

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** May 18, 2022

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** CESWL-RD, SW 28th Street Extension, SWL-2022-00130

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Arkansas County/parish/borough: Benton City: Bentonville  
Center coordinates of site (lat/long in degree decimal format): Lat. 36.3431°, Long. -94.2333°  
Universal Transverse Mercator: NAD 83/UTM Zone 15, 4022710 Northing, 389327 Easting  
Name of nearest waterbody: Little Osage Creek  
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Illinois River (OK)  
Name of watershed or Hydrologic Unit Code (HUC): 11110103

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
- Check if other sites (e.g., offsite mitigation sites, disposal sites, etc....) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

- Office (Desk) Determination. Date: May 13, 2022
- Field Determination. Date(s): May 11, 2022

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There are no “*navigable waters of the U.S.*” within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. **[Required]**

- Waters subject to the ebb and flow of the tide.
- Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain:

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There are and are not “*waters of the U.S.*” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. **[Required]**

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively Permanent Waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: (Ephemeral 1) 75 linear feet: 2 width (ft) and/or acres.  
Wetlands: 1.35 acres.

**c. Limits (boundaries) of jurisdiction based on:**

Elevation of established OHWM (if known):

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: A man-made pond (Pond 1) and associated fringe wetland (Wetland 2) are located in the westernmost tract of the subject property (identified as Area 1 in Crafton Tull’s wetland delineation of the subject property). Crafton Tull’s wetland delineation and Corps site visit indicated the pond (including fringe wetland) was constructed in uplands and is geographically isolated from waters of the U.S.

**SECTION III: CWA ANALYSIS**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least “seasonally” (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

**1. TNW**

Identify TNW:

Summarize rationale supporting determination:

**2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”:

**B. Characteristics of Tributary (That Is Not a TNW) and Its Adjacent Wetlands (If Any):**

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e., tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

**1. Characteristics of non-TNWs that flow directly or indirectly into TNW**

**(i) General Area Conditions:**

Watershed size: 757.7 square miles

Drainage area: 316 acres

Average annual rainfall: 47 inches

Average annual snowfall: 9 inches

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

- Tributary flows directly into TNW.
- Tributary flows through 6 tributaries before entering TNW.

Project waters are 30 (or more) river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 30 (or more) aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: Project waters do not cross or represent state boundaries.

Identify flow route to TNW<sup>5</sup>: Ephemeral channel flows to an intermittent tributary to Little Osage Creek Tributary 1, to Little Osage Creek Tributary 1, to Little Osage Creek, to Osage Creek, and finally to Illinois River (Illinois River becomes an TNW in Oklahoma).

Tributary stream order, if known: 1<sup>st</sup> Order.

**(b) General Tributary Characteristics (check all that apply):**

- Tributary is:**
- Natural
  - Artificial (man-made). Explain:
  - Manipulated (man-altered). Explain: Channel appears to have been channelized (within the subject property).

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

**Tributary properties with respect to top of bank (estimate):**

Average width: 2 feet  
Average depth: 0.25 feet  
Average side slopes: 2:1

**Primary tributary substrate composition (check all that apply):**

- Silts                       Sands                       Concrete  
 Cobbles                       Gravel                       Muck  
 Bedrock                       Vegetation. Type/% cover: Approximately 50 percent herbaceous (sedges, rushes, water primrose).  
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Relatively stable due to vegetation.  
Presence of run/riffle/pool complexes. Explain: No true complex due to ephemeral nature.  
Tributary geometry: Relatively Straight  
Tributary gradient (approximate average slope): <0.01 %

**(c) Flow:**

Tributary provides for: Ephemeral Flow

Estimate average number of flow events in review area/year: 11-20

Describe flow regime: Ephemeral flow resulting from storm events and discharge from upstream stormwater and associated/abutting wetland complex.

Other information on duration and volume: No specific information available (gage data, etc.). Aerial photography (Google Earth) indicates water in a few periods of record.

Surface flow is: Discrete Characteristics: Generally, the channel lacks defined banks and connects discretely to upstream wetland complex.

Subsurface flow: Unknown Explain findings:

- Dye (or other) test performed:

Tributary has (check all that apply):

- Bed and banks  
 OHWM<sup>6</sup> (check all indicators that apply):  
 clear, natural line impressed on the bank     the presence of litter and debris  
 changes in the character of soil                       destruction of terrestrial vegetation  
 shelving                       the presence of wrack line  
 vegetation matted down, bent, or absent     sediment sorting  
 leaf litter disturbed or washed away     scour  
 sediment deposition                       multiple observed or predicted flow events  
 water staining                       abrupt change in plant community  
 other (list):  
 Discontinuous OHWM.<sup>7</sup> Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- High Tide Line indicated by:                       Mean High Water Mark indicated by:  
 oil or scum line along shore objects     survey to available datum;  
 fine shell or debris deposits (foreshore)     physical markings;  
 physical markings/characteristics     vegetation lines/changes in vegetation types.  
 tidal gauges  
 other (list):

**(iii) Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Only one area abutting wetland complex supported water a site visit; generally clear. Due to proximity to storm water discharges/urbanization, channel likely supports moderate to poor water quality.

Identify specific pollutants, if known: No specific pollutants, likely those associated with urban areas (nutrients, pesticides, etc.).

**(iv) Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width):

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>Ibid.

- Wetland fringe. Characteristics: Narrow wetland fringe (consisting of sedges and other hydrophytes).
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings: Low quality habitat for small mammals, herpetofauna, and insects.

**2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

**(i) Physical Characteristics:**

**(a) General Wetland Characteristics:**

Properties:

Wetland size: 1.35 acres

Wetland type: Palustrine forested and palustrine open water. Explain: The northern portion of the areas supports two man-made ponds (shallow ponds that have accumulated silt/sediment over time) that directly abut a forested wetland area to the south.

Wetland quality: Low-Moderate quality. Explain: The northern portion of the wetland complex (Wetland 1) includes two shallow-water man-made ponds that support open water and wetland fringe communities. The southern portion of the wetland complex supports a forested wetland community dominated by mature green ash (*Fraxinus pennsylvanica*).

Project wetlands cross or serve as state boundaries. Explain:

**(b) General Flow Relationship with Non-TNW:**

Flow is: Ephemeral Flow Explain: An ephemeral channel (Ephemeral 1) exits Wetland 1 (exiting the subject property) and flows to a pond complex that directly abuts/connects to an intermittent tributary to Little Osage Creek.

Surface flow is: Discrete

Characteristics: The wetland complex is hydrologically connected by an ephemeral channel that directly abuts the wetland and flows south to an intermittent tributary.

Subsurface flow: Unknown Explain findings:

Dye (or other) test performed:

**(c) Wetland Adjacency Determination with Non-TNW:**

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: Wetland is hydrologically connected by an ephemeral channel, that transitions between a feature with bed/banks and linear wetland feature.

Ecological connection. Explain:

Separated by berm/barrier. Explain:

**(d) Proximity (Relationship) to TNW**

Project wetlands are 30 (or more) river miles from TNW.

Project waters are 30 (or more) aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 500-year or greater floodplain.

**(ii) Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Wetland 1 is located in a developing, generally urbanized area, receiving stormwater runoff and some amount of natural drainage. Surface water observed during the Corps field visit was generally clear, with evidence of bacterial sheen.

Identify specific pollutants, if known: Possible pollutants may include excess nutrients, pesticides, herbicides, and petroleum from surrounding urbanized area.

**(iii) Biological Characteristics. Wetland supports (check all that apply):**

Riparian buffer. Characteristics (type, average width): A narrow upland buffer surrounds the wetland community, although the buffer is generally herbaceous supporting a mixture of native and invasive species common to early successional communities in the region.

Vegetation type/percent cover. Explain: The southern portion of the wetland complex supported a forested wetland community (approximately 40 percent cover) dominated by green ash. Herbaceous cover, representing approximately 70 percent cover, included species such as *Carex squarrosa*, *Carex* spp., *Juncus marginatus*, and additional herbaceous hydrophytes. The northern portion of the complex, representing approximately 20 percent of the total area, supported open water with true aquatic species and a narrow herbaceous wetland fringe.

Habitat for:

Federally Listed species. Explain findings: The forested wetland community may support summer roosting habitat for federally listed bats, such as northern long-eared bat.

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

- Aquatic/wildlife diversity. Explain findings: The wetland community provides habitat for small/large mammals, birds, herpetofauna, and a variety of insects.

**3. Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis:

Approximately (1.35) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Wetland 1	No	1.35		

Summarize overall biological, chemical and physical functions being performed: Wetland 1 supports an area totaling approximately 1.0 acre of forested wetlands (PFO) and approximately 0.35-acre of open-water and emergent wetlands (POW, PEM). The wetland complex provides for flood storage from stormwater runoff to the north and northeast of the site. Chemical functions, such as carbon transfer and nutrient transfer occur between the wetland complex and related connection to an ephemeral tributary to Little Osage Creek. The wetland complex supports moderate functions and values regarding wildlife and biodiversity, providing a nexus between those species utilizing the wetland complex and downstream waters of the U.S.

**C. SIGNIFICANT NEXUS DETERMINATION**

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

*Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:*

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: Wetland 1 supports a discrete hydrologic connection to Ephemeral 1, an ephemeral tributary to Little Osage Creek. Wetland 1 provides storage of flood waters and collection of potential pollutants that would be transferred to TNWs via Ephemeral 1. Wetland 1 also supports habitat for aquatic and semi-aquatic species, especially frogs, salamanders, crayfish, and insects. It provides potential roosting for bat species and nesting habitat for birds. Nutrient transfer would be expected to occur between the collection of nutrients within Wetland 1 and its conveyance to downstream waters via Ephemeral 1, providing a minor contribution to downstream foodwebs.
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

**D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):**

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
  - TNWs: linear feet width (ft), Or, acres.
  - Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
  - Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .
- Provide estimates for jurisdictional waters in the review area (check all that apply):
- Tributary waters: linear feet width (ft).
  - Other non-wetland waters: acres.
- Identify type(s) of waters:

**3. Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet width (ft).
  - Other non-wetland waters: acres.
- Identify type(s) of waters:

**4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
  - Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
  - Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

**5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

**6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- Wetlands adjacent to such waters and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: 1.35 acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain:
- Other factors. Explain:

**Identify water body and summarize rationale supporting determination:**

Provide estimates for jurisdictional waters in the review area (check all that apply):

<sup>8</sup>See Footnote # 3.

<sup>9</sup>To complete the analysis, refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup>Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.  
Identify type(s) of waters:
- Wetlands: acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: A man-made pond (Pond 1) constructed in uplands and adjacent fringe wetland (Wetland 2) were identified in the westernmost tract (Area 1) of the subject property. Although a channel is mapped by NHD and on NWI maps abutting the pond/wetlands complex, a Corps site visit and consultant wetland delineation failed to prove the existence of the channel feature. There was no hydrologic connection observed to the pond and associated wetland.
- Other: (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: 0.42 acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: 0.12 acres.

**SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Approved Jurisdictional Determination Request SW 28<sup>th</sup> Street Extension, Bentonville, AR dated April 18, 2022, by Crafton Tull.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters’ study:
- U.S. Geological Survey Hydrologic Atlas: HUC 8: 11110103 (Illinois), HUC 12: 111101030302 (); NHD data accessed on National Regulatory Viewer (May 4, 2022).
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Bentonville South, AR (1:24K).
- USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey of Benton County, Arkansas (1977); Soil maps also provided by Crafton Tull in wetland delineation (based on NRCS’ Web Soil Survey).
- National wetlands inventory map(s). Cite name: NWI maps provided by Crafton Tull in wetland delineation.
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Google Earth (1994-2021); National Regulatory Viewer; Crafton Tull wetland delineation
- or  Other (Name & Date): Site photos provided in Crafton Tull wetland delineation and site photos collected during Corps site visit (May 11, 2022).
- Previous determination(s). File no. and date of response letter:

- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): Corps site visit on May 11, 2022.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** The wetland delineation by Crafton Tull identified three tracts (referred to as Area 1 through Area 3 in wetland delineation) as consisting of the subject property (the subject property includes sections of a proposed extension to 28<sup>th</sup> Street in Bentonville, Arkansas). Pond 1 and associated fringe wetland (Wetland 2) were identified in Area 1. Pond 1 and associated Wetland 2 were constructed in uplands and are geographically isolated from waters of the U.S. Wetland 1, totaling approximately 1.35 acres, was identified by Crafton Tull in Area 3. This feature was identified as an isolated wetland feature in Crafton Tull's report. However, an additional feature, Ephemeral 1 (extending approximately 75 linear feet within the subject property), was observed during the Corps site visit that provides a hydrologic connection between Wetland 1 and downstream tributaries to Little Osage Creek (and ultimately to Illinois River, a TNW). Therefore, Wetland 1 and Ephemeral 1 would be regulated as waters of the U.S. under Section 404 of the CWA.

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David Rupe  
Project Manager

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May 18, 2022  
Date