



**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): 3/16/2021
 ORM Number: LRH-2018-331-GUY-Reedy Branch
 Associated JDs: LRH-2018-331-GUY-Cedar Creek PJD dated 23 April 2018 and 26 August 2019
 Review Area Location¹: State/Territory: West Virginia City: Coal Mountain
 County/Parish/Borough: Wyoming
 Center Coordinates of Review Area: Latitude 37.668047 Longitude -81.698165

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)²

§ 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): ³			
(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 INTO	65	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
Stream INT2	3356	linear feet	(a)(2) Intermittent tributary

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

² 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.

³ 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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Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
			contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Guyandotte River, an (a)(1) TNW, at a location outside of the AOI. Stream INT2 contributes surface water flow indirectly to the Guyandotte River, an (a)(1) TNW, in a typical year (reference Section III B of this AJD form).
Stream INT11	2091	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream INT11 is an intermittent tributary to Reedy Branch, an (a)(2) water and indirect tributary to the Guyandotte River, an (a)(1) TNW, at a location outside of the AOI. Stream INT11 contributes surface water flow indirectly to the Guyandotte River, an (a)(1) TNW, in a typical year (reference Section III B of this AJD form).
Stream INT13	1378	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream INT13 is an intermittent tributary to Reedy Branch, an (a)(2) water and indirect tributary to the Guyandotte River, an (a)(1) TNW, at a location outside of the AOI. Stream INT13 contributes surface water flow indirectly to the Guyandotte River, an (a)(1) TNW, in a typical year (reference Section III B of this AJD form).
Stream INT26	1316	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream INT26 is an intermittent tributary to Reedy Branch, an (a)(2) water and indirect tributary to the Guyandotte River, an (a)(1) TNW, at a location outside of the AOI. Stream INT26 contributes surface water flow indirectly to the Guyandotte River, an (a)(1) TNW, in a typical year (reference Section III B of this AJD form).
Stream INT28	1813	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream INT28 is an intermittent tributary to Reedy Branch, an (a)(2) water and indirect tributary to the Guyandotte River, an (a)(1) TNW, at a location outside of the AOI. Stream INT28 contributes surface water flow indirectly to the Guyandotte River, an (a)(1) TNW, in a typical year (reference Section III B of this AJD form).
Stream INT30	1164	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream INT30 is an intermittent tributary to Reedy Branch, an (a)(2) water and indirect tributary to the Guyandotte River, an (a)(1) TNW, at a location outside of the AOI. Stream INT30 contributes surface water flow indirectly to the Guyandotte River, an (a)(1) TNW, in a typical year (reference Section III B of this 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)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Stream DB15	1845	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream DB 15 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream EPH1	437	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream EPH1 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream EPH2	229	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream EPH2 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream EPH9	1222	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream EPH9 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream EPH10	202	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream EPH10 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream EPH11	866	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream EPH11 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream EPH13	278	linear feet	(b)(3) Ephemeral feature, including an ephemeral	Stream EPH13 is an ephemeral stream and meets the definition of “ephemeral” in paragraph

⁴ 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.

⁵ 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)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
			stream, swale, gully, rill, or pool	(c)(3). Reference Section III D for typical year assessments.
Stream EPH15	427	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream EPH15 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream EPH19	387	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream EPH19 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream EPH20	610	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream EPH20 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream EPH21	393	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream EPH21 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream EPH23	162	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream EPH23 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream EPH26	771	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream EPH26 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream EPH27	584	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream EPH27 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream EPH28	189	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream EPH28 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream EPH29	1553	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream EPH29 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination	
Stream EPH30	370	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream EPH30 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream EPH31	628	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream EPH31 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream EPH32	307	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream EPH32 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.

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: [Appalachian Technical Services, Inc.](#), on behalf of BD Energy, LP, submitted a delineation report for Reedy Branch South Surface Mine dated 17 September 2020 (Report, Sept 2020).

This information is sufficient for purposes of this AJD.

Rationale: [The information provided by or on behalf of the applicant accurately reflects the district’s conclusions on the AJD.](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
- Photographs: [Other: \(Report, Sept 2020\)](#).
- Corps site visit(s) conducted on: [Date\(s\)](#).
- Previous Jurisdictional Determinations (AJDs or PJDs): [LRH-2018-00331-GUY PJDs dated 23 April 2018 and 26 August 2019](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Title\(s\) and/or date\(s\)](#).
- USFWS NWI maps: [ORM dataset accessed Feb 2021](#)
- 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 Sources	ORM dataset NHD map accessed Feb 2021
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	ORM Aquatic Resources Layer
State/Local/Tribal Sources	N/A.
Other Sources	N/A.



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B. Typical year assessment(s): A typical year occurs over a rolling thirty year period and includes the analysis of precipitation and other climatic variables to establish a normal period range (seasonally or annually) for a specific geographic region where the aquatic resource occurs. One (1) point-in-time data source, dated 5 February 2020, with a corresponding APT report, was included in the evaluation for the excluded features on-site. The antecedent precipitation tool was utilized to determine typical year for point-in-time data sources. Based on the antecedent precipitation tool, 5 February 2020 is included during the Web-based Water-Budget Interactive Modeling Program wet season and has a Palmer Drought Severity Index of (2.5) moderate wetness and an antecedent precipitation condition score of 15. The antecedent precipitation condition is considered “wetter than normal” for that point in time.

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