



**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): 5/13/2021

ORM Number: SWL-2021-00147

Associated JDs: N/A.

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

Center Coordinates of Review Area: Latitude 36.29892 Longitude -94.24369

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
N/A.	N/A.	N/A.	N/A.	N/A.

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.

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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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
EPH-1	1824	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Channel lacks an OHWM and was dry at time of consultant field visit and Corps site visit (wet season, normal conditions). Aerial imagery supports lack of flow/surface water in typical year.
EPH-2	373	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Channel is not mapped by USGS topographic quadrangle, however, is mapped on NHD. Channel was not flowing at time of consultant field investigation and lacks OHWM. Aerial photography does not show flow or water during typical year.
OW-1	459	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Channel is mapped by both USGS topographic quadrangle and NHD; however, channel was not flowing nor contained water during consultant field investigation (wet season, normal conditions). In addition, aerial photography from multiple years fails to show water in channel during wet or dry season.
OW-2	665	Linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Channel is mapped by both USGS topographic quadrangle and NHD; however, channel was not flowing nor contained water during consultant field investigation (wet season, normal conditions). Aerial photography from multiple years fails to show water in channel during wet or dry season.
POND-1	0.55	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 upland pond abuts to non-regulated (b)(3) waters (EPH-1, EPH-2).
POND-2	0.3	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in	Man-made pond constructed in uplands.

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
			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).	
WET-1	0.01	acre(s)	(b)(1) Non-adjacent wetland.	Wetland is adjacent to EPH-2, a non-regulated ephemeral channel ((b)(3) water).
WET-2	0.28	acre(s)	(b)(1) Non-adjacent wetland.	Fringe wetland located adjacent to POND-1, a non-regulated water (b)(8).
WET-3	0.05	acre(s)	(b)(1) Non-adjacent wetland.	Emergent wetland that abuts EPH-1, a non-regulated (b)(3) water; therefore, wetland is non-adjacent due to lack of connection to regulated waters.
WET-4	0.13	acre(s)	(b)(1) Non-adjacent wetland.	Emergent wetland that abuts EPH-1, a non-regulated (b)(3) water; therefore, wetland is non-adjacent due to lack of connection to regulated waters.

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: [Request for an Approved JD, Evening Star Subdivision, Benton County, AR by Crafton Tull, dated April 30, 2021. Follow up site visit conducted May 13, 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 \(1994-2020\); Photos provided by Crafton Tull in report dated April 30, 2021.](#)

Corps site visit(s) conducted on: [May 12, 2021.](#)

Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\).](#)

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

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

USFWS NWI maps: [National Wetland Inventory Mapper \(provided by consultant and accessed via The National Map.](#)

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 and LiDAR



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Data Source (select)	Name and/or date and other relevant information
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	Antecedent Precipitation Tool, Version 1.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

- B. Typical year assessment(s):** ATP was accessed for period corresponding to Crafton Tull's site visit (April 6, 2021). Findings: wet season, normal conditions.
- C. Additional comments to support AJD:** Crafton Tull's wetland report identifies two potentially regulated features (OW-1 and OW-2) and eight potentially non-regulated features (EPH-1, EPH-2, POND-1, POND-2, and WET 1-4). OW-1 is described by Crafton Tull as an intermittent channel, and is mapped by NHD and on topographic quadrangles. However, based on Crafton Tull's field visit(s) and multiple years of aerial photography, this reach of channel appears to only flow for a short duration following storm events and is ephemeral within the reach of the subject property. OW-2, is also mapped by topo quadrangles and by NHD. Similar to OW-1, this reach of channel is ephemeral within the subject property. It was dry at time of Crafton Tull's site visit(s), and doesn't support water based on aerial images accessed via Google Earth between 1994-2020. Ephemeral channels EPH-1 and EPH-2 are both vegetated and lacked an OHWM, representing (b)(3) waters. Pond-1 is located adjacent to EPH-1 ((b)(3) water), and is therefore not regulated due to lack of connection to (a)(1) through (a)(4) waters. Pond-2 is a man-made pond constructed in uplands ((b)(8) water). The four wetlands identified (WET-1 through WET-4), abut either Pond-1 or EPH-1, and therefore lack adjacency to (a)(1) through (a)(3) waters.