234	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral swale (silt, vegetated substrate) which does not support an ordinary high water mark that conveys stormwater runoff to a culvert road crossing on SE P St. discharging into an intermittent stream (Int-02).
Eph-08	~178	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral swale (silt, vegetated substrate) which does not support an ordinary high water mark and conveys stormwater discharge from Wetland D to Wetland C.
Eph-09	~201	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral swale (silt, vegetated substrate) which does not support an ordinary high water mark that conveys stormwater runoff to Wetland C.
Eph-10	~618	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral swale (silt, vegetated substrate) which does support an ordinary high water mark (~1.5') that discharges stormwater runoff into a culvert to stormwater control feature Eph-12.
Eph-11	~526	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral channel (silt, vegetated substrate, cobble) supporting an ordinary high water mark (~2' width) that discharges stormwater runoff into a culvert to stormwater control feature Eph-12.
Eph-12	~411	linear feet	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff.	Ephemeral channel (silt, vegetated substrate) supporting an ordinary high water mark (~1.5' width) that provides stormwater runoff to Int-01, a heavily channelized, urban stormwater control channel (silt, vegetated substrate) that discharges into a storm culvert prior to exiting the project area to an undetermined location.
Ditch-01	~310	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	Ditch (silt, vegetated substrate) that discharges stormwater to an undetermined location.



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REGULATORY PROGRAM
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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination	
Ditch-02	~846	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	Ditch (concrete, silt substrate) that discharges stormwater to an undetermined location.
Ditch-03	~416	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	Ditch (silt, vegetated substrate, concrete) that discharges stormwater runoff ephemeral (Eph-11).
Wetland-A	~0.05	acre(s)	(b)(1) Non-adjacent wetland.	Emergent wetland with low to moderate functionality in regards to flood storage and filtration with limited wildlife habitat. Located in the southwestern portion of the project area and consisted of small depression.
Wetland-B	~0.01	acre(s)	(b)(1) Non-adjacent wetland.	Emergent wetland with low to moderate functionality in regards to flood storage and filtration with limited wildlife habitat. Consisted of a small depression located in the west-central portion of the project area.
Wetland-D	~0.01	acre(s)	(b)(1) Non-adjacent wetland.	Emergent wetland with low to moderate functionality in regards to flood storage and filtration with limited wildlife habitat that abuts a small drain/ephemeral channel (Eph-08).

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: [Delineation of Potential Section 404 Issues, Project NEO, Bentonville, Benton County, Arkansas, FTN Associates, June 7, 2018.](#)

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: Google Earth Imagery, March 14, 1994 – September 13, 2019.](#)

☒ Corps site visit(s) conducted on: [June 25, 2019.](#)

☐ Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\).](#)



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- ☒ Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- ☒ USDA NRCS Soil Survey: SCS Soil Survey of Benton County, Arkansas, 1977; NRCS Web Soil Survey 3.2, 2018.
- ☒ USFWS NWI maps: USFWS National Wetlands Inventory – Wetlands Mapper
- ☒ USGS topographic maps: USGS Topographic Quadrangle Bentonville South-AR

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	USGS The National Map – 3DEP
USDA Sources	NRCS Web Soil Survey
NOAA Sources	NOAA Daily Global Historical Climatology
USACE Sources	USACE ArcMAP
State/Local/Tribal Sources	N/A.
Other Sources	DHS-FEMA NFHL FIRMet; USACE 1987 manual and <i>Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (Version 2.0)</i> (USACE Engineer Research and Development Center 2012).

B. Typical year assessment(s): On the FTN field observation date of May 22, 2018, the last recorded rainfall event occurred on May 20, 2018, with a total of 0.02 inches. The previous 7-day rainfall cumulative total was 1.8 inches. The USACE Antecedent Precipitation Tool (APT) indicated that at the time of field investigation, precipitation conditions included a total of 4.51 inches of rainfall observed over a 30-day period, which fell between the 30th percentile (3.01 inches) and the 70th percentile (6.18 inches) of the 30-year normal range, indicating a incipient drought for the drought index. The 30 day observation period was preceded by wet conditions in March and April that fell above the 70th percentile of the 30-year normal range. Overall, the reports indicated an antecedent precipitation verses the normal range based on NOAA's daily global historical climatology network with an overall rating of Wetter than Normal Conditions classification.

C. Additional comments to support AJD: This jurisdictional determination is specific to an ~342-acre parcel of land within an urbanized portion of Bentonville. The project area is comprised primarily of commercial buildings, streets, parking lots, and urban lawns. The project site is bounded to the south by SE 14th Street (AR Hwy 102), to the west by SE J Street and to the north by E Central Avenue (AR Hwy 72), located in Bentonville, Benton County, Arkansas. Legal description of the project area is part of Sections 26, Township 19 North, Range 30 West. Center coordinates of the project area are 36.363872 N, -94.192196 W (NAD 83). The southern portion of the project area is located in the Illinois River watershed (Hydrologic Unit Code [HUC] 11110103), with an watershed area of approximately 1,671 square miles. No jurisdictional aquatics resources were identified within the southern portion of the project area. The southwestern corner of the project area is mapped within a Federal Emergency Management Agency (FEMA) 1-percent chance (100-year) floodplain and floodway for Bentonville, Benton County, Arkansas.

The northern portion of the project area is located in the Elk River watershed (HUC 11070208), with a watershed area of approximately 220 square miles. Three intermittent streams (Int-02, Int-03, Int-04) totaling approximately 3,325 linear feet and one wetland (Wetland C) totaling approximately 0.16 acres were identified as jurisdictional within the northern portion of the project.



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Several ephemeral channels (Eph-01, Eph-02, Eph-03, Eph-04, Eph-05, Eph-06, Eph-07, Eph-08, Eph-09, Eph-10, Eph-11, Eph-12) and several man-made ditches/storm-control structures (Int-01, Ditch-01, Ditch-02, Ditch-03) were observed throughout the review area. Multiple storm water detention areas were also observed. In addition, three potential wetland areas (Wetland A, Wetland B, Wetland D) were identified, primarily in the western portion of the review area. These aquatic resources were excluded from Clean Water Act jurisdiction within the review area.