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Regulatory Program



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INTERIM APPROVED JURISDICTIONAL DETERMINATION FORM

U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in the Interim Approved Jurisdictional Determination Form User Manual.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD): 25 Sep 2019

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): LRN-2013-00521

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Tennessee County/parish/borough: McMinn City: Athens

Center coordinates of site (lat/long in degree decimal format): Lat. 35.511316, Long. -84.613429.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: attached in report/map titled

Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1):

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office (Desk) Determination Only. Date:

Office (Desk) and Field Determination. Office/Desk Dates: 25 Sep 2019 Field Date(s): 29 May 2019.

SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: Reference Jurisdictional Waters Report submitted by S&ME, Inc. dated 11 April 2019.

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date: Reference Jurisdictional Waters Report submitted by S&ME, Inc. dated 11 April 2019.

Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon:

Revised Title/Date:

Data sheets prepared by the Corps. Title/Date:

Corps navigable waters study. Title/Date:

CorpsMap ORM map layers. Title/Date:

USGS Hydrologic Atlas. Title/Date:

USGS, NHD, or WBD data/maps. Title/Date:

USGS 8, 10 and/or 12 digit HUC maps. HUC number:

USGS maps. Scale & quad name and date: Reference Jurisdictional Waters Report submitted by S&ME, Inc. dated 11 April 2019.

USDA NRCS Soil Survey. Citation: Reference Jurisdictional Waters Report submitted by S&ME, Inc. dated 11 April 2019.

USFWS National Wetlands Inventory maps. Citation: Reference Jurisdictional Waters Report submitted by S&ME, Inc. dated 11 April 2019.

State/Local wetland inventory maps. Citation:

FEMA/FIRM maps. Citation:

Photographs: Aerial. Citation: . or Other. Citation: Reference Jurisdictional Waters Report submitted by S&ME, Inc. dated 11 April 2019.

- LiDAR data/maps. Citation:
- Previous JDs. File no. and date of JD letter: File No. LRN-2013-00521, PJD response letter dated 24 April 2013.
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

SECTION III: SUMMARY OF FINDINGS

Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Water Droplet Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required

A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:

- "navigable waters of the U.S." within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

- **Complete Table 1 - Required**

NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "waters of the U.S." within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. **Check all that apply.**

- (a)(1): All waters which are currently used, 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 (TNWs))

- **Complete Table 1 - Required**

- This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

- (a)(2): All interstate waters, including interstate wetlands.

- **Complete Table 2 - Required**

- (a)(3): The territorial seas.

- **Complete Table 3 - Required**

- (a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.

- **Complete Table 4 - Required**

- (a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 5 - Required**

- (a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

- **Complete Table 6 - Required**

- Bordering/Contiguous.
 - Neighboring:

- (c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.

- (c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.

- (c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

- (a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**

- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

- (a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

C. NON-WATERS OF THE U.S. FINDINGS:

Check all that apply.

The review area is comprised entirely of dry land.

Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):

- **Complete Table 10 - Required**

(b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.

(b)(2): Prior converted cropland.

(b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).

(b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.

(b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.

(b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.¹

(b)(4)(iv): Small ornamental waters created in dry land.¹

(b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.

(b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.¹

(b)(4)(vii): Puddles.¹

(b)(5): Groundwater, including groundwater drained through subsurface drainage systems.¹

(b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.¹

(b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).

- **Complete Table 11 - Required.**

D. ADDITIONAL COMMENTS TO SUPPORT AJD:

¹ In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

Jurisdictional Waters of the U.S.

Table 1. (a)(1) Traditional Navigable Waters

(a)(1) Waters Name	(a)(1) Criteria	Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.
N/A	Choose an item.	N/A

Table 2. (a)(2) Interstate Waters

(a)(2) Waters Name	Rationale to Support (a)(2) Designation
N/A	N/A

Table 3. (a)(3) Territorial Seas

(a)(3) Waters Name	Rationale to Support (a)(3) Designation
N/A	N/A

Table 4. (a)(4) Impoundments

(a)(4) Waters Name	Rationale to Support (a)(4) Designation
N/A	N/A
N/A	N/A

Table 5. (a)(5) Tributaries

(a)(5) Waters Name	Flow Regime	(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows	Tributary Breaks	Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A

Table 6. (a)(6) Adjacent Waters

(a)(6) Waters Name	(a)(1)-(a)(5) Water Name to which this Water is Adjacent	Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.
N/A	N/A	N/A

Table 7. (a)(7) Waters

SPOE Name	(a)(7) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Table 8. (a)(8) Waters

SPOE Name	(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Non-Jurisdictional Waters

Table 9. Non-Waters/No Significant Nexus

SPOE Name	Non-(a)(7)/(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus	Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.
North Mouse Creek SPOE	LRN-2013-00521 WA	North Mouse Creek (Chickamauga Lake)	<p>LRN-2013-00521 WA (WA), is a small 0.18 acre linear slope wetland within the North Mouse Creek Single Point of Entry (SPOE). All aquatic resources identified in the AJD Review Areas (see Figure 1) are within the watershed boundary.</p> <p>WA is located near the crest of a hillside slope adjacent to a potential stream feature (LRN-2013-00521 S4) and has an approximate 4.23 acre watershed. Review of the USDA/NRCS soil map indicates this feature appears to be located entirely in Fullerton gravelly silt loam (FgF2), a non-hydric soil with 25-60% slope and eroded. The acreage and distances were determined using the JD Viewer within the ORM2 database. The wetland is approximately 29.5 miles from Chickamauga Lake Reservoir boundaries (North Mouse Creek, a tributary to the Hiwassee River), the closest (a)(1) water. Embayments and tributaries of all impounded reservoirs of navigable waters of the United States are considered navigable waters of the U.S. North Mouse Creek SPOE watershed consists of approximately 47,972.72 acres. WA is not located within the 100 year floodplain of an (a)(1) – (a)(3) water, but is approximately 1,440 linear feet from an (a)(5) tributary.</p> <p>Based on a field reivew conducted 29 May 2019, the wetland does not flow into a feature that meets the definition of a tributary. The reach of the water from the wetland to the (a)(5) tributary is too weak and infrequent to establish a bed and bank or display indicators of an ordinary high water mark. Physical indicators of volume, frequency, and duration of flow were not sufficient to identify a consistently reliable OWHM throughout the entire reach.</p> <p>A significant nexus analysis was conducted to determine whether or not WA, either alone or in combination with other similarly situated wetlands in the North Mouse Creek SPOE significantly affects the chemical, physical, or biological integrity of the Hiwassee River. Per the 2015 Clean Water Rule, similarly situated waters must function alike and lie within a contiguous area of land with homogeneous soils, vegetation, and landform (SVL) or function alike and lie within the distance thresholds for (a)(8) waters. There area no waters belonging to the Palustrine Emergent Cowardin Class within the SVL of WA. Five (5) palustrine emergent wetland features that are similarly situated within the North Mouse Creek SPOE were identified. WA in addition to the similarly situated waters have a combined area of approximately 4.9 acres of wetland and all are located in rural areas.</p>

			Four of the five sites are impacted by agricultural activities in varying degrees and the other site is highly impacted by a rock quarry. Given the small size, surrounding topography, position within the watershed and the limited functioning capacity of WA and the similarly situated waters, they do not significantly contribute to the biological, chemical, and physical integrity of the Tennessee River, and (a)(1) water. Therefore WA does not have a significant nexus to an (a)(1) water
N/A	N/A	N/A	N/A

Table 10. Non-Waters/Excluded Waters and Features

Paragraph (b) Excluded Feature/Water Name	Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.
LRN-2013-00521 S2	LRN-2013-00521 S2 is a swale that displays the accumulation of leaf litter, sections of bare earth, with plants and saplings growing throughout the feature. All evidence of water flow and potential indicators for a tributary terminates at the base of the slope and within the review area. Based on a field review, this feature meets the criteria for exclusion per (b)(4)(vi), erosional features, because it lacks the physical characteristics required to meet the definition of a tributary per 33 C.F.R. 328.3. The 2015 Clean Water Rule defines “tributary” by emphasizing the physical characteristics created by sufficient volume, frequency and duration of water flow through a channel. Physical indicators of volume, frequency, and duration of flow were not sufficient to identify a consistently reliable OWHM throughout the entire reach.
LRN-2013-00521 S3	LRN-2013-00521 S3 is a 2 foot deep channel that graduates to a 5 foot deep gully choked with debris and saplings and no physical indicators water flow or ordinary high water mark. The feature located in a commercial industrial park may be remnants or results from the initial construction. This feature intersects LRN-2013-00521 S4. No other potential waters of the U.S. were observed within the review area downstream of this feature. Based on field review, this feature meets the criteria for exclusion per (b)(4)(vi), erosional features, because the potential stream feature lacks the physical characteristics required to meet the definition of a tributary per 33 C.F.R. 328.3. The 2015 Clean Water Rule defines “tributary” by emphasizing the physical characteristics created by sufficient volume, frequency and duration of water flow through a channel. Physical indicators of volume, frequency, and duration of flow were not sufficient to identify a consistently reliable OWHM throughout the entire reach.
LRN-2013-00521 S4	LRN-2013-00521 S4 is a 2 foot deep channel that graduates to a 6 foot deep gully choked with debris and saplings and no physical indicators water flow or ordinary high water mark. The property is a commercial industrial park and this feature may be remnants of its initial construction. No other potential waters of the U.S. were observed within the review area downstream of this feature. Based on field review, this feature meets the criteria for exclusion per (b)(4)(vi), erosional features, because the potential stream feature lacks the physical characteristics required to meet the definition of a tributary per 33 C.F.R. 328.3. The 2015 Clean Water Rule defines “tributary” by emphasizing the physical characteristics created by sufficient volume, frequency and duration of water flow through a channel. Physical indicators of volume, frequency, and duration of flow were not sufficient to identify a consistently reliable OWHM throughout the entire reach.

Table 11. Non-Waters/Other

Other Non-Waters of U.S. Feature/Water Name	Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.
N/A	N/A