



**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): 3/18/2021

ORM Number: LRN-2018-00110

Associated JDs: LRN-2018-00110 PJD, Dated April 9, 2018

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

Center Coordinates of Review Area: Latitude 36.83111 Longitude -83.24083

**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.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination	
N/A.	N/A.	N/A.	N/A.	N/A.

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.

<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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**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 1	173	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream 1 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 24 hours. No aquatic plants or macroinvertebrates were observed.
Stream 3	305	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream 3 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 24 hours. No aquatic plants or macroinvertebrates were observed.
Stream 6	926	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream 6 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 24 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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Stream 7	959	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream 7 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 24 hours. No aquatic plants or macroinvertebrates were observed.
Stream 8	947	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream 8 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 24 hours. No aquatic plants or macroinvertebrates were observed.
Stream 9	889	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream 9 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 24 hours. No aquatic plants or macroinvertebrates were observed.
Stream 10	758	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream 10 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 24 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: From delineation report dated January 23, 2018 and updated on March 29, 2018

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: Other: February 1, 2018 site visit

☒ Corps site visit(s) conducted on: February 1, 2018

☐ Previous Jurisdictional Determinations (AJDs or PJDs): LRN-2018-00110, April 9, 2018



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- ☐ Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- ☐ USDA NRCS Soil Survey: Title(s) and/or date(s).
- ☒ USFWS NWI maps: USFWS NWI Mapper checked April 3, 2018
- ☐ USGS topographic maps: Title(s) and/or date(s).

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

Data Source (select)	Name and/or date and other relevant information
USGS Stream stats	Reviewed on March 16, 2021
USDA Sources	N/A.
NOAA Sources	N/A.
CorpsMap ORM Map Layers	Reviewed on March 16, 2021
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 02/01/2018. 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 02/01/2018 was determined to be drier than normal. The precipitation in the 30 day period prior to 02/01/2021 was considered to be dry. No evidence of recent or sustained flow was observed in Stream 1, 3 or Streams 6-10 during the site visits. Approximately 0.5" of rainfall was recorded within 24 hours of the site visit.

**C. Additional comments to support AJD:** N/A or provide additional discussion as appropriate.