

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): January 10, 2023

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWL-RD, 19-acre Commercial Development SWL-2022-00354

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Arkansas County/parish/borough: Benton City: Siloam Spring
Center coordinates of site (lat/long in degree decimal format): Lat. 36.1829 °, Long. -94.5044°
Universal Transverse Mercator: NAD 83/UTM Zone 15, 4005284 Northing, 364721 Easting
Name of nearest waterbody: Tributary to Sager 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: December 27, 2022
☒ Field Determination. Date(s): December 29, 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):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: INT-1: 1,044 linear feet: 9 width (ft); INT-2: 1,051 linear feet: 7 width (ft).
Wetlands: acres.

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

Elevation of established OHWM (if known):

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: A wetland delineation by Blackbird Environmental identified two emergent wetlands (WET-1 (PEM1-1) and WET-2 (PEM1-2)) and one man-made pond (PUB-1). The emergent wetlands total approximately 0.32 acre (WET-1: 0.055 acre; WET-2: 0.263 acre) and are located in the southeastern portion of the subject property. Both features are depressional (collecting storm runoff) and are geographically isolated, lacking a hydrologic connection to potentially regulated waters. The man-made pond (PUB-1),

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).

³ Supporting documentation is presented in Section III.F.

totaling approximately 0.12 acre, is located in the northeastern corner of the subject property. This feature was constructed in uplands and fits the definition of waters generally excluded per 51 FR, 41217 (November 1986).

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: 757.7 square miles

Drainage area: 473.6 acres

Average annual rainfall: 45 inches

Average annual snowfall: 11 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 20-25 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, project waters do not cross state boundaries.

Identify flow route to TNW⁵: Intermittent Channel 2 (INT-2) flows to Intermittent Channel 1 (INT-1), then to Sager Creek, to Flint Creek, to Illinois River (TNW).

Tributary stream order, if known: 2nd

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

Tributary is: ☒ Natural

☐ Artificial (man-made). Explain:

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.

- ☒ Manipulated (man-altered). Explain: A portion of INT-2 (totaling approximately 439 linear feet along the SW boundary of the subject property) has been channelized.

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

Average width: INT-1: 9 feet; INT-2: 7 feet

Average depth: INT-1: 1 foot; INT-2: 1 foot

Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- | | | |
|---|--|-----------------------------------|
| <input checked="" type="checkbox"/> Silts | <input checked="" 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: Portions of both intermittent channels (INT-1 and INT-2) support reaches with narrow riparian zones that exhibited eroding banks.

Presence of run/riffle/pool complexes. Explain: Both channels support reaches that exhibit pools/runs/riffles typical of Ozark plateau 2nd and 3rd order streams.

Tributary geometry: Meandering

Tributary gradient (approximate average slope): <0.01%

(c) Flow:

Tributary provides for: Seasonal Flow

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

Describe flow regime: Intermittent flow supported by well-established bed/bank, surface water during site visits, presence of fish, and presence of water/flow during multiple years of record on aerial imagery.

Other information on duration and volume: No gage data available; aerial photography suggests channel flows on a seasonal basis.

Surface flow is: Confined Characteristics: Both channels supported defined bed/banks and exhibited little out of bank flooding.

Subsurface flow: Unknown Explain findings: It is assumed that subsurface flow is present, especially in INT-1, which supports water during dry season.

- ☐ Dye (or other) test performed:

Tributary has (check all that apply):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Bed and banks | |
| <input checked="" type="checkbox"/> OHWM ⁶ (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 checked="" 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 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): | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ 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 was present and flowing in both channels (INT-1 and INT-2) at time of Corps site visit (December 29, 2022).

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.

⁷Ibid.

Water was generally very clear (especially considering urban environment), although eroded banks were evident due to lack of riparian zone and storm flow from surrounding impervious surfaces. A large amount of debris and trash was observed in INT-2.

Identify specific pollutants, if known: No specific pollutants observed, although both channels are likely affected by herbicide and pesticide application, in addition to hydrocarbons and other common urban/suburban pollutants.

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

- ☒ Riparian corridor. Characteristics (type, average width): Narrow forested riparian corridor consisting of Osage orange (*Maclura pomifera*) and American elm (*Ulmus americana*), generally extending 10 feet or less along both channel banks (along portions of both INT-1 and INT-2).
- ☐ Wetland fringe. Characteristics:
- ☒ Habitat for:
 - ☒ Federally Listed species. Explain findings: Forested riparian zone, while narrow, potentially supports roosting habitat for federally listed bats due to age class (mature trees) that provide crevices/sloughing bark for roosting.
 - ☒ Fish/spawn areas. Explain findings: Poor quality fish community, the agent (Blackbird Environmental) observed mosquito fish (*Gambusia affinis*) in INT-1.
 - ☐ Other environmentally-sensitive species. Explain findings:
 - ☒ Aquatic/wildlife diversity. Explain findings: Both channels provide habitat for benthic macroinvertebrates, amphibians, and small species of fish. The channels (and narrow riparian zones) are likely utilized by small mammals, large mammals (white-tailed deer), reptiles, and birds.

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: acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: Explain:

Surface flow is:

Characteristics:

Subsurface flow: 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 river miles from TNW.

Project waters are aerial (straight) miles from TNW.

Flow is from:

Estimate approximate location of wetland as within the 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:

Identify specific pollutants, if known:

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

- ☐ Riparian buffer. Characteristics (type, average width):
- ☐ Vegetation type/percent cover. Explain:
- ☐ Habitat for:
 - ☐ Federally Listed species. Explain findings:
 - ☐ Fish/spawn areas. Explain findings:
 - ☐ Other environmentally-sensitive species. Explain findings:
 - ☐ Aquatic/wildlife diversity. Explain findings:

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

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

Approximately () 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>
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Summarize overall biological, chemical and physical functions being performed:

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:
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: A Corps site visit on December 29, 2022, resulting in observation of the following indicators of seasonal water flow: water present/flowing (no recent storm event), presence of benthic macroinvertebrate community, well-established bed/banks, presence of riffles/runs/pools, various particle sizes in the channel, and sinuous stream morphology. A desktop review of the tributaries indicate they support flow during numerous years of record, especially during the wet season (Google Earth). In addition, the wetland delineation provided by Blackbird Environmental (conducted during a drought period of 2022) showed water present within the channel of INT-1 and identified the presence of fish.

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

- ☒ Tributary waters: INT-1: 1,044 linear feet 9 width (ft); INT-2 1,051 linear feet 7 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:

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: 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.

⁸See Footnote # 3.

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.

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): A man-made pond (approximately 0.12 acre) constructed in uplands (PUB-1), is a generally excluded preamble water.

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: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☒ Wetlands: 0.32 acre total (WET-1 0.055 acre; WET-2: 0.263 acre).

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: Lentic and Lotic Waterbody and Wetland Delineation Study by Blackbird Environmental dated September 29, 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. See Section IV B.
- ☐ Data sheets prepared by the Corps:
- ☐ Corps navigable waters’ study:
- ☒ U.S. Geological Survey Hydrologic Atlas: HUC 8: 11110103; HUC 12 111101030502 (Sager Creek); NHD layer accessed via StreamStats (USGS) and National Regulatory Viewer (NRV).
 - ☒ USGS NHD data.
 - ☒ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: Siloam Springs, AR (1:24K)
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS Web Soil Survey (Ver. 3.3) and soil map provided by Blackbird Environmental.
- ☒ National wetlands inventory map(s). Cite name: NWI maps provided by Blackbird Environmental.
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Google Earth (1994-2021), Maps provided by Blackbird Environmental (wetland delineation dated Sept. 2022)
 - ☐ or ☒ Other (Name & Date): Site photos provided by Blackbird Environmental in wetland delineation (Sept. 2022).
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): StreamStats (USGS application accessed December 27, 2022).

B. ADDITIONAL COMMENTS TO SUPPORT JD: A wetland delineation by Blackbird Consulting identified the following aquatic resources: an intermittent channel (INT-1), an ephemeral channel (INT-2), a man-made pond (PUB-1), emergent wetland 1 (WET-1) and emergent wetland 2 (WET-2). The delineation identified the intermittent channel as likely jurisdictional, and the remaining features were identified as likely non-jurisdictional under Section 404 of the CWA. A Corps site visit on December 29, 2022, confirmed the status of

intermittent channel (INT-1) as a seasonal intermittent channel; however, the site visit resulted in a determination that the channel identified as ephemeral (INT-2) is a seasonal channel, supporting a distinct bed and bank, numerous OHWM indicators, surface flow during the Corps site visit, a reach supporting morphology consistent with a seasonal channel (riffle/runs/pools), and aerial photography from numerous years of record (Google Earth) that shows water/flow clearly visible in the channel. Therefore, both channels INT-1 and INT-2 are regulated as WOTUS under Section 404 of the CWA. The Corps site visit confirmed that the man-made pond was constructed in uplands and fits the definition of a generally excluded water (per 51 FR, 41217). In addition, both emergent wetlands (WET-1 and WET-2) were observed to be geographically isolated, lacking a hydrologic connection to potentially regulated waters. These wetland features appeared to be man-made features created as a result of ground disturbance/borrow associated with removal of chicken houses that were removed at some point during the early 1990s (the chicken houses are visible in aerial photography in the 1980s). Therefore, the man-made pond and both emergent wetlands were determined to lack jurisdiction under Section 404 of the CWA.

David Rupe
Project Manager

January 10, 2023
Date