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): September 20, 2021

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWL-RD, Little Rock Port-Treehouse, SWL 2019-00295-1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Arkansas County/parish/borough: Pulaski City: Little Rock
Center coordinates of site (lat/long in degree decimal format): Lat. 34.6926°, Long. -92.1857°
Universal Transverse Mercator: NAD 83/UTM Zone 15, Northing: 574583.93, Easting: 3839256.11
Name of nearest waterbody: Unnamed Tributary to Fourche Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Fourche Creek
Name of watershed or Hydrologic Unit Code (HUC): Lower Arkansas-Maumelle, 11110207

- [x] 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):

- [x] Office (Desk) Determination. Date: September 20, 2021
- [x] Field Determination. Date(s): July 27, 2021

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): [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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
- [x] 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: EPH-01 - 621 linear feet: ~2.5 width (ft) and/or Open Water Feature (OW-1) 0.47 acres.
Wetlands: 12.2 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):[3]

- [x] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: The project area includes a number of isolated depressions that meet the criteria for classification as wetlands. These include both actively farmed (unvegetated/herbaceous/emergent) wetland depressions (i.e., WET-E, WET-F, WET-G, WET-H, WET-I, WET-J, WET-K, WET-N, Wetland 1a, Wetland 2, and W-3; totaling 7.18 acres) as well as forested wetland depression (i.e., WET-C, WET-D, WET-L, WET-M, WET-O, Wetland 3, and Wetland 1b; totaling 11.23 acres). Another water in the form of a pond (OW-2) is considered not jurisdictional due to a lack of surface connection to a jurisdictional water. Further, an upland dug drainage ditch (DD-1) is not

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] 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).
[3] Supporting documentation is presented in Section III.F.

considered a jurisdictional water. Due to a lack of hydrologic connection to a downstream TNW, these features should be considered hydrologically isolated and not "adjacent" (i.e., bordering, neighboring, or contiguous) to regulated waters. The actively farmed wetland depressions support virtually no wetland functions/values. These features may be the result of historic depressions which were converted to farmland or depressions that resulted from agricultural activity. The forested wetland depressions support a variety of functioning flora/faunal habitats. These forested wetland depressions may have been hydrologically connected historically; however, natural, or unnatural hydrologic alterations to the area have resulted in these features being hydrologically isolated.

SECTION III: CWA ANALYSIS

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[4] 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: 955 square miles
Drainage area: 650 acres

Average annual rainfall: 50 inches
Average annual snowfall: 4 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 3 tributaries before entering TNW.

Project waters are 2-5 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 1-2 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: N/A

Identify flow route to TNW[5]: An ephemeral tributary is located onsite. Wetlands are connected to the tributary that flows offsite, which has a downstream connection to a TNW. Flow from the site is generally toward the southwest via an offsite unnamed tributary to that flows through a system of drainage channels that replaced waters of the United States then west to

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] 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.

another unnamed tributary to Fourche Creek were it then turns northernly were it finally empties into Fourche Creek and ultimately the Arkansas River.
Tributary stream order, if known:

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

Tributary is:
- ☐ Natural
- ☐ Artificial (man-made). Explain:
- ☑ Manipulated (man-altered). Explain: Flow from the site goes through tributaries/dug drainage channels that have been historically altered (primarily associated with agricultural activity).

Tributary properties with respect to top of bank (estimate):
Average width: 2.5 feet
Average depth: 0.5 feet
Average side slopes: 4:1 (or greater)

Primary tributary substrate composition (check all that apply):

☐ Silts	☑ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☑ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain:		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Shallow
Presence of run/riffle/pool complexes. Explain: None noted
Tributary geometry: Relatively Straight
Tributary gradient (approximate average slope): 1%

(c) Flow:
Tributary provides for: Ephemeral Flow
Estimate average number of flow events in review area/year: 11-20
Describe flow regime: Low velocity due to friction and source from wetlands.
Other information on duration and volume:
Surface flow is: Discrete Characteristics: Spreads out across wetlands due to low terrain.
Subsurface flow: Unknown Explain findings:
- ☐ Dye (or other) test performed:

Tributary has (check all that apply):
- ☐ Bed and banks
- ☐ OHWM[6] (check all indicators that apply):
  - ☐ clear, natural line impressed on the bank
  - ☐ changes in the character of soil
  - ☐ shelving
  - ☐ vegetation matted down, bent, or absent
  - ☐ leaf litter disturbed or washed away
  - ☐ sediment deposition
  - ☐ water staining
  - ☐ other (list):
  - ☐ the presence of litter and debris
  - ☐ destruction of terrestrial vegetation
  - ☐ the presence of wrack line
  - ☐ sediment sorting
  - ☐ scour
  - ☐ multiple observed or predicted flow events
  - ☐ abrupt change in plant community
- ☑ Discontinuous OHWM.[7] Explain: Ephemeral tributary is generally a linear wetland with slight stream channel characteristics of an OHWM.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
- ☐ High Tide Line indicated by:
  - ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gauges
  - ☐ other (list):
- ☐ Mean High Water Mark indicated by:
  - ☐ survey to available datum;
  - ☐ physical markings;
  - ☐ vegetation lines/changes in vegetation types.

[6]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.
[7]Ibid.

(iii) Chemical Characteristics:

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

Explain: The ephemeral channel likely provides some filtration of agricultural related chemicals flowing downstream. No water in the channel on the date of the site inspection.

Identify specific pollutants, if known:

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

- ☐ Riparian corridor. Characteristics (type, average width):
- ☑ Wetland fringe. Characteristics: Forested
- ☑ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☑ Aquatic/wildlife diversity. Explain findings: Possibly some Macro and Micro-Invertebrate Species.

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: 12.2 acres

Wetland type. Explain: There are five jurisdictional wetlands identified within the project area. There are 3 forested wetlands (WET-B, W-1, and WET-2), and two herbaceous/emergent wetlands (WET-A (formerly farmed) and W-2 (actively farmed).

Wetland quality. Explain: W-2 is very low quality with essentially no wetland functionality, due to active farming. WET-A was formerly farmed and is now a fallow field; it currently is of low quality with minimal wetland functionality. WET-B and W-1 are of moderate quality with functional habitat; primarily due to the narrow, linear nature of these features WET-2 is of moderate quality and minimal functional habitat; primarily due to the very small size of the feature.

Project wetlands cross or serve as state boundaries. Explain: No

(b) General Flow Relationship with Non-TNW:

Flow is: Ephemeral Flow Explain: Flow through the wetland features into the offsite RPW is ephemeral.

Surface flow is: Discrete and Confined

Characteristics: Surface flow from the W-1/W-2 wetland complex into EPH-1 is confined to EPH-1. Flow from WET-2 into EPH-1 is overland sheet flow through wetland that directly abuts EPH-1. Flow from the WET-A/WET-B wetland complex flows south into OW-1 (which then directly discharges into the offsite RPW).

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: The W-1/W-2 wetland complex and WET-2 directly abut EPH-1. EPH-1 flows into WET-B. The WET-A/WET-B conveys water to OW-1, which then flows into the offsite RPW.
  - ☐ Ecological connection. Explain:
  - ☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are 2-5 river miles from TNW.

Project waters are 1-2 aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 50 - 100-year 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: Water was clear/slightly brown (turbid).

Identify specific pollutants, if known: Pollutants are unknown, but are expected to be sediment and pesticides associated with upstream agricultural activity.

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

- ☑ Riparian buffer. Characteristics (type, average width): W-1 and W-2 are within an actively farmed field and have no riparian buffer. WET-2 is within a forested area and has a riparian buffer of greater than 200 feet. The WET-A/WET-B complex has a riparian buffer of greater than 100 feet (much more to the north and west) in most locations.

- ☑ Vegetation type/percent cover. Explain: WET-A is primarily herbaceous, with some woody vegetation. W-1, WET-2, and WET-B are forested. W-2 is emergent and within an area that is actively farmed. Vegetative cover for WET-A, WET-B, W1, and WET-2 is approximately 100%. Vegetative cover for W-2 depends on time of year and is dependent on current farming activity.
- ☑ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☑ Aquatic/wildlife diversity. Explain findings: Possibly some Macro and Micro-Invertebrate Species.

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

All wetland(s) being considered in the cumulative analysis: 5
Approximately (12.12) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
No	9.2	No	2.5
No	0.3	No	0.1
No	0.02		

Summarize overall biological, chemical, and physical functions being performed: Agricultural runoff filtration and urban wildlife habitat.

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: N/A

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: EPH-1 is an ephemeral channel that drains three wetland features (W-1, W-2, and WET-2) south, to WET-B.

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: N/A

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[8] 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: 621 linear feet, 2.5 width (ft).
   - ☑ Other non-wetland waters: 0.47 acres.
     Identify type(s) of waters: OW-1 and OW-2 are pond features (similar to impoundments) that were built near a regulated water, i.e., an ephemeral channel that historically flowed through the WET-B area and the offsite (west of project area) RPW but are not technically impoundments of jurisdictional waters. OW-1 flows directly into the offsite RPW and is therefore considered to have a significant nexus ultimately to a downstream TNW.

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 jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: 11.7 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: 1.05 acres.

7. **Impoundments of jurisdictional waters.**[9]
   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).

[8]See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

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):[10]

- ☐ 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):

- ☐ 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:
- ☑ Other: (explain, if not covered above): The wetlands and other aquatic features listed as isolated are closed depression/swale features with no hydrologic connection to a RPW or TNW. DD-1 is a man-made (associated with historic agricultural activity) drainage ditch. This ditch appears to have historically functioned to drain the field area in the southeast portion of the project area. Flow from DD-1 is south toward Thibault Road, thence to a roadside ditch on the north side of Thibault Road. This roadside ditch has no connection (culvert, low-water crossing, bridge, pipe, etc.) to the south side of Thibault Road. Based on visual observation, it appears that this DD-1 no longer functions, except to detain water. Based on visual observation and evaluation of available LIDAR data, it appears that this roadside ditch increases in elevation both to the east and west. DD-1 is considered to be a non-regulated upland drainage feature. Similarly, wetlands that flow toward DD-1 (WET-H, WET-I, WET-N, and WET-O) and have no other flow pathway are considered to be isolated waters. A number of wetlands (WET-C, WET-D, WET-E, WET-F, WET-G, WET-J, WET-K, WET-L, WET-M, W-3, Wetland 1a, Wetland 1b, Wetland 2, and Wetland 3) are isolated depressional features. Note that WET-K, WET-L, WET-M, WET-N, and WET-O are all within or directly connected to two mapped FEMA Zone A floodplains located on the eastern project boundary. However, these floodplains are mapped as isolated floodplain depressions that have no connection to other mapped floodplains or waterbodies. These floodplains are likely elevation based and a remnant of historic FEMA floodplain mapping. These isolated floodplains do not provide a connection for the associated wetland features. Wetland 3 is located within a mapped FEMA Zone X "AREA WITH REDUCED FLOOD RISK DUE TO LEVEE" floodplain. Due to the levee-protective nature of this FEMA mapped floodplain, flooding in this area is reduced and not typically anticipated. Therefore, this levee-protected floodplain does not support a connection of Wetland 3. OW-2 has no connection and does not meet the Rapanos criteria for an impoundment of a water of the United States as the water appears to be self-contained; therefore, OW-2 is considered an isolated water.

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: 1.8 acres. List type of aquatic resource: OW-2, open water pond & 1,001 linear feet, 3 foot width; DD-1, Upland Drainage Ditch..
- ☑ Wetlands: 18.41 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: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource:
- ☐ Wetlands: acres.

[10] 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.*

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: Package submitted by agent dated September 10, 2021
- ☑ 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: Lower Arkansas-Maumelle, 11110207
  - ☑ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: 24K, Sweet Home
- ☑ USDA Natural Resources Conservation Service Soil Survey. Citation: Pulaski County Soil Survey
- ☑ National wetlands inventory map(s). Cite name: USFWS NWI Maps from their Website https://www.fws.gov/wetlands/Data/Mapper.html
- ☐ State/Local wetland inventory map(s):
- ☑ FEMA/FIRM maps: DFirm 05119C
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☑ Photographs: ☑ Aerial (Name & Date): 1955 - present available aerial imagery
- ☐ or ☑ Other (Name & Date): From 2019 and 2021 delineation report
- ☑ Previous determination(s). File no. and date of response letter: SWL 2019-00295, November 26, 2019
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☐ Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: This Approved Jurisdictional Determination was conducted at the request of the Port of Little Rock. A previous Preliminary Jurisdictional Determination (SWL 2019-00295) was conducted in 2019. The current determination finds that 5 wetlands (WET-A [9.2 acres], WET-B [2.5 acres], W-1 [0.3 acre], W-2 [0.1 acre] and WET-2 [0.02]), one ephemeral channel (EPH-1 [621 linear feet]), and one open water pond feature (OW-1 [0.47 acre]) are the jurisdictional waters of the United States features within the approximately 303-acre project area. A remaining 18.41 acres of wetlands and 1.8 acres of open water pond were found to be considered isolated waters. Further, approximately 1,000 linear feet of an upland dug drainage channel was found to not be considered a jurisdictional water of the United States. It should be noted that the consultant for the Little Rock Port Authority transmitted their initial report on July 9, 2021, which was based on the 2020 Navigable Waters Protection Rule. However, further data was submitted by the consultant on September 13, 2021, as a result of the August 30, 2021, Federal ruling, which placed the Corps back to the pre-2015 waters of the United States definition. The attached summary table provides a list of each aquatic feature, size, and jurisdictional status.

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Gerald Dickson
Environmental Protection Specialist

September 20, 2021
Date

Aquatic Resources Summary Table

Feature Name	Feature Type	Size (acres or linear feet)		Jurisdictional
WET-A	Wetland - primarily herbaceous (formerly farmed)	9.2	acres	Yes
WET-B	Wetland - forested	2.5	acres	Yes
WET-C	Wetland - forested slough	4.9	acres	No
WET-D	Wetland - forested	0.15	acres	No
WET-E	Wetland - herbaceous (actively farmed)	1.4	acres	No
WET-F	Wetland - herbaceous (actively farmed)	0.18	acres	No
WET-G	Wetland - herbaceous (actively farmed)	0.12	acres	No
WET-H	Wetland - herbaceous (formerly farmed)	0.75	acres	No
WET-I	Wetland - unvegetated field depression	0.06	acres	No
WET-J	Wetland - unvegetated field depression	0.26	acres	No
WET-K	Wetland - unvegetated field depression	0.58	acres	No
WET-L	Wetland - forested slough	0.88	acres	No
WET-M	Wetland - forested	1.8	acres	No
WET-N	Wetland - herbaceous (formerly farmed)	3	acres	No
WET-O	Wetland - forested	2.8	acres	No
Wetland 1a	Wetland - emergent	0.19	acres	No
Wetland 1b	Wetland - forested	0.07	acres	No
Wetland 2	Wetland - emergent	0.04	acres	No
Wetland 3	Wetland - forested	0.63	acres	No
W-1	Wetland - forested	0.3	acres	Yes
W-2	Wetland - emergent	0.1	acres	Yes
W-3	Wetland - emergent	0.6	acres	No
WET-2	Wetland - forested	0.02	acres	Yes
OW-1	Open Water - pond	0.47	acres	Yes
OW-2	Open Water - pond	1.8	acres	No
EPH-1	Ephemeral Channel	621	linear feet	Yes
DD-1	Upland Dug Drainage Ditch	1,001	linear feet	No