



**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): 12/8/2020
 ORM Number: LRH-2019-791-TUG-UNT Belcher Branch
 Associated JDs: LRH-2019-791-TUG-UNT Belcher Branch – AJD/PJD dated 9/30/2019
 Review Area Location¹: State/Territory: WV City: Thorpe County/Parish/Borough: McDowell
 Center Coordinates of Review Area: Latitude 37.39504 Longitude -81.500592

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
- 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):within the AJD Boundary			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) 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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Tributaries ((a)(2) waters):within the AJD Boundary				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.		linear feet		

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.	acre(s)	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.	acre(s)	N/A.	

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴ within the AJD boundary.				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Tributary A, A1, B, & B1 of Upper Belcher Branch Harmon Branch, and Tributary C of Harmon Branch	3,921	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	These channel segments only provide ephemeral flow, are narrow and shallow, and have channel beds that have large amounts of leaf litter and debris which is indicative of low flow for short durations. These channel segments do not present any evidence of physical or biological indicators of intermittent flow. While no channel flow was observed during the October 2020, the lower stream segments contained ponded water resulting from rainfall during the site investigation. As indicated in Table 1, portions of some of these channel segments have intermittent flow and are not included in this determination. The channel segments identified in this form were also determined to be ephemeral in the September 30, 2019 PJD/AJD. See Section B for additional information and Table 1 for further description of the ephemeral stream channels.

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 within the AJD boundary.			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination

Excluded waters ((b)(1) – (b)(12)): ⁶ within the AJD boundary.			
Exclusion Name	Exclusion Size	Exclusion ⁷	Rationale for Exclusion Determination
N/A.	N/A.	N/A.	N/A.

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: [Kirk Environmental](#), in a letter dated November 11, 2020, requested an AJD for ephemeral stream channel segments identified in the original report entitled “Eckman West Delineation Report – dated August 2019” prepared by Mid-Vol Coal Sales and the new report entitled “Ephemeral Stream Reach Descriptions for the Harmon West Project Area – dated November 11, 2020” prepared by Kirk Environmental and the attached delineation mapping entitled “Eckman West Delineation Map – date March 2019” (note – the project names has changed from Eckman West to Harmon East since the submittal of the original delineation).

⁶ 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.

⁷ 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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This information is sufficient for purposes of this AJD.

Rationale: The consultant has provided all of the additional information requested to clarify site conditions. The information provided is sufficient to verify the stream, wetland, & open water locations.

- Data sheets prepared by the Corps: Title(s) and/or date(s).
- Photographs: Other: Photos provided in the August 2019 and November 2020 Delineation Reports
- Corps site visit(s) conducted on: Date(s).
- 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: Welch and Gary USGS Quadrangle

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	NHD map accessed through LRH Regulatory GIS Viewers
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): The antecedent precipitation tool was utilized to determine typical year for point-in-time data sources. The site delineations were conducted on January 14-15, 2019 and October 12-13, 2020. The applicant indicated that while there was rainfall/snowfall during the January 2019 site visits and approximately 1/2-inch of rainfall during the October 2020 site visits. Based on the antecedent precipitation tool, the 30-day rolling total for precipitation was lower than the 30-year normal range during the sampling period.

C. Additional comments to support AJD: Attached mapping entitled “Eckman West PJD Delineation Map – August 2019” has determined to be accurate.