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LITTLE ROCK DISTRICT, CORPS OF ENGINEERS
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CESWL-RD 26 June 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-2025-00431**

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.[2] 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.[3] For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),[4] 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 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] 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] 33 CFR 331.2.
[3] Regulatory Guidance Letter 05-02.
[4] 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.

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. Pond01, non-jurisdictional, Section 404

        ii. Pond02, non-jurisdictional, Section 404

        iii. DR01, non-jurisdictional, Section 404

        iv. Vegetated Swales, non-jurisdictional, Section 404

        v. Erosional Swales, non-jurisdictional, Section 404

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)

3. REVIEW AREA. The review area totals approximately 69 acres within the headwaters of Spavinaw Creek (HUC12 110702090302) which is part of the larger Lower Neosho River watershed (11070209). The review area is located near 12982 AR-279, Hiwasse, Benton County, Arkansas, in Section 12 of Township 20 North Range 32 West and Section 7 of Township 20 North Range 31 West. Center coordinates of the review area include: 36.419141, -94.327424. The review area is an active cattle pasture with forested ravines and boundary lines.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Grand (Neosho) River [5]

[5] 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. See Table 1 below for the flow path from the subject aquatic resources to the nearest TNW.

Table 1. Flowpath From the Subject Aquatic Resources to Nearest TNW

Step	Waterbody Segment	Hydrologic Description	Flow Direction & Destination
1	Unnamed Tributary	Surface runoff drains into a local intermittent tributary/swale on the east side of Gravette.	Flows southwest toward Spavinaw Creek.
2	Spavinaw Creek	The tributary feeds into the headwaters of Spavinaw Creek, a perennial stream that drains the Ozark foothills of western Benton County.	Flows westward across the Arkansas-Oklahoma state border.
3	Lake Eucha / Lake Spavinaw	Spavinaw Creek is impounded in Oklahoma, forming Lake Eucha and Lake Spavinaw (municipal water supply reservoirs) .	The water discharges through the Spavinaw Lake dam gates.
4	Grand (Neosho) River (TNW)	The outlet of Spavinaw Lake discharges directly into Lake Hudson, an impounded segment of the Grand (Neosho) River.	This is the designated Section 10 TNW.

6. SECTION 10 JURISDICTIONAL WATERS[6]: 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.[7] 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.

[6] 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.

[7] 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.

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

    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").[8] 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.

        Pond01 is a man-made pond constructed wholly in uplands for the purposes of stock watering, totaling 0.19 acres within the northern portions of the review area. The agent's delineation report stated the pond possessed an outfall that drained into a vegetated swale but possessed no continuous surface connections with relatively permanent waters (RPW). Aerial imagery also shows cattle grazing near the pond in March 2025. Due to its construction in uplands for the purposes

[8] 51 FR 41217, November 13, 1986.

of stock watering, Pond01 is considered a non-jurisdictional “preamble water” in the preamble to the 1986 regulations.

Pond02 is a man-made pond constructed wholly in uplands for the purposes of stock watering, totaling 0.53 acres within the western portions of the review area. The agent’s delineation report stated the pond possessed an outfall that drained into a vegetated swale but possessed no continuous surface connections with relatively permanent waters (RPW). Aerial imagery also shows cattle grazing near the pond in March 2025. Due to its construction in uplands for the purposes of stock watering, Pond02 is considered a non-jurisdictional “preamble water” in the preamble to the 1986 regulations.

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.

   Five vegetated swales, totaling approximately 1,817 linear feet within the review area, were documented in the applicant’s delineation report. These features are dominated by upland vegetation and lack ordinary high-water marks (OHWMs), defined bed and banks, relatively permanent flow (intermittent or perennial), and other characteristics indicative of relatively permanent waters (RPWs). Therefore, they were classified as swales, which are generally non-jurisdictional under the Rapanos guidance.

   Three erosional swales, totaling approximately 490 linear feet within the review area, were also documented in high-gradient areas of the site. These features are likewise dominated by upland vegetation and lack OHWMs, defined bed and banks, relatively permanent flow (intermittent or perennial), and other characteristics indicative of RPW streams. Therefore, they were classified as erosional features, which are generally non-jurisdictional under the Rapanos guidance.

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 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).

The applicant's delineation documented a ~30-foot section of non-RPW intermittent stream reach, i.e., DR01, in a large drainage that stretches from the southern review area boundary towards the northeast corner of the review area. DR01 originates from a spring or seep and sustains flow for about 30 feet before losing surface flow and its OHWM and converting to a vegetated swale. This feature is likely fed by groundwater but lacks adequate recharge to sustain flows throughout the wet season and provide a continuous surface connection to downstream TNWs. Due to the classification of DR01 as a NRPW intermittent stream which lacks continuous surface connection with downstream TNWs, it does not meet one or more categories of WOTUS under the pre-2015 regulatory regime consistent with the Supreme Court's decision in *Sackett.* Therefore, DR01 is considered non-jurisdictional in accordance with Supreme Court's decision in Sackett.

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. Desktop evaluations conducted by USACE Regulatory personnel on June 25, 2026.

b. Imagery viewed using the Corps National Regulatory Viewer (NRV), which references the following resources: Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, iPaC, State of Florida, Maxar, Microsoft, accessed June 25, 2026.

c. USFWS, National Wetlands Inventory (NWI) Mapper, June 25, 2026.

d. USGS 3D Elevation Program (3DEP) Bare Earth DEM, June 25, 2026.

e. Web Soil Survey, https://websoilsurvey.nrcs.usda.gov/app/accessed, June 25, 2026.

f. Google Earth Pro (years of record 1994-2026), June 25, 2026.

g. The agent conducted a delineation report, dated October 2025, in which they included pertinent information such as a formal delineation report, figures, drainage point data sheets, and photos of observed features.

10. OTHER SUPPORTING INFORMATION. N/A

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.

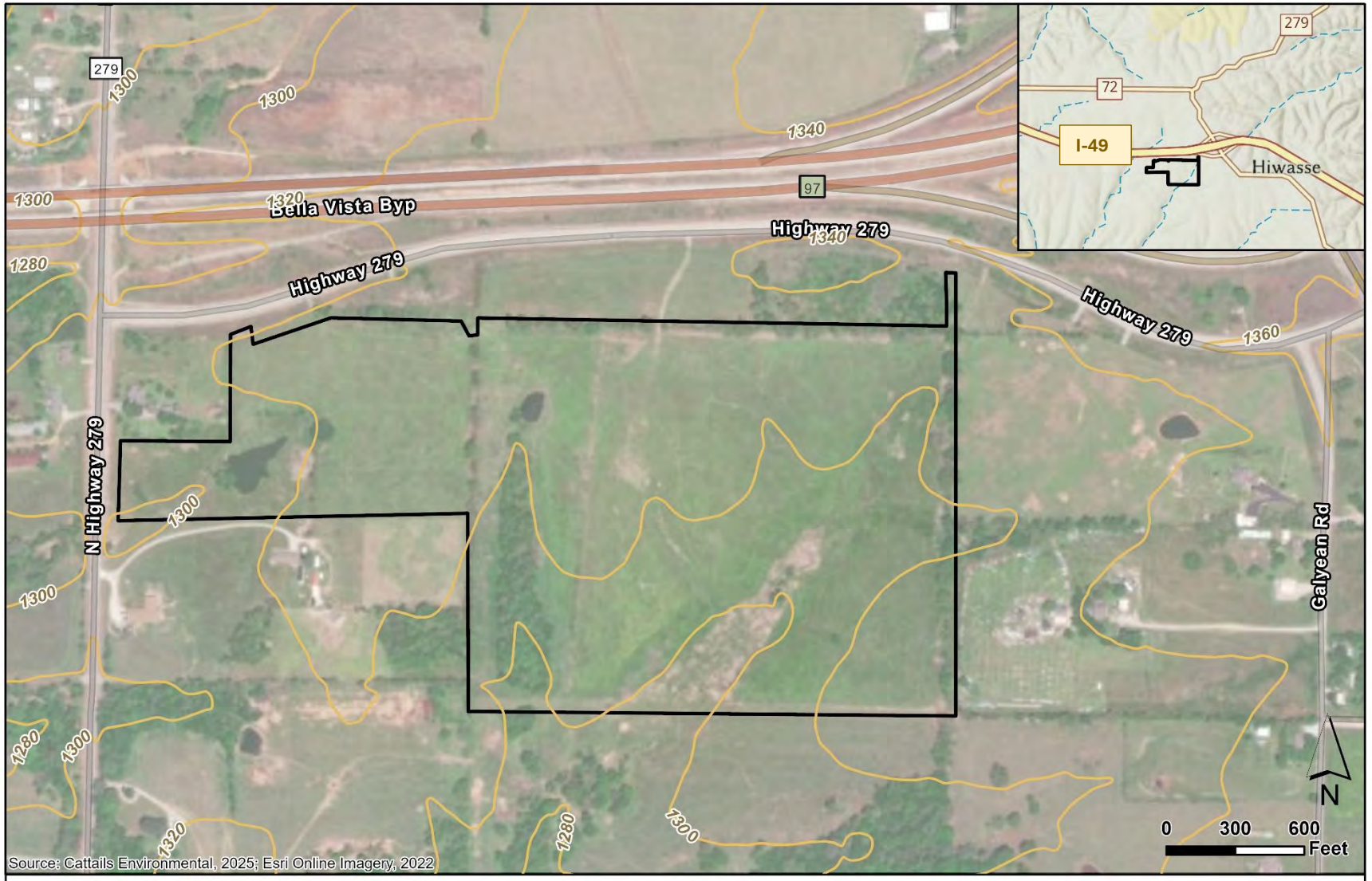


Figure A-1. Site Location map for the Terra Rose Project, Hiwasse, Benton County, Arkansas.

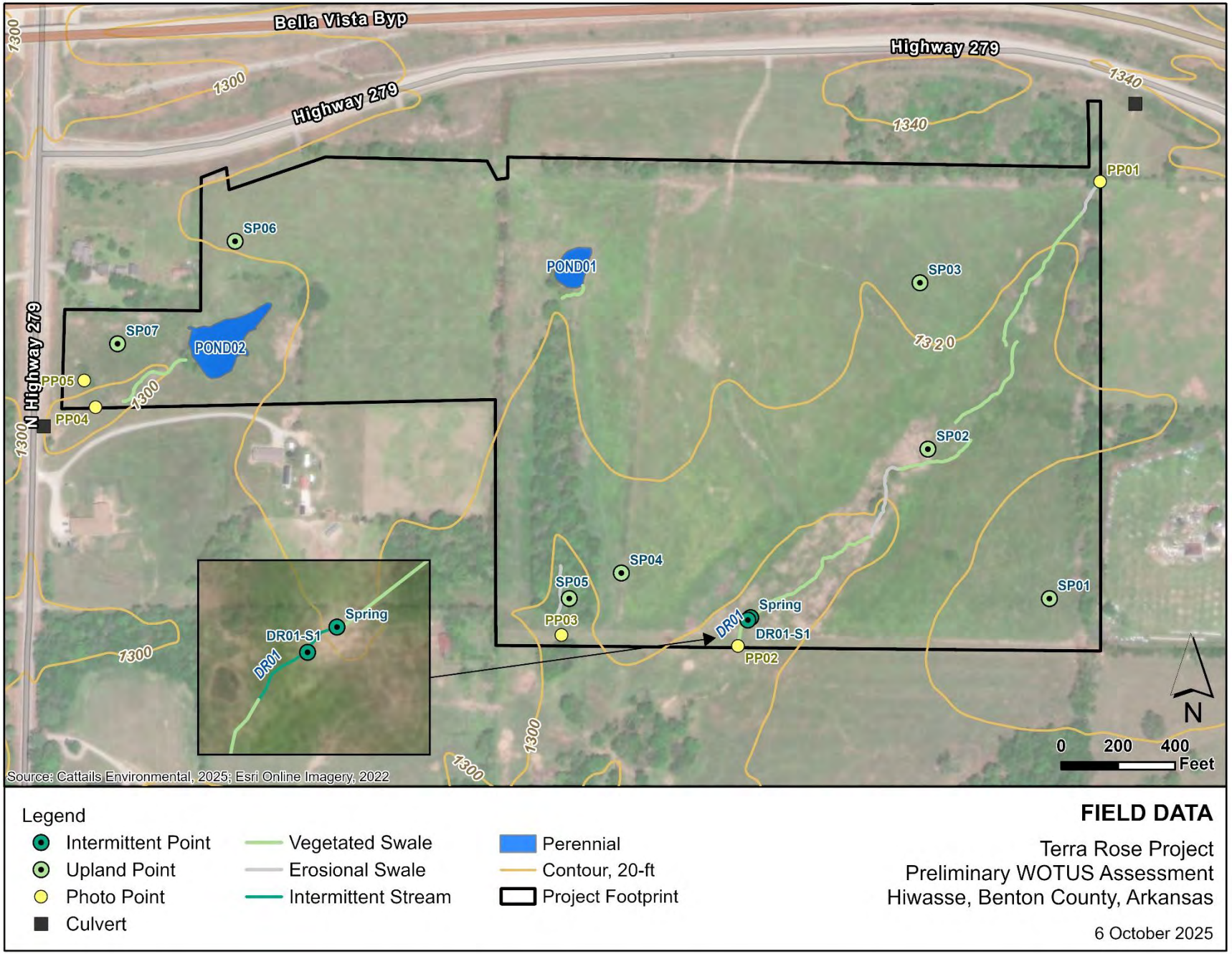
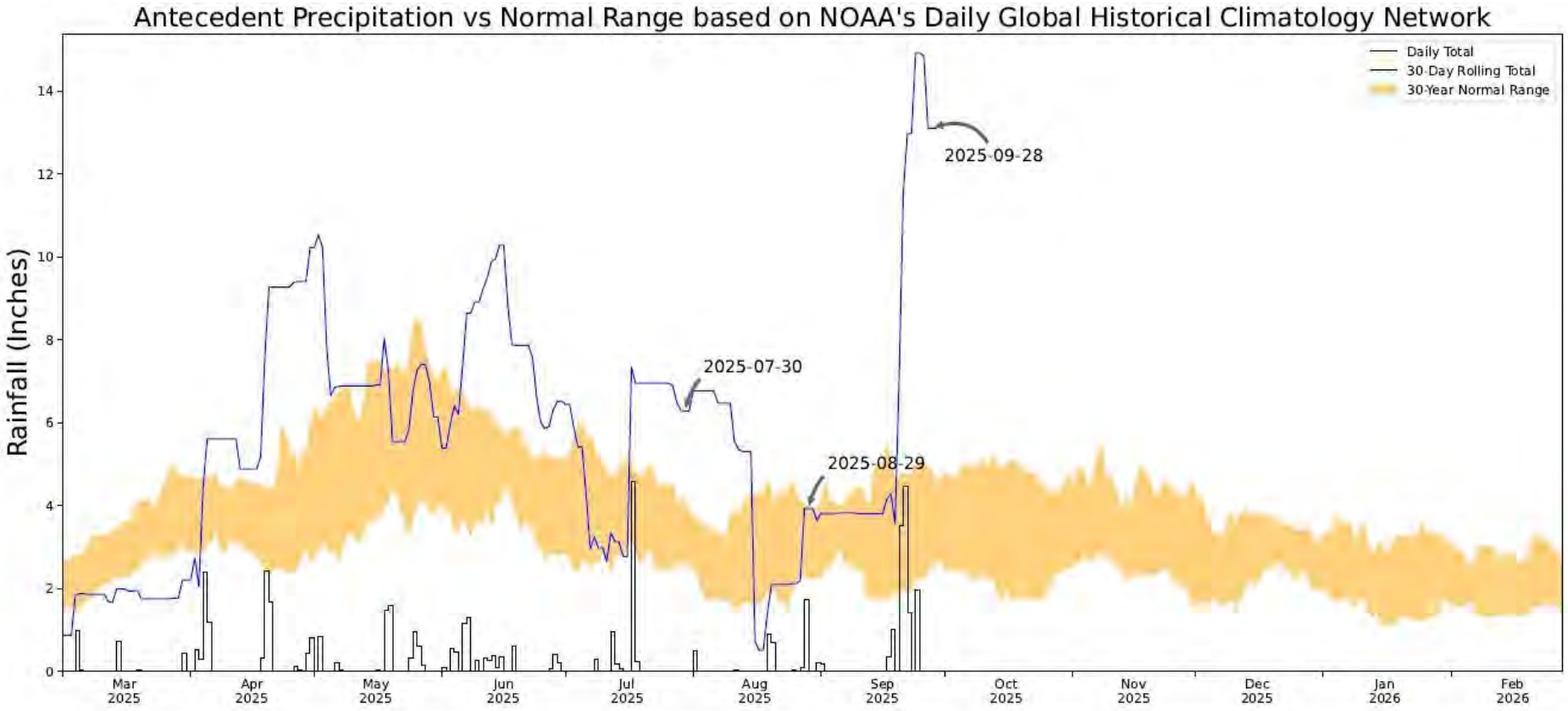


Figure A-2. Field Data map for Terra Rose Project, Hiwasse, Benton County, Arkansas.



Coordinates	36.41914, -94.32742
Observation Date	2025-09-28
Elevation (ft)	1319.354
Drought Index (PDSI)	Moderate wetness (2025-08)
WebWIMP H_2O Balance	Dry Season

30 Days Ending	30th %ile (in)	70th %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2025-09-28	2.613386	4.801181	13.098426	Wet	3	3	9
2025-08-29	2.244882	3.965748	3.929134	Normal	2	2	4
2025-07-30	2.683858	4.196063	6.279528	Wet	3	1	3
Result							Wetter than Normal 16

Figures and tables made by the
Antecedent Precipitation Tool
Version 3.0

US Army Corps of Engineers.
ERDC

Developed by:
U.S. Army Corps of Engineers and
U.S. Army Engineer Research and
Development Center

Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days Normal	Days Antecedent
FAYETTEVILLE SPRINGDALE NW AR	36.2897, -94.3114	1277.887	8.988	41.467	4.417	9260	78
BENTONVILLE 6.6 SSW	36.2788, -94.2437	1234.908	3.845	42.979	1.896	6	10
CENTERTON 0.8 WSW	36.3573, -94.2992	1307.087	4.72	29.2	2.262	2	0
BENTONVILLE 2.8 SSW	36.3344, -94.2328	1261.155	5.356	16.732	2.5	1	0
CENTERTON 1.0 E	36.3609, -94.2663	1267.06	5.523	10.827	2.545	0	2
BENTONVILLE 4 S	36.3219, -94.215	1220.144	5.81	57.743	2.95	2077	0
GRAVETTE	36.4261, -94.4481	1259.843	12.111	18.044	5.668	7	0

Figure A-3. USACE Antecedent Precipitation Tool (APT) results for the Terra Rose Project, Hiwasse, Benton County, Arkansas. The site visit occurred on September 30, 2025.

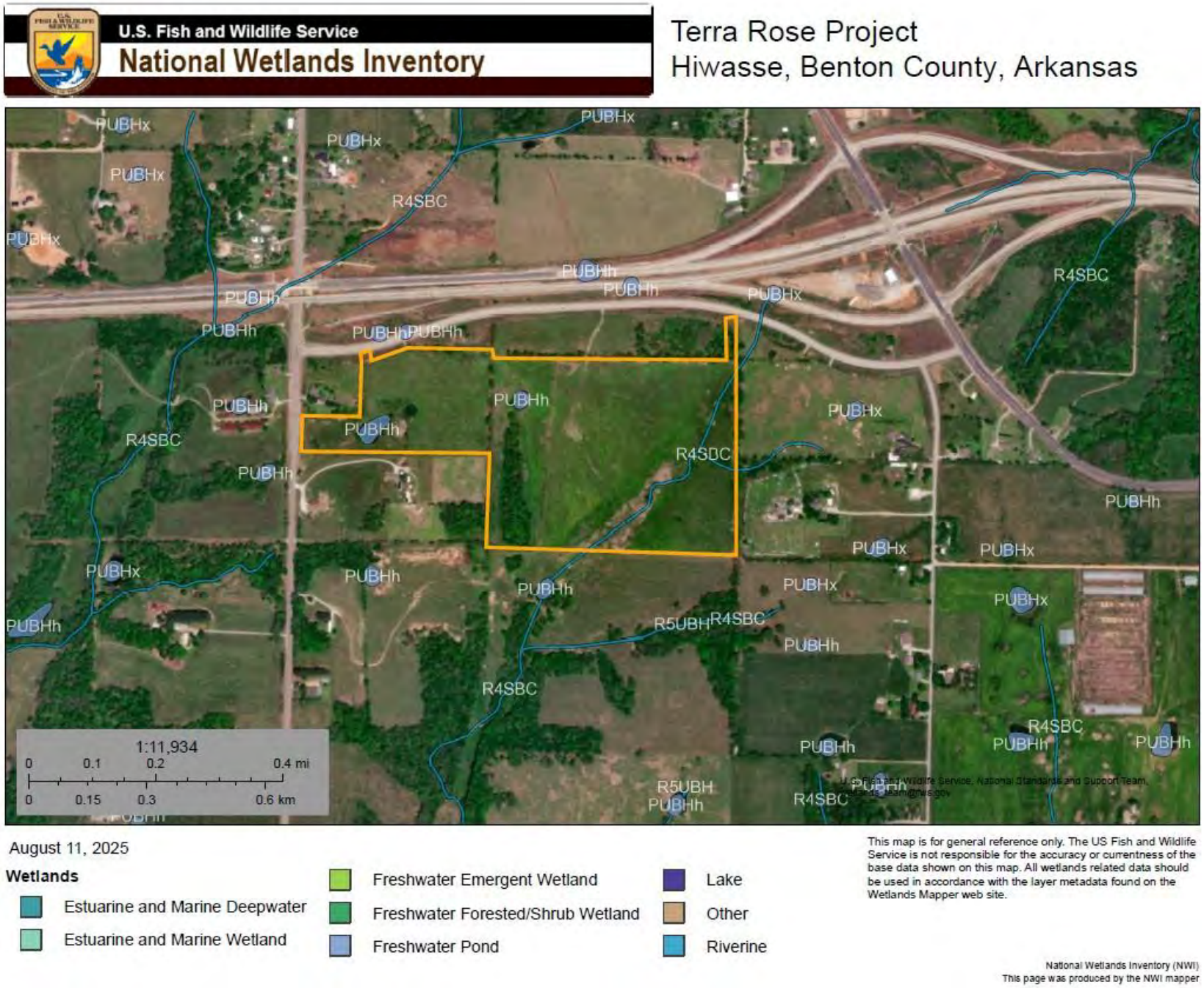


Figure A-4. USFWS National Wetlands Inventory (NWI) map for the Terra Rose Project, Hiwasse, Benton County, Arkansas. Approximate boundaries shown in orange.

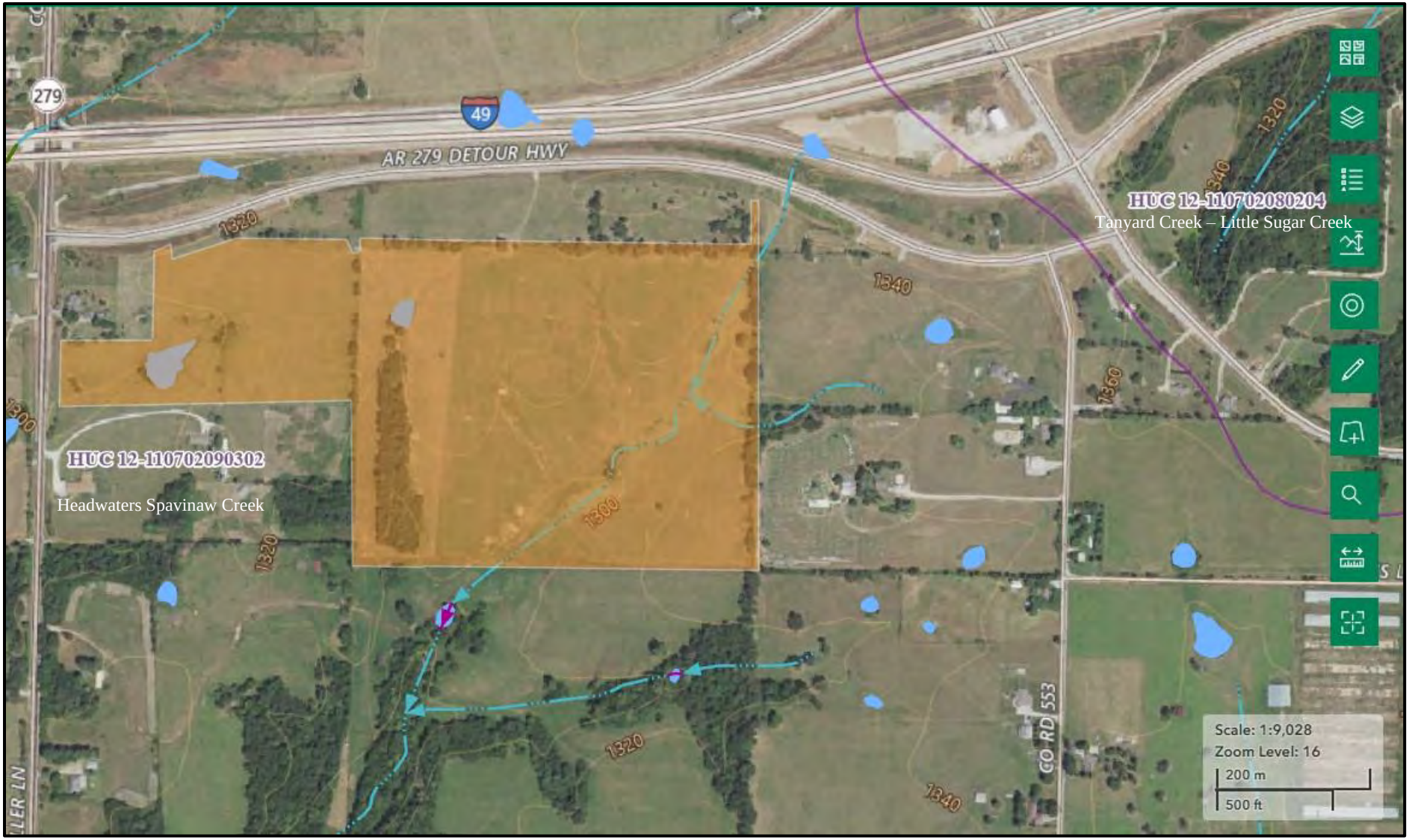


Figure A-5. USGS NMAV National Hydrography Dataset (NHD) and watershed boundary map for the Terra Rose Project, Hiwasse, Benton County, Arkansas. Site property shown in light orange. Purple lines are HUC12 watershed boundaries.

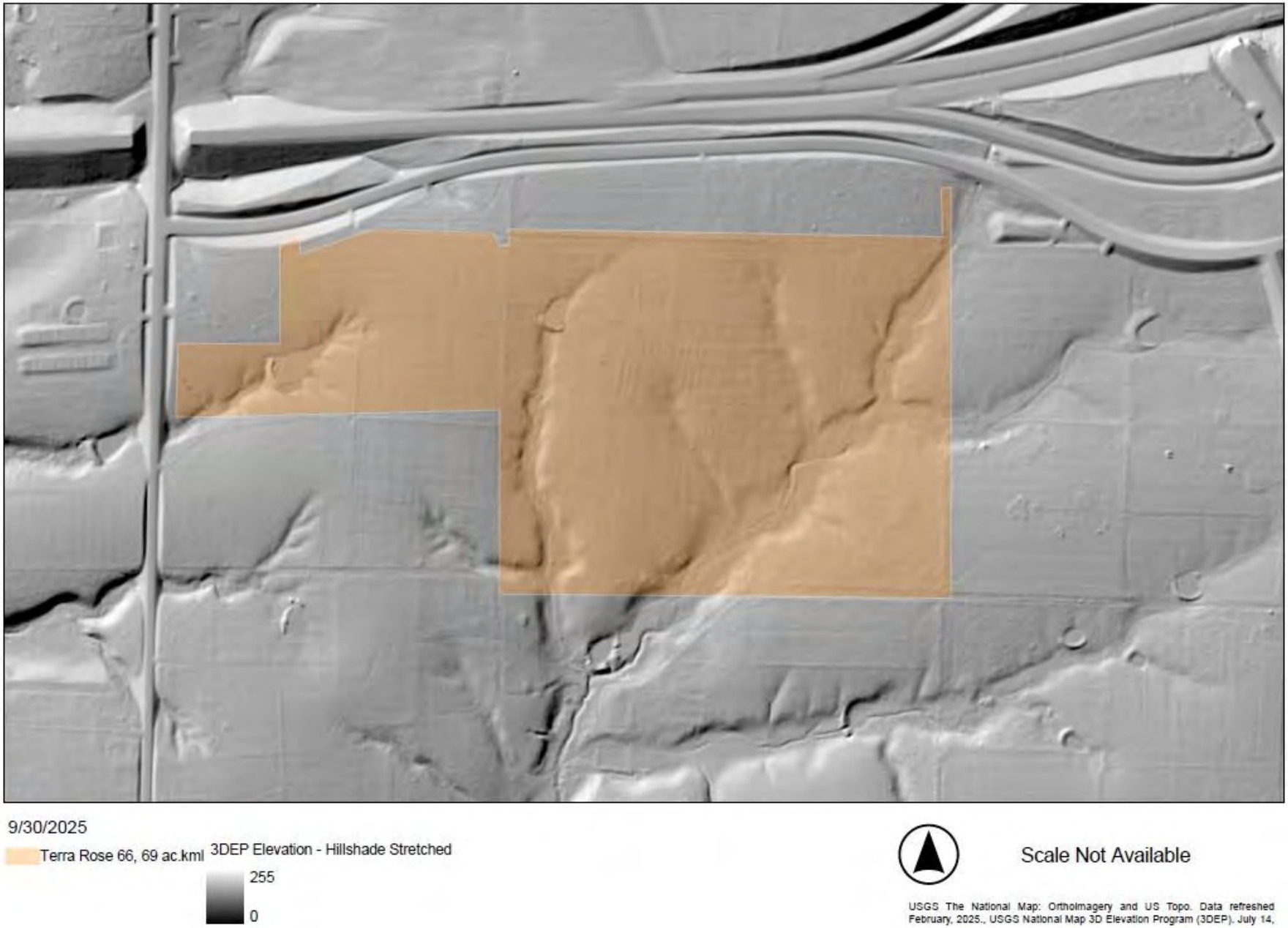


Figure A-6. USGS NMAV LiDAR (3DEP Elevation-Hillshade Stretched) map for the Terra Rose Project, Hiwasse, Benton County, Arkansas. Site property shown in light orange.