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LITTLE ROCK DISTRICT, CORPS OF ENGINEERS
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CESWL-RD

2 April 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-2025-00414** [1 of 1]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).

Name	Jurisdictional/Non-Jurisdictional	Authority (Section 10/404)
OW 1a	Non-Jurisdictional	N/A
OW 1b	Non-Jurisdictional	N/A
OW 2	Jurisdictional	Section 404
OW 3	Non-Jurisdictional	N/A
OW 4	Non-Jurisdictional	N/A
OW 5	Non-Jurisdictional	N/A
OW 6	Jurisdictional	Section 404
OW 7	Non-Jurisdictional	N/A
OW 8	Jurisdictional	Section 404
OW 9	Non-Jurisdictional	N/A
OW 10	Non-Jurisdictional	N/A
OW 11	Non-Jurisdictional	N/A
OW 12a	Non-Jurisdictional	N/A
OW 12b	Non-Jurisdictional	N/A
OW 12c	Non-Jurisdictional	N/A
OW 12d	Jurisdictional	Section 404
OW 13	Non-Jurisdictional	N/A
OW 14	Non-Jurisdictional	N/A
W 1a	Non-Jurisdictional	N/A
W 1b	Non-Jurisdictional	N/A
W 1c	Non-Jurisdictional	N/A
W 2	Non-Jurisdictional	N/A
W 3	Non-Jurisdictional	N/A
W 4	Non-Jurisdictional	N/A
W 5	Jurisdictional	Section 404
W 6	Jurisdictional	Section 404
W 7	Jurisdictional	Section 404
P 1	Non-Jurisdictional	N/A
P 2	Non-Jurisdictional	N/A

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. Regional Streamflow Duration Assessment Methods (SDAM), Version 3.0.1, Released October 2025
3. REVIEW AREA. The site covers approximately 205 acres located at Latitude: 35.446792°, Longitude: -93.45264°, in Clarksville, Johnson County, Arkansas. Currently, the site is partially developed and features a small skeet shooting range along with related infrastructure.
 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Arkansas River⁶
 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The resources generally flow west-northwest within the review area; however, once they are outside the review area, they generally continue west until reaching Spadra Creek, which generally flows south until it meets the Arkansas River a 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

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.

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):

OW 2 is an intermittent creek approximately 1,611 linear feet long, with a well-sorted rock, silt, and clay substrate. OW 2 is not classified in the NHD; however, field delineations identified a clear bed and bank, and OW 2 was classified as an intermittent Relatively Permanent Water (RPW).

OW 6 is an intermittent creek approximately 2,481 linear feet long, with a rock, silt, clay, and bedrock substrate. OW 2 is classified in the NHD as an intermittent RPW. During the initial site visit on January 9, 2026, the stream appeared ephemeral; however, during the visit on March 1, 2026, it showed all the characteristics of an intermittent system, including a high abundance of aquatic invertebrate species. There was no significant rainfall between the two visits, and both site visits were identified as drier than normal in APT.

OW 8 is an intermittent creek approximately 533 linear feet long, with a silt/clay and bedrock substrate. OW 2 is classified in the NHD as an intermittent RPW. OW 8 has a small spring/seep upstream from the confluence with OW 6.

OW 12d is an intermittent creek that stretches approximately 2,093 linear feet and has a substrate composed of silt and clay. According to the NHD, OW 12d is classified as an intermittent Relatively Permanent Waterbody (RPW). A SDAM study confirmed its intermittent status. OW 12d connects to Spadra Creek through culverts located beneath I-40 and then merges with another unnamed

creek. Both creeks have been channelized into a roadside ditch, which ultimately flows into Spadra Creek.

f. The territorial seas (a)(6): N/A

g. Adjacent wetlands (a)(7):

W 5 is a 0.55-acre palustrine forested (PFO) wetland that meets the criteria for wetlands as outlined in the 1987 Corps of Engineers Wetland Delineation Manual and its associated regional supplements. This wetland has a continuous surface connection to a jurisdictional RPW and is therefore considered jurisdictional under the pre-2015 CWA regime.

W 6 is a 0.03-acre palustrine emergent (PEM) wetland that meets the criteria for wetlands as outlined in the 1987 Corps of Engineers Wetland Delineation Manual and its associated regional supplements. This wetland has a continuous surface connection to a jurisdictional RPW and is therefore considered jurisdictional under the pre-2015 CWA regime.

W 7 is a 0.15-acre palustrine emergent wetland that meets the criteria for wetlands as outlined in the 1987 Corps of Engineers Wetland Delineation Manual and its associated regional supplements. This wetland has a continuous surface connection to a jurisdictional RPW and is therefore considered jurisdictional under the pre-2015 CWA regime.

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

⁹ 51 FR 41217, November 13, 1986.

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).

OW 1a, OW 1b, OW 2, OW 5, OW 7, OW 14 are Non-RPWs (Non-Relatively Permanent Waters), ephemeral streams that flow into OW 6. They do not have well-defined beds and banks or characteristics of an RPW. Non-RPWs are classified as non-jurisdictional waters under the pre-2015 Clean Water Act (CWA) regime.

OW 3 and OW 4 are Non-RPWs, ephemeral streams that flow into OW 2. They do not have well-defined beds and banks or characteristics of an RPW. Non-RPWs are classified as non-jurisdictional waters under the pre-2015 CWA regime.

OW 9a, OW 10, and OW 11 are intermittent systems; however, they are losing systems and do not have a Continuous Surface Connection (CSC) to a RPW, making them non-jurisdictional under the pre-2015 CWA regime.

OW 9b is an ephemeral stream that flows into P 1. It does not have well-defined beds and banks or characteristics of a RPW. P 1 does not have a CSC to an RPW. Due to the lack of a CSC, OW 9b would be classified as a non-RPW and considered non-jurisdictional waters under the pre-2015 CWA regime.

OW 12a (Ephemeral), OW 12b (Intermittent), and OW 12c (Ephemeral) are classified as losing reaches within the OW 12 system. Although OW 12b is

intermittent, it does not have a CSC to RPW because OW 12c is an ephemeral reach. As a result, OW 12a, OW 12b, and OW 12c are considered non-jurisdictional waters under the pre-2015 CWA regime.

OW 13 is an ephemeral stream that flows into a roadside ditch. OW 13 does not have well-defined beds and banks or characteristics of an RPW. Non-RPWs are classified as non-jurisdictional waters under the pre-2015 CWA regime.

W 1a (PFO), W 1b (PEM), W 1c (PFO) that meet the criteria for wetlands as outlined in the 1987 Corps of Engineers Wetland Delineation Manual and its associated regional supplements. However, these wetlands lack a continuous surface connection to a jurisdictional RPW and are therefore not considered jurisdictional under the pre-2015 CWA regime.

W 2 (PFO) meets the criteria for wetlands as outlined in the 1987 Corps of Engineers Wetland Delineation Manual and its associated regional supplements. However, this wetland lacks a continuous surface connection to a jurisdictional RPW and is therefore not considered jurisdictional under the pre-2015 CWA regime.

W 3 (PEM) meets the criteria for wetlands as outlined in the 1987 Corps of Engineers Wetland Delineation Manual and its associated regional supplements. However, this wetland lacks a continuous surface connection to a jurisdictional RPW and is therefore not considered jurisdictional under the pre-2015 CWA regime.

W 4 (PFO) meets the criteria for wetlands as defined in the 1987 Corps of Engineers Wetland Delineation Manual and its associated regional supplements. W 4 is adjacent to and the headwater of OW 10; however, OW 10 is a losing reach and does not have a continuous surface connection to a jurisdictional RPW. Therefore, W 4 is not considered jurisdictional under the pre-2015 CWA regime.

P1 and P2 are open water ponds; however, these ponds do not have an outlet or any connection to a RPW and are therefore not considered jurisdictional under the pre-2015 CWA regime.

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. November 24, 2025, Desktop Review, National Regulatory Viewer

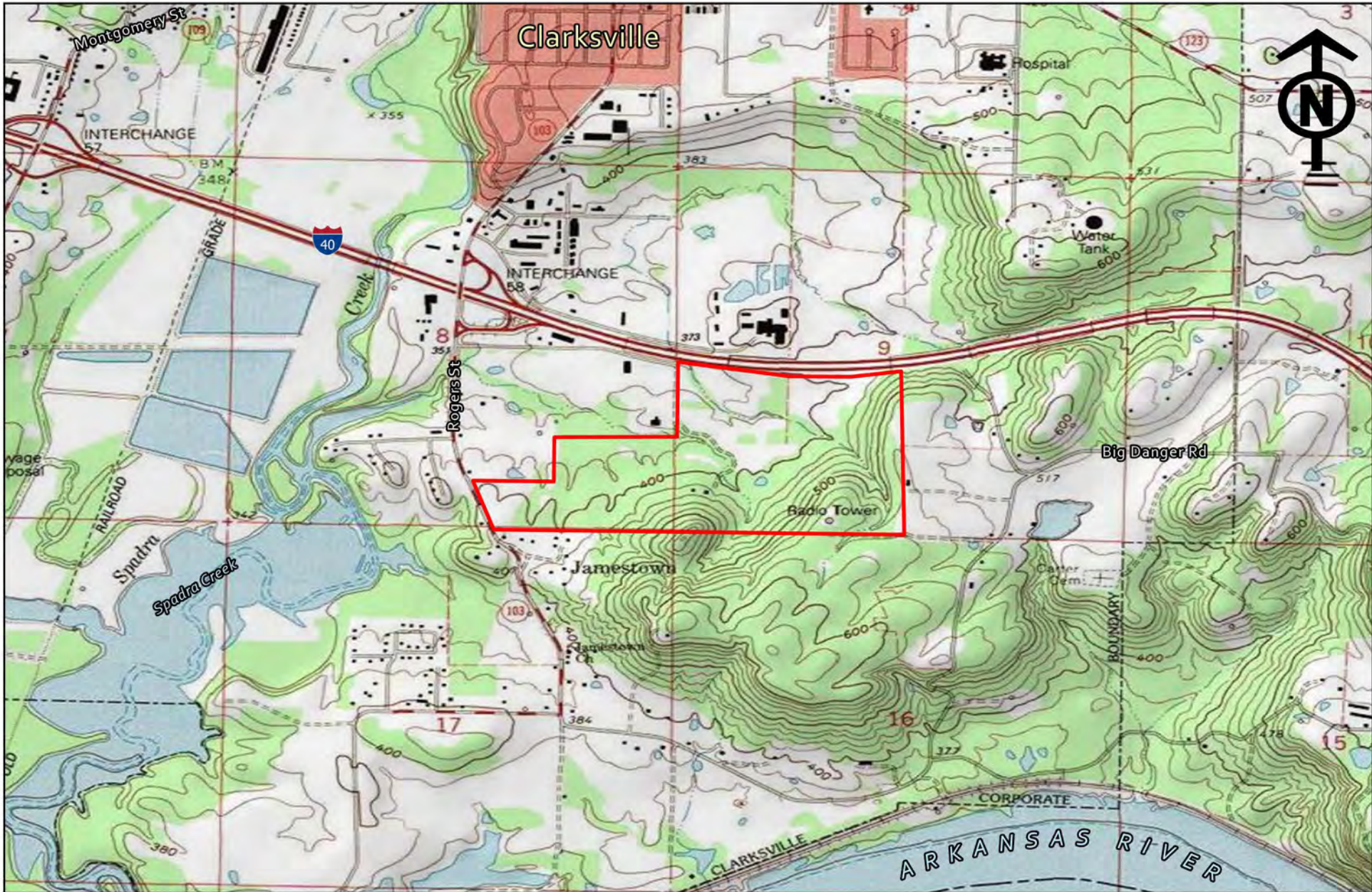
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- b. November 24, 2025, USGS Topo Viewer
<https://ngmdb.usgs.gov/topoview/viewer/#15/35.4455/-93.4581>
- c. January 9, 2026, Field Visit, with Agent
- d. March 2, 2025, Field Visit, with R6 EPA Ms. Chelsey Sherwood, SDAM Specialist

10. OTHER SUPPORTING INFORMATION. University of the Ozarks - Ozarks River Valley Shooting Complex Clarksville, Johnson County, Arkansas Preliminary Wetland Delineation Report, Created by Garver USA, Dated November 2025

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.



SITE LOCATION MAP
 Clarksville River Valley Shooting Range
 Clarksville, Johnson County, Arkansas
 USGS Topographic Map (1:24000)
 NW 1/4 of S: 9, T: 9 N, R 23 W


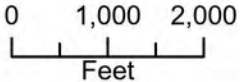
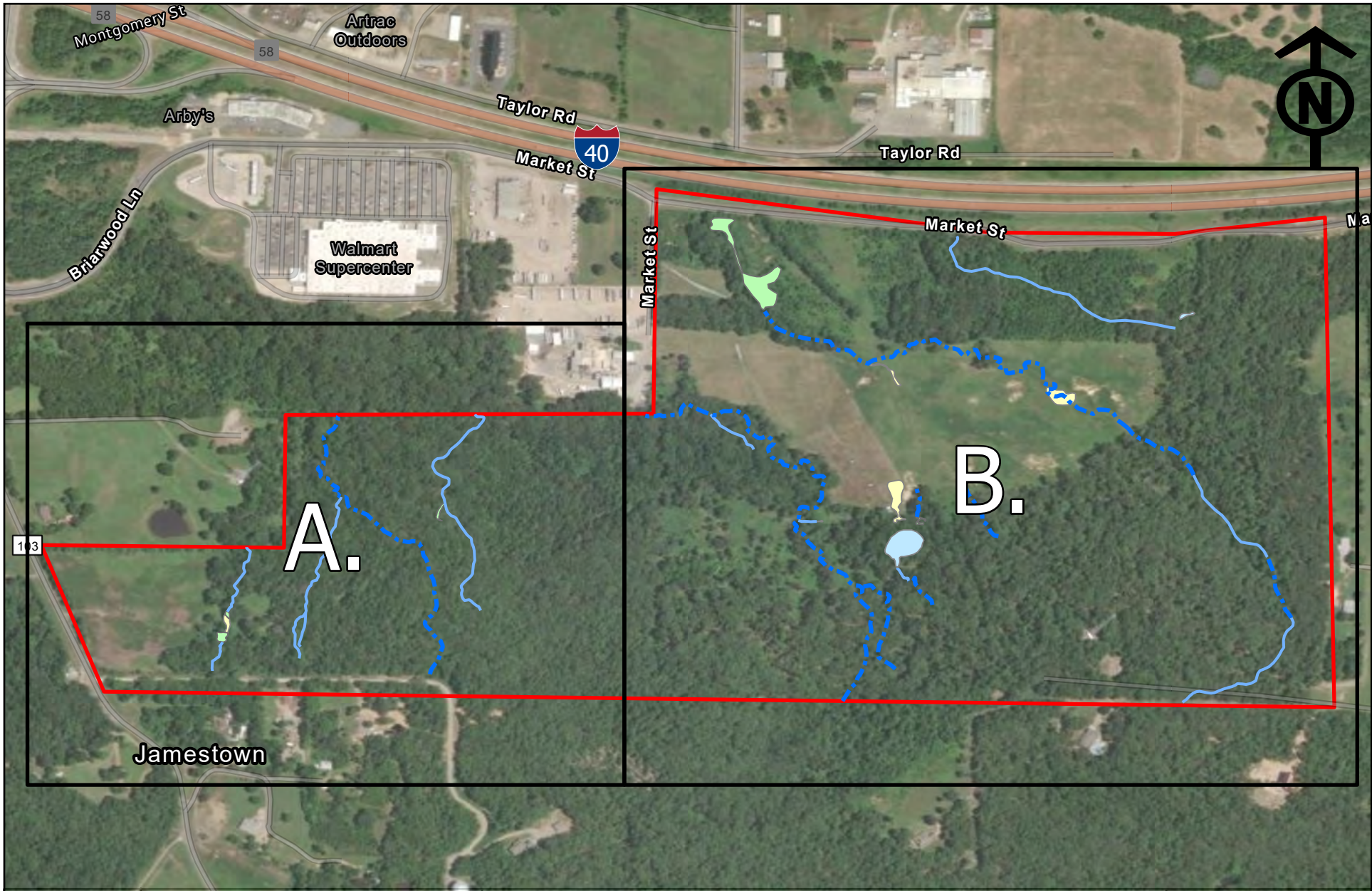
 Study Area

Figure 1





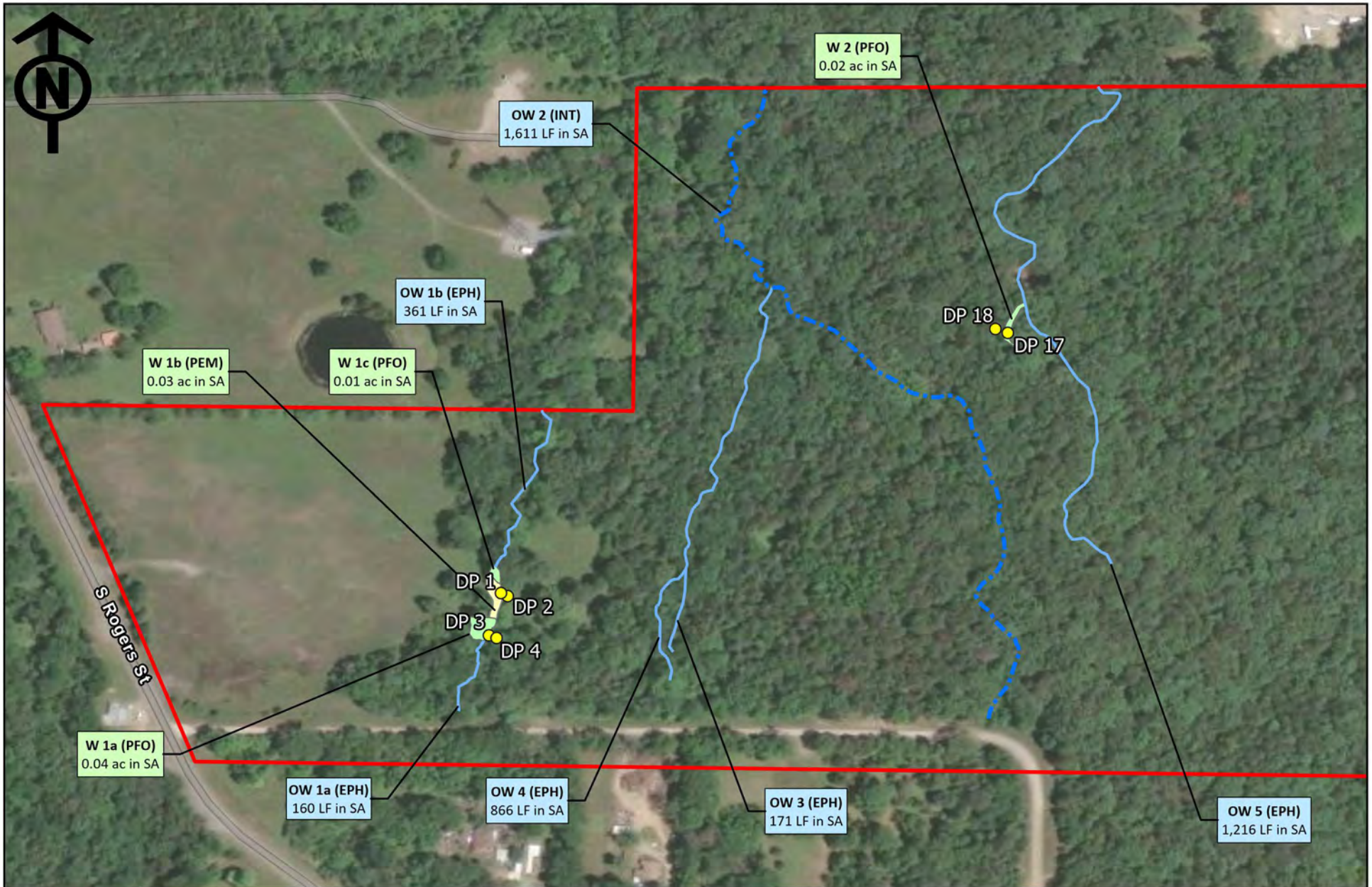
GARVER
DELINEATED RESOURCES MAP
 Ozarks River Valley Shooting Range
 Clarksville, Johnson County, Arkansas
 ESRI Aerial Imagery (May 2024)
 NW 1/4 of S: 9, T: 9 N, R 23 W

- Study Area
- Stream Type**
- Ephemeral (EPH)
- - - Intermittent (INT)

- Wetland Type**
- Emergent (PEM)
- Forested (PFO)
- Pond (PUB)

Figure 4

0 400 800
 Feet

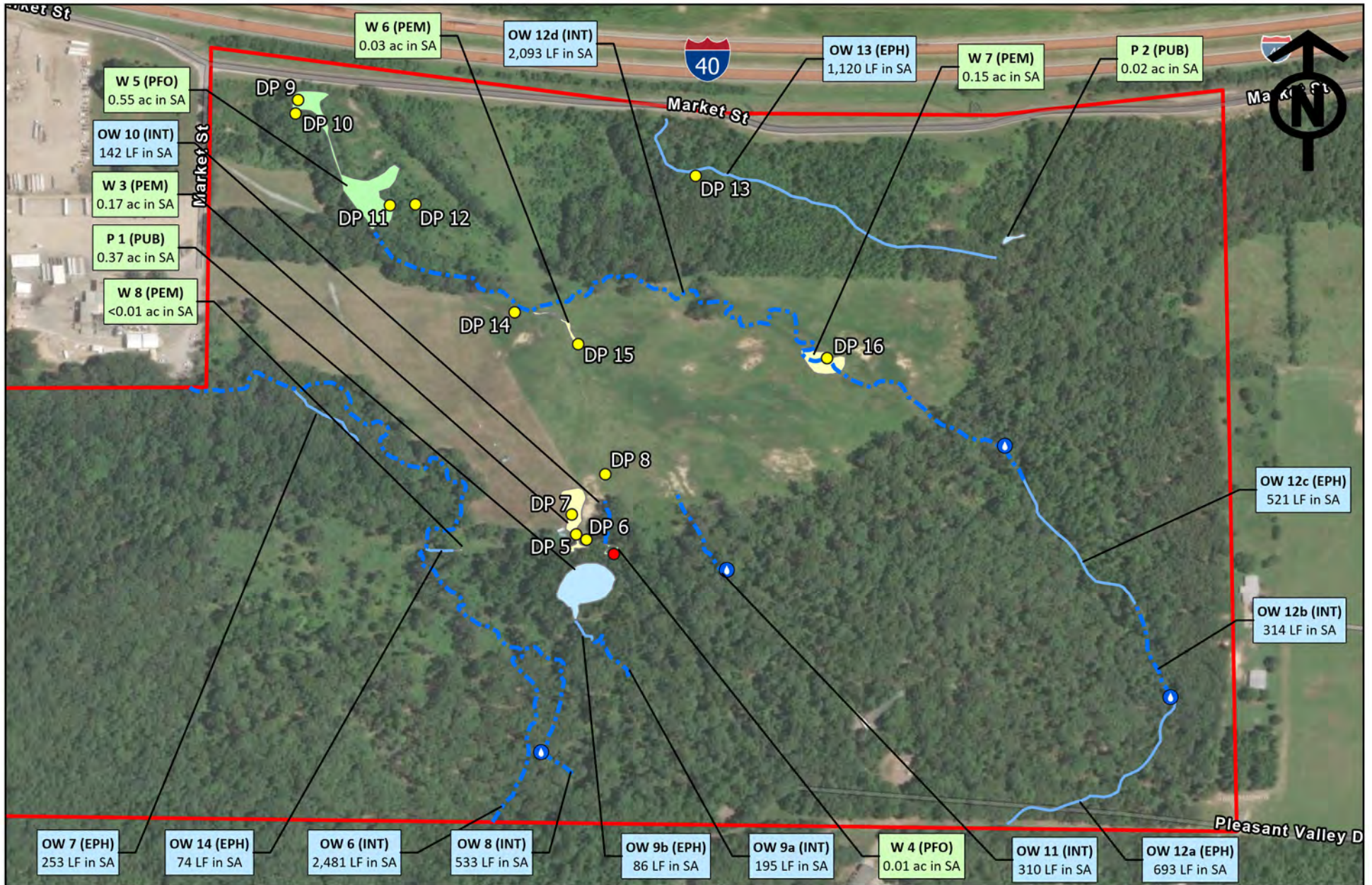


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DELINEATED RESOURCES MAP
 Ozarks River Valley Shooting Range
 Clarksville, Johnson County, Arkansas
 University of the Ozarks/AJD
 Johnson County
 ESRI Aerial Imagery (May 2024)
 NW 1/4 of S: 9, T: 9 N, R 23 W

<ul style="list-style-type: none"> Study Area ● Data Point (DP) ● Observation Point ● Spring/Seep 	<p>Stream Type</p> <ul style="list-style-type: none"> — Ephemeral (EPH) - - - Intermittent (INT) 	<p>Wetland Type</p> <ul style="list-style-type: none"> Emergent (PEM) Forested (PFO) Pond (PUB)
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Figure 4a

0 150 300
 Feet



GARVER
DELINEATED RESOURCES MAP
 Ozarks River Valley Shooting Range
 Clarksville, Johnson County, Arkansas
 University of the Ozarks/AJD
 Johnson County
 ESRI Aerial Imagery (May 2024)
 NW 1/4 of S: 9, T: 9 N, R 23 W

Study Area	Stream Type Ephemeral (EPH) Intermittent (INT)	Wetland Type Emergent (PEM) Forested (PFO) Pond (PUB)
Data Point (DP)	Observation Point	
Spring/Seep		

Figure 4b

0 250 500
 Feet