



**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): 5/25/2021

ORM Number: SWL-2021-00113

Associated JDs: N/A

Review Area Location¹: State/Territory: Arkansas City: Bentonville County/Parish/Borough: Benton

Center Coordinates of Review Area: Latitude 36.33827 Longitude -94.19981

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 D	990	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Channel is mapped by NHD, NWI, and USGS topographic quadrangle. Channel is well-defined on aerial photography. Consultant field investigation noted flow, well established bed/bank, and aquatic life.

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.



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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
Pond A	0.22	acre(s)	(a)(3) Lake/pond or impoundment of a jurisdictional water contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Man-made pond that impounds Intermittent Stream D. Intermittent Stream D is an (a)(2) water that flows to Osage Creek, Illinois River, and then to Arkansas River (a TNW).

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland B	0.36	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Forested wetland that abuts Intermittent Stream D, an (a)(2) water.
Wetland C	0.26	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Forested/shrub-scrub wetland that abuts Intermittent Stream D, an (a)(2) water. Wetland also abuts Pond A (an (a)(3) water).

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Ephemeral Stream E	170	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral channel that is not mapped by NHD or USGS topographic quadrangle. Consultant wetland delineation noted lack of flow and poorly defined channel; in addition, photos provided of channel supports the ephemeral determination.

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: [Lindsey Management Company, Properties—USACE Delineation and AJD Request Southeast J Street by PMI dated May 20, 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: Google Earth \(1994-2020\); PMI Wetland Delineation \(dated May 20, 2021\).](#)
- Corps site visit(s) conducted on: [Date\(s\).](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\).](#)
- Antecedent Precipitation Tool: [*provide detailed discussion in Section III.B.*](#)

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.



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- USDA NRCS Soil Survey: [Soil Survey of Benton County, Arkansas; Web Soil Survey, Version 3.4](#)
- USFWS NWI maps: [NWI Maps provided in PMI Wetland Delineation](#)
- USGS topographic maps: [Bentonville South, AR \(1972, 1977, 1982, 2014\)](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS/WBD/NHD data/maps	The National Map (NHD, LiDAR)
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	Antecedent Precipitation Tool (APT), Version 1; National Regulatory Viewer (accessed May 21, 2021).
State/Local/Tribal Sources	N/A.
Other information (specify)	PMI Wetland Delineation (May 20, 2021); Historicalaerials.com.

- B. Typical year assessment(s):** [ATP was accessed for period corresponding to PMI's field investigation \(field work associated with the delineation was performed April 27, 2021\). Findings: wet season, normal conditions.](#)
- C. Additional comments to support AJD:** [PMI wetland delineation maps an intermittent channel \(Intermittent Stream A\) that flows from north to south through the site. NHD, topographic maps, aerial photos, and site photos confirm channel as intermittent and therefore regulated by the Corps as an \(a\)\(2\) water. Wetlands B and C directly abut the intermittent channel and would therefore be regulated as \(a\)\(4\) waters. Pond A, impounded on Intermittent Stream D and abutting Wetland C, is directly connected to both \(a\)\(2\) and \(a\)\(4\) waters, and would therefore be regulated as an \(a\)\(3\) water. Ephemeral Stream E, unmapped by NHD and topographic quadrangles, was identified by PMI as ephemeral. Site photos confirm the lack of defined bed/bank and ephemeral flow, confirming the channel as an ephemeral \(b\)\(3\) water.](#)