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): 7/16/2021
ORM Number: SWL 2021-00160
Associated JDs: PJD SWL 2007-00200 dated 22 May 2007
Review Area Location[1]: State/Territory: Arkansas City: Little Rock County/Parish/Borough: Pulaski
Center Coordinates of Review Area: Latitude 34.760918 Longitude -92.463050

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 or describe rationale.
- ☐ 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
Intermittent Stream B	628	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Intermittent Stream B is an (a)(2) water it contains continuously-flowing surface water during certain times of the year (observed flowing in late-spring 2021) and more than in direct response to precipitation (see normal wetness conditions in APT data below and in project file). The delineation documents the stream as having good flow, well-defined riffle-run-pool stream sequencing and a well-defined bed and bank. Photographs submitted by the applicant's agent

[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.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
				confirm the feature is intermittent. Additionally, Intermittent Stream B indirectly contributes surface water flow to an (a)(1) water. Specifically, Intermittent Stream B flows into Rock Creek (an (a)(2) water) which flows into Fourche Creek (an (a)(2) water) which then flows into the Arkansas River (an (a)(1) water).

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.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Ephemeral Stream A	576	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral Stream A is an ephemeral feature that exhibits surface water flowing only in direct response to precipitation. At the time of the 5/15/21 site visit (wet season, normal conditions; see B. Typical Year Assessments below), the ephemeral stream channel exhibited a weakly-defined bed and bank and only minor flow.
Wetland A	0.11	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	Wetland A is the remains of a manmade pond connected to an ephemeral stream channel. Wetland A is not adjacent to an (a)(1) – (a)(4) water. As noted above, at the time of the 5/15/21 site visit (wet season, normal conditions; see B. Typical Year Assessments below), the ephemeral stream channel—which connects to the eastern end of Wetland A—exhibited a weakly-defined bed and bank and only minor flow. Wetland A is not inundated by an (a)(1) – (a)(4) water in a typical year. The wetland is not within a designated flood zone, though one for Rock

[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
				Creek is located downslope to the east (from approximately just above 500 ft asl to approximately just below 490 ft asl according to USGS topographic maps). Wetland A appears "bermed" on all sides and topography on the north, south, and east sides slopes downhill from the manmade impoundment. NHD data and USGS topographic maps show no streams flowing into or out of Wetland A. Ephemeral Stream A may have been a manmade drainage channel for the pond at one time. Aerial photographs on Google Earth from 1994 through and 2009 do not show a stream channel extending eastward from the pond, but that may be because vegetation obscures the ground east of the pond. A transmission line corridor cut traversing the pond is evident in aerial photographs from 2010 through 2020 and in some of those aerial photographs there appears to be an ephemeral stream. No flooding in or around the pond is evident in any of the observed aerial photographs.

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: PMI – AJD Request dated 17 May 2021, received by SWL on 24 May 2021.

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: PMI – AJD Request dated 17 May 2021, received by SWL on 24 May 2021; Google Earth accessed 28 May 2021; HistoricAerials.com accessed 28 May 2021.

☐ Corps site visit(s) conducted on: Date(s).

☒ Previous Jurisdictional Determinations (AJDs or PJDs): PJD SWL 2007-00200 dated 22 May 2007

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

☒ USDA NRCS Soil Survey: Web Soil Survey accessed on 28 May 2021.

☒ USFWS NWI maps: NWI data accessed 26 May 2021.

☒ USGS topographic maps: 24K, Pinnacle Mountain, AR; years 1943, 1954, 1961, 1986, 1994, 2011, 2014, 2017, 2020 accessed online via USGS' TopoView website on 28 May 2021.

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	The National Map (NHD, LiDAR) accessed on 28 May 2021.
USDA Sources	N/A.

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Data Source (select)	Name and/or date and other relevant information
NOAA Sources	N/A.
USACE Sources	Antecedent Precipitation Tool (APT), Version 1 accessed on 28 May 2021.
State/Local/Tribal Sources	N/A.
Other Sources	Applicant's agent conducted site visits for wetland and stream delineation purposes dated 17 May 2021.

B. Typical year assessment(s): APT was accessed for the date corresponding to the PMI site visit for wetland and stream delineation (15 May 2021). Findings were wet season normal conditions. APT was also accessed for ten years of historical Google Earth imagery of the project area; findings: June 2020 dry season, wetter than normal; October 2018 wet season, wetter than normal; March 2018 wet season, wetter than normal; September 2016 dry season wetter than normal; September 2015 dry season normal conditions; February 2014 wet season normal conditions; November 2012 wet season normal conditions; February 2011 wet season wetter than normal.

C. Additional comments to support AJD: Ephemeral Stream A is described as having a weakly defined bed and bank with minor flow noted during the site visit (15 May 2021). Per the National Weather Service approximately 0.83 inches of ran fell in the Little Rock area on 12 May 2021. Photos submitted by the applicants agent confirm this feature as described.

Intermittent Stream B is depicted as an unnamed intermittent stream on USGS topographic maps (Pinnacle Mountain, AR) dated 1943, 1954, 1961, 1986, 1994, 2011, 2014, 2017, and 2020. It is described as having a good flow, well-defined riffle-run-pool stream sequencing and a well-defined bed and bank. Photos submitted by the applicant's agent confirm this feature as described. The presence of fish, macroinvertebrates, and crayfish were also noted during the site visit.

Wetland A (pond) is depicted as a pond on USGS topographic maps (Pinnacle Mountain, AR) dated1986, 1994, and 2011. It does not appear as a pond on the 1943, 1954, 1961, 2014, 2017, or 2020. Additionally, no stream is depicted flowing into or out of the area of Wetland A (pond) on any of the USGS topographic maps (Pinnacle Mountain, AR).

A review of of historical aerial photographs of the proposed project boundaries Intermittent Stream B is visible in photos dating back to 1955 (HistoricAerials.com) and 1994 in Google Earth. There does appear to be a stream channel visible in the area of Wetland A (pond) in the 1955, 1960, and 1970 photgraphs (the 1983 photograph on the HistoricAerials.com site is low quality and no pond or stream is visible). Wetland A (pond) is visible in the 1994, 2003, 2006, and 2009 photos on the HistoricAerials.com site and 1994 in Google Earth. No stream channel is visible exiting Wetland A (pond) in the HistoricAerials.com or Google Earth photos 1994 – 2020. LiDAR data from the USGS National Mapper depicts Wetland A (pond) howerer, no defined stream channel is notable entering or leaving the feature.

Based on the PMI site visit for wetland and stream delineation report (13 May 2021) and available historical data, Intermittent Stream B is the only jurisdictional feature within the project boudnries.

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