



**U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE**

**I. ADMINISTRATIVE INFORMATION**

Completion Date of Approved Jurisdictional Determination (AJD): 1/11/2021

ORM Number: LRN-2019-00357

Associated JDs: LRN-2019-00357 PJD, Dated May 31, 2019 and AJD Dated November 10, 2020

Review Area Location<sup>1</sup>: State/Territory: KY City: Eolia County/Parish/Borough: Letcher

Center Coordinates of Review Area: Latitude 37.019444 Longitude -82.791667

**II. FINDINGS**

**A. Summary:** Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- ☒ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

**B. Rivers and Harbors Act of 1899 Section 10 (§ 10)<sup>2</sup>**

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

**C. Clean Water Act Section 404**

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): <sup>3</sup>				
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination	
N/A.	N/A.	N/A.	N/A.	

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination	
Stream 8I	400	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream 8I was determined to have an intermittent flow regime based on an evaluation of the submitted information, a site inspection, topographical maps, and online resources including the NHD layer and Stream Stats application. Flow was observed during the December 10, 2020 site visit and macroinvertebrates were found throughout the reach

<sup>1</sup> Map(s)/figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

<sup>3</sup> A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size		(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>				
Exclusion Name	Exclusion Size		Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Stream 8E	825	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream 8E was determined to have an ephemeral flow regime based on an evaluation of the submitted information, a site inspection, topographical maps, and online resources including the NHD layer and Stream Stats application. No flow was observed in the reach despite 0.5" of rain in the previous 72 hours. No aquatic plants or macroinvertebrates were observed.
Feature A	0	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Feature A was determined to be a gully based on an evaluation of the submitted information, a site inspection, topographical maps, and online resources including the NHD layer and Stream Stats application. No ordinary high water mark or flow was observed in the reach despite 0.5" of rain in the previous 72 hours. No aquatic plants or macroinvertebrates were observed.
Feature B	0	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Feature B was determined to be a gully based on an evaluation of the submitted information, a site inspection, topographical maps, and online resources including the NHD layer and Stream Stats application. No ordinary high water mark or flow was observed in the reach despite 0.5" of rain in the previous 72 hours. No aquatic plants or macroinvertebrates were observed.
Feature C	0	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Feature C was determined to be a gully based on an evaluation of the submitted information, a site inspection, topographical maps, and online resources including the NHD layer and Stream Stats application. No ordinary high water mark or flow was observed in the reach despite 0.5" of rain in the previous 72 hours. No aquatic plants or macroinvertebrates were observed.

<sup>4</sup> Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

<sup>5</sup> Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Feature D	0	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.
			Feature D was determined to be a gully based on an evaluation of the submitted information, a site inspection, topographical maps, and online resources including the NHD layer and Stream Stats application. No ordinary high water mark or flow was observed in the reach despite 0.5" of rain in the previous 72 hours. No aquatic plants or macroinvertebrates were observed.

### III. SUPPORTING INFORMATION

**A. Select/enter all resources** that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

☒ Information submitted by, or on behalf of, the applicant/consultant: "Mark Energy, LLC, LRN-2019-00357, AM 8, Letcher County, KY", Dated October 2, 2020

This information is sufficient for purposes of this AJD.

Rationale: N/A

☐ Data sheets prepared by the Corps: Title(s) and/or date(s).

☐ Photographs: Select. Title(s) and/or date(s).

☒ Corps site visit(s) conducted on: December 09, 2020

☒ Previous Jurisdictional Determinations (AJDs or PJDs): LRN-2019-00357 PJD and AJD

☒ Antecedent Precipitation Tool: provide detailed discussion in Section III.B.

☐ USDA NRCS Soil Survey: Title(s) and/or date(s).

☒ USFWS NWI maps: Regulatory viewer, Dated May 28, 2019

☒ USGS topographic maps: Regulatory viewer, Dated May 28, 2019

#### Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS/WBD/NHD data/maps	Regulatory viewer, Dated May 28, 2019
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

**B. Typical year assessment(s):** The Antecedent Precipitation Tool was used to evaluate the project area for the previous 90 days, with an input date of 12/10/2020. A single point centered on the center of the project site was used to evaluate the rainfall data and was determined to be sufficient based on the small geographic size of the site. The 90 day period prior to 12/10/2020 was determined to be normal. The precipitation in the 30 day period prior to 12/10/2020 was considered to be dry. No evidence of recent or sustained flow was observed in the ephemeral section of Stream 8E or Features A, B, C, or D during the site visits. Approximately 0.5" of rainfall was observed within 72 hours of the site visit.



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**C. Additional comments to support AJD:** [N/A or provide additional discussion as appropriate.](#)