



**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): 7/22/2020

ORM Number: LRH-2019-1003-TUG; UT Road Branch

Associated JDs: NA

Review Area Location¹: State/Territory: WV City: Enter. County/Parish/Borough: MINGO

Center Coordinates of Review Area: Latitude 37.768473 Longitude -82.309194

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
TG-2 (intermittent reach); trib of Tug Fork	1,760 linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Flowing during multiple observations. Not on USGS map as perennial. 2nd order mainstem. Stream drains approx. 110 acres. Stream flows directly into Tug Fork (a Sec.10 navigable river).

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.

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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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.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
RB-1; drains to Road Branch	765 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Observed no flow in Jan 2019. No flow on 4 June 2020 after 3 days of no precip. Not on USGS map or NHD. No benthics or other biological indicators of intermittent flow.
RB-2; drains to Road Branch	1044 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Observed no flow in early June after 3 days of no precip. Dry during Jan 2020 site review. Jan-April 2020 generally wet months, but precip for previous year considered a “typical year”. Not on USGS map or NHD. No biological indicators of intermittent flow.
RB-3 seep	NA NA	(b)(1) water features that are not identified in 3(a)(1),(2),(3) or (4).	No defined channel or consistent ordinary high water mark to Road Fork or other water. Does not contribute surface flow to an (a)(1) water.
TG-2 upper ephemeral reach	402 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Observed no flow along measured reach. Not on USGS map or on NHD. Agent’s site review performed in July 2019 (dry) & Jan 2020 (dry). Site precipitation has been typical year. No biological indicators of intermittent flow.
TG-3; trib of trib of Tug Fork	528 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Observed no flow in July 2019 & Jan 2020. First order channel. Low drainage acreage. Channel characteristic of low volume ephemeral flow of short duration. No biological indicators. Not on USGS map or NHD. Site precipitation has been typical year.
TG-4 (drains to TG-2-intermit)	559 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	No flow in July 2019 & Jan 2020. Not on USGS map or on NHD. Site precipitation during Jan generally wet, but typical year. First order channel. Low drainage acreage. Channel characteristic of low volume ephemeral flow of short duration.
TG-6 (drains to TG-2-intermit)	791 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Observed no flow in July 2019 and Jan 2020. Entirely ephemeral. Not on USGS map or on NHD Agent’s site review performed in July 2019 (dry) & Jan 2020 (dry). Site precipitation has been typical year. No biological indicators.

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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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: [ATS, Inc; AJD report dated 4 Dec 2019 titled "Jurisdictional Determination Package Request for Southeastern Land, LLC's MT-1 Ridge Deep Mine Study Area \(ATS Project No. 1772.01\).](#)

This information is and is not sufficient for purposes of this AJD.

Rationale: [Required site visit to verify flow regime for three streams. The info for all other delineated streams were sufficient to verify location and flow regime.](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Other: Photos in AJD report and supplemental photos dtd 1-8-2020](#)
- Corps site visit(s) conducted on: [3 Feb 2020 and 6-3-2020.](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\).](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Title\(s\) and/or date\(s\).](#)
- USFWS NWI maps: [Title\(s\) and/or date\(s\).](#)
- 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/WBD/NHD data/maps	Topo Map with NHD overlay.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A
State/Local/Tribal Sources	N/A.
Other Sources	N/A

B. Typical year assessment(s): [Site reviews performed in July 2019, Jan 2020 \(during generally wet season\) and again on 4 June 2020 \(after 3 days of no precip\) to assure observations were not during precipitation runoff. These time periods had no unusually dry periods. The Corps' Antecedent Precipitation Tool data for 9 July 2019 indicates that precipitation in the vicinity of the AJD area received 0.64 inch on 8 July, and 0.6 inch on 7 July 2019 but was within the upper limit of the 30-year normal range. Therefore, storm water runoff may potentially have been flowing during the agent's 9 July 2019. The APT data for 30 June 2020 also indicates the area received substantial rain just prior to 30 June 2020, yet streams RB-1 and RB-2 were observed to be entirely dry.](#)

C. Additional comments to support AJD: [NA](#)