



DEPARTMENT OF THE ARMY
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS
POST OFFICE BOX 867
LITTLE ROCK, ARKANSAS 72203-0867
www.swl.usace.army.mil

CESWL-RD

5 January 2026

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322
(2023),¹ **SWL-2025-00198**²

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.³ AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court’s decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as

¹ While the Supreme Court’s decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in this state due to litigation.

1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
 - i. PER-1, non-jurisdictional
 - ii. Pond-1, non-jurisdictional

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area covers approximately 4.9 acres situated north of Johnson Mill Blvd, bounded on the west by South 48th St. and on the east by Old Mill St. in Johnson, Washington County, Arkansas. It is in part of Section 21, Township 17 North, Range 30 West on the Springdale, AR 7.5-minute quadrangle. The review area is within the Lake Fayetteville-Clear Creek sub-watershed (12-Digit HUC 111101030201) of the Illinois River watershed (8-Digit HUC 11110103). This area encompasses a developed site known as the Inn at the Mill, which includes a hotel and restaurant, and is surrounded by a mix of commercial and undeveloped parcels. The review area includes primarily parking lots, structures, and urban lawn communities, positioned on a moderate hillslope with a southern orientation. Notably, a spring-fed channel (PER-1) that captures water from diverted spring flow, along with a man-made pond (Pond-1) that serves as an aesthetic feature, are present within the project area. The approximate geographic center of the review area is 36.1475°N, -94.1787°W (NAD 83). Maps detailing the review area and resource locations are provided in Figures 1-3.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS

CONNECTED. Illinois River (11110103) is the nearest downstream TNW (Oklahoma) as it is designated as a Section 10 water northeast of Tahlequah, Oklahoma (36.040570, -94.904086).⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The spring feature on site (PERS-1) directs water into a man-made pond (Pond-1), which then drains into a stormwater culvert. This culvert collects water from various other stormwater infrastructures before discharging into Clear Creek, which ultimately flows into the Illinois River (TNW).
6. SECTION 10 JURISDICTIONAL WATERS⁷: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁸ N/A
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
 - a. TNWs (a)(1): N/A

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) 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.

⁷ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁸ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

- b. Interstate Waters (a)(2): N/A
- c. Other Waters (a)(3): N/A
- d. Impoundments (a)(4): N/A
- e. Tributaries (a)(5): N/A
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).⁹ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A
- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A
- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “SWANCC,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic

⁹ 51 FR 41217, November 13, 1986.

resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. N/A

- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

The agent identified a spring-fed channel, confirmed by a Corps site inspection, designated as PER-1, which extends for 443 linear feet in total. In the delineation report prepared by the agent, the channel has been divided into three distinct segments: the upper reach, lower reach, and diverted reach. This channel is represented on the USGS topographic quadrangle for Springdale, AR (7.5-minute series) and is included in the National Wetlands Inventory (NWI) and the National Hydrography Dataset (NHD).

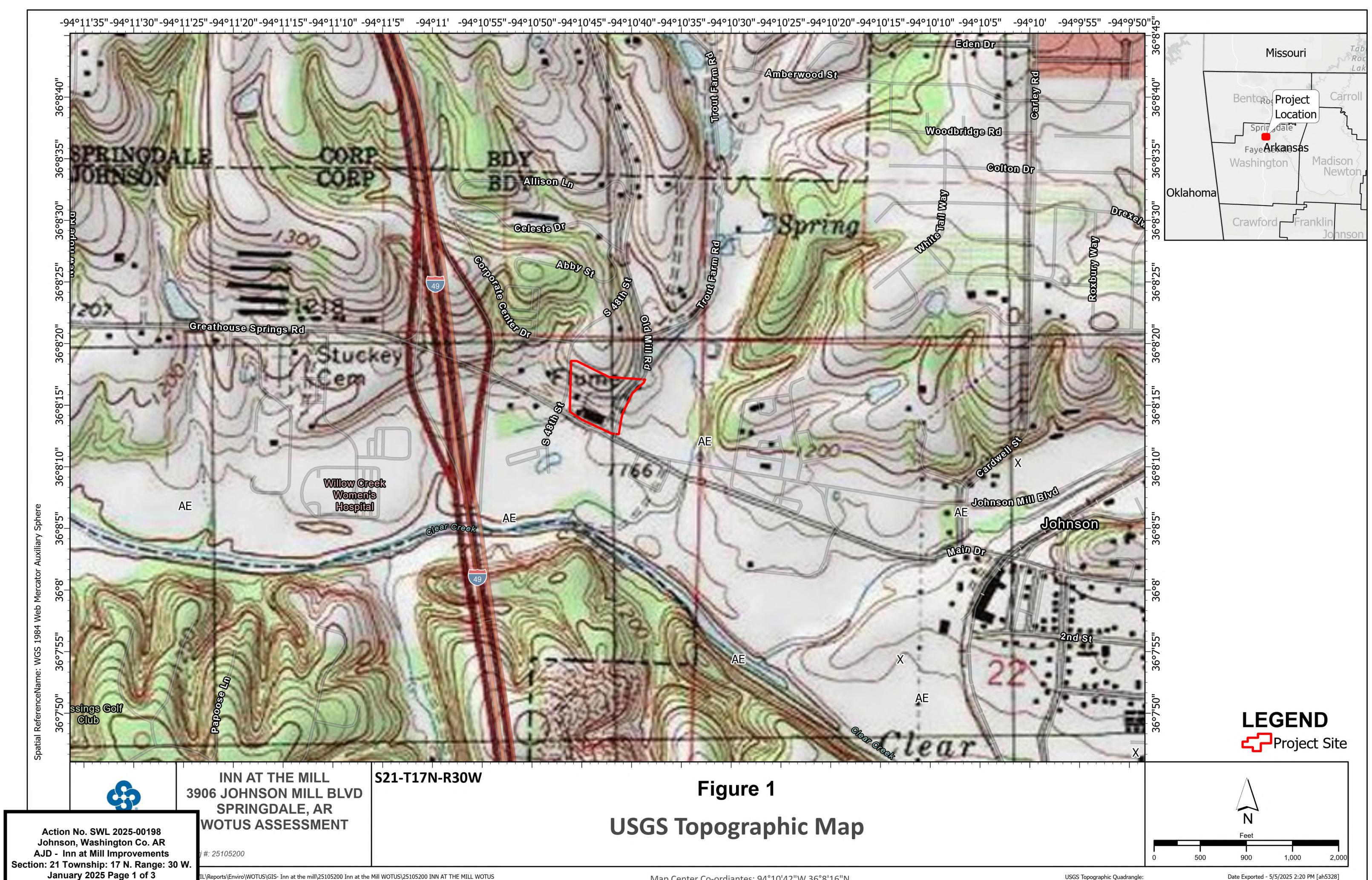
The channel originates from an upslope spring, where a portion of the flow is diverted through a 24-inch pipe along Old Mill Street, entering the project area and flowing westward in an approximately 15-foot-wide channel. It then transitions into dual 6-inch pipes leading to a diversion structure. This structure permits the water to either flow into a rock-armored natural-bottom channel, referred to as the PER-1 Lower Reach, or into an aerial sluice used for operating the mill wheel, which was not functional during the site visit. Water accumulates in a small pond at the mill location before being piped offsite through a 24-inch reinforced concrete pipe (RCP), which connects to a large storm drain system on the south side of Johnson Mill Boulevard. Additionally, another diversion creates an aesthetic feature that channels water into a smaller sluice, which flows into a small collecting pond and subsequently through a man-made channel designated as the PER-1 Diverted Reach, into the lower section of the PER-1 Lower Reach. Although PER-1 exhibits perennial flow, indicating it is a relatively permanent water (RPW), it eventually enters a stormwater infrastructure system that integrates multiple drainage inputs, which combine and discharge through an outfall culvert into Clear Creek. The specific contributions from each drainage feature, including PER-1 at the outfall, remain unclear, and the outfall does not appear to provide a continuous hydrologic connection to Clear Creek, likely only conveying flow during wet seasons or after precipitation events. Given the fact that PER-1 flows underground through a culverted system for approximately 1,200 linear feet through a discontinuous and complex network of stormwater inputs, PER-1 is classified as non-jurisdictional.

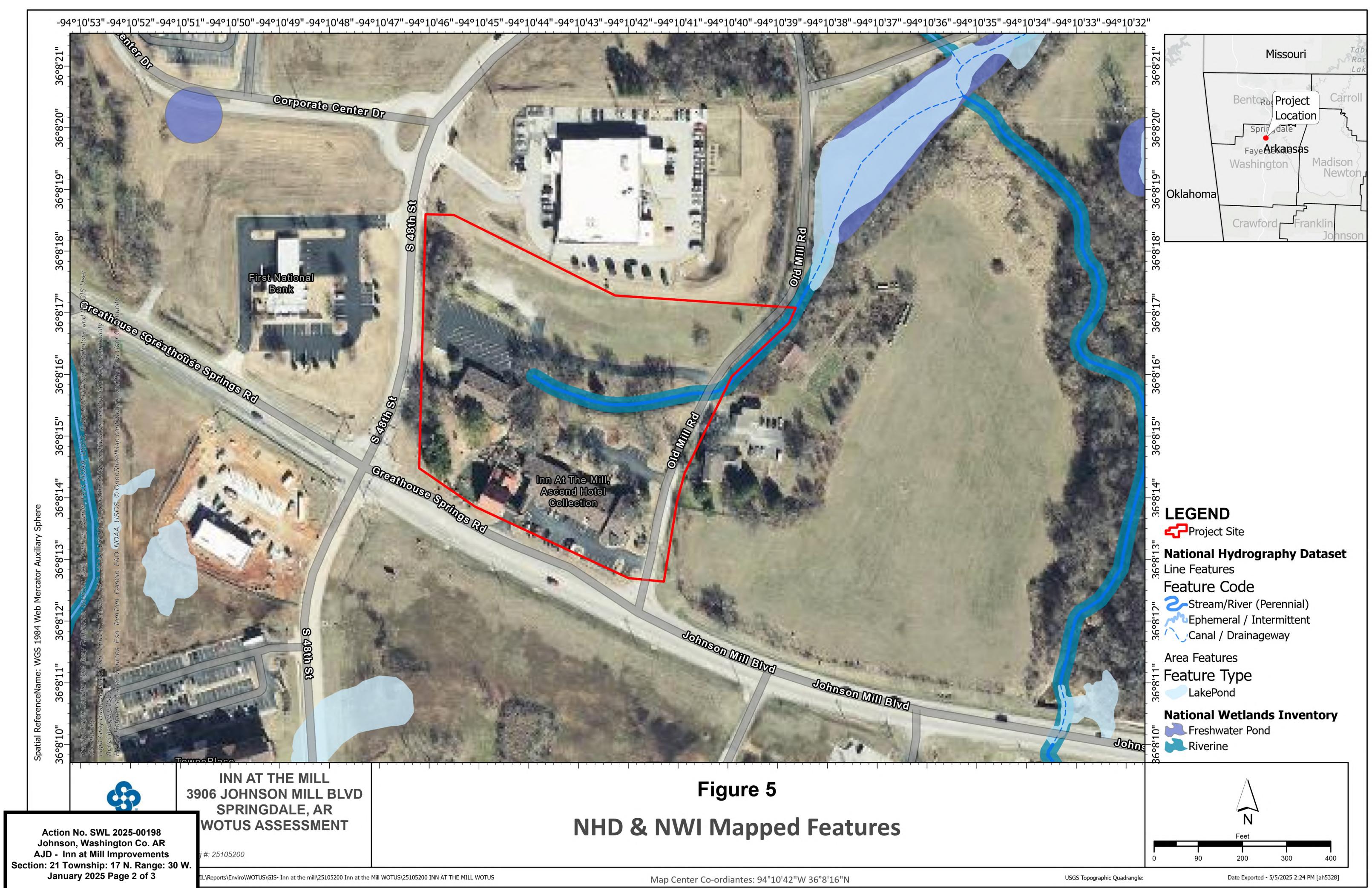
The agent also identified a man-made pond, confirmed by a Corps site inspection, designated as Pond-1 (0.08 acres). This pond serves an aesthetic

function at the mill location by collecting water from PER-1. It is noteworthy that this feature is not represented on the respective USGS topographic quadrangle, NWI, or NHD. While Pond-1 receives water from the perennial spring-fed channel, its discharge flows into a series of stormwater pipes that ultimately direct the water southward to Clear Creek. This configuration complicates the hydrologic connection to the nearest downstream relatively permanent water (RPW), which is Clear Creek. Similar to PER-1, the relative contribution and hydrologic continuity of Pond-1 are obscured within an underground stormwater infrastructure system that does not appear to provide a continuous hydrologic connection, thus classifying it as non-jurisdictional.

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. A Corps desktop evaluation was conducted 30 July 2025: SWL-2025-00198 Site Inspection.pdf
 - b. Agent provided Section 404 Delineation Report: 25105200 Inn at the Mill AJD Request, accessed 5 January 2026.
 - c. NHD data accessed on National Regulatory Viewer, Accessed 5 January 2026.
 - d. USGS Topographic Quadrangle Springdale, AR (1:24K), Accessed 5 January 2026.
 - e. U. S. Fish and Wildlife Service. Publication date (found in metadata). National Wetlands Inventory website, Accessed 5 January 2026.
 - f. Google Earth Pro. (1993-2025 Imagery). *Lat. 36.1475°N, Long. -94.1787°W* Accessed 5 January 2026.
 - g. USDA Natural Resources Conservation Service Soil Survey. Citation: USDA-NRCS Web Soil Survey. Accessed 5 January 2026.
10. OTHER SUPPORTING INFORMATION. N/A

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.





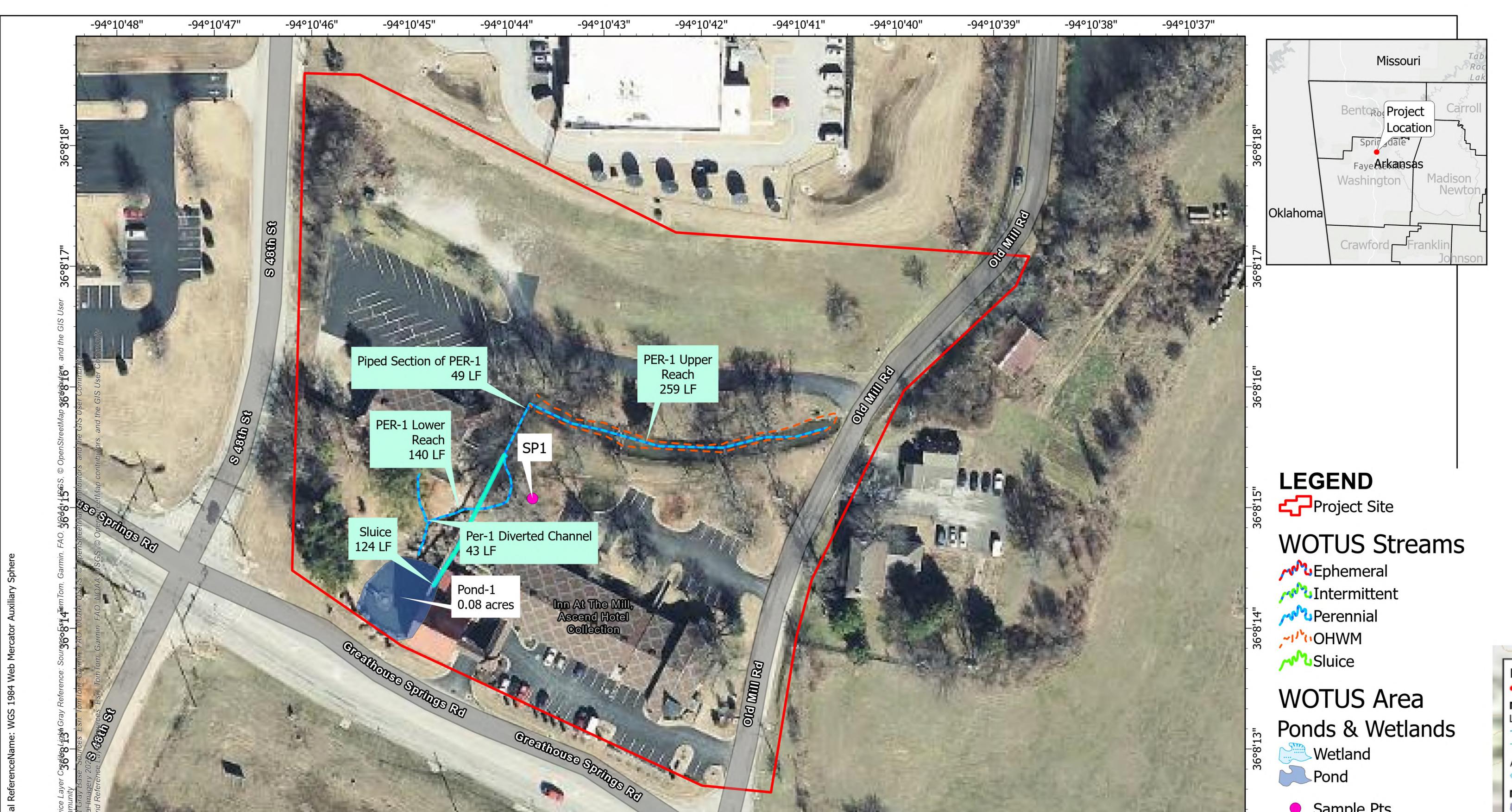


Figure 6

Wetlands & Waters Delineation


INN AT THE MILL
3906 JOHNSON MILL BLVD
SPRINGDALE, AR
WOTUS ASSESSMENT
 Action No. SWL 2025-00198
 Johnson, Washington Co. AR
 AJD - Inn at Mill Improvements
 Section: 21 Township: 17 N. Range: 30 W.
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