



**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): 3/19/2021
 ORM Number: LRH-2018-446-GUY-Jacob Cook Branch
 Associated JDs: LRH-2018-446-GUY-Jacob Cook Branch PJD dated 26 July 2018
 Review Area Location¹: State/Territory: West Virginia City: Lillydale County/Parish/Borough: Wyoming
 Center Coordinates of Review Area: Latitude 37.684975 Longitude -81.683788

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 RB11	5143 linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream RB11 is an intermittent portion of Reedy Branch within the AJD boundary, an (a)(2) water and indirect tributary to the Guyandotte River, an (a)(1) TNW, at a location outside of the AOI. Stream RB11 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 RB10	1156 linear feet	(a)(2) Intermittent tributary contributes	Stream RB10 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

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
			surface water flow directly or indirectly to an (a)(1) water in a typical year.	outside of the AOI. Stream RB10 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 RB13	378	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream RB13 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 RB13 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 RB14	351	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream RB14 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 RB14 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 JCB9	1454	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream JCB9 is an intermittent tributary to Jacob Cook Branch, an (a)(2) water and indirect tributary to the Guyandotte River, an (a)(1) TNW, at a location outside of the AOI. Stream JCB9 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 JCB14	713	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream JCB14 is an intermittent tributary to Jacob Cook Branch, an (a)(2) water and indirect tributary to the Guyandotte River, an (a)(1) TNW, at a location outside of the AOI. Stream JCB14 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 JCB16	6319	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream JCB16 is an intermittent tributary to Jacob Cook Branch, an (a)(2) water and indirect tributary to the Guyandotte River, an (a)(1) TNW, at a location outside of the AOI. Stream JCB16 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 LBO	1529	linear feet	(a)(2) Intermittent tributary contributes	Stream LBO is an intermittent tributary to Lower Road Branch, an (a)(2) water and indirect tributary to the Guyandotte River, an (a)(1) TNW, at a



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Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
			surface water flow directly or indirectly to an (a)(1) water in a typical year.	location outside of the AOI. StreamLB0 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 LB4	2189	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream LB4 is an intermittent tributary to Lower Road Branch, an (a)(2) water and indirect tributary to the Guyandotte River, an (a)(1) TNW, at a location outside of the AOI. Stream LB4 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 RB28	2104	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream RB28 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 RB28 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 JCB2	2281	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream JCB2 is an intermittent tributary to Clear Fork, an (a)(2) water and indirect tributary to the Guyandotte River, an (a)(1) TNW, at a location outside of the AOI. Stream JCB2 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 JCB3	1815	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream JCB3 is an intermittent tributary to Jacob Cook Branch, an (a)(2) water and indirect tributary to the Guyandotte River, an (a)(1) TNW, at a location outside of the AOI. Stream JCB3 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 UNTCF2	2794	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream UNTCF2 is an intermittent tributary to Jacob Cook Branch, an (a)(2) water and indirect tributary to the Guyandotte River, an (a)(1) TNW, at a location outside of the AOI. Stream UNTCF2 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 RB4	1832	linear feet	(a)(2) Intermittent tributary contributes	Stream RB4 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



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Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
		surface water flow directly or indirectly to an (a)(1) water in a typical year.	outside of the AOI. Stream RB4 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).

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.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland W3	0.07 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland W3 is an (a)(4) water that directly abuts Stream JCB2, an intermittent (a)(2) water in a typical year.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Stream JCB16	394 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream JCB16 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream JCB19	513 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream JCB19 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream JCB20	1165 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream JCB20 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream JCB21	1386 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream JCB21 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream LB0	384 linear feet	(b)(3) Ephemeral feature, including an ephemeral	Stream LB0 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3).

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.	Reference Section III D for typical year assessments.
Stream LB1	798	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream LB1 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream LB2	622	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream LB2 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream LB4	385	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream LB4 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream LB6	1966	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream LB6 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream LB6A	566	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream LB6A is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream JCB1	345	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream JCB1 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream JCB2	694	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream JCB2 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream JCB3	937	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream JCB3 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream JCB6	1140	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream JCB6 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 RB19	1527	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream RB19 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream RB20	1423	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream RB20 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream RB24	1172	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream RB24 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream RB25	334	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream RB25 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream RB28	603	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream RB28 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream RB30	253	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream RB30 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream RB31	1203	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream RB31 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream UNTCF1	1182	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream UNTCF1 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream UNTCF1.1	259	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream UNTCF1.1 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream UNTCF1.2	515	linear feet	(b)(3) Ephemeral feature, including	Stream UNTCF1.2 is an ephemeral stream and meets the definition of “ephemeral” in paragraph



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
			an ephemeral stream, swale, gully, rill, or pool	(c)(3). Reference Section III D for typical year assessments.
Stream UNTCF2	337	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream UNTCF2 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream RB2	383	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream RB2 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream RB3	264	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream RB3 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream RB4	221	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream RB4 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream RB5	541	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream RB5 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream RB7	813	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream RB7 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream RB10	891	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream RB10 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream RB11	723	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream RB11 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Stream RB12	319	linear feet	(b)(3) Ephemeral feature, including an ephemeral	Stream RB12 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, swale, gully, rill, or pool	
Stream RB15	497	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool
Stream RB16	680	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool
Stream JCB8	557	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool
Stream JCB13	595	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool
Stream JCB14	473	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool

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 Jacob Cook Branch North, Jacob Cook Branch South and Reedy Branch North Surface Mine received 3 February 2021 (Report, Feb 2021).

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: \(Report, Feb 2021\).](#)

Corps site visit(s) conducted on: [Date\(s\).](#)

Previous Jurisdictional Determinations (AJDs or PJDs): [LRH-2018-00446-GUY PJD dated 26 July 2018](#)

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 Mar 2021](#)



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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 Mar 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.

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 4 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, 4 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 14. The antecedent precipitation condition is considered “normal” for that point in time.

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