



US ARMY CORPS OF ENGINEERS (USACE)
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
2023 RULE

OMB Control Number: 0710-0024
Expiration Date: 09/30/2023

AGENCY DISCLOSURE NOTICE

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I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): [4/12/2023](#)

ORM Project Name: [GC Homes, LLC/022223/Proposed Pre-Construction Notification of a Residential Subdivision in Benton, Saline County, Arkansas](#)

ORM Identification Number: [MVK-2023-156](#)

- ☐ Other sites (e.g., offsite mitigation sites, disposal sites or other review areas, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form(s).

Associated JD Names and Numbers: [N/A](#)

Review Area Location: State/Territory: Arkansas City: [Benton](#)

County/Parish/Borough: [Saline](#)

Center Coordinates of Review Area: Latitude: [34.548799°N](#), Longitude: [-92.602209°W](#)

Limits of review area: [See Enclosure 1](#)

II. SUMMARY²

Check all that apply. At least one box from the following list **MUST** be selected. Complete the corresponding tables in Section III., summarize data sources in Section IV., and attach completed Appendices A and/or B when specified.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area). Rationale: [Provide Rationale for Dry Land Determination](#)
- ☐ There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete the table in Section III.A.).
- ☐ There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section III.B. and complete and attach appendices as appropriate).
- ☒ Potentially jurisdictional waters and/or features were assessed within the review area and determined to be non-jurisdictional (complete appropriate tables in Section III.C. and complete and attach appendices as appropriate).

¹ The final rule “Revised Definition of ‘Waters of the United States’” (2023 Rule) was published in the *Federal Register* on 18 January 2023 and the effective date is 20 March 2023. See <https://www.federalregister.gov/documents/2023/01/18/2022-28595/revised-definition-of-waters-of-the-united-states>.

² Map(s)/figure(s) or descriptions of the review area and any jurisdictional waters are attached to the AJD provided to the requestor.



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III. FINDINGS IN THE REVIEW AREA

A. Jurisdictional under the Rivers and Harbors Act of 1899³ (Section 10)⁴

Section 10 Waters			
Section 10 water name	Section 10 size in review area		Type of Section 10 water
N/A	N/A	N/A	N/A.
Rationale for determination: N/A			

B. Jurisdictional under the Clean Water Act

Paragraph (a)(1) waters: ⁵ Waters which are: (i) Currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide (Traditional Navigable Waters); (ii) The territorial seas; or (iii) Interstate waters, including interstate wetlands			
(a)(1) water name	(a)(1) size in review area		Type of paragraph (a)(1) water
N/A	N/A	N/A	N/A.
Rationale for determination: N/A			

Paragraph (a)(2) waters: Impoundments of waters otherwise defined as waters of the United States under this definition, other than impoundments of waters identified under paragraph (a)(5)			
(a)(2) water name	(a)(2) size in review area		Type of paragraph (a)(2) water
N/A	N/A	N/A	N/A.
Rationale for determination: N/A			

³ If the navigable water of the United States is not subject to the ebb and flow of the tide and not included on the district's list of Rivers and Harbors Act (RHA) Section 10 navigable waters of the United States list do NOT use this form to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedure outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the Rivers and Harbors Act.

⁴ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this AJD form, jurisdiction under RHA will be referred to as Section 10.

⁵ A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of RHA is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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Paragraph (a)(3) waters: Tributaries of waters identified in paragraph (a)(1) or (2): (i) That are relatively permanent, standing or continuously flowing bodies of water; or (ii) That either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1)

(a)(3) water name	(a)(3) size in review area	Type of paragraph (a)(3) water
N/A	N/A	N/A

Rationale for determination: N/A

Paragraph (a)(4) waters: Wetlands adjacent to the following waters: (i) Waters identified in paragraph (a)(1); or (ii) Relatively permanent, standing or continuously flowing bodies of water identified in paragraph (a)(2) or (a)(3)(i) and with a continuous surface connection to those waters; or (iii) Waters identified in paragraph (a)(2) or (3) when the wetlands either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1)

(a)(4) water name	(a)(4) size in review area	Adjacency criteria
N/A	N/A	N/A
Type of paragraph (a)(4) water	N/A	

Rationale for determination: N/A

Paragraph (a)(5) waters: Intrastate lakes and ponds, streams, or wetlands not identified in paragraphs (a)(1) through (4): (i) That are relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to the waters identified in paragraph (a)(1) or (a)(3)(i); or (ii) That either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1).⁶

(a)(5) water name	(a)(5) size in review area	Type of paragraph (a)(5) water
N/A	N/A	N/A

Rationale for determination: N/A

⁶ In implementing the significant nexus standard, the agencies generally intend to analyze waters under paragraph (a)(5) individually to determine if they significantly affect the chemical, physical, or biological integrity of a paragraph (a)(1) water.



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C. Waters or features that are not jurisdictional under the Clean Water Act

Waters analyzed under paragraph (a)(3)(ii), (a)(4)(iii), or (a)(5)(ii) and determined non-jurisdictional: Tributaries of waters identified in paragraph (a)(1) or (2); and/or wetlands adjacent to waters identified in paragraph (a)(2) or (3); and/or intrastate lakes and ponds, streams, or wetlands not identified as (a)(1) through (4) waters; that either alone or in combination with similarly situated waters in the region, do not significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1).

Water name	Water size in review area	Type of water for which significant nexus was not met:
Forested Wetland2	0.14 Acre(s)	Intrastate lake, pond, stream, or wetland that was evaluated under (a)(5)(ii) and determined not to have a significant nexus to an (a)(1) water - Appendix B is attached

Rationale for determination: Forested Wetland2 encompasses 0.14 acres and does not meet the requirements of an a(4) adjacent wetland. It lacks a continuous connection to jurisdictional waters, is not physically separated from an a(1)-a(3) water by a natural or man-made structure, nor does it meet the definition of 'reasonably close'.

(b)(1) – (b)(8) Excluded Features⁷

Excluded feature name	Excluded feature size in review area	Exclusion ⁸
N/A	N/A	N/A

Rationale for determination: N/A

IV. SUPPORTING INFORMATION

A. Paragraph (a)(1) water that is outside the review area:

- Provide the name of the paragraph (a)(1) water: Saline River
- Type of paragraph (a)(1) water: (a)(1)(i) Water is currently used, was used in the past, or may be susceptible to use in interstate or foreign commerce, including waters subject to the ebb and flow of the tide
- Provide the rationale for jurisdiction of the paragraph (a)(1) water: The Saline River is a perennial stream that becomes jurisdictional under Section 10 of the Rivers and Harbors Act approximately 37 straight-line miles SE of the project site.

B. Significant nexus analyses

- ☐ Appendix A is attached and includes the significant nexus analysis for any waters in the review area that were evaluated under paragraph (a)(3)(ii) and/or paragraph (a)(4)(iii).

⁷ Transient features on the landscape that are difficult to document due to their non-permanent nature, such as rills and gullies, may not be specifically identified on the AJD form unless a requestor specifically asks a USACE district to do so. USACE districts may, in case-by-case instances, elect to document any such feature on a case-by-case basis, such as when the feature is relevant to analysis of the jurisdictional status of another water.

⁸ Note the full text of the exclusions for (b)(1)-(6) and (b)(8) are included in the dropdown list, while the text for the (b)(7) exclusion is truncated due to space limitations. The full text of the (b)(7) exclusion is as follows: (b)(7) Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States



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- ☒ Appendix B is attached and includes the significant nexus analyses for any waters in the review area that were evaluated under paragraph (a)(5)(ii).
- ☐ There are no waters in the review area that require evaluation under the significant nexus standard. Therefore, neither Appendix A nor Appendix B are included with this form

C. Data, models, and other relevant methods Select/enter all resources that were used to support this determination and include data/maps and/or references/citations in the administrative record, as appropriate.

- ☒ Aquatic resources delineation submitted by, or on behalf of, the requestor: [River Street Project Jurisdictional Determination, January 16, 2023](#)
The aquatic resources delineation submitted by or on behalf of the requestor is sufficient for purposes of this AJD [Yes](#)
Rationale: [N/A](#)
- ☐ Aquatic resources delineation prepared by the USACE: [Title\(s\) and Date\(s\)](#)
- ☐ Wetland field data sheets prepared by the USACE: [Title\(s\) and Date\(s\)](#)
- ☐ OHWM data sheets prepared by the USACE: [Title\(s\) and Date\(s\)](#)
- ☐ USACE site visit: Date(s) of site visit(s): [Date\(s\) of Site Visit\(s\)](#), [Title\(s\) and Date\(s\) of Site Visit Summary Document\(s\)](#)
- ☐ Previous Jurisdictional Determinations (AJDs or PJDs) addressing the same (or portions of the same) review area: [ORM Number\(s\) and Date\(s\)](#)
- ☒ Photographs: [Consultant photos, 10/20/2022 & 01/06/2023](#)
- ☒ Aerial Imagery: [Google Earth, Various Years](#)
- ☐ LiDAR: [Source\(s\), Title\(s\) and Date\(s\)](#)
- ☒ USDA NRCS Soil Survey: [MVK-2023-156 Web Soil Survey, 4/3/2023](#)
- ☐ USFWS NWI maps: [Title\(s\) and Date\(s\)](#)
- ☐ USGS topographic maps: [Title\(s\) and Date\(s\)](#)
- ☐ USGS NHD data/maps: [Title\(s\) and Date\(s\)](#)
- ☐ USGS Dynamic Surface Water Extent: [Title\(s\) and Date\(s\)](#)
- ☐ Section 10 navigability resource used: [Title\(s\) and Date\(s\)](#)

Other data sources or models used to aid in this determination:

Data source or model (Select)	Name, date, and other relevant information
USGS Sources	N/A
USEPA Sources	N/A
USDA Sources⁹	N/A
NOAA Sources	N/A
USACE Sources	N/A
State/Local/Tribal Sources	N/A
Other Sources	N/A

D. Additional comments to support AJD: [Forested Wetland2 is isolated in nature and receives water from precipitation events only. It is not an impoundment of a jurisdictional stream and does not possess](#)

⁹ Including Certified Wetland Determination from the NRCS.



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a continuous connection to a downstream jurisdictional water. Effluent only exists in the form of overland sheetflow and evaptranspiration.



APPENDIX B
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ORM Project Name: GC Homes, LLC/022223/Proposed Pre-Construction Notification of a Residential Subdivision in Benton, Saline County, Arkansas

ORM Identification Number: MVK-2023-156

Appendix B 1 of 1: Significant Nexus Analysis for potential paragraph (a)(5)(ii) waters:

Completion of this appendix is **required** for all potential paragraph (a)(5)(ii) waters.

1. Identify and describe the catchment (region): (location of downstream limit of catchment, and approximate size and extent of the catchment) (include map of catchment showing all waters within the review area² that are being analyzed under paragraph (a)(5)(ii), and the location of the review area):
[See attached map.](#)
2. Identify the paragraph (a)(1) water to which the tributary that is most closely associated with the potential (a)(5)(ii) water(s) directly or indirectly flows:
[Saline River](#)
3. Describe the flowpath from the downstream limit of the tributary most closely associated with the potential (a)(5)(ii) water(s) to the paragraph (a)(1) water:
[Flow enters the subject wetland in the form of precipitation and overland sheetflow only. From which it exits in the form of overland sheetflow and moves approximately 300 feet across the landscape through a series forested wetlands and open water features for approximately 0.65 miles. It exists this series of wetlands and other waters through a channelized feature for approximately 0.2 miles where it dumps into the Saline River, approximately 45 miles NW of the point at which the river is designated as a Section 10 TNW.](#)
4. Use the table below to list each intrastate lake or pond, stream, and/or wetland within the review area that is being analyzed under paragraph (a)(5)(ii) and to provide information supporting the rationale that this waterbody is most closely associated with the tributary reach that was selected to define the region.

¹ The final rule "Revised Definition of 'Waters of the United States'" (2023 Rule) was published in the *Federal Register* on 18 January 2023 and the effective date is 20 March 2023. See <https://www.federalregister.gov/documents/2023/01/18/2022-28595/revised-definition-of-waters-of-the-united-states>.

² In implementing the significant nexus standard, the agencies generally intend to analyze waters under paragraph (a)(5) individually to determine if they significantly affect the chemical, physical, or biological integrity of a paragraph (a)(1) water. This approach reflects the agencies' consideration of public comments, as well as implementation considerations for waters assessed under paragraph (a)(5). (See 88 FR 3102). When assessing waters individually under paragraph (a)(5)(ii) of the 2023 Rule, it is not necessary to identify or consider any similarly situated waters in the region that are located outside of the review area. Supplemental information to identify and describe in the region, which are located outside of the review area, may be referenced in Section IV.C or provided in Section IV.D of the AJD form.



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Lake or pond, stream, or wetland name	Resource type	Explain why the subject water does not meet the criteria for paragraphs (a)(1) through (a)(4) or paragraph (a)(5)(i). Support the rationale that this waterbody is most closely associated with the tributary reach that was selected to define the region.
Forest Wetland2	Wetland	The subject feature meets the criteria required of a wetland; therefore, it does not meet the definitions of an a(1)-a(3) water. However, it cannot be defined as adjacent as it has no connection to jurisdictional waters, is not physically separated from jurisdictional waters by only a natural berm or man-made structure or reasonably close to jurisdictional waters.

5. Use the tables below to consider the factors and assess the functions provided by each potential paragraph (a)(5)(ii) water(s) listed above. Each potential paragraph (a)(5)(ii) water should generally be evaluated individually. Complete the factors table by describing the site-specific conditions that relate to the potential paragraph (a)(5)(ii) water.³

FACTORS
Distance from a water identified in paragraph (a)(1) (river miles and straight-line miles):
Approximately 50 river miles and 36 straight line miles
Hydrologic factors, such as the frequency, duration, magnitude, timing, and rate of hydrologic connections, including shallow subsurface flow:
Influent only exists in the form of precipitation and runoff via sheet flow from nearby roadways. This provides for effluent in the form of evapotranspiration and overland sheet flow due to the lack of a surface connection.
Size, density, or number of waters that have been determined to be similarly situated ⁴ :
The subject wetland encompasses 0.14 acres.
Landscape position and geomorphology:
Wetland is situated on a slope of <2% in the uppermost reaches of the catchment.
Climatological variables such as temperature, rainfall, and snowpack:
Benton, AR receives an average annual rainfall of approximately 54.2" and an average snowfall of approximately 3.8".

For each function, consider each factor to evaluate the likely strength of any effect of that function on a paragraph (a)(1) water. Consider whether the factors are likely to increase or decrease the strength of the influence of the function on the paragraph (a)(1) water.

FUNCTIONS
Contribution of flow:

³ Supplemental information to consider the factors and assess the functions of waters in the region, which are located outside of the review area, may be referenced in Section IV.B. or IV.C. or provided in Section IV.D. of the AJD form.

⁴ Note that, because waters assessed under paragraph (a)(5)(ii) are generally assessed individually, generally only the total size of the potential paragraph (a)(5)(ii) water will be described.



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Forested Wetland2 does not contribute flow via a surface connection or shallow subsurface flow to jurisdictional waters.
Trapping, transformation, filtering, and transport of materials (including nutrients, sediment, and other pollutants):
Trapping, transformation, or filtering provided by said wetland is miniscule as it encompasses only 0.14 acres and does not retain water but very briefly as it flows downgradient immediately following rainfall events.
Retention and attenuation of floodwaters and runoff:
Only retains runoff immediately following precipitation events and does not receive backwater flooding.
Modulation of temperature in waters identified in paragraph (a)(1):
No affect
Provision of habitat and food resources for aquatic species located in waters identified in paragraph (a)(1):
No affect

6. For each potential paragraph (a)(5)(ii) water within the review area, enter the name(s) of the water(s) in the table below and select a conclusion statement from the drop-down menu that applies to that water. Consider the factors and assess the functions of the potential paragraph (a)(5)(ii) water and whether the subject water significantly affects the chemical, physical, or biological integrity of the paragraph (a)(1) water to support the conclusion in the summary table.

Conclusion Summary	
Water name: Forested Wetland2	Conclusion: This water does not significantly affect the chemical, physical, or biological integrity of a paragraph (a)(1) water.
Rationale Summary: Subject wetland is a forested wetland that encompasses 0.14 acres in the upper reaches of the catchment. It is not defined by paragraphs a(1)-a(4) of the 2023 Rule, nor does it meet the relatively permanent standard. It indirectly flows through a series of wetlands and waters to eventually dump into the Saline River, which is designated as a Section 10 water approximately 36 straight-line miles SE of the subject property. The forested wetland does not have a material influence, thereby, does not significantly affect the downstream a(1) water. Therefore, it does not possess a significant nexus, and is considered non-jurisdictional.	

Figures

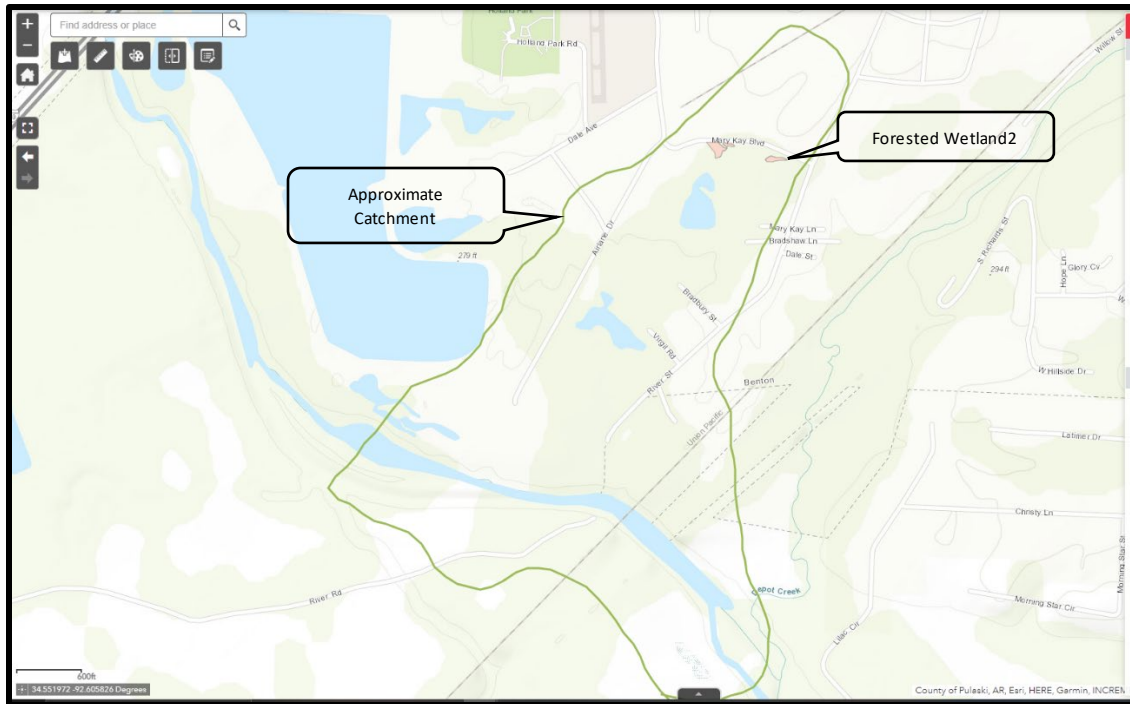


Figure 1. Approximate Catchment. Delineated using the National Regulatory Viewer

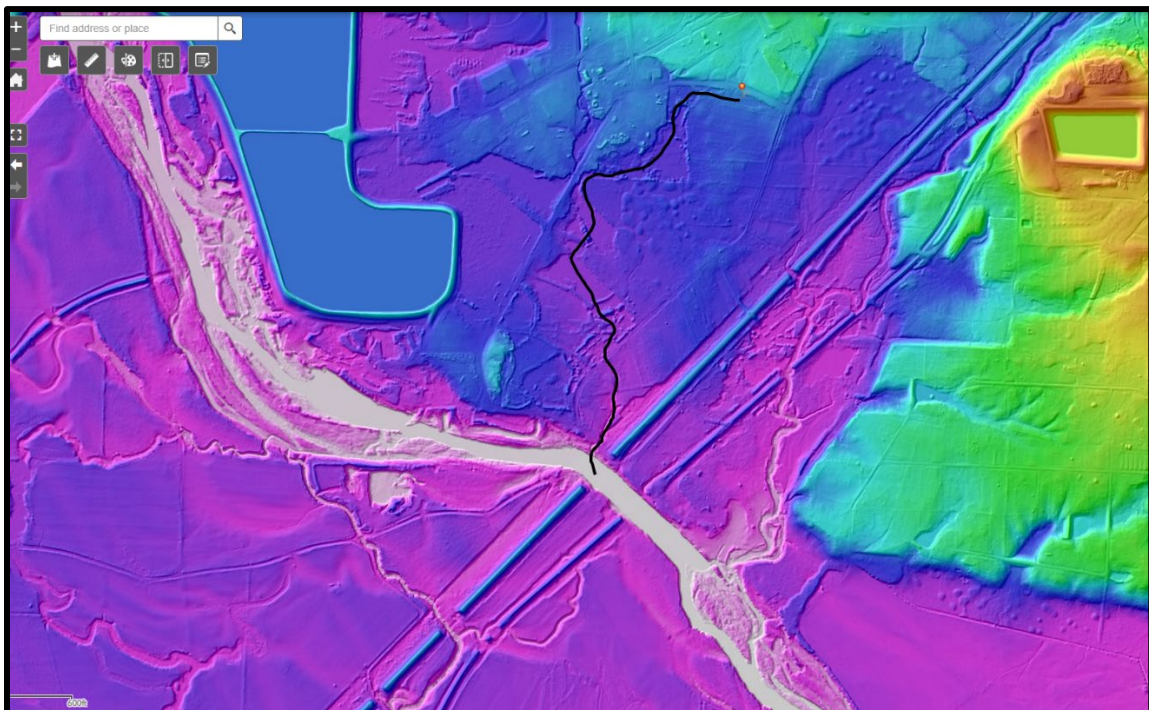


Figure 2. LiDAR Imagery with flow path. Path was traced to the Saline River, eventually in designated a Section 10 TNW downstream.