

**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):** July 18, 2022

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** CESWL-RD, SWL-2022-00137

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

State: Arkansas County/parish/borough: Benton City: Bentonville

Center coordinates of site (lat/long in degree decimal format): Lat. 36.3614°, Long. -94.2040°

Universal Transverse Mercator: NAD 83/UTM Zone 15, 4024707 Northing, 391981 Easting

Name of nearest waterbody: Tributary to Little Osage Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Illinois River (Oklahoma)

Name of watershed or Hydrologic Unit Code (HUC): 11110103 (Illinois)

- 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: July 14, 2022

Field Determination. Date(s): May 31, 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 and are not “*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: Trib-1, 377 linear feet: 2.3 width (ft).

Wetlands: WET-1A, 0.71 acre; WET-1B, 0.10 acre; WET-5, 0.61 acre.

**c. Limits (boundaries) of jurisdiction based on:** 1987 Delineation Manual

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: A wetland delineation conducted by Olsson (agent) initially identified seven emergent or shrub-scrub wetlands that were described as lacking a significant nexus to waters of the United State (WOTUS). A Corps site visit and subsequent additional visit by Olsson resulted in the identification of four emergent wetlands (WET-6 through WET-9), located in the eastern portion of the subject property, that lack a significant nexus to WOTUS.

**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: 757.7 square miles

Drainage area: 1,858 acres

Average annual rainfall: 47 inches

Average annual snowfall: 9 inches

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through 5 tributaries before entering TNW.

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

Project waters are 1 (or less) river miles from RPW.

Project waters are 30 (or more) aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW<sup>5</sup>: Tributary flows to Little Osage Creek Tributary 2, then to Little Osage Creek, to Osage Creek, to Illinois River (TNW).

Tributary stream order, if known: 2<sup>nd</sup> Order.

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

**Tributary is:**  Natural

Artificial (man-made). Explain:

Manipulated (man-altered). Explain: Upon reaching C Street, Trib-1 has been channelized alongside the roadway until its confluence with Little Osage Creek Tributary 2.

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

<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.

Average width: 2.3 feet  
Average depth: 0.5 feet  
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- |   |  |                                   |
|---|--|-----------------------------------|
| <input checked="" type="checkbox"/> Silts | <input type="checkbox"/> Sands   | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles          | <input type="checkbox"/> Gravel  | <input type="checkbox"/> Muck     |
| <input type="checkbox"/> Bedrock          | <input checked="" type="checkbox"/> Vegetation. Type/% cover: Herbaceous/<5% |                                   |
| <input type="checkbox"/> Other. Explain:  |  |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Tributary is urban influenced, supporting either a narrow riparian zone or lacking a riparian zone (along roadside).

Presence of run/riffle/pool complexes. Explain: Channelized reach of stream lacking complex morphology.

Tributary geometry: Relatively Straight

Tributary gradient (approximate average slope): <0.02 %

(c) Flow:

Tributary provides for: Seasonal Flow

Estimate average number of flow events in review area/year: 20 (or greater)

Describe flow regime: Channel supports indicators of intermittent (seasonal flow), supporting aquatic life near its confluence with the downstream tributary. The channel transitions from a somewhat poorly defined bed/bank to a well-defined bed/bank as it flows west/southwest within subject property.

Other information on duration and volume: No quantitative data available on flow or volume, however, aerial photography suggests seasonal flow.

Surface flow is: Discrete and Confined Characteristics: Channel exhibits relatively low banks, directly abutting wetland features prior to being directed south along a city street (C Street) and passing through three culverts (associated with driveways/streets) within the subject property.

Subsurface flow: Unknown 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 checked="" type="checkbox"/> clear, natural line impressed on the bank            | <input 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 type="checkbox"/> shelving  | <input type="checkbox"/> the presence of wrack line                 |
| <input type="checkbox"/> vegetation matted down, bent, or absent                         | <input type="checkbox"/> sediment sorting                           |
| <input checked="" type="checkbox"/> leaf litter disturbed or washed away                 | <input type="checkbox"/> scour                                      |
| <input checked="" 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):   |   |

- 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:**

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

Explain: Water was generally clear, slightly turbid at time of Corps site visit. Drainage area supports extensive amounts of impervious surface and commercial/residential development.

Identify specific pollutants, if known: No specific pollutants identified, however, expected pollutants would include increased nutrients, herbicides, pesticides, and hydrocarbon associated with urban and residential watershed.

<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.

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

- Riparian corridor. Characteristics (type, average width): Portions of the channel support a narrow forested riparian corridor (approximately 10-15 feet in width), the lower reach of the channel (along roadside) lacks a riparian zone.
- Wetland fringe. Characteristics: An emergent wetland community directly abuts the northern bank of the channel within the subject property.
- Habitat for:
  - Federally Listed species. Explain findings: A few mature trees were located along the channel that could (although unlikely) provide summer roosting habitat for federally listed bats. Marginal habitat and of overall poor quality due to sparse tree cover.
  - Fish/spawn areas. Explain findings: The channel supported a low-quality fish community dominated by mosquitofish (*Gambusia affinis*).
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings: The channel and narrow riparian zone provides limited habitat for aquatic and terrestrial species but does support habitat for a variety of herpetofauna (leopard frogs were noted in abundance during the site visit, along with tadpoles of several species of frogs/toads). The channel also supports habitat for aquatic insects and other benthic macroinvertebrates. The narrow riparian zone supports generally poor habitat for small mammals and birds (primarily birds adapted to urban/suburban environments).

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: 1.42 acres (WET-1A, 0.71 acre, WET-1B, 0.10 acre, and WET-5, 0.61 acre).

Wetland type. Explain: Wetlands WET-1A, WET-1B, and WET-5 support primarily emergent wetland communities dominated by sedges (*Carex* spp. and *Cyperus* spp.), rushes (*Juncus* spp.), and additional hydrophytes. Saplings and small trees, consisting primarily of green ash (*Fraxinus pennsylvanica*) were observed, especially in WET-1B, supporting an area of scrub/shrub wetland communities.

Wetland quality. Explain: Overall, wetlands provide a diversity of hydrophytes supporting several aquatic and semi-aquatic species, along with flood storage, nutrient storage/transport, and some functionality in carbon cycle.

Project wetlands cross or serve as state boundaries. Explain: No. Wetlands do not cross state boundaries.

(b) General Flow Relationship with Non-TNW:

Flow is: Ephemeral Flow Explain: Wetlands (WET-1A, WET-1B, and WET-5) are located within a low-lying gradient that flows southwest abutting Trib-1 (RPW).

Surface flow is: Discrete and Confined

Characteristics: Wetland complex (WET-1A and WET-1B) directly abut Trib-1 (RPW). WET-5 is connected to WET-1A via a culvert (associated with a bike path).

Subsurface flow: Unknown Explain findings:

- Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

- Directly abutting
- Not directly abutting
  - Discrete wetland hydrologic connection. Explain: WET-5 is connected to WET-1A by a small pipe/culvert (extending approximately 6 linear feet).
  - Ecological connection. Explain:
  - Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

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

Project waters are 30 (or more) aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 50 - 100-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: Generally clear water, although wetlands supported a minimal amount of surface water during site visit.

Identify specific pollutants, if known: Potential pollutants include increased nutrients, herbicides, pesticides, and hydrocarbons resulting from urban/suburban runoff.

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

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain: Shrub/scrub and emergent wetlands (approximately 20% shrub/scrub and 70% or greater emergent/herbaceous strata. Green ash, rushes, and sedges dominated the wetland communities. Additional species such as swamp milkweed (*Asclepias incarnata*) and *Ludwigia* sp. were also noted.

- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings: Mosquitofish were observed in ponded portions of wetland complex.
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings: The wetland complex supports a moderately diverse herbaceous wetland community that provides habitat for a diversity of herpetofauna, insects, small mammals, and birds. Several frogs/toads were observed during the Corps site visit, along with a diversity of insects (including several species with aquatic early life stages).

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

All wetland(s) being considered in the cumulative analysis: 3  
 Approximately ( ) 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>
WET-1A	Yes	0.71		
WET-1B	Yes	0.10		
WET-5	No	0.61		

Summarize overall biological, chemical and physical functions being performed: Wetlands provide moderate habitat quality for wildlife (supporting a diversity of herbaceous hydrophytes) and moderate functionality for flood storage. Low to moderate functions regarding pollutant retention and carbon cycle.

**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:
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: WET-5 does not directly abut a RPW, although it supports a direct hydrologic connection to WET-1A (WET-1A directly abuts a RPW) via a man-made culvert. WET-5 provides habitat for semi-aquatic species (numerous species were observed within wetlands during Corps site visit) and provides for flood/pollutant storage. In addition, the area provides for low functions/values regarding nutrient transfer and storage (in relation to downstream TNWs).

**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: .
- 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: .

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

Tributary waters: Trib-1: 377 linear feet 2.3 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: linear feet 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 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: WET-1A and WET-1B: 0.81 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: WET-5, 0.61 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).

**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:

<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.

<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.

**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: Four emergent wetlands (WET-6 through WET-9) are located in the eastern portion of the subject property that lack a direct hydrologic connection to WOTUS. Portions of the wetlands are located within FEMA-mapped 100-year and 500-year floodplains; however, a Corps site visit indicated the wetlands would infrequently receive water during storm events and hydrology in the wetlands appeared to be the result of ponding/direct precipitation.
- 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: WET-6 0.02 acre; WET-7, 0.01 acre; WET-8, 0.01 acre; WET-9, 0.01 acre.

**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:
- 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: HUC 8: 11110103 (Illinois) and HUC 12: 111101030302 (Little Osage Creek). NHD data accessed via National Regulatory Viewer (NRV).
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Bentonville South, AR (1:24K)
- USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey of Benton County, Arkansas (1977). Soil data also provided in Olsson's wetland delineation report.
- National wetlands inventory map(s). Cite name: NWI maps accessed via NRV.
- State/Local wetland inventory map(s):
- FEMA/FIRM maps: FEMA Flood Panel 05007C0255K.
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Google Earth (1994-2021).

- or  Other (Name & Date): Site photographs by Olsson in wetland delineation and photos collected during Corps site visit on May 31, 2022.
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): Corps site visit conducted on May 31, 2022.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** The initial wetland delineation by Olsson identified nine wetland areas, including seven wetland areas were identified as isolated. A Corps site visit resulted in discovery of an interconnected wetland complex (WET-1A, WET-1B, and WET-5) in the central and western portion of the subject property, that abuts an intermittent channel (combining wetlands originally identified by Olsson as isolated). In summary, three wetland areas (WET-1A, WET-1B, and WET-5), totaling approximately 1.42 acres, and one intermittent channel (Trib-1), extending approximately 377 linear feet within the subject property, were identified as jurisdictional features that would be regulated under Section 404 of the Clean Water Act. Four wetlands (WET-6 through WET-9 totaling approximately 0.05 acre), located in the eastern portion of the subject property, were determined to lack a significant nexus to WOTUS and would not be regulated under Section 404 of the Clean Water Act.

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David Rupe  
Project Manager

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July 18, 2022  
Date