

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): 10 NOV 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: SWT-2020-00643

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oklahoma County/parish/borough: Mayes City: Pryor Creek
Center coordinates of site (lat/long in degree decimal format): Lat. 36.220746° N, Long. -95.322802° W.
Universal Transverse Mercator:

Name of nearest waterbody:

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:

Name of watershed or Hydrologic Unit Code (HUC):

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: 10 NOV 2022

Field Determination. Date(s): March 16, 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 waters² (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: 22,197 linear feet: 7 width (ft) and/or 2.4062 acres.

Wetlands: 0.22 acres.

c. Limits (boundaries) of jurisdiction based on: Established by OHWM.

Elevation of established OHWM (if known): .

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

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: **The review area contains one pond (OW2, 0.337 acre), one wetland (EW4, 0.055 acre), one erosional feature (NWVS01, 520 Linear feet, 0.02 acre), and one ditch (UMMDD1, 131 Linear feet, 0.149 acre). OW2 is not identified as having been created within or an impoundment of a WOTUS. OW2 is determined to be excavated wholly in the uplands and is an upland stock tank for past agricultural activities. EW4 is identified as exhibiting all three**

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.

characteristics of a wetland (hydrology, hydrophytic vegetation, and hydric soils). However, EW4 is located within a depression with no connectivity to the downstream waters. NWVS01 is located in the upper reaches of ES15 with no direct hydrologic connectivity to ES15. Additionally, ES15 is not mapped on USGS topographic map and is not obvious on aerial photography. NWVS01 is determined to be an erosional headwater feature. UMMDD1 is a straightened linear feature, excavated in the uplands during the construction of an access road. Therefore, UMMDD1 is determined to be an upland ditch. Based on the above information, OW2, EW4, NWVS01, and UMMDD1 are determined not to be jurisdictional pursuant to Section 404 of the Clean Water Act. Additionally, EW4 has been determined to be an isolated wetland with no connectivity to downstream waters. EW4 is not regulated pursuant to Section 404 of the Clean Water Act and the use or degradation will not affect commerce.

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: **Arkansas River**.

Summarize rationale supporting determination: The Arkansas River has been determined to be a Traditionally Navigable Water in a previous study.

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 waterbody⁴ 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: 2,392 **Pick List**

Drainage area: 2,392 **Pick List**

Average annual rainfall: 45.1 inches

Average annual snowfall: 9.8 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through **Pick List** 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 **25-30** 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: The waters within the review area do not cross or serve as state boundaries.

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

Identify flow route to TNW⁵: The waters within the review area flow into the Neosho River, which flows into the Arkansas River, TNW.

Tributary stream order, if known: .

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

Tributary is: Natural
 Artificial (man-made). Explain: .
 Manipulated (man-altered). Explain: Portions of ES13 have been channelized.

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

Average width: 3.89 feet

Average depth: 2 feet

Average side slopes: **2:1**.

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: The banks of the streams within the review area are stable with a riparian area.

Presence of run/riffle/pool complexes. Explain: The banks of the streams within the review area contain riffle pool complexes.

Tributary geometry: **Meandering**

Tributary gradient (approximate average slope): 2-3 %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **2-5**

Describe flow regime: Please see the attached spreadsheet for all streams within the review area.

Other information on duration and volume: .

Surface flow is: **Confined**. Characteristics: All flow is confined within the well defined bed and banks .

Subsurface flow: **Unknown**. Explain findings: .

Dye (or other) test performed: .

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (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.⁷ 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:**

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.

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.

⁷Ibid.

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

Explain: The streams within the review area did not exhibit signs of pollution.

Identify specific pollutants, if known: .

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

- Riparian corridor. Characteristics (type, average width): forested and grassed. 10-50 feet.
- Wetland fringe. Characteristics:
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings: The on-site streams contain riparian areas and were found to contain

habitat for many 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: Please see the attached spreadsheet acres

Wetland type. Explain: Please see the attached spreadsheet

Wetland quality. Explain: Please see the attached spreadsheet

Project wetlands cross or serve as state boundaries. Explain: The waters within the review area do not cross or serve as state boundaries.

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Please see the attached spreadsheet.

Surface flow is: **Confined**

Characteristics: Please see the attached spreadsheet.

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:

Ecological connection. Explain:

Separated by berm/barrier. Explain: FW1 is separated from the banks of ES10 by one berm, but still receives flow during flood events, with water returning to ES10 and continuing downstream.

(d) Proximity (Relationship) to TNW

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

Project waters are **25-30** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**

Estimate approximate location of wetland as within the **2 - 5-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: The waters within the review area did not have any indication of pollution.

Identify specific pollutants, if known:

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

Riparian buffer. Characteristics (type, average width): 10-50.

Vegetation type/percent cover. Explain:

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: The on-site streams contained riparian areas and were found to contain habitat for many species.

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

All wetland(s) being considered in the cumulative analysis: **11**

Approximately (1.013) 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>
Please see the attached spreadsheet.			

Summarize overall biological, chemical and physical functions being performed:

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: During the site visit on March 16, 2021, all on-site streams (as identified in the attached spreadsheet) were observed to contain evidence of OHWM, with a clearly defined channel, containing flowing water, and direct connectivity to downstream unnamed tributaries or directly into RPWs (IS1 and Choteau Creek). All on-site streams carry sediments and attached nutrients, pollutants, and/or other elements to downstream tributaries, and ultimately to the Arkansas River, a TNW, during flooding and rain events. Due to the direct hydrologic connectivity to the downstream waters and the vegetation present along the banks, the on-site streams host a diverse group of organisms by providing habitat and food for life cycles of many organisms. Therefore, a significant nexus to the Arkansas River has been identified for the on-site streams.
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: FW1 flows into ES10 (a Non-RPW) during flood and other rain events, due to separation by a berm. FW1 acts as a small catchment area for sediments carried via storm water toward a downstream tributary. Sediments and attached nutrients, pollutants, and/or other elements become deposited and captured within the wetland, as opposed to flowing to the tributary and ultimately to the Arkansas River, a TNW, during flooding and rain events. Due to the wetland's location within the landscape and in relation to ES10, the hydrologic conditions, and the diverse vegetation present, the wetlands will host a diverse group of organisms by providing habitat and food for life cycles of many organisms. Therefore, FW1 possess a significant nexus to the Arkansas River. Additionally, the other adjacent on-site wetlands that directly about Non-RPWs act as catchment areas for sediments carried via storm water toward a downstream tributaries. Sediments and attached nutrients, pollutants, and/or other elements become deposited and captured within the wetlands, as opposed to flowing to the tributary and ultimately to the Arkansas River, a TNW, during flooding and rain events. The Non-RPWs contain direct hydrologic connection to RPWs and then flow to the TNW. This direct hydrologic results in the transport of sediments and attached nutrients, pollutants, and/or other elements to downstream tributaries, and ultimately to the Arkansas River, a TNW, during flooding and rain events. Due to the direct hydrologic connectivity to the downstream waters and the vegetation present along the banks, the on-site streams host a diverse group of organisms by providing habitat and food for life cycles of many organisms. Therefore, a significant nexus to the Arkansas River has been identified for the on-site streams. Due to the location of the wetlands within the landscape and in

relation to the downstream waters, the hydrologic conditions, and the diverse vegetation present, the wetlands will host a diverse group of organisms by providing habitat and food for life cycles of many organisms. Therefore, the on-site wetlands that directly abut Non-RPWs possess a significant nexus to the Arkansas River.

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: All on-site streams were observed to contain obvious evidence of OHWM with several containing flow at the time of the site visit (March 4, 2021), are mapped on USGS topographic map, and exhibited predictable flow events on aerial photography.

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

- Tributary waters: **Please see the attached spreadsheet** linear feet width (ft).
 Other non-wetland waters: acres.
Identify type(s) of waters: .

3. **Non-RPWs⁸ 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: **Please see the attached spreadsheet** 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: The wetlands, as listed in the attached spreadsheet as directly abutting, directly touch the adjacent streams, being located in line with the flow of the stream.

Provide acreage estimates for jurisdictional wetlands in the review area: **Please see the attached spreadsheet** 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.

⁸See Footnote # 3.

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: **Please see the attached spreadsheet** 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).

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 review area contains one pond (OW2, 0.337 acre), one wetland (EW4, 0.055 acre), one erosional feature (NWVS01, 520 Linear feet, 0.02 acre), and one ditch (UMMDD1, 131 Linear feet, 0.149 acre). OW2 is not identified as having been created within or an impoundment of a WOTUS. OW2 is determined to be excavated wholly in the uplands and is an upland stock tank for past agricultural activities. EW4 is identified as exhibiting all three characteristics of a wetland (hydrology, hydrophytic vegetation, and hydric soils). However, EW4 is located within a depression with no connectivity to the downstream waters. NWVS01 is located in the upper reaches of ES15 with no direct hydrologic connectivity to ES15. Additionally, ES15 is not mapped on USGS topographic map and is not obvious on aerial photography. NWVS01 is determined to be an erosional headwater feature. UMMDD1 is a straightened linear feature, excavated in the uplands during the construction of an access road. Therefore, UMMDD1 is determined to be an upland ditch. Based on the above information, OW2, EW4, NWVS01, and UMMDD1 are determined not to be jurisdictional pursuant to Section 404 of the Clean Water Act. Additionally, EW4 has been determined to be an isolated wetland with no connectivity to downstream waters. EW4 is not regulated pursuant to Section 404 of the Clean Water Act and the use or degradation will not affect commerce.**

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.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

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.

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: Please see the attached spreadsheet. 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: .
- 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:11070209, Lower Neosho, Arkansas, Oklahoma.
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: .
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):Google Earth Aerial Imagery (2020, 2017, 2016, 2013, 2012) .
or Other (Name & Date): .
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: Although the site visit was conducted during the period of time the “Navigable Waters Protection Rule” definition of waters of the United States was in effect (currently vacated), the observations and assessments from that site visit have been re-examined in light of the current rules in place for definition of “waters of the United States” (the pre-2015 Rapanos rules and guidance) in determining the extent of jurisdiction on this project site.