



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

3 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 2026-00089** []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. DR01-INT (~175 linear feet long, non-RPW), non-Jurisdictional
 - ii. DR01-EPH (~52 linear feet long, non-RPW), 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. United States Army Corps of Engineers (USACE). 2012. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region Version 2.0.
- f. United States Army Corps of Engineers (USACE). 2022. National Wetland Plant List version 3.6, Effective February 13, 2024.

3. REVIEW AREA. The site is located in the NE 1/4 of section 31, T. 17 N., R. 29 W., Fayetteville, Washington County, Arkansas. The review area is an approximately 3.7-acre site labeled as "Project Area" on the attached maps. The approximate geographic center of the project area is latitude 36.105945, longitude -94.119292.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Illinois River (TNW) which is also a Section 10 Waterway.⁶

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

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Generally, all aquatic features, within the review area, drain to the south – southwest (per StreamStats & The City of Fayetteville’s stormwater utilities mapper) where they exit the review area via a culver/unnamed non-RPW, to Flynn Creek (RPW), to Niokaska Creek (RPW), to Mud Creek (RPW), to Scull Creek (RPW), to Clear Creek (RPW), to the Illinois River (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): N/A

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.

- e. Tributaries (a)(5): N/A
- 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. 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

⁹ 51 FR 41217, November 13, 1986.

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. DR01-INT is an approximately 175 linear-foot-long non-RPW. Upon review of the available data (historical aerial photography, USGS Topographic Maps, LiDAR, and the delineation report), this feature does not display Relative Permanent Flow, as such it is not jurisdictional because it does 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).
 - ii. DR01-EPH is an approximately 52 linear-foot-long non-RPW. Upon review of the available data (historical aerial photography, USGS Topographic Maps, LiDAR, and the delineation report), this feature does not display Relative Permanent Flow, as such it is not jurisdictional because it does 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).
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 March 13, 2026
 - b. Cattails Environmental, LLC Delineation Report dated, February 2026
 - c. USGS Stream Stats accessed, March 13, 2026
 - d. USGS Stream Stats accessed, March 13, 2026
 - e. USGS topoView Fayetteville, AR 1:24K accessed, March 13, 2026
 - f. USDA Natural Resources Conservation Service Web Soil Survey Washington County accessed, March 13, 2026
 - g. NHD data accessed on National Regulatory Viewer accessed, March 13, 2026




10. OTHER SUPPORTING INFORMATION. N/A

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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.



Legend:  Project Area  Washington County Parcels	Figure: Site Location		Figure: A-1
	Project: 3105 N. Old Wire Road Fayetteville, AR	Approved: Jodie Murray Burns, MS, MEd, PWS	Date Exported: February 12, 2026
Imagery: NAIP 09/30/2023 <small>Credits: Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community, Esri, USDA Farm Service Agency, Sources: Esri, U.S. Department of Commerce, Census Bureau, U.S. Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), National Geodetic Survey (NGS), Esri, HERE, Garmin, FAO, NOAA, USGS, EPA</small>		 Scale: 1:100 / Spatial Reference: WGS 1984 UTM	

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Figure A-1. Site Location map of the 3105 North Old Wire Road, Fayetteville, Washington County



Legend: Project Area Barbed Wire Fence Ephemeral Drain Intermittent Drain Upland Point Spring Spring House Culvert		Field Data Project: 3105 N. Old Wire Road Fayetteville, AR Approved: Jodie Murray Burns, MS, MEd, PWS Date Exported: February 12, 2026 Figure: A-2	
Imagery: NAIP 09/30/2023 <small>Credits: Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community, Esri, USDA Farm Service Agency</small>		 Scale: 1:100 / Spatial Reference: WGS 1984 UTM	

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Figure A-2. Field Data map of the 3105 North Old Wire Road, Fayetteville, Washington County, Ark



February 4, 2026

Wetlands

- | | | |
|--------------------------------|-----------------------------------|----------|
| Estuarine and Marine Deepwater | Freshwater Emergent Wetland | Lake |
| Estuarine and Marine Wetland | Freshwater Forested/Shrub Wetland | Other |
| | Freshwater Pond | Riverine |

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

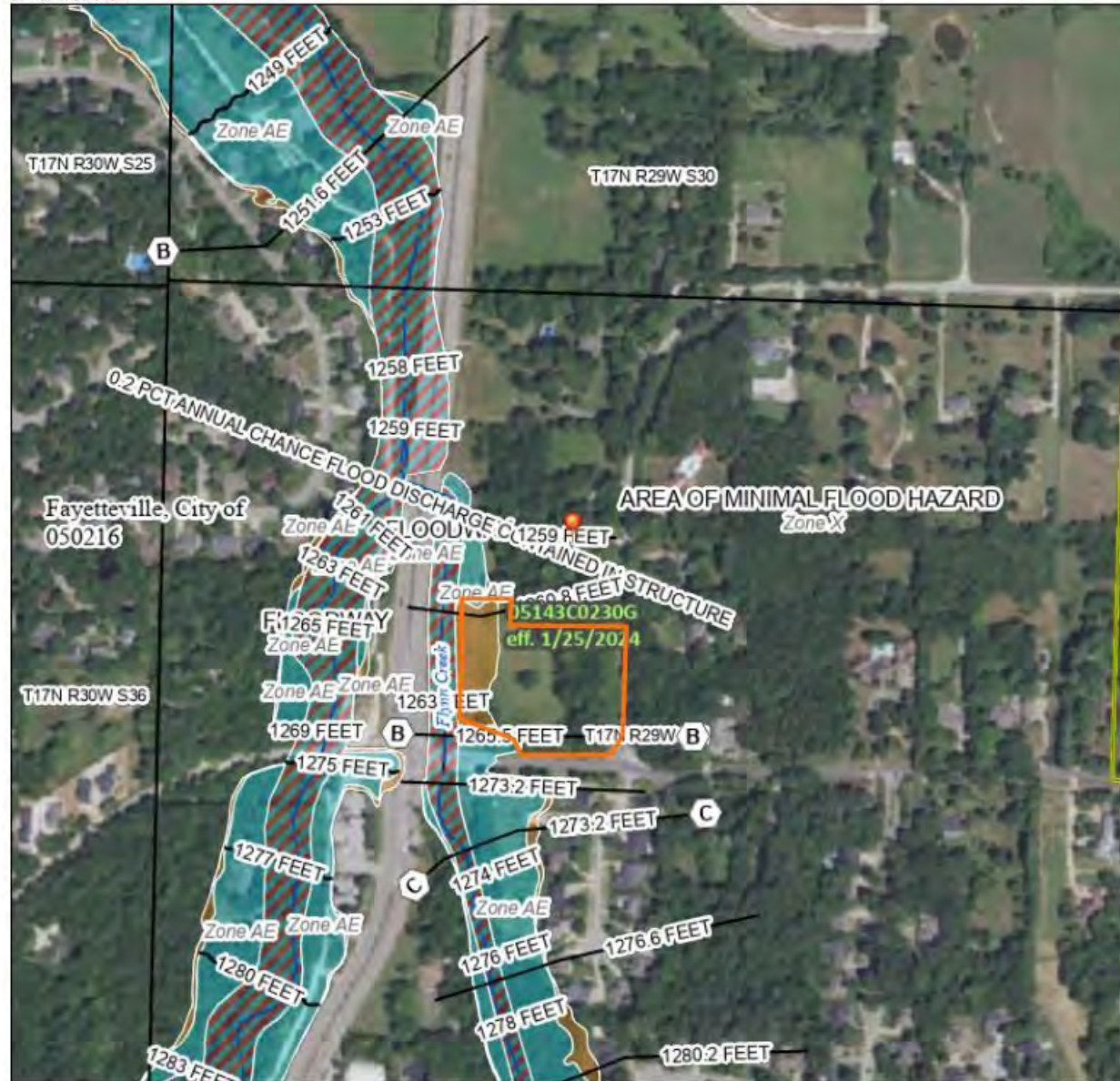
Figure A-4. USFWS National Wetlands Inventory (NWI) map of the 3105 North Old Wire Road, Fayetteville, Washington County, Arkansas.

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National Flood Hazard Layer FIRMette



94°7'27"W 36°6'40"N



0 250 500 1,000 1,500 2,000 Feet 1:6,000

Basemap Imagery Source: USGS National Map 2023

Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) Zone A, V, A99
		With BFE or Depth Zone AE, AO, AH, VE, AR Regulatory Floodway
OTHER AREAS OF FLOOD HAZARD		0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
		Future Conditions 1% Annual Chance Flood Hazard Zone X
		Area with Reduced Flood Risk due to Levee. See Notes. Zone X
		Area with Flood Risk due to Levee Zone D
OTHER AREAS		NO SCREEN Area of Minimal Flood Hazard Zone X
		Effective LOMRs
GENERAL STRUCTURES		Area of Undetermined Flood Hazard Zone D
		Channel, Culvert, or Storm Sewer
OTHER FEATURES		Levee, Dike, or Floodwall
		Cross Sections with 1% Annual Chance Water Surface Elevation 20.2 17.8
MAP PANELS		Digital Data Available
		No Digital Data Available
		Unmapped
		3105 North Old Wire Road, Fayetteville, Washington County, Arkansas

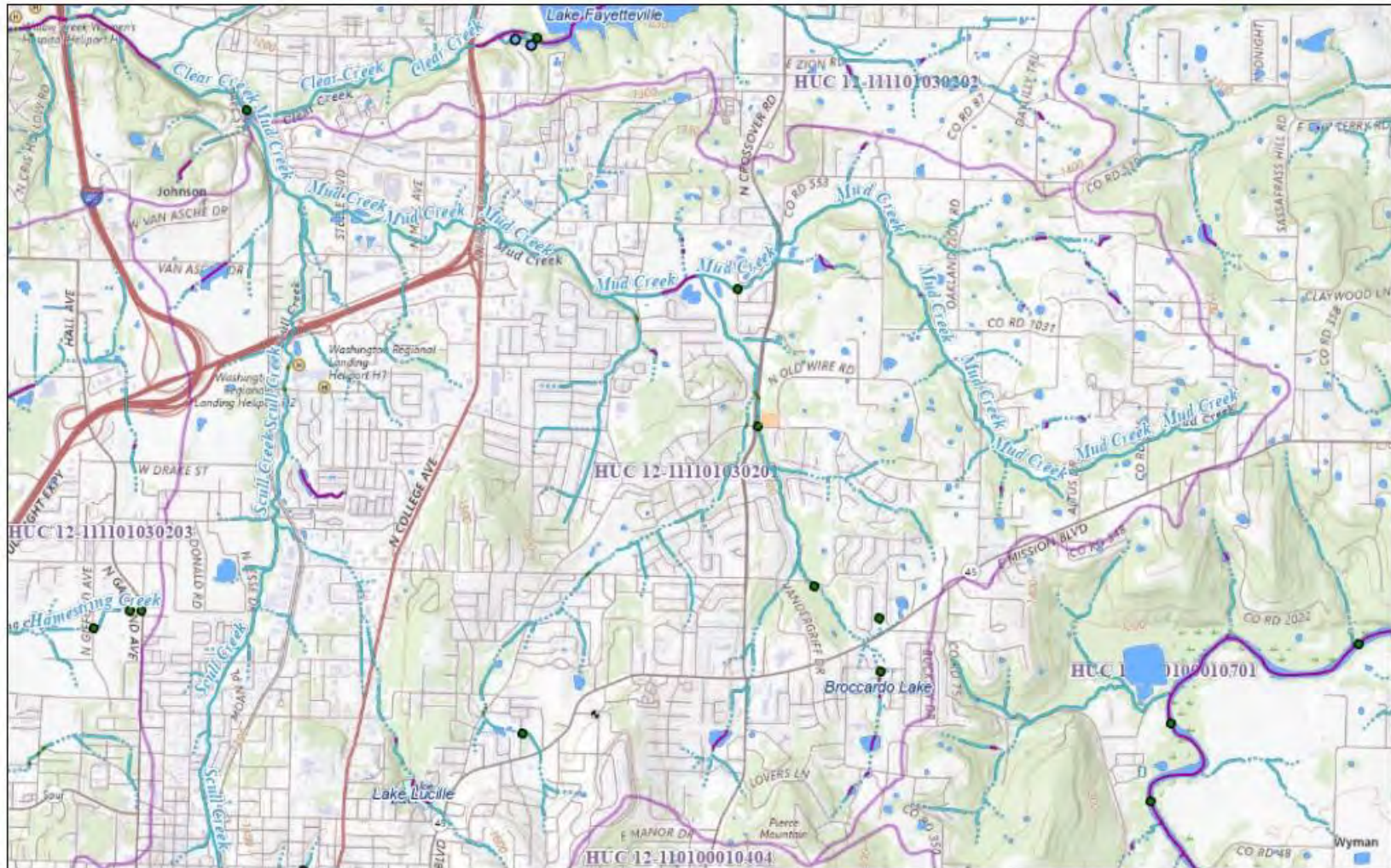
This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards.

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 2/4/2026 at 6:13 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers.

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Figure A-5. FEMA National Flood Hazard Layer FIRMette of the 3105 North Old Wire Road, Fayetteville



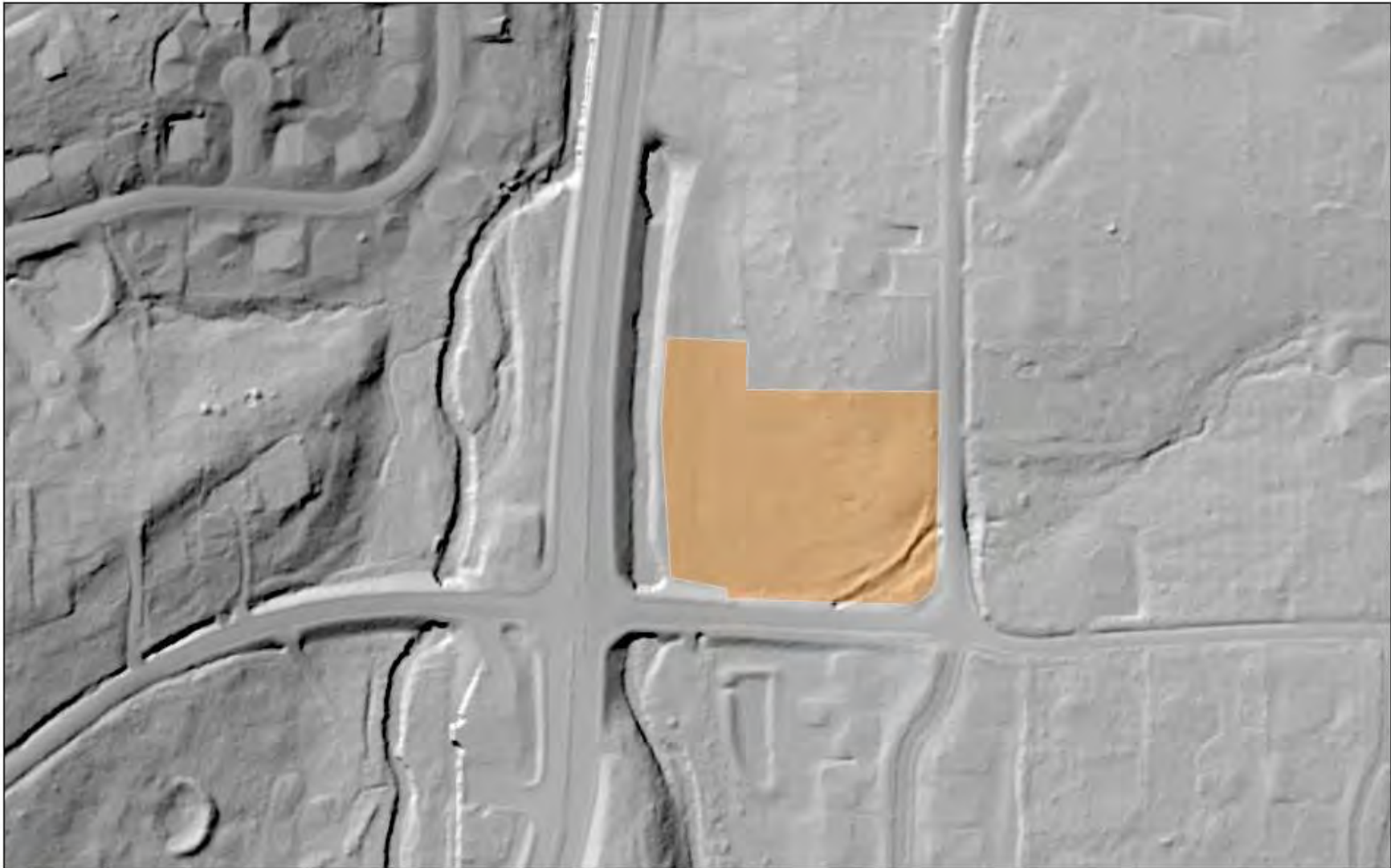
2/12/2026

- | | | | |
|--|--|---|--|
| <ul style="list-style-type: none"> 3105 n old wire rd, 3.71 ac.kml Point ○ Other ● Point Event Line - Large Scale | <ul style="list-style-type: none"> Line Flowline - Large Scale Perennial Intermittent Artificial Path | <ul style="list-style-type: none"> Underground Conduit Area - Large Scale Stream/River Waterbody - Large Scale Lake Pond | <ul style="list-style-type: none"> Reservoir 2-digit HU (Region) 12-digit HU (Subwatershed) |
|--|--|---|--|



USGS The National Map: National Boundaries Dataset, 3DEP Elevation Program, Geographic Names Information System, National Hydrography

Figure A-6.1. USGS National Map Advance Viewer (NMAV) map indicating National Hydrography Commission (NHC) boundaries of the 3105 North Old Wire Road, Fayetteville, Washington County, Arkansas (Lake Fayetteville-Clear Creek watershed) and HUC8-11110103 (Upper Illinois River watershed). **ACTION NO. SWL 2026-00089**
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2/12/2026



Scale Not Available

USGS The National Map: National Boundaries Dataset, 3DEP Elevation Program, Geographic Names Information System, National Hydrography

Figure A-6.2. USGS National Map Advanced View 3DEP Elevation - Hillshade Stretched (LiDAR) Fayetteville, Washington County, Arkansas.

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