



**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): 1/14/2021

ORM Number: SWL-2020-00386

Associated JDs: N/A.

Review Area Location¹: State/Territory: Arkansas City: Berryville County/Parish/Borough: Carroll

Center Coordinates of Review Area: Latitude 36.3658; 36.3555 Longitude -93.3660; -93.5378

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	
Warden Creek	2580	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	NHD, USGS topographic quadrangle, and aerial photography indicate the channel is intermittent. A site visit confirmed the channel was intermittent based on flow regime, channel morphology and presence of aquatic organisms.
Intermittent Stream A	528	linear feet	(a)(2) Intermittent tributary contributes	The channel is not mapped by either NHD or USGS topographic quadrangles, but channel is evident on aerial photography. The channel transitions from

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
			surface water flow directly or indirectly to an (a)(1) water in a typical year.	ephemeral to intermittent as it nears the confluence with Warden Creek. The channel supported flow at time of Corps site visit and exhibited a well established bed/bank.

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
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
Intermittent Stream C (Ephemeral channel)	650	linear feet	(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year.	Channel exits Pond A and then flows southeast into Pond B. The channel was flowing at the time of the Corps site visit, although there was no recent storm event. The channel exits Pond B as ephemeral and then transitions to overland sheet flow with no discernable channel.
Ephemeral Stream A (Ephemeral channel)	1652	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral channel that directs sheet flow to the east into Warden Branch (this reach is located upstream of its transition to Intermittent Stream A). The channel supports a discontinuous bed/bank; was dry at time of Corps site visit. The channel is not mapped by USGS topographic quadrangle or NHD.
Intermittent Stream B	60	linear feet	(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year.	Site visit and wetland delineation confirm channel supports intermittent flow (flow arises from groundwater spring), flowing into Pond A and then to Pond B (as Intermittent Stream C), however, the channel exits Pond B as ephemeral before transitioning to overland sheet flow.
Ephemeral Stream D	412	linear feet	(b)(3) Ephemeral feature, including	Channel is not mapped by NHD or topographic quadrangle. Channel supported a short reach of

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	
			an ephemeral stream, swale, gully, rill, or pool.	defined bed/bank, but lacked a defined channel overall. The channel was not flowing at time of Corps site visit.
Pond A	0.7	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	An intermittent channel enters (Intermittent Stream B) and exits (Intermittent Stream C) the pond; however, the channel ultimately lacks connection to downstream waters (the channel transitions to ephemeral and then to overland sheet flow). Therefore, there is no connection between the pond and (a)(1), (a)(2), or (a)(4) waters.
Pond B	0.08	acre(s)	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year.	Upland man-made pond. Intermittent Channel C enters pond; however, the channel discharges from the pond as ephemeral and transitions to overland sheet flow, therefore the pond is not connected to (a)(1), (a)(2), or (a)(4) waters.
Pond C	0.5	acre(s)	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year.	A non-jurisdictional channel (Ephemeral Stream D) enter/exits the man-made pond; therefore, it is not connected to (a)(1) through (a)(4) waters.
Pond D	0.04	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake	Man-made pond constructed in uplands.



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
		or pond is not an impoundment of a jurisdictional water that meets (c)(6).	

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: [Berryville Solar Arrays—Entegrity—USACE Delineation by PMI dated December 29, 2020.](#)

This information [is and is not](#) 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: Onsite photographs provided in consultant delineation report. Google Earth aerial imagery \(1994-2019\).](#)

☒ Corps site visit(s) conducted on: [January 13, 2021](#)

☐ 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 Carroll County, Arkansas \(1984\); Web Soil Survey \(accessed January 12, 2021\).](#)

☒ USFWS NWI maps: [National Wetland Inventory Mapper \(accessed January 12, 2021\).](#)

☒ USGS topographic maps: [Berryville, 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-11010001
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	Antecedent Precipitation Tool, Version 1.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): [APT was accessed for period near the time of consultant's wetland delineation \(December 21, 2020\); findings: wet season, normal conditions. APT was access for period near the time of Corps site visit \(January 13, 2021\); findings: wet season, wetter than normal \(period in January was only slightly wetter than normal\).](#)

C. Additional comments to support AJD: [Warden Branch is a mapped, intermittent channel \(mapped on NHD, USGS topographic quadrangles\) that was confirmed as intermittent during site visit. Intermittent Stream A, which enters the subject property as ephemeral, transitions to intermittent approximately 528' upstream of it's confluence with Warden Branch. Ephemeral Stream A was observed to be an ephemeral tributary to Warden Branch that flows only in response to direct precipitation \(NHD data and aerial](#)



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photography also support ephemeral status), this channel transistions into Intermittent Stream A. Intermittent Stream B is a spring-fed channel that enters Pond A, exits the pond as intermittent (Intermittent Stream C) and then flows into Pond B. The channel exits Pond B as ephemeral and then transitions to broad, diffuse overland sheet flow. Therefore, Intermittent Streams B and C; and Ponds A and B, are non-jurisdictional due to lack of connection to (a)(1) through (a)(4) waters. Ephemeral Stream D is a ephemeral channel (unmapped by NHD and topographic quadrangle) that lacked a defined bed/bank and lacked flow at time of site visit. Pond C, located along Ephemeral Stream D, is a man-made pond constructed in uplands. Finally, Pond D was observed to be a man-made pond constructed entirely on uplands.