U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 9/3/2020
ORM Number: SWL-2020-00190
Associated JDs: N/A
Review Area Location[1]: State/Territory: Arkansas City: North Little Rock County/Parish/Borough: Pulaski
Center Coordinates of Review Area: Latitude 34.844715° Longitude -92.371204°

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- ☐ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)[2]

§ 10 Name	§ 10 Size		§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters):[3]				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size		(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

[1] Map(s)/figure(s) are attached to the AJD provided to the requestor.
[2] If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.
[3] A stand-alone TNW determination 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. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Stream S-1	1,181	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Based on the analysis in GBMc & Associates (GBMc) delineation, observations from USACE's 8/22/20 field review, evidence in maps and aerial photographs of the area, and spatial data from various other sources (see III. Supporting Information), this 1,181-foot-long section of stream is ephemeral exhibiting surface water flow only in direct response to storm related precipitation events. See also Section III, Subsection C for stream observation information.
Stream S-1b	76	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Based on the analysis in GBMc's delineation, observations from USACE's 8/22/20 field review, evidence in maps and aerial photographs of the area, and spatial data from various other sources (see III. Supporting Information), this 76-foot-long section of stream is ephemeral exhibiting surface water flow only in direct response to storm related precipitation events. See also Section III, Subsection C for stream observation information.
Stream S-2	305	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Based on the analysis in GBMc's delineation, observations from USACE's 8/22/20 field review, evidence in maps and aerial photographs of the area, and spatial data from various other sources (see III. Supporting Information), this 305-foot-long section of stream is ephemeral exhibiting surface water flow only in direct response to storm related precipitation events. See also Section III, Subsection C for stream observation information.
Wetland W-1	0.7	acre(s)	(b)(1) Non-adjacent wetland.	An approximately 0.7-acre predominantly scrub/shrub wetland in soils with a low hydric rating (Tiak fine sandy loam). This wetland is located in area of minimal flood risk (Zone X [unshaded]) with a 0.2% chance of annual flooding (500 year flood) indicating that W-1 is not inundated by an a(1)–(3) water in a typical year. Based on the analysis in GBMc's delineation, observations from USACE's 8/22/20 field review,

[4] Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.
[5] Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				evidence in maps and aerial photographs of the area, and spatial data from various other sources (see III. Supporting Information), this wetland abuts only a (b)(3) ephemeral feature which are not jurisdictional waters under the NWPR. This wetland does not meet the adjacency criteria and conditions in 33 CFR 328.3(c)(1)(iii) and (iv) of the NWPR. Specifically, W-1 is not physically separated from an a(1)–(3) water by only a single natural feature as there are no a(1)–(3) waters between W-1 and a single natural feature. W-1 is also not physically separated by an a(1)–(3) water by only a single artificial structure or feature that allows for a direct hydrological surface connection to an a(1)–(3) water as there are no a(1)–(3) waters between W-1 and a single artificial structure or feature with a hydrologic connection to an a(1)–(3) water.
Wetland W-2	0.1	acre(s)	(b)(1) Non-adjacent wetland.	An approximately 0.1-acre predominantly scrub/shrub wetland in soils with a low hydric rating (Tiak fine sandy loam). This wetland is located in area of minimal flood risk (Zone X [unshaded]) with a 0.2% chance of annual flooding (500 year flood) indicating that W-1 is not inundated by an a(1)–(3) water in a typical year. Based on the analysis in GBMc's delineation, observations from USACE's 8/22/20 field review, evidence in maps and aerial photographs of the area, and spatial data from various other sources (see III. Supporting Information), this wetland abuts only a (b)(3) ephemeral feature which are not jurisdictional waters under the NWPR. This wetland does not meet the adjacency criteria and conditions in 33 CFR 328.3(c)(1)(iii) and (iv) of the NWPR. Specifically, W-1 is not physically separated from an a(1)–(3) water by only a single natural feature as there are no a(1)–(3) waters between W-1 and a single natural feature. W-1 is also not physically separated by an a(1)–(3) water by only a single

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				artificial structure or feature that allows for a direct hydrological surface connection to an a(1)–(3) water as there are no a(1)–(3) waters between W-1 and a single artificial structure or feature with a hydrologic connection to an a(1)–(3) water.
Wetland W-3	5.1	acre(s)	(b)(1) Non-adjacent wetland.	An approximately 5.1-acre wetland composed of a combination of mature oak/pine forest and regenerating forest in soils with a low hydric rating (Tiak fine sandy loam). This wetland is located in area of minimal flood risk (Zone X [unshaded]) with a 0.2% chance of annual flooding (500 year flood) indicating that W-1 is not inundated by an a(1)–(3) water in a typical year. Based on the analysis in GBMc's delineation, observations from USACE's 8/22/20 field review, evidence in maps and aerial photographs of the area, and spatial data from various other sources (see III. Supporting Information), this wetland abuts only a (b)(3) ephemeral feature which are not jurisdictional waters under the NWPR. This wetland does not meet the adjacency criteria and conditions in 33 CFR 328.3(c)(1)(iii) and (iv) of the NWPR. Specifically, W-1 is not physically separated from an a(1)–(3) water by only a single natural feature as there are no a(1)–(3) waters between W-1 and a single natural feature. W-1 is also not physically separated by an a(1)–(3) water by only a single artificial structure or feature that allows for a direct hydrological surface connection to an a(1)–(3) water as there are no a(1)–(3) waters between W-1 and a single artificial structure or feature with a hydrologic connection to an a(1)–(3) water.
Wetland W-4	2.4	acre(s)	(b)(1) Non-adjacent wetland.	An approximately 2.4-acre wetland composed of a combination of mature oak/pine forest and regenerating forest in soils with a low hydric rating. This wetland is located in area of minimal flood risk (Zone X [unshaded]) with a 0.2% chance of annual flooding (500 year flood) indicating that

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				W-1 is not inundated by an a(1)–(3) water in a typical year. Based on the analysis in GBMc's delineation, observations from USACE's 8/22/20 field review, evidence in maps and aerial photographs of the area, and spatial data from various other sources (see III. Supporting Information), this wetland abuts only a (b)(3) ephemeral feature which are not jurisdictional waters under the NWPR. This wetland does not meet the adjacency criteria and conditions in 33 CFR 328.3(c)(1)(iii) and (iv) of the NWPR. Specifically, W-1 is not physically separated from an a(1)–(3) water by only a single natural feature as there are no a(1)–(3) waters between W-1 and a single natural feature. W-1 is also not physically separated by an a(1)–(3) water by only a single artificial structure or feature that allows for a direct hydrological surface connection to an a(1)–(3) water as there are no a(1)–(3) waters between W-1 and a single artificial structure or feature with a hydrologic connection to an a(1)–(3) water.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

☒ Information submitted by, or on behalf of, the applicant/consultant: An aquatic resources delineation in AJD Request – Maumelle Academics Plus School Site, GBMc No: 3225-20-301, emailed to USACE on June 16, 2020 by GBMc & Associates (GBMc)

This information is sufficient for purposes of this AJD.

Rationale: N/A

☐ Data sheets prepared by the Corps: Title(s) and/or date(s).

☒ Photographs: Aerial and Other: Site Photos in Delineation Report, GBMc; Google Earth Imagery (all images available in the historical imagery feature between 1994 and 2018); Global Enhanced GEOINT Delivery Imagery (all images available beween 2017 and 2020 at Zoom Level 17); HistoricAerials.com (images from 1955, 1960, and 1970)

☒ Corps site visit(s) conducted on: August 22, 2020

☐ Previous Jurisdictional Determinations (AJDs or PJDs): ORM Number(s) and date(s).

☒ Antecedent Precipitation Tool: *provide detailed discussion in Section III.B*.

☒ USDA NRCS Soil Survey: NRCS Web Soil Survey 3.3.2, accessed online for the project area on August 6, 2020
☒ USFWS NWI maps: USFWS Wetlands Mapper, accessed online for the project area on August 6, 2020
☒ USGS topographic maps: USGS 7.5 min. topographic quadrangles: North Little Rock, Arkansas (1986, 1996, 2011, 2014, 2017)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	USGS The National Map – 3DEP, National Hydrography Dataset
USDA Sources	NRCS Web Soil Survey 3.3.2 – Map Unit Description for Tiak fine sandy loam
NOAA Sources	N/A.
USACE Sources	USACE ArcMap data; Antecedent Precipitation Tool (APT)
State/Local/Tribal Sources	N/A.
Other Sources	FEMA National Flood Hazard Layer Viewer; USACE 1987 manual and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0) (USACE Engineer Research and Development Center 2012).

B. Typical year assessment(s): Dates for the delineation conducted by GBMc (April 1 and 10, 2020) and USACE's field review (August 22, 2020) were entered into USACE's Antecedent Preciptation Tool to determine if, at the time of the field investigations, precipitation conditions were typical, or within the normal precipitation range for the project vicinity over the preceding 30 years. According to the APT, precipitation conditions were wetter than normal (final Antecedent Condition Calculation of 18) when the delineation was conducted, which may account for an atypical presence of flowing water in the ephemeral channels and standing water in the wetlands at that time of year. Precipitation conditions were normal (final Antecedent Condition Calculation of 13) for that time of year when USACE personnel visited the project area.

C. Additional comments to support AJD: According to GBMc & Associates' (GBMc) April 2020 aquatic resources delineation of the project property, there are three streams (S-1, S-1b, and S-2) and four wetlands (W-1, W-2, W-3, and W-4) within the property boundaries. GBMc classified the streams as ephemeral but provided minimal supporting data to justify the classification. W-1 and W-2 were identified as predominantly scrub/shrub wetlands in soils with a low hydric rating. W-3 and W-4 were classified as wetlands composed of a combination of mature oak/pine forest and regenerating forest in soils with a low hydric rating. In the AJD request letter, GBMc indicated that, because the streams are ephemeral and the wetlands are connected only to the ephemeral streams, there are no jurisdictional aquatic resources, as defined in the 2020 Navigable Waters Protection Rule (NWPR), on the property.

On August 22, 2020, USACE conducted a field inspection to observe the aquatic resource identified in the delineation and identify features and characteristics indicating whether or not the aquatic resources are jurisdictional WOTUS. All four of the wetlands exhibit the hydrology, vegetation, and soil indicators documented in GBMc's delineation that are necessary for classification as wetlands. However, the wetlands do not meet any of the adjacency criteria under the definition of Adjacent Wetlands in the NWPR (33 CFR 328.3(c)(1)). Specifically, there are no jurisdictional waters (i.e., a(1)–a(3) waters) close enough to W-1, W-2, W-3, and W-4 to share a hydrological surface connection nor are they close enough to a jurisdictional water to be physically separated by only a single natural feature or to be physically separated

by only a single artificial structure or feature. Additionally, the wetlands are not inundated by flooding from jurisdictional waters in a typical year. They are in fact located within a 500-year floodplain (Flood Zone X [unshaded]) with a 0.2 percent chance of annual flooding, indicating that annual seasonal flooding is extremely unlikely.

The three ephemeral streams exhibit weakly- to moderately-defined bed and bank features and did not convey any water at the time of the field inspection. Numerous instances of leaf litter and amassed debris observed during the field field inspection are evident in the stream channels, suggesting flows of short duration like, for example, during a rain event or even seasonally. Leaf litter and debris does not tend to accumumlate in perennial streams and, to a degree, intermittent streams, where water flow is more constant and consistent and able to carry leaves and debris out of the stream channel. The stream beds are comprised primarily of silt and do not exhibit depositional features such as sediment grading evident in non-ephmeral stream flow environments. Although the ephemeral stream channels exhibit evidence for bed and bank, there are locations along the channels where terrestrial plants are growing inside the channel beds, suggesting flows are not frequent enough to prevent terrestrial plant growth within the channels. Given the stream characteristics observed during the August field inspection, the streams documented in the delineation are ephemeral.

Based on GBMc's delineation, observations from USACE's August 22, 2020 field inspection, evidence in maps and aerial photographs of the area, and spatial data from various other sources (see III. Supporting Information), USACE has determined that the streams and wetlands within the project property are not jurisdictional waters as defined in the NWPR.

This jurisdictional determination is specific to an approximately 37-acre property located in Pulaski County, Arkansas near the city of Maumelle but within the municipal jurisdiction of the city of North Little Rock. The property is on the north side of Counts Massie Road immediately east of the Maumelle Baseball Fields at 9510 Counts Massie Road. The area of the delineation is mapped on the North Little Rock, Arkansas U.S. Geological Survey (USGS) 7.5 minute topographic quadrangle and the legal description is SW ¼ of the SW ¼ of section 35, T. 3 N., R. 13 W. Coordinates of the approximate property center are 34.844715°N, -92.371204°W. The property is located in the Lower Arkansas-Maumelle watershed ([HUC] 11110207), a watershed of approximately 1126.78 square miles. The review area contains 3 non-jurisdictional ephemeral streams and 4 non-jurisdictional wetlands. The entire property is located within a FEMA Flood Zone X (unshaded) indicating 500-year floodplain of minimal flood hazard.

PREPARED BY:

James Beers
Archaeologist & Regulatory Project Manager