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LITTLE ROCK DISTRICT, CORPS OF ENGINEERS
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CESWL-RD

23 June 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-2025-00199**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. WET-01, non-jurisdictional
 - ii. WET-02, non-jurisdictional
 - iii. INT-01, jurisdictional, Section 404
 - iv. INT-02, jurisdictional, Section 404
 - v. INT-03, non-jurisdictional
 - vi. INT-04, non-jurisdictional
 - vii. EPH-01, non-jurisdictional
 - viii. EPH-02, non-jurisdictional
 - ix. EPH-03, non-jurisdictional
 - x. EPH-04, non-jurisdictional
 - xi. EPH-05, non-jurisdictional
 - xii. Pond-01, non-jurisdictional
 - xiii. Pond-02, non-jurisdictional
 - xiv. Pond-03, non-jurisdictional
 - xv. Pond-04, jurisdictional, Section 404
 - xvi. Pond-05, non-jurisdictional
 - xvii. Pond-06, 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 encompasses approximately 118 acres located immediately west of Blue Springs Road near Goshen, Washington County, Arkansas. The site is currently comprised of improved pastureland and is bordered predominantly by agricultural fields and undeveloped forested areas. The legal

description for the review area is portions of Section 19, Township 17 North, Range 28 West, with an approximate geographic center at latitude 36.1257, longitude - 94.0057. the review area is located primarily within the Roberts Creek-Beaver Lake sub-watershed (12-digit HUC 110100010701). A small portion of the eastern extent of the review area falls within the Dry Creek-Richland Creek sub-watershed (12-digit HUC 110100010504). Both sub-watersheds contribute to the larger Beaver Reservoir watershed (8-digit HUC 11010001). The review area is predominantly comprised of improved upland pasture, with forested upland communities present along the southern boundary. The site exhibits gently to moderately sloping topography, draining westward, northward, and southward from a hilltop location. USGS topographic quadrangles (Sonora and Elkins, AR) depict three channels originating within or adjacent to the review area, flowing west, north, and east. Six man-made ponds were observed on-site and are also identified on the aforementioned topographic quadrangles. Notably, no FEMA-mapped floodways or floodplains are present within the review area. Site location, topography, and aquatic resources within the review area are illustrated in the enclosed maps and figures 1-5.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest Traditional Navigable Water (TNW) is Beaver Lake-White River (11010001). The White River is considered a TNW as it is designated as Section 10 waters beginning at the Hwy 45 Bridge, Goshen, AR.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS.

The site hydrology demonstrates several distinct flowpaths. WET-02 and EPH-05 contribute flow downslope to Pond-01. However, outflow from Pond-01 is conveyed via EPH-01 which terminates in uplands and does not connect to any downstream waters. A separate flowpath originates with EPH-02, which flows into INT-01. INT-01 then connects to an unnamed tributary that ultimately discharges directly into Beaver Lake-White River (TNW). INT-03 receives flow from Pond-04, and this combined flow continues into INT-02. INT-02 then flows into an unnamed tributary that also discharges directly into Beaver Lake-White River (TNW). EPH-04 and Pond-03 contribute flow to INT-04, which follows the same pathway – an unnamed tributary directly to Beaver Lake-White River. Several features are isolated from any downstream connections. EPH-03 drains into Pond-02, which is entirely contained

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.

within uplands. Pond-05 and Pond-06 are also fully isolated in uplands and exhibit no observable connection to any 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
 - b. Interstate Waters (a)(2): N/A
 - c. Other Waters (a)(3): N/A
 - d. Impoundments (a)(4): An assessment of the site revealed six pond features. One pond was initially identified as potentially jurisdictional by the agent and subsequently confirmed as such by Corps personnel: Pond-04 (0.26-acre). Pond-04 is a result of a berm and impoundment constructed around INT-03 and possesses a continuous surface connection to INT-02 (RPW) which exits the bank of Pond-04 to the south. Because of the direct hydrologic connection to INT-02, Pond-04 is considered jurisdictional.

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.

- e. Tributaries (a)(5): The agent identified 9 stream drainage features, of which two were determined to be jurisdictional: INT-01 (744 lf) and INT-02 (92 lf). INT-01 is a seasonal stream with intermittent flow, flowing north out of the review area into an unnamed tributary that flows directly into Beaver Lake-White River. INT-01 exhibits distinct bed and bank morphology. The feature possesses a continuous Ordinary High Water Mark (OHWM) approximately 3 ft in width and approximately 0-5 inches in depth. INT-01 possesses indicators meeting the Relatively Permanent Water (RPW) standard and therefore is a jurisdictional stream. INT-02 is a seasonal tributary that flows from Pond-04 to the west and into Beaver Lake-White River. INT-02 possesses distinct bed and banks with a continuous OHWM approximately 3 ft wide with an average depth of approximately 2-4 inches. INT-02 possesses indicators meeting the RPW standard and therefore is a jurisdictional stream
- 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. The agent identified five man-made ponds that were constructed in uplands for the purpose of watering livestock and supporting the existing cattle operation: Pond-01 (0.25-acre), Pond-02 (0.05-acre), Pond-03 (0.13-acre), Pond-05 (0.10-acre), and Pond-06 (0.09-acre). These man-made features do not convey surface flow to jurisdictional waters in the project area. Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering are generally not considered jurisdictional according to the November 13, 1986, Federal Register (51 FR, 41217).
- 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

⁹ 51 FR 41217, November 13, 1986.

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). The agent identified 9 stream drainage features in the review area, of which seven are considered non-jurisdictional: INT-03 (570 lf), INT-04 (477 lf), EPH-01 (53 lf), EPH-02 (62 lf), EPH-03 (80 lf), EPH-04 (141 lf), and EPH-05 (157 lf). INT-03 and INT-04 are intermittent channels with an observed Ordinary High Water Mark (OHWM). However, these channels appear to flow for a very limited duration – likely less than one month per year – and are primarily sustained by runoff and sheet flow from rainfall events. Because these features do not meet the Relatively Permanent Water standard due to limited hydrologic connection to downstream jurisdictional waters, INT-03 and INT-04 are not considered jurisdictional. Five ephemeral channels (EPH-01 through EPH-05) were identified within the project area. These channels are unlikely to be regulated under Section 404 of the Clean Water Act due to their ephemeral flow regime and, with the exception of EPH-02, a lack of an Ordinary High Water Mark (OHWM). Specifically, EPH-01 originates from flooding of POND-01, flowing 53 feet before dissipating, while EPH-02 flows 62 feet and connects to INT-01. EPH-03, located west of POND-02, begins as a seep and flows 80 feet towards the pond, and EPH-04 flows 141 feet east-west southwest of POND-03, influenced by pond flooding and sheet flow. Finally, EPH-05 flows 157 feet south-northeast from POND-01, diffusing into sheet flow towards WET-02. The temporary nature of flow in all these channels, combined with the absence of a defined OHWM in most cases, supports the determination that they do not fall under federal jurisdiction.

The agent identified two wetlands in the review area: WET-01 (0.02-acre) and WET-02 (0.02-acre). WET-01 is an emergent wetland located northeast of Pond-03 and is formed by sheet flow, seepage from Pond-3 and out of bank flooding events from INT-04. WET-01 does not exhibit a continuous surface connection to jurisdictional waters and is therefore non-jurisdictional. WET-02 is located in uplands just upslope of ephemeral channel EPH-05. Given its geographic isolation and lack of a continuous surface connection to regulated waters, WET-02 is non-jurisdictional.

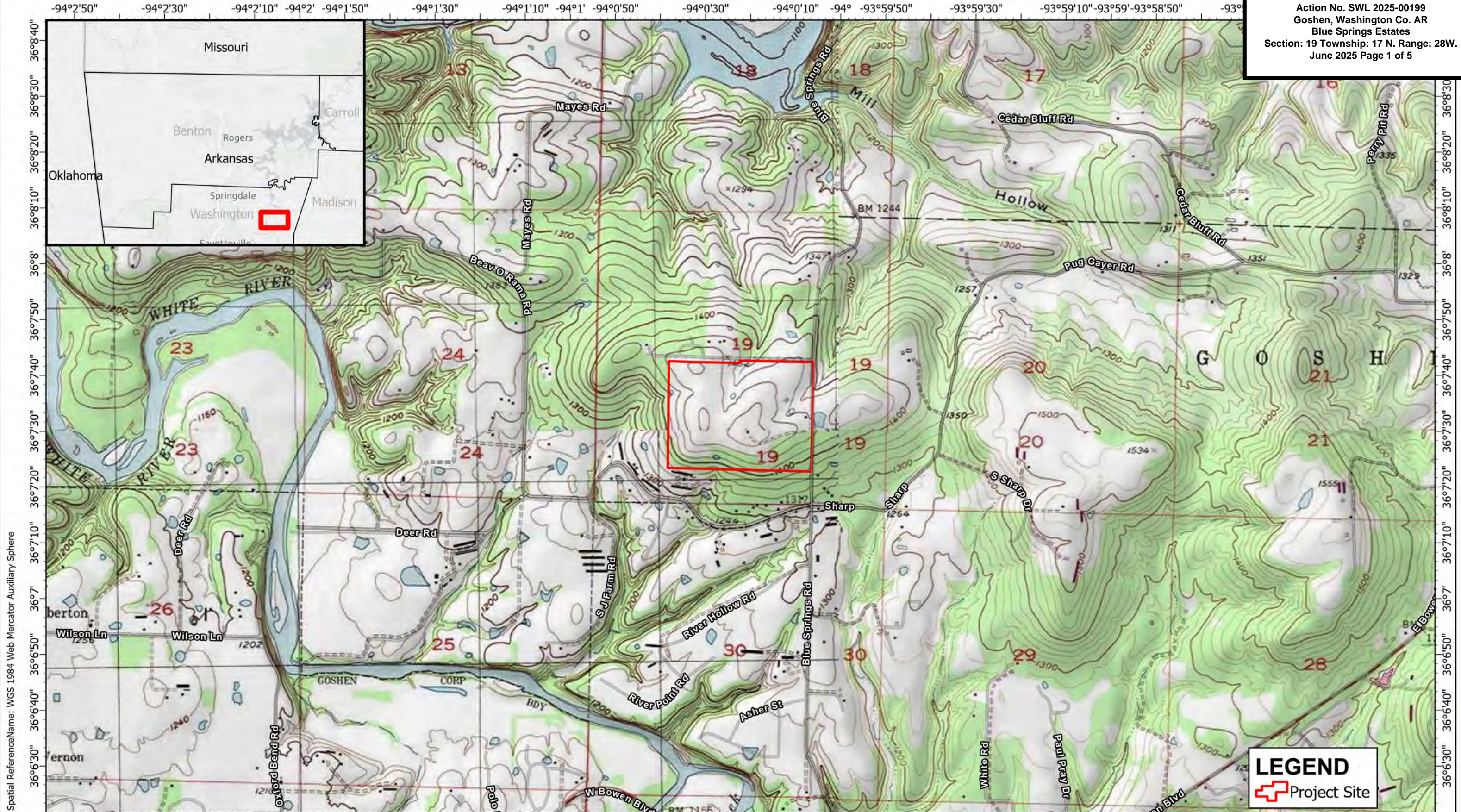
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. Corps desktop review conducted, June 9, 2025
- b. Agent provided Section 404 Delineation Report: 25302200 Blue Springs AJD Packet, May 6, 2025
- c. NHD data accessed on National Regulatory Viewer, Accessed June 9, 2025.
- d. USGS Topographic Quadrangle Sonora, AR (1:24K), Accessed June 9, 2025.
- e. U. S. Fish and Wildlife Service. Publication date (found in metadata). National Wetlands Inventory website, Accessed June 9, 2025.
- f. Google Earth Pro. (1994-2025 Imagery). *Lat. 36.1257°, Long. -94.0057°*, Accessed June 9, 2025.
- g. USDA Natural Resources Conservation Service Soil Survey. Citation: USDA-NRCS Web Soil Survey, June 09, 2025.

10. OTHER SUPPORTING INFORMATION.

Leasure, D.R.; Magoulick, D.D.; Longing, S.D. 2016. Natural flow regimes of the Ozark-Ouachita interior highlands region. *River Res. Appl.* 32: 18–35

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.



Spatial ReferenceName: WGS 1984 Web Mercator Auxiliary Sphere

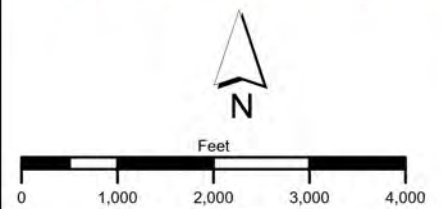


BLUE SPRINGS ESTATES
BLUE SPRINGS ROAD
GOSHEN, AR
WOTUS ASSESSMENT

CT Prj #: 25302200

Section-Title-Range

Figure 1
USGS Topographic Map



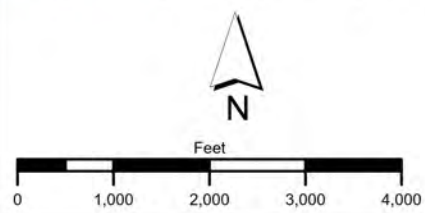


BLUE SPRINGS ESTATES
BLUE SPRINGS ROAD
GOSHEN, AR
WOTUS ASSESSMENT

CT Prj #: 25302200

Figure 2
FEMA National Flood Hazard Map

FIRM Panel(s): 05143C & 05143C & 05143C & 05143C-0095 & 0125 & 0235 & 0275 (Eff. 5/16/2008 & 5/16/2008 & 5/16/2008 &





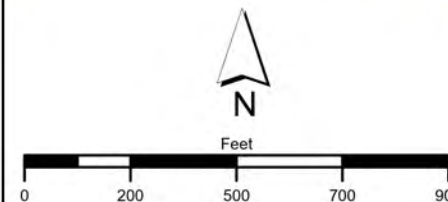
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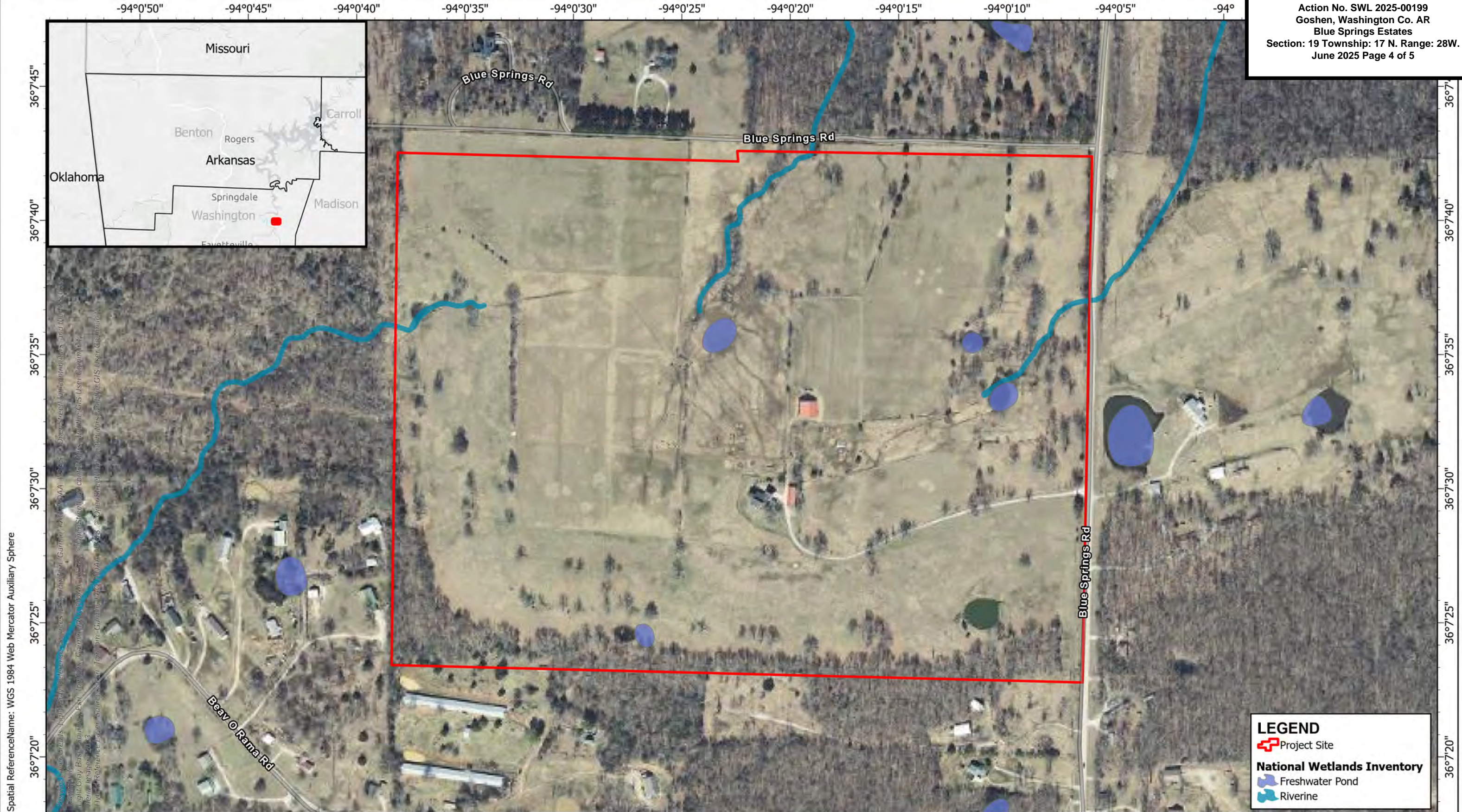


BLUE SPRINGS ESTATES
BLUE SPRINGS ROAD
GOSHEN, AR
WOTUS ASSESSMENT

CT Prj #: 25302200

Figure 4
NRCS Soils





Spatial ReferenceName: WGS 1984 Web Mercator Auxiliary Sphere



BLUE SPRINGS ESTATES
BLUE SPRINGS ROAD
GOSHEN, AR
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Figure 5

NHD & NWI Mapped Features

Map Center Co-ordinates: 94°0'22"W 36°7'33"N

USGS Topographic Quadrangle:

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