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**SPECIAL CONDITIONS FOR STREAM RESTORATION ACTIVITIES
TO BE PERFORMED BY THE WVCA**

- a. The permit will apply only in counties declared to be disaster areas by the Governor of West Virginia for the specific sudden watershed impairment. Projects qualifying for this permit must be completed within 6 months from the closing date of the associated disaster declaration. The WVCA shall immediately notify the Corps in cases when declarations are extended.
- b. Notice shall be given to resource agencies, including the Corps, U.S. Environmental Protection Agency (USEPA), U.S. Fish and Wildlife Service (USFWS), WVDEP, West Virginia Division of Natural Resources (WVDNR), and West Virginia Division of Culture and History (WVDCH) inviting them to field reviews of all proposed exigency (emergency) projects. At the earliest possible date, WVCA shall provide location and construction details of exigency projects to the resource agencies. For non-exigency projects, the WVCA shall invite resource agencies to all field reviews and provide the USEPA, USFWS, and WVDNR construction and location details for review a minimum of 15 days prior to initiation of work.
- c. The maximum length of a single and complete project per landowner is limited to 500 linear feet, unless otherwise approved by all the resource agencies listed in Section “b” above. Projects approved by the resource agencies shall not, in any case, exceed 1,000 linear feet per landowner.
- d. The WVCA must indicate in the information submitted to the Corps when a series of proposed projects occurring consecutively along the same stream exceeds a total of 5,000 linear feet. Similarly, concerning non-consecutive reaches of stream, the WVCA must also provide notification in the same manner to the Corps if the total amount of proposed work on a given stream exceeds 5,000 linear feet.
- e. The work shall be performed in an environmentally, technically, and economically sound manner. For non-exigency projects, Natural Stream Channel Design principles shall be incorporated into project design to the maximum extent practicable. Only clean, uncontaminated material may be used. Acceptable materials include durable stone and concrete rubble. Any reinforcing rods extending from rubble must be cut flush with the concrete surfaces. Blast furnace slag, asphalt, wood, waste metal, bituminous pavement, solid waste, glass and ceramic wastes, tires, appliances, automobile bodies, and other deleterious materials are prohibited for use under this regional permit.
- f. In-stream work will be limited to that absolutely necessary for completion of restoration activities.
- g. Due to the potential for adversely affecting threatened or endangered species, this permit will not apply to non-emergency (non-exigency) work on streams listed in Appendix A.

- h. For non-exigency projects, the WVCA will invite resource agencies to all field reviews and provide WVDNR and USFWS construction and location details for review a minimum of 30 days prior to initiation of work on streams supporting protected freshwater mussels. The most current list of streams known to support state protected freshwater mussel species is available from the Inter-Agency Coordination Supervisor, WVDNR, P.O. Box 67, Elkins, West Virginia, 26241. The most current list of these streams can be found in Appendix B.
- i. For low bedload streams, stabilization will typically consist of the placement of random large boulders situated along the toe of the stream bank at a rate of one per 5 meters, or other rate determined to be appropriate given site conditions. For high bedload streams, random boulder placement results in aggradation and increases in stream bank shear stress. Therefore, for high bedload streams, the WVCA should contact WVDNR for technical assistance in accessing proper stabilization. Revegetation must include seeding and mulching of all disturbed. Planting of native shrub and/or tree seedlings along the top of the bank (1 seedling per 2 meters) is strongly encouraged. Only native vegetation will be used in re-vegetation efforts.
- j. A copy of this permit must be posted on-site during construction activities.
- k. This regional permit will not authorize:
 - 1. Normal operation and maintenance activities;
 - 2. Work associated with impairments that existed prior to the disaster;
 - 3. Channel modification that increases the pre-disaster flow capacity;
 - 4. Repair, construction or maintenance of “rock piles” that are not constructed in accordance with approved dike criteria;
 - 5. Projects where, following on-site review, the WVCA and resource agencies are in disagreement over construction methods or mitigative measures. These projects must be authorized by Individual Permit;
 - 6. Activities that would affect historic, cultural or archaeological sites listed or eligible for listing in the National Register of Historic Places, unless coordination as required by Section 106 of National Historic Preservation Act and the Advisory Council on Historic Preservation has been conducted. The WVCA will contact the WV Division of Culture and History (WVDCH) to determine if historic, cultural or archaeological sites are or may be within the within the proposed work areas and if they are eligible for or listed on the National Register. The response from the WVDCH shall be provided to the Corps. No work shall commence until Section 106 requirements have been satisfied and the Corps’ regional permit verification letter is provided to the WVCA;

7. Activities at sites that may affect proposed or listed endangered species or their designated critical habitat, unless consultation under Section 7(c) of the Endangered Species Act has been completed. The WVCA will contact the USFWS to determine if listed endangered species may occur within the area of the proposed work. The response from the USFWS must be provided to the Corps. No work shall commence until Section 7 requirements have been satisfied and the Corps' regional permit verification letter is provided to the WVCA;
8. Fills in designated components of the National or State Wild and Scenic Rivers Systems, Federal or State designated wildlife management areas or at sites included in the National Registry of Natural Landmarks, unless approval is granted from the administering agency;
9. Work in Nationwide Rivers Inventory streams, unless coordinated with the National Park Service. Inventory Rivers within the State of West Virginia include: Big Sandy Creek (Preston County), Blackwater River, Cheat River, Dry Fork of Cheat River, Glady Fork of Cheat River, Shavers Fork of Cheat River, South Fork of Cheat River, Cherry River, South Fork of Cherry River, North Fork of Cherry River, Cranberry River, Elk River, Left Fork of Elk River, Gauley River, Greenbrier River, East Fork of Greenbrier River, West Fork of Greenbrier River, Holly River, Left Fork of Holly River, Hughes River, North Fork of Hughes River, Laurel Fork (Randolph County), Little Kanawha River, Middle Fork River, Mud River, New River, North River, Otter Creek, Potomac River, North Fork of South Branch of Potomac River, South Branch of Potomac River, South Fork of the South Branch of Potomac River, Red Creek, Seneca Creek, Shavers Fork, Tygart Valley River, and Williams River;
1. Prior to commencement of stream restoration work, Miss Utility of West Virginia should be contacted at 1-800-245-4848 to determine the location of underground utility lines in the project area.

General Conditions for Stream Restoration Activities to be Performed by the WVCA

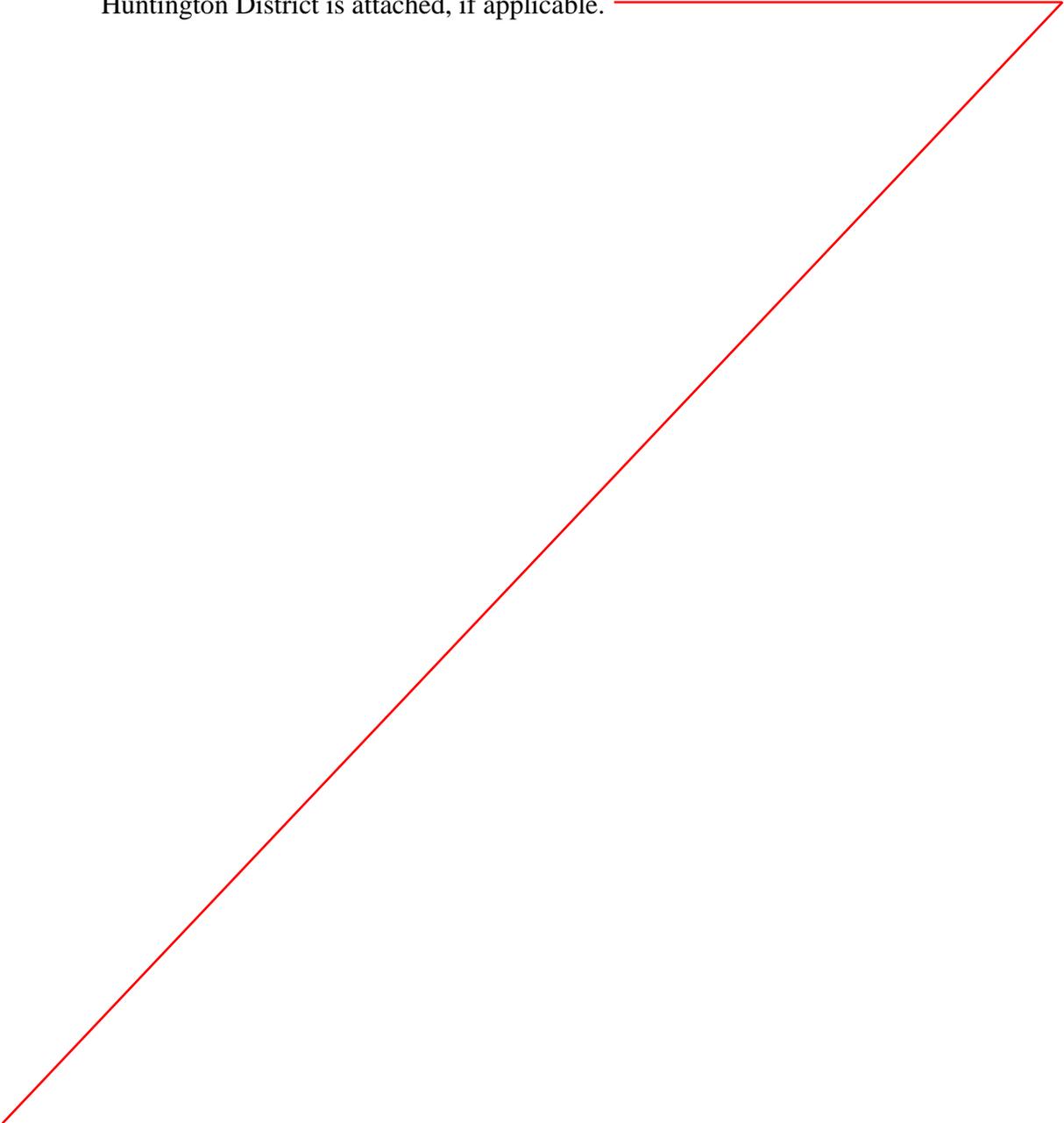
- a. If any previously unknown historic or archaeological remains are discovered while accomplishing the activity authorized by this permit, work must immediately cease and notification must be provided to this office detailing what has been found. The Corps will initiate the required Federal and state coordination to determine if the site is eligible for listing in the National Register of Historic Places.
- b. Representatives from the Corps will be allowed to inspect the authorized activity at any time deemed necessary to insure that it is being or has been accomplished in accordance with the terms and conditions.
- c. Further Information:

1. Congressional Authorities: This activity has been authorized pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.
2. Limits of this authorization:
 - (a) This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - (b) This permit does not grant any property rights or exclusive privileges.
 - (c) This permit does not authorize any injury to the property or rights of others.
 - (d) This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:
 - (a) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - (b) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the U.S. in the public interest.
 - (c) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - (d) Design or construction deficiencies associated with the permitted work.
 - (e) Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that the activity is not contrary to the public interest was made in reliance on the information provided pursuant to the notification requirement. Any change to the proposed work may make the project ineligible for authorization by this regional permit.
5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - (a) Failure to comply with the terms and conditions of this permit.

- (b) The information provided with the submitted permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- (c) Significant new information becomes available which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5.

- 6. Consent to easement over and under land identified as a flowage easement within the Huntington District is attached, if applicable.





west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Telephone Number: (304) 926-0495
Fax Number: (304) 926-0496

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
dep.wv.gov

March 30, 2012

Ms. Ginger Mullins
Chief, Regulatory Branch
Huntington District, Corps of Engineers
502 Eighth Street
Huntington, West Virginia 25701-2070

Re: Reissuance of Regional Permit for Stream Restoration Activities to be performed by the West Virginia Conservation Agency within the Huntington and Pittsburgh Districts in the State of West Virginia. Public Notice No. LRH-2012-147.

Dear Ms. Mullins:

The West Virginia Department of Environmental Protection-Division of Water and Waste Management (WVDEP-DWWM), in conjunction with the West Virginia Division of Natural Resources - Wildlife Resources Section (WVDNR-WRS), has completed review of the above-referenced project.

The Corps of Engineers (COE) is in the process of re-authorizing the Regional Permit (RGP) for stream restoration activities to be performed by the West Virginia Conservation Agency (WVCA) within the Huntington District in West Virginia as it expires April 16, 2012. The purpose of this regional permit is to expedite USACE review of requests for authorizations for the WVCA to perform projects for the purpose of alleviating hazard to life and property. This permit allows WVCA to perform critical flood restoration efforts after declared disaster events. Such projects would include debris and deposition removal, bank stabilization, stream erosion repair, and restoration of bridges or utilities.

The Pittsburgh District has indicated their interest in making this applicable for their portion of West Virginia as well. Therefore, this regional permit would apply to all streams under the jurisdiction of the USACE within the Huntington and Pittsburgh Districts in West Virginia, except those excluded by special and general permit conditions. The WVDNR and WVDEP participated in a field review of projects completed under the current RGP and was

Promoting a healthy environment.

satisfied the WVCA has been abiding by the permit conditions. The WVCA is responsible for ensuring the work is performed in accordance with the terms and conditions of the authorizations allowed under this regional permit.

The WVCA and the COE has proposed reasonable minor changes to the RGP:

- 1) The WVCA has requested the maximum length of a single and complete project per landowner increase from "150 meters" or 492 linear feet (lf) as indicated in Special Condition C to 500 lf. Although the majority of projects evaluated under this RGP have been covered as it is currently written, this change would accommodate projects that may require more work. Special Condition C would be amended to the following: "The maximum length of a single and complete project per landowner is limited to 500 lf, unless otherwise approved by resource agencies. Projects approved by resource agencies shall not, in any case, exceed 1,000 lf per landowner." In the case of a proposed project exceeding 500 lf, the WVCA would provide the required information, including pictures of the area, for full agency coordination. A site visit may be conducted if determined necessary.
- 2) The Corps of Engineers is considering extending the timeframe for the use of this RGP. Currently, Special Condition A indicates "the permit will apply only in counties declared to be disaster areas by the Governor of West Virginia for the specific sudden watershed impairment." Under the current RGP, this special condition has been inferred to mean that the permit could only be used within the timeframes of emergency declarations. In the past, when disaster declarations expired, we could no longer use this RGP to authorize these types of projects (i.e. for projects that received funding later in the declaration period which delayed the entire process). Our office believes extending the timeframe for stream restoration work in counties having emergency declarations is reasonable and may allow for a more thorough review in situations like the one mentioned above. Nationwide Permits have a similar stipulation concerning their use after the expiration date if work has begun. The following statement has been added to Special Condition A: "Projects qualifying for this permit must be completed within 6 months from the closing date of an emergency declaration."

In consultation with the COE, the WVDNR has also requested some minor reporting requirement changes that were included in the current Public Notice. The WVDNR has requested that the included updated list of streams with the documented protected "no-take" mussel populations be included in the final approved regional permit. The mussel list included as Appendix B is outdated as additional data has been collected and streams added to the list since March of 2007. We have included the updated list of streams with verified mussel populations. There are a few streams on the list that may not have verified populations of mussels but are tributaries of streams with federally protected threatened and endangered species which requires consultation with the Fish and Wildlife Service.

State 401 Certification, as required by the Clean Water Act, is extended. Certification shall be effective fifteen (15) days after receipt unless appealed under title 47, Series 5A, Section 7 of the Code of State Regulations, State Certification of Activities Requiring a Federal Permit. The appeal must be in writing and set forth the action complained of and the grounds upon which

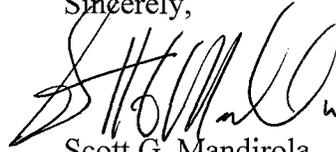
Ms. Ginger Mullins

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the appeal is based. It should be directed to: Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection, 601 57th Street SE, Charleston, West Virginia 25304: ATTENTION: 401 Certification Program.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Mandirola", written in a cursive style.

Scott G. Mandirola
Director

SGM/lbb

Cc: Gene Saurborn
WVCA
201 Scott Avenue
Morgantown, WV 26508
U.S. Environmental Protection Agency - Jessica Martinsen
U.S. Fish and Wildlife Service - Laura Hill
WVDNR-Wildlife Resources Section, Elkins - Roger Anderson

APPENDIX A

Streams with potential presence of Federally endangered species or their habitats

HUNTINGTON DISTRICT:

- Kanawha River (Kanawha Falls Wheeler Islands, River Mile 75.5) Fayette and Kanawha Counties (Tubercled-blossum pearl mussel, *Epioblasma torulosa*; Pink mucket pearl mussel, *Lampsilis abrupta*; and Fanshell, *Cyprogenia stegaria*)
- Potts Creek, Monroe County
(James spinymussel, *Pleurobema collina*)
- South Fork Potts Creek, Monroe County
(James spinymussel, *Pleurobema collina*)
- Elk River (Sutton Dam to slackwater below Coonskin Park) Braxton, Clay and Kanawha Counties (Clubshell, *Pleurobema clava*, Pink mucket pearl mussel; *Lampsilis abrupta*; and Northern riffleshell, *Epioblasma torulosa rangiana*)
- Meathouse Fork Middle Island Creek, Doddridge County
(Clubshell, *Pleurobema clava*)
- Middle Island Creek, Doddridge, Tyler and Pleasants Counties
(Clubshell, *Pleurobema clava*)
- Ohio River (Upper Greenup, R.C. Byrd, Racine, and Bellville Navigation Pools) Cabell, Mason, Jackson and Wood Counties (Pink mucket pearl mussel, *Lampsilis abrupta*; and Fanshell, *Cyprogenia stegaria*)
- Lower Gauley River (Summersville to Swiss), Nicholas and Fayette Counties
(Virginia spiraea, *Spiraea virginiana*)
- Bluestone River (Bluestone Gorge to slackwater Bluestone Reservoir) Mercer and Summers Counties (Virginia spiraea, *Spiraea virginiana*)
- Greenbrier River, Pocahontas and Greenbrier Counties
(Virginia spiraea, *Spiraea virginiana*)
- Lower Meadow River (Nallen to Gauley River) Nicholas and Fayette Counties
(Virginia spiraea, *Spiraea virginiana*)
- Dingess Branch of Marsh Fork and associated palustrine emergent and scrub-shrub wetlands – Raleigh County (Virginia spiraea, *Spiraea virginiana*)

- Millers Camp Branch of Marsh Fork and associated palustrine emergent scrub-shrub wetlands - Raleigh County (Virginia spiraea, *Spiraea virginiana*)
- South Fork Hughes River – Ritchie County
(Clubshell, *Pleurobema clava*)

PITTSBURGH DISTRICT:

- Sleepy Creek, and associated riverine emergent wetland habitat, Morgan County
(Harperella, *Ptilimnium nodosum*)
- Great Cacapon River and associated riverine emergent wetland habitat, Morgan County
(Harperella, *Ptilimnium nodosum*)
- Back Creek and associated riverine emergent wetland habitat Berkeley County
(Harperella, *Ptilimnium nodosum*)
- Hackers Creek of West Fork River, Lewis County
(Clubshell, *Pleurobema clava*)
- Wetlands Hardy and Berkeley Counties
Northeastern bulrush, *Scirpus ancistrochaetus*)
- Evitts Run watershed, Jefferson County
(Madison cave isopod, *Antrolana lira*)
- Rippon and Leetown areas near sinkholes spring seeps, or other groundwater/surface water interfaces, Jefferson County (Madison cave isopod, *Antrolana lira*)

APPENDIX B

Streams with potential presence of state protected “no take” mussel species

HUNTINGTON DISTRICT

James River Drainage
 Potts Creek
 South Fork Potts Creek
 Cove Creek
Big Sandy River Drainage
 Big Sandy River
 Tug Fork River
Kanawha River Drainage
 Kanawha River
 Crooked Creek
 Thirteenmile Creek
 Sixteenmile Creek
 Buffalo Creek
 Hurricane Creek
 Mill Creek
 Tackett Branch
 Little Hurricane Creek
 Guano Creek
Coal River
 Little Coal River
Elk River
 Big Sandy Creek
 Granny Creek
 Hollywood Trace Fork
 King Shoals Run
 Laurel Creek
 Strange Creek
 Birch River
 Little Sandy Creek
New River
 Indian Creek
 Bluestone River
 Greenbrier River
 Wolf Creek
 Muddy Creek
 Mill Creek
 Second Creek

Knapp Creek
Clover Creek (Cloverlick Creek)
Sitlington Creek
Deer Creek
West Fork Greenbrier River
Pocatalico River
 Pocatalico Creek (Left Fork)
 Middle Fork Pocatalico Creek
 Cox Fork
 Big Lick
 Rush Creek
 Cranes Nest Run
Little Kanawha River Drainage
 Little Kanawha River
 Sand Fork
 Slate Creek
 Tucker Creek
 Reedy Creek
 Left Fork Reedy Creek
 Middle Fork Reedy Creek
 Spring Creek
 Right Fork Spring Creek
 Left Fork Spring Creek
 Straight Creek
 Leading Creek
 Yellow Creek
 Pine Creek
 Tanner Creek
 Cedar Creek
 Leading Creek
 Cove Creek
 Fink Creek
 Sand Fork
 Oil Creek
 Saltlick Creek
Hughes River
 North Fork Hughes River
 Gillespie Run
 Devilhole Creek
 Addis Run
 Bonds Creek
 Goose Creek
 South Fork Hughes River
 Middle Fork South Fork Hughes River
 Indian Creek

Leatherbark Creek
Spruce Creek
Slab Creek
Bone Creek
Otterslide Creek
Steer Creek
Left Fork Steer Creek
Right Fork Steer Creek
West Fork Little Kanawha River
Henry's Fork
Laurel Run
Beech Fork
Left Fork West Fork Little Kanawha River
Guyandotte River Drainage
Guyandotte River
Barboursville Lake
Charley's Creek
Twomile Creek
Mud River
Kilgore Creek
Trace Fork
Buffalo Creek
Middle Fork Mud River
Big Laurel Creek
Middle Island Creek Drainage
Middle Island Creek
McKim Creek
Sugar Creek
Sancho Creek
Point Pleasant Creek
Pursley Creek
Elk Fork
Indian Creek
McElroy Creek
Arnold Creek
Bluestone Creek
Meathouse Fork
Toms Fork
Indian Fork
Buckeye Creek
Toms Fork
Indian Fork
Buckeye Creek
Ohio River Direct Drainage
Ohio River

Twelvepole Creek
Beech Fork
 West Fork Twelvepole Creek
 East Fork Twelvepole Creek
Guyan Creek
Tomblason Run embayment
Little Mill Creek
Mill Creek
 Cow run
 Parchment Creek
 Grasslick Creek
 Bear Fork
 Elk Fork
 Little Mill Creek
Sandy Creek
 Crooked Fork
 Left Fork Sandy Creek
 Nesselroad Run
Little Sandy Creek
Little Pond Creek
Lee Creek
 South Fork Lee Creek
 North Fork Lee Creek

PITTSBURGH DISTRICT

Ohio River Direct Drainage
 Ohio River
 French Creek
 Fishing Creek
 South Fork Fishing Creek
 North Fork Fishing Creek
Fish Creek
 Valley Run
 WV Fork Fish Creek
 Long Drain Creek
Wheeling Creek
 Middle Wheeling Creek
 Turkey Run
 Enlow Fork
 Dunkard Fork
Buffalo Creek
Cheat River Drainage
 Monongahela River
 Dunkard Creek

Blacks Run
Days Run
Miracle Run
 Right Branch Miracle Run
WV Fk Dunkard
 North Fork WV Fork Dunkard Creek
 Camp Run
 South Fork WV Fork Dunkard Creek
Tygart Valley River
West Fork River
 Tenmile Creek upstream of Little Tenmile
 Jacob's Fork
 Salem Fork
Booths Creek
Elk Creek
 Brushy Fork of Elk Creek
 Gnatty Creek
Isaacs Creek
Hackers Creek
 Jesse Run
Kincheloe Creek
Freemans Creek
 Right Fork Freemans Creek
Stonecoal Creek
Right Fork West Fork River
Blackwater River
 Sand Run
 Glade Run
 West Fork Glady
Potomac River Drainage
 Mill Creek
 Back Creek
 Sleepy Creek
 Cacapon River
 Lost River
 North River
 Patterson Creek
 North Fork Patterson Creek (below dam near mouth)
 South Branch Potomac River
 South Fork South Branch

