

**DISTRICT OFFICE:**           Huntington District  
**FILE NUMBER:**           200500379

**PROJECT LOCATION INFORMATION:**

State: Kentucky  
County: Pike  
Center coordinates of site (latitude/longitude): 37-15-30 / 82-37-49 Wheelwright Quad.  
Approximate size of area (parcel) reviewed, including uplands: 1000+?? acres.  
Name of nearest waterway: Adams Branch, Wolfpen Branch, U/T Pettys Fork, Bear Fork  
Name of watershed: Above streams are tributaries of Long Fork and Beefhide Creek

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination            Date:           May 19, 2005  
                  Site visit(s)                     Date(s):

**Jurisdictional Determination (JD):**

- Preliminary JD - Based on available information,  *there appear to be* (or)  *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).
- Approved JD – An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:
  - There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: \_\_\_\_\_.
  - There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: \_\_\_\_\_.
  - There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
 Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

- A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**
- The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
- B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**
- (1) The presence of waters, which are 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.
  - (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.
  - (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
    - (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
    - (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
    - (iii) which are or could be used for industrial purposes by industries in interstate commerce.
  - (4) Impoundments of waters otherwise defined as waters of the US.
  - (5) The presence of a tributary to a water identified in (1) – (4) above.
  - (6) The presence of territorial seas.
  - (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:*

Photo No. / Point No.	LOCATION (Drainage Identification)	Is Stream Jurisdictional?	Reasoning
0+00 to 54+00 [See Note 1]	Wolfpen Branch of Long Fork of Shelby Creek of Robinson Creek of Levisa Fork (location of proposed Hollow Fill 5)	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 54+00	Wolfpen Branch of Long Fork...	No	No clear bed, OHW and surface water connection to trib of navigable river.

0+00 to 1+50	First left hand tributary at 12+00 of Wolfpen Branch.	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 1+50	First left hand tributary at 12+00 of Wolfpen Branch	No	No clear bed, OHW and surface water connection to trib of navigable river.
0+00 to 2+00	Second left hand tributary at 24+30 of Wolfpen Branch	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 2+00	Second left hand tributary at 24+30 of Wolfpen Branch	No	No clear bed, OHW and surface water connection to trib of navigable river.
0+00 to 4+00	Third left hand tributary at 29+45 of Wolfpen Branch	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 4+00	Third left hand tributary at 29+45 of Wolfpen Branch	No	No clear bed and OHW.
0+00 to 7+00	Fourth left hand tributary at 45+60 of Wolfpen Branch	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 7+00	Fourth left hand tributary at 45+60 of Wolfpen Branch	No	No clear bed and OHW.
0+00 to 12+00	First right hand tributary at 41+81 of Wolfpen Branch	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 12+00	First right hand tributary at 41+81 of Wolfpen Branch	No	No clear bed and OHW.
0+00 to 2+30	Right hand drain at 9+30 of First right hand tributary of Wolfpen Branch.	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 2+30	Right hand drain at 9+30 of First right hand tributary of Wolfpen Branch.	No	No clear bed and OHW.
0+00 to 4+00	Second right hand tributary at 47+21 of Wolfpen Branch.	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
5+00 and up	Second right hand tributary at 47+21 of Wolfpen Branch.		No defined bed and OHW.
0+00 to 17+00 [See Note 2]	Bear Fork of Beehive Creek of Shelby Creek of Robinson Creek of Levisa Fork (at proposed Hollow Fill 6)	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 17+00	Bear Fork of Beehive Creek of Shelby Creek of Robinson Creek of Levisa Fork (at proposed Hollow Fill 6)	N	No clear bed and OHW.
0+00 to 10+00	First left hand tributary to Bear Fork (at 6+20)	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 10+00	First left hand tributary to Bear Fork (at 6+20)	NO	No defined bed and OHW.
0+00 to 1+00	Left hand drain of First left hand tributary to Bear Fork (at 6+90)	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 1+00	Left hand drain of First left hand tributary to Bear Fork (at 6+90)	No	No defined bed and OHW.
0+00 to 2+00	Right hand tributary at 13+25 of Bear Fork	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 2+00	Right hand tributary at 13+25 of Bear Fork.	No	No defined OHW.
	"Non-jurisdictional Drain of 1st left hand tributary of Bear Fork"	No	No defined bed and OHW.
Mouth of stream to existing fill at 14+66 [See Note 3]	Adams Branch of Long Fork of Shelby Creek of Robinson Creek of Levisa Fork (area of proposed HF 4).	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 14+66	Adams Branch of Long Fork of Shelby Creek of Robinson Creek of Levisa Fork.	No	No surface water flow through existing rock check fill.

0+00 to 3+50	1st Left Hand Tributary at 7+50 of Adams Branch.	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 3+50	1st Left Hand Tributary at 7+50 of Adams Branch.	No	No defined OHW.
0+00 to 4+00 (to existing fill)	2nd Left Hand Tributary at 11+00 of Adams Branch	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 4+00	2nd Left Hand Tributary at 11+00 of Adams Branch	No	No surface flow.
0+00 to 1+50	1st Right Hand Tributary at 6+50 of Adams Branch	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 1+50	1st Right Hand Tributary at 6+50 of Adams Branch	No	No defined OHW
0+00 to 20+00 [See Note 4]	1st Unnamed Tributary of Pettys Fork (area of proposed <b>Hollow Fill 3</b> )	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 20+00	1st Unnamed Tributary of Pettys Fork	No	No clear bed and OHW.
0+00 to 1+00	1st Left Hand Tributary at 8+00 of Unnamed Trib.of Pettys Fork	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 1+00	1st Left Hand Tributary at 8+00 of Unnamed Trib.of Pettys Fork	No	No defined OHW
0+00 to 3+75	1st Right Hand Tributary at 8+50 of Unnamed Trib of Pettys Fork	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 3+75	1st Right Hand Tributary at 8+50 of Unnamed Trib of Pettys Fork	No	No defined OHW
0+0 to 4+00	2nd Left Hand Tributary at 11+00 of Unnamed Trib of Pettys Fork	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 4+00	2nd Left Hand Tributary at 11+00 of Unnamed Trib of Pettys Fork	No	No surface flow or OHW or depression.
<b>Photo No./ Station No.</b>	<b>LOCATION (Drainage identification)</b>	<b>Is stream jurisdictional?</b>	<b>Reasoning</b>
0+00 (at existing pond) to 13+56 [See Note 5]	2nd unnamed tributary of Pettys Fork (area of proposed <b>Hollow Fill 2</b> )	YES	Established ordinary high water mark (OHW) and surface water connection to trib of navigable river.
above 13+56 [See Note 6]	2nd unnamed tributary of Pettys Fork	No	No defined OHW.

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- Ordinary High Water Mark indicated by:
- clear, natural line impressed on the bank
  - the presence of litter and debris
  - changes in the character of soil
  - destruction of terrestrial vegetation
  - shelving
  - other:
- High Tide Line indicated by:
- oil or scum line along shore objects
  - fine shell or debris deposits (foreshore)
  - physical markings/characteristics
  - tidal gages
  - other:

- Mean High Water Mark indicated by:
- survey to available datum;  physical markings;  vegetation lines/changes in vegetation types.

- Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- The reviewed area consists entirely of uplands.
- Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
  - Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - Artificially irrigated areas, which would revert to upland if the irrigation ceased.

- Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
- Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
- Water-filled 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 found at 33 CFR 328.3(a).
- Isolated, intrastate wetland with no nexus to interstate commerce.
- Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
- Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
- Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant.
- Data sheets prepared/submitted by or on behalf of the applicant.
- This office concurs with the delineation report, dated \_\_\_\_\_, prepared by:
- This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- Data sheets prepared by the Corps.
- Corps' navigable waters' studies:
- U.S. Geological Survey Hydrologic Atlas:
- U.S. Geological Survey 7.5 Minute Topographic maps:
- U.S. Geological Survey 7.5 Minute Historic quadrangles:
- U.S. Geological Survey 15 Minute Historic quadrangles:
- USDA Natural Resources Conservation Service Soil Survey:
- National wetlands inventory maps:
- State/Local wetland inventory maps:
- FEMA/FIRM maps (Map Name & Date):
- 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
- Aerial Photographs (Name & Date):
- Other photographs (Date): April 2005 and
- Advanced Identification Wetland maps:
- Site visit/determination conducted on:
- Applicable/supporting case law:
- Other information (please specify):

Prepared by: Richard Berkes Date: May 19, 2005 *RBK*

Approved by: Veresa Spagna Date: May 19, 2005

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.