



DEPARTMENT OF THE ARMY
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS
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CESWL-RD

16 July 2025

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 2025-00105** []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. Stream A, ~2,499 linear feet, jurisdictional, Section 404
 - ii. Stream B, ~215 linear feet, jurisdictional, Section 404
 - iii. Stream C, ~485 linear feet, jurisdictional, Section 404
 - iv. Stream D, ~477 linear feet, jurisdictional, Section 404
 - v. Stream E, ~14 linear feet, jurisdictional, Section 404
 - vi. Stream F, ~304 linear feet, non-jurisdictional
 - vii. Stream G, ~153 linear feet, non-jurisdictional
 - viii. Stream H, ~392 linear feet, jurisdictional, Section 404
 - ix. Stream I, ~790 linear feet, jurisdictional, Section 404
 - x. Stream J, ~6 linear feet, non-jurisdictional
 - xi. Stream K, ~192 linear feet, non-jurisdictional
 - xii. Stream L, ~106 linear feet, non-jurisdictional
 - xiii. Stream M, ~130 linear feet, non-jurisdictional
 - xiv. Stream N, ~569 linear feet, jurisdictional, Section 404
 - xv. Stream O, ~41 linear feet, non-jurisdictional
 - xvi. Stream P, ~431 linear feet, jurisdictional, Section 404
 - xvii. Stream Q, ~101 linear feet, non-jurisdictional
 - xviii. Stream R, ~402 linear feet, non-jurisdictional

xix. Stream S, ~137 linear feet, non-jurisdictional

xx. Stream T, ~239 linear feet, 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)
 - e. 1987 Corps of Engineers Wetlands Delineation Manual, Eastern Mountains and Piedmont Region
3. REVIEW AREA. The site is located in sections 11 and 14 T 11 N., R 12 W., Fairfield Bay in Cleburne County, Arkansas. The review area is an approximately 51-acre site labeled as "Approximate Site Boundary" on the attached maps. Approximate center coordinates for the review area are Lat. 35.593435, Long. -92.236940
 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Little Red River which is also a Section waterway⁶
 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. All aquatic features drain generally north to south, flowing into Greers Ferry Lake/Little Red River (TNW).
 6. SECTION 10 JURISDICTIONAL WATERS⁷: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with

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.

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

b. Interstate Waters (a)(2): N/A

c. Other Waters (a)(3): N/A

d. Impoundments (a)(4): N/A

e. Tributaries (a)(5):

- i. Stream A, ~2,499 linear feet 3rd order RPW. The delineation report described this feature as flowing from northwest to southeast into Greers Ferry/Little Red River. The report stated the feature had good flow and a well-defined bed and bank.
- ii. Stream B, ~215 linear feet 1st order RPW. The delineation report described this feature as flowing from northeast to southwest into Stream A. The report stated the feature had moderate flow and a moderately defined bed and bank.
- iii. Stream C, ~485 linear feet 1st order RPW. The delineation report described this feature as flowing from northeast to southwest into Stream

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.

- A. The report stated the feature had moderate flow and a moderately defined bed and bank.
- iv. Stream D, ~477 linear feet 1st order RPW. The delineation report described this feature as flowing from west to east into Stream A. The report stated the feature had good flow and a well-defined bed and bank.
 - v. Stream E, ~14 linear feet 1st order RPW. The delineation report described this feature as flowing from northeast to southwest into Stream D. The report stated the feature had moderate flow and a moderately defined bed and bank.
 - vi. Stream H, ~392 linear feet 2nd order RPW. The delineation report described this feature as flowing from northwest to southeast into Stream A. The report stated the feature had moderate flow and a moderately defined bed and bank.
 - vii. Stream I, ~790 linear feet 2nd order RPW. The delineation report described this feature as flowing from northwest to southeast into Greer Ferry Lake/Little Red River. The report stated the feature had good flow and a well-defined bed and bank.
 - viii. Stream N, ~569 linear feet 1st order RPW. The delineation report described this feature as flowing from northwest to southeast into Stream I. The report stated the feature had moderate flow and a well-defined bed and bank.
 - ix. Stream P, ~431 linear feet 1st order RPW. The delineation report described this feature as flowing from northwest to southeast into Greer Ferry Lake/Little Red River. The report stated the feature had moderate flow and a well-defined bed and bank.
- 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

⁹ 51 FR 41217, November 13, 1986.

the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A

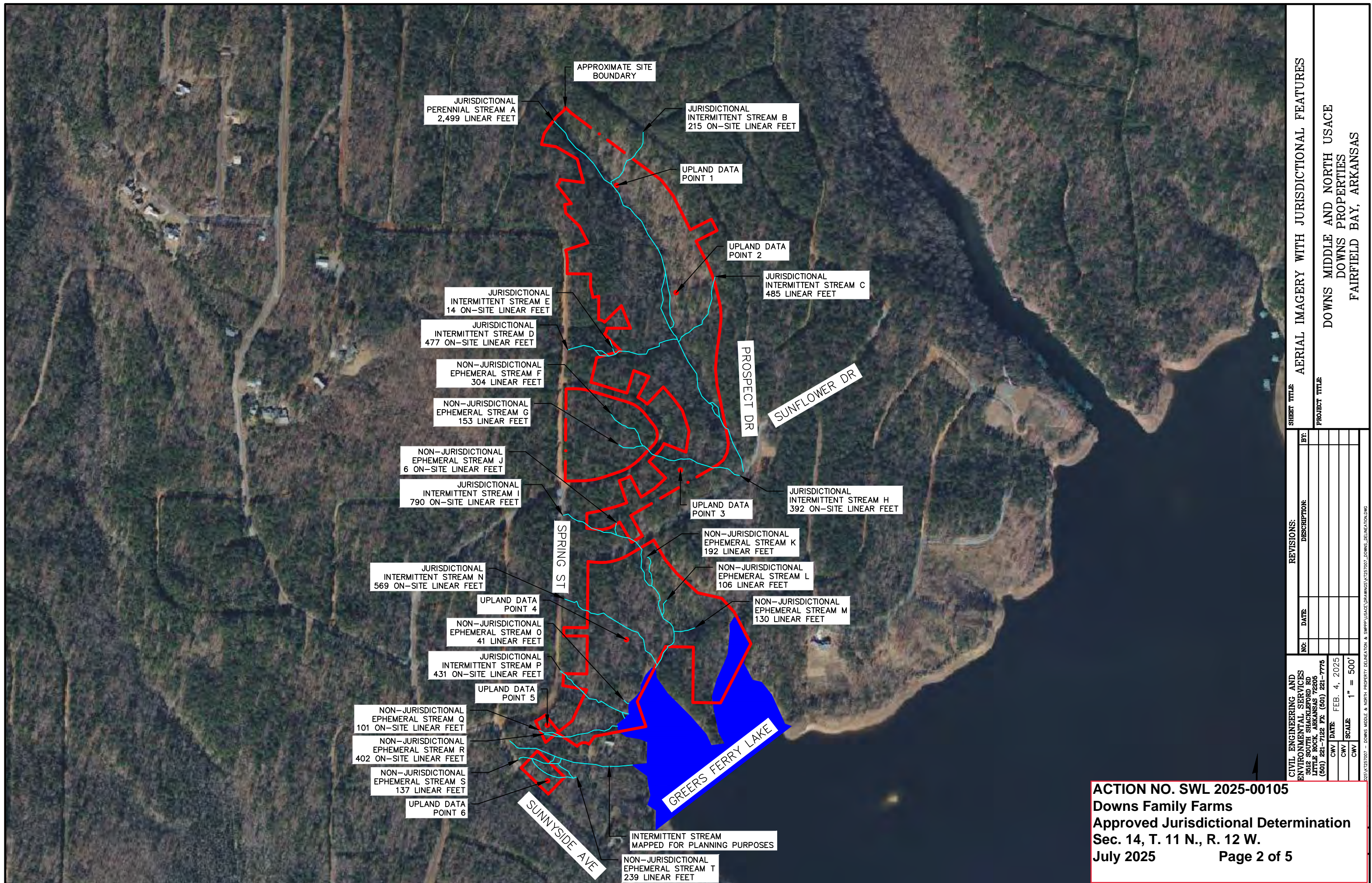
- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria 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 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).
 - i. Stream F, ~304 linear feet 2nd order non-RPW. The delineation report described this feature as flowing from northwest to southeast into Stream A. The report stated the feature had poor flow and a poorly defined bed and bank.
 - ii. Stream G, ~153 linear feet 1st order non-RPW. The delineation report described this feature as flowing from west to east into Stream A. The report stated the feature had poor flow and a poorly defined bed and bank.

- iii. Stream J, ~6 linear feet 1st order non-RPW. The delineation report described this feature as flowing from north to south into Stream I. The report stated the feature had poor flow and a poorly defined bed and bank.
 - iv. Stream K, ~192 linear feet 1st order non-RPW. The delineation report described this feature as flowing from north to south into Stream I. The report stated the feature had poor flow and a poorly defined bed and bank.
 - v. Stream L, ~106 linear feet 1st order non-RPW. The delineation report described this feature as flowing from north to south into Stream I. The report stated the feature had poor flow and a poorly defined bed and bank.
 - vi. Stream M, ~130 linear feet 1st order non-RPW. The delineation report described this feature as flowing from west to east into Stream I. The report stated the feature had poor flow and a poorly defined bed and bank.
 - vii. Stream O, ~41 linear feet 1st order non-RPW. The delineation report described this feature as flowing from northwest to southeast into Greers Ferry/Little Red River. The report stated the feature had poor flow and a poorly defined bed and bank.
 - viii. Stream Q, ~101 linear feet 1st order non-RPW. The delineation report described this feature as flowing from west to east into Stream R. The report stated the feature had poor flow and a poorly defined bed and bank.
 - ix. Stream R, ~402 linear feet 2nd order non-RPW. The delineation report described this feature as flowing from west to east into Greers Ferry Lake/Little Red River. The report stated the feature had poor flow and a poorly defined bed and bank.
 - x. Stream S, ~137 linear feet linear feet 1st order non-RPW. The delineation report described this feature as flowing from northwest to southeast into a stream labeled Intermittent Stream Mapped for Planning Purposes. The report stated the feature had poor flow and a poorly defined bed and bank.
 - xi. Stream T, ~239 linear feet 1st order non-RPW. The delineation report described this feature as flowing from northwest to southeast into a stream labeled Intermittent Stream Mapped for Planning Purposes. The report stated the feature had poor flow and a poorly defined bed and bank.
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. Office review by Corps personnel was conducted on 24 April 2025.
 - b. Pollution Management, Inc., A Terracon Company (PMI) Delineation Report dated, February 26, 2025
 - c. USGS Stream Stats accessed, April 24, 2025
 - d. USGS topoView Greers Ferry, AR 1:24K accessed, April 24, 2025
 - e. Google Earth Pro. (1994-2021 Imagery) accessed, April 24, 2025
 - f. USDA Natural Resources Conservation Service Web Soil Survey Cleburne County accessed, April 24, 2025
 - g. NHD data accessed on National Regulatory Viewer accessed, April 24, 2025
 - h. Historic Aerials via <https://www.historicaerials.com/viewer> accessed, April 24, 2025
 - i. Site photographs provided by PMI in delineation report dated, February 26, 2025
 - j. LiDAR data via National Regulatory Viewer accessed, April 24, 2025
10. OTHER SUPPORTING INFORMATION. The delineation report maps denote a feature labeled Intermittent Stream Mapped for Planning Purposes. This feature was not accessed for jurisdictional status as part of this Approved Jurisdictional Determination.
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.



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Downs Family Farms
Approved Jurisdictional Determination
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July 2025 **Page 1 of 5**



AERIAL IMAGERY WITH JURISDICTIONAL FEATURES

**DOWNES MIDDLE AND NORTH USACE
DOWNES PROPERTIES
FAIRFIELD BAY, ARKANSAS**

SHEET TITLE:

ENVIRONMENTAL SERVICES 3512 SOUTH SHACKLEFORD RD LITTLE ROCK, ARKANSAS 72205 (501) 221-7122 FX. (501) 221-7775		DATE: FEB. 4, 2025	
CWV	CWV	SCALE:	1" = 500'
CWV	CWV		
CWV	CWV		
NO.	DATE	DESCRIPTION	BY
REVISIONS:			



CIVIL ENGINEERING AND ENVIRONMENTAL SERVICES
3612 SOUTH SHACKLEFORD RD
LITTLE ROCK, ARKANSAS 72205
P: (501) 221-7122 FX: (501) 221-7775

CWV

DATE: FEB. 4, 2025

SCALE: N.T.S.

NO.

DATE

DESCRIPTION

BY:

REVISIONS:

SHEET TITLE:
USGS NATIONAL WETLANDS INVENTORY

PROJECT TITLE:
DOWNS MIDDLE AND NORTH USACE
DOWNS PROPERTIES
FAIRFIELD BAY, ARKANSAS

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MAP LEGEND

Area of Interest (AOI)
Area of Interest (AOI)

Soils
Soil Rating Polygons
Hydric (100%)
Hydric (66 to 99%)
Hydric (33 to 65%)
Hydric (1 to 32%)
Not Hydric (0%)
Not rated or not available
Soil Rating Lines
Hydric (100%)
Hydric (66 to 99%)
Hydric (33 to 65%)
Hydric (1 to 32%)
Not Hydric (0%)
Not rated or not available
Soil Rating Points
Hydric (100%)
Hydric (66 to 99%)
Hydric (33 to 65%)
Hydric (1 to 32%)
Not Hydric (0%)
Not rated or not available
Water Features
Streams and Canals

Transportation
Rails
Interstate Highways
US Routes
Major Roads
Local Roads
Background
Aerial Photography

Hydric Rating by Map Unit				
Map unit symbol	Map unit name	Rating	Acres in AOI	Percent of AOI
7	Enders-Nella-Steprock complex, 8 to 20 percent slopes	0	9.8	19.3%
9	Enders-Steprock complex, 8 to 20 percent slopes	0	8.2	16.1%
10	Enders-Steprock complex, 20 to 40 percent slopes	0	3.2	6.4%
Totals for Area of Interest			50.8	100%

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REVISIONS:

NO.	DATE	DESCRIPTION	BY:

SHEET TITLE: USDA SOILS MAP
PROJECT TITLE: DOWNS MIDDLE AND NORTH USACE
DOWNS PROPERTIES
FAIRFIELD BAY, ARKANSAS

CIVIL ENGINEERING AND ENVIRONMENTAL SERVICES
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DATE: FEB. 4, 2025
SCALE: N.T.S.
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