



**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): 5/5/2021

ORM Number: SWL-2021-00123

Associated JDs: SWL-2018-00324 (January 2021)

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

Center Coordinates of Review Area: Latitude 36.35655 Longitude -94.19426

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.

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.

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
EPH-01 Intermittent Reach	20 linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	This reach of EPH-01 (Osage Creek Tributary 1) extends approximately 20 linear feet south of SE 14th Street. The channel supported flow at time of consultant field visit and Corps field visit. Channel is mapped on topographic quadrangle, NHD data, and is evident on several aerial photographs (1996-2020). Channel appears to collect stormwater and additional sources of hydrology at SE 14th Street crossing.

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
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
EPH-01	297	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	This reach of EPH-01 is located north of SE 14th Street. This reach was identified as ephemeral by previous AJD; in addition, aerial photographs, consultant wetland delineation, and Corps site visit confirm channel reach as ephemeral.
EPH-02	96	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	This channel was identified as ephemeral by previous AJD. In addition, aerial photography, Corps site visit, and consultant wetland delineation support ephemeral status.
UPL-01	65	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).	Roadside ditch constructed in uplands.
UPL-02	91	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).	Roadside ditch constructed in uplands.
WET-A	0.10	acre(s)	(b)(1) Non-adjacent wetland.	Non-adjacent emergent wetland that abuts EPH-01 (non-regulated ephemeral channel). Wetland

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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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			was identified as non-jurisdictional by previous AJD.

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: [Delineation of Potential Section 404 Issues SE 14th Street Tunnel Project, Bentonville, Benton County, Arkansas dated April 13, 2021 by FTN Associates, Ltd.](#)

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 \(1996-2020\). FTN wetland delineation dated April 13, 2021. Corps site visit on May 5, 2021.](#)

Corps site visit(s) conducted on: [May 5, 2021.](#)

Previous Jurisdictional Determinations (AJDs or PJDs): [SWL-2018-00324 January 2021.](#)

Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

USDA NRCS Soil Survey: [Soil Survey of Benton County, Arkansas \(1977\). Web Soil Survey, Version 3.3](#)

USFWS NWI maps: [National Wetlands Inventory Mapper \(accessed on Google Earth and The National Map\)](#)

USGS topographic maps: [Bentonville South, AR \(1970, 1972, 1977, 1982, 2014, and 2017\)](#)

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, and NWI layers)
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	Antecedent Precipitation Tool (APT), Version 1.
State/Local/Tribal Sources	N/A.
FEMA/FIRM maps	Panel 05007C0255K (2012)

B. Typical year assessment(s): [The ATP was utilized for the period corresponding to FTN's wetland delineation field investigation \(February 2021\); findings: wet season, normal conditions.](#)

C. Additional comments to support AJD: [Previous AJD \(SWL-2018-00324\) completed in January 2021 identified features EPH-01, EPH-02, and WET-A as non-jurisdictional. EPH-01 and EPH-02 were identified as ephemeral channels; WET-A was identified as an emergent wetland area that was non-adjacent due to connection only to an ephemeral channel \(EPH-01\). The previous AJD did not include features UPL-01 and UPL-02, which were observed to be ditches constructed in uplands alongside Arkansas State Hwy 102 \(SE 14th Street\). The reach of EPH-01 south of SE 14th Street was not included in the SWL-2018-00324 AJD as it was located outside the project area. This reach of channel \(approximately 20 linear feet\) was observed to be intermittent based on a site visit, APT, NHD data, topographic quadrangles, and aerial](#)



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photography. This reach of channel supports a well-developed bed/bank and pool/run morphology. Aerial photography shows this reach to support water in a majority of images between 1996 and 2020.