

**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):** November 15, 2022

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** CESWL-RD, SWL-2019-00289

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Arkansas County/parish/borough: Independence City: west of Thida  
Center coordinates of site (lat/long in degree decimal format): Lat. 35.576°, Long. -91.529°  
Universal Transverse Mercator: NAD 83/UTM Zone 15, 3937938 Northing, 633287 Easting  
Name of nearest waterbody: Departee Creek, Bailey Creek, associated tributaries and wetlands  
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: White River  
Name of watershed or Hydrologic Unit Code (HUC): 11010013

- 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: September 8, 2022
- Field Determination. Date(s): June 13, 2022 July 27, 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 “*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):<sup>1</sup>**

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively Permanent Waters<sup>2</sup> (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: Departee Creek – 11,670; Bailey Creek – 5,530; Stream 3 (tributary to Bailey Cr.) – 2,994; Stream 4 (tributary to Bailey Cr.) – 2,048; Stream 5 (tributary to Departee Cr.) – 154; Stream 6 (tributary to Departee Cr.) – 192; Stream 7 (tributary to Village Cr.) - 30 linear feet: Stream 1 – 18; Stream 2 – 12; Stream 3 – 3; Stream 4 – 1; Stream 5 – 1; Stream 6 – 1; Stream 7 - 1 width (ft) and/or acres.  
Wetlands: Wetland A – 0.1; Wetland B – 0.5; Wetland C – 0.16; Wetland D – 0.09 acres.

**c. Limits (boundaries) of jurisdiction based on:**

Elevation of established OHWM (if known):

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain:

**SECTION III: CWA ANALYSIS**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> 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).

<sup>3</sup> Supporting documentation is presented in Section III.F.

**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 waterbody<sup>4</sup> 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: 167.7 square miles

Drainage area: 41.1 square miles

Average annual rainfall: 49.2 inches

Average annual snowfall: 2.4 inches

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

- Tributary flows directly into TNW.
- Tributary flows through 2 tributaries before entering TNW.

Project waters are 44.4 river miles from TNW.

Project waters are 0 river miles from RPW.

Project waters are 5 aerial (straight) miles from TNW.

Project waters are 0 aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW<sup>5</sup>: Streams 3 and 4 flow into Bailey Creek, which flows into Departee Creek. Streams 5 and 6 flow into Departee Creek. Stream 7 flows into Village Creek, which flows into Departee Creek. Departee Creek flows into the White River.

Tributary stream order, if known:

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

- Tributary is:**
- Natural
  - Artificial (man-made). Explain:
  - Manipulated (man-altered). Explain: Stream 3 has likely been manipulated several times in the past. It currently serves as a flow path for Stream 4 as well as a backwater area for Bailey Creek. The eastern portion, which flows straight through an open field, was likely either straightened or possibly

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> 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.

created as an additional drainage mechanism for Stream 3, potentially to increase the availability of backwater fish spawning habitat. Currently there are a number of beaver dams present in this stream.

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

Average width: Departee Creek – 63 feet; Bailey Creek – 23 feet; Stream 3 – 5 feet; Stream 4 – 2 feet; Stream 5 – 1 foot; Stream 6 – 1 foot; Stream 7 – 1 foot

Average depth: Stream 1 – 18 inches; Stream 2 – 9 inches; Stream 3 – 6 inches; Stream 4 – 3 inches; Stream 5 – 3 inches; Stream 6 – 3 inches; Stream 6 – 3 inches

Average side slopes:

Primary tributary substrate composition (check all that apply):

- |   |  |                                   |
|---|--|-----------------------------------|
| <input checked="" type="checkbox"/> Silts | <input checked="" type="checkbox"/> Sands          | <input type="checkbox"/> Concrete |
| <input 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: Overall, tributary condition is good. Departee Creek and Bailey Creek have some fairly high banks with some erosion troubles near the downstream portion of the site, but considering the geography of the area that seems expected. Stream 3 metamorphoses wildly, from a wide backwater slough to a series of beaver impoundments, to a fairly natural stream, to a natural stream with high banks. Stream 4 has been culverted at two locations for a forestry road but is otherwise natural. Streams 5, 6, and 7 appear natural.

Presence of run/riffle/pool complexes. Explain:

Tributary geometry:

Tributary gradient (approximate average slope): %

(c) **Flow:**

Tributary provides for: Streams 1 and 2 are RPWs. Stream 3 showed a trickle of flow on the 13 June 2022 site visit, but the APT for that date indicated wetter than normal conditions. It is likely more ephemeral in nature, as well as providing backwater storage. Streams 4, 5, 6, and 7 are ephemeral.

Estimate average number of flow events in review area/year:

Describe flow regime:

Other information on duration and volume:

Surface flow is: Characteristics:

Subsurface flow: Explain findings:

- Dye (or other) test performed:

Tributary has (check all that apply):

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Bed and banks  |   |
| <input checked="" type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply): |   |
| <input 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 type="checkbox"/> destruction of terrestrial vegetation        |
| <input checked="" type="checkbox"/> shelving   | <input type="checkbox"/> the presence of wrack line                   |
| <input checked="" type="checkbox"/> vegetation matted down, bent, or absent              | <input type="checkbox"/> sediment sorting                             |
| <input checked="" type="checkbox"/> leaf litter disturbed or washed away                 | <input checked="" type="checkbox"/> scour                             |
| <input 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. <sup>7</sup> 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:**

<sup>6</sup>A 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.

<sup>7</sup>Ibid.

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Water color is clear. Overall the watershed is roughly half forested, half agricultural with a few residences. Several chicken farms are present, particularly near the town of Pleasant Plains.

Identify specific pollutants, if known: Chicken litter from the chicken farms, excess fertilizer runoff from the pastureland

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

- Riparian corridor. Characteristics (type, average width): The downstream portions of Departee Creek and Bailey Creek in particular are largely undisturbed forest.
- Wetland fringe. Characteristics: mostly herbaceous, in the floodplain
- Habitat for:
  - Federally Listed species. Explain findings: The endangered Gray Bat, endangered Indiana Bat, and threatened Northern Long-eared bat are found in this area.
  - Fish/spawn areas. Explain findings: The backwater area of Stream 3 in particular is ideal fish spawning habitat. The wetlands abutting Bailey Creek may provide spawning habitat as well.
  - Other environmentally-sensitive species. Explain findings: The wetlands and beaver-ponded area provide habitat for frogs and other amphibians.
  - Aquatic/wildlife diversity. Explain findings: Entire project area supports habitat for wide range of forest animals.

**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: A: 0.1 acres; B: 0.5 acres; C: 0.16 acres; D: 0.09 acres

Wetland type. Explain: Wetlands B, C, and D are herbaceous and appear to be backwater channel scar. Wetland A is also a backwater channel scar, but is located within a forested area and is sparsely vegetated

Wetland quality. Explain: Wetland A: moderate (sparse scrub-shrub, adjacent); B: moderate (adjacent, good species diversity, connectivity has been partially severed); C: good (abutting, good species diversity); D: good (abutting, good species diversity)

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 Wetlands C and D

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain: Wetland A would be inundated by Departee Creek during periods of higher flow.

Separated by berm/barrier. Explain: Wetland B is part of the same channel scar feature as wetland D; however at some point fill and a culvert were placed to allow access to the adjacent field. The culvert has since been completely crushed, severing the lower water surface flow to wetland D and therefore Bailey Creek.

**(d) Proximity (Relationship) to TNW**

Project wetlands are 30 (or more) river miles from TNW.

Project waters are 2-5 aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 10 - 20-year 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: Overall the watershed is roughly half forested, half agricultural with a few residences. Several chicken farms are present, particularly near the town of Pleasant Plains.

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

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain: Wetland A is forested; wetlands B, C, and D are emergent herbaceous wetlands
- Habitat for:
  - Federally Listed species. Explain findings:

- Fish/spawn areas. Explain findings: Wetlands C and D particularly could provide protected areas during high water periods for fish spawning.
- Other environmentally-sensitive species. Explain findings:
- Aquatic/wildlife diversity. Explain findings: Wetlands provide habitat for aquatic and wildlife species, and a water source for wildlife

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

All wetland(s) being considered in the cumulative analysis: 4

Approximately (0.85) 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>
Wetland A	N	0.1		
Wetland B	N	0.5		
Wetland C	Y	0.16		
Wetland D	Y	0.09		

Summarize overall biological, chemical and physical functions being performed: Wetlands provide cover and habitat for aquatic and terrestrial wildlife, serve as a chemical sink for the watershed, and provide for floodwater storage.

**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: Streams 4, 5, 6, and 7 all contribute water to the Departee Creek watershed. Pollution from livestock grazing or turbidity from timbered areas could enter the waterway and travel via Departee Creek to the White River. The streams are a potential watersource to local wildlife and contribute leaf detritus to the waterway and are therefore an integral part of the foodweb.
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: Wetlands A and B are both within the 100-year floodplain of Departee Creek and Bailey Creek. These wetlands have the potential to serve as rainwater storage, slowly releasing the water into the system rather than all at once. Pollutants from livestock grazing near Wetland B could also be taken up by the wetland, thereby removing them from the system and contributing to higher water quality downstream. Stream 3 also holds water for an extended period of time and likely serves as fish spawning habitat in portions. It also has the potential to serve as rainwater storage for Bailey Creek.

**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: Departee Creek is mapped perennial on USGS topographic maps. In addition, the cumulative drainage area at this site is 26,304 acres, according to USGS StreamStats. Bailey Creek is mapped perennial on USGS topographic maps. USGS StreamStats notes the cumulative drainage area of Bailey Creek is 5,139 acres.
- 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: Stream 3 is an odd aquatic feature in that it shares characteristics of both streams and wetlands. It is a large and oddly-shaped backwater area for Bailey Creek that both slowly drains/flows into Bailey Creek and contributes ephemeral flow from Stream 5. While Stream 5 may only flow ephemeral, the slow drainage of the backwater area occurs seasonally.

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

- Tributary waters: Departee Creek 11,670 linear feet 63 width (ft)
- Bailey Creek 5,530 linear feet 23 width (ft)
  - Stream 3 2,994 linear feet 5 width (ft)

Other non-wetland waters: acres.  
Identify type(s) of waters:

**3. Non-RPWs<sup>8</sup> 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: Stream 4 2,048 linear feet 2 width (ft).
- Stream 5 154 linear feet 1 width (ft)
  - Stream 6 192 linear feet 1 width (ft)
  - Stream 7 30 linear feet 1 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 C and D are located within the 100-year floodplain of Bailey Creek. Also, portions of both wetlands form the border of the creek.
  - 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: 0.25 acres (Wetland C – 0.16 acres; Wetland D – 0.09 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: **0.6 acres (Wetland A – 0.1 acres; Wetland B – 0.5 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.<sup>9</sup>**

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).

<sup>8</sup>See Footnote # 3.

<sup>9</sup>To complete the analysis, refer to the key in Section III.D.6 of the Instructional Guidebook.

**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):<sup>10</sup>**

- 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.

**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):

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: acres.

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: see final project area for AJD purposes received 16 September 2022 as well as Data sheets and figures submitted in project folder SWL-2019-00236
- 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.
- Data sheets prepared by the Corps:
  - Corps navigable waters’ study:
- U.S. Geological Survey Hydrologic Atlas:
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24K Huff

<sup>10</sup> 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*.

- USDA Natural Resources Conservation Service Soil Survey. Citation: Arkansas\_Soils.shp
- National wetlands inventory map(s). Cite name: National Wetland Inventory.shp
- State/Local wetland inventory map(s):
- FEMA/FIRM maps: FEMA maps accessed within Google Earth, National Regulatory Viewer
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Google Earth, ESRI World Imagery, MAXAR Digital Globe all accessed throughout 2022
- or  Other (Name & Date):
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): National Regulatory Viewer, World Hillshade DEM

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** Jurisdictional waters present: Departee Creek (perennial RPW) – 11,670 linear feet with an average 63 foot width; Bailey Creek (perennial RPW) – 5,530 linear feet with an average 23 foot width; Stream 3 (ephemeral RPW) – 2,994 linear feet with an average 5 foot width; Stream 4 (ephemeral non-RPW) – 2,048 linear feet with an average 2 foot width; Stream 5 (ephemeral non-RPW) – 154 linear feet with an average 1 foot width; Stream 6 (ephemeral non-RPW) – 192 linear feet with an average 1 foot width; Stream 7 (ephemeral non-RPW) – 30 linear feet with an average 1 foot width; Wetland A (adjacent to RPW) – 0.1 acres; Wetland B (adjacent to RPW) – 0.5 acres; Wetland C (abuts RPW) – 0.16 acres; Wetland D (abuts RPW) – 0.09 acres

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Lisa Boyle  
Project Manager

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Date