



**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): 6/3/2021

ORM Number: SWL-2020-00368

Associated JDs: SWL-2009-00280 (2015)

Review Area Location<sup>1</sup>: State/Territory: Arkansas City: Fort Smith County/Parish/Borough: Sebastian

Center Coordinates of Review Area: Latitude 35.33500 Longitude -94.34398

**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)<sup>2</sup>**

§ 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): <sup>3</sup>				
(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 Channel	323	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	An onsite field investigation revealed the channel supported flow, a well-defined bed/bank, riffle/pool morphology, and aquatic life (fish and crayfish). The channel is not mapped on historic topographic quadrangles or by NHD; however, historic aerials show a natural channel within the approximate location. The channel flows south from the project area and enters a braided wetland system before the confluence with Massard Creek, a tributary to Arkansas River (a TNW).

<sup>1</sup> Map(s)/figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> 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.

<sup>3</sup> 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.



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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.	

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.	

**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>				
Exclusion Name	Exclusion Size		Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Ditch-01	921	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	Man-made ditch constructed in uplands that directs flow to Pond C. Ditch exits pond and flows N/NE to intermittent channel. Review of historic aerial photography indicates area where channel is located supported uplands prior to channel construction (both upstream and downstream of pond).
Ephemeral Channel	282	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	A channelized ephemeral channel that directs sheet flow (primarily stormwater runoff) to the south before transitioning to intermittent near the confluence with Ditch-01. Channel is not mapped by historic topographic quadrangle or NHD.
Pond B	0.25	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).	Man-made pond constructed in uplands.
Pond C	1.09	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-	Man-made pond constructed in uplands. Pond is connected to a non-regulated man-made ditch (Ditch-01), a (b)(5) water.

<sup>4</sup> 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.

<sup>5</sup> 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.



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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
		jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	
Wetland A	0.31	acre(s)	(b)(1) Non-adjacent wetland.
Wetland B	0.09	acre(s)	(b)(1) Non-adjacent wetland.

**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: [Title\(s\) and date\(s\)](#)  
This information [Select](#). sufficient for purposes of this AJD.  
Rationale: [N/A or describe rationale for insufficiency \(including partial insufficiency\)](#).
- Data sheets prepared by the Corps: [Three sampling sites \(A-01, A-02, A-03\) completed on May 24, 2021.](#)
- Photographs: [Aerial and Other: Google Earth \(1994-2019\); site photos collected during Corps site visit on May 24, 2021.](#)
- Corps site visit(s) conducted on: [May 24, 2021.](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [SWL-2009-00280-1 \(2015\)](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Soil Survey of Sebastian County, Arkansas \(1975\); Web Soil Survey, version 3.4](#)
- USFWS NWI maps: [NWI maps accessed on National Regulatory Viewer \(May 25, 2021\).](#)
- USGS topographic maps: [Barling, AR \(1951, 1971, 1978, 1988, 2014\). Historical topographic quadrangles accessed via historicaerials.com](#)

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
<a href="#">USGS/WBD/NHD data/maps</a>	<a href="#">The National Map (NHD)</a>
<a href="#">USDA Sources</a>	<a href="#">N/A.</a>
<a href="#">NOAA Sources</a>	<a href="#">N/A.</a>
<a href="#">USACE Sources</a>	<a href="#">National Regulatory Viewer (soil map, NWI layers, LiDAR); Antecedent Precipitation Tool (APT), Version 1.</a>
<a href="#">State/Local/Tribal Sources</a>	<a href="#">N/A.</a>



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Data Source (select)	Name and/or date and other relevant information
FEMA/FIRM maps	National Flood Hazard Layer (accessed via National Regulatory Viewer on June 2, 2021).

**B. Typical year assessment(s):** APT was accessed for period corresponding to Corps site visit (May 24, 2021). Findings: wet season, wetter than normal. The 60-day period corresponding to March and April was identified as dry and normal, respectively. The 30-day period nearest the field investigation was identified as above normal precipitation.

**C. Additional comments to support AJD:** A prior AJD, completed in 2015, identified Ponds B and C as connected to an ephemeral channel (both ponds were identified as jurisdictional features by the previous AJD (SWL-20099-00280-1)). The channel that connect the ponds, a man-made ditch constructed in uplands, is not regulated under the NWPR, therefore, the ponds would not be regulated as they represent (b)(8) waters.

The previous AJD identified the Ephemeral Channel as a linear wetland feature, however, the channel (based on the recent Corps site visit), now supports a channelized ephemeral channel (feature exhibited a defined bed/bank) and therefore represents a (b)(3) water. Ditch-01 is a man-made ditch constructed in uplands that enters Pond C from the west and exits via a man-made channel/ditch that flows north/northeast before reaching its confluence with the Ephemeral Channel. At the point of the confluence and downstream of that location, the channel follows a natural flow line (that can be seen in historic aerial photography, e.g., Google Earth 1994). At the point of confluence and downstream to where the channel exits the subject property, the channel supports characteristics of an intermittent channel and would be regulated as an (a)(2) water that connects to a TNW (Massard Creek and then Arkansas River). Finally, Wetlands A and B, both emergent wetlands dominated by Caric sedges (*Carex* spp.) and rushes (*Juncus* spp.), represent non-adjacent wetlands ((b)(1) waters) with no connection to potentially regulated waters of the U.S.