



**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): 6/22/2020
 ORM Number: LRH-2020-411-GUY; UT Still Run
 Associated JDs: PJD LRH-2018-576 and PJD LRH-2019-461
 Review Area Location¹: State/Territory: WV City: Itmann County/Parish/Borough: MINGO
 Center Coordinates of Review Area: Latitude 37.58625 Longitude -81.42626

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
Still Run of Guyandotte River	31 linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Still Run is a direct tributary to the Guyandotte River, a navigable water of the United States. Still Run flows to the Guyandotte River approximately 0.71 mile downstream from the AJD review area. Refer to the enclosed map titled “Stream and Wetland Delineation Map, Itmann No.5 Deep Mine – IBR No2” dated 20 April 2020. Still Run includes no known natural or artificial non-jurisdictional features along the flow path within the

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.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

Tributaries ((a)(2) waters):within the AJD Boundary				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
				AJD review area. Still Run was observed with perennial flow during multiple observations in typical year scenarios. Refer to Section B for additional information. Additionally, Still Run is mapped on the USGS topographic map as a perennial flow regime.

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 within the AJD boundary.				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
CH-1; Trib of Still Run	264.6	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	CH-1 was observed with no flow in November 2019 and February 2020 during normal and drier than normal conditions. Refer to Section B for additional information. Ch-1 is depicted on the USGS topographic map as an intermittent stream which does not correlate with the current site conditions. CH-1 has been previously disturbed by past deep mining and fill activities. The stream channel is narrow and shallow which is indicative of low flow for short duration. No physical or biological indicators of intermittent flow were observed.
LT-1	109	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	LT-1 was observed with no flow in November 2019 and February 2020 during normal and drier than normal conditions. Refer to Section B for additional information. LT-1 is not depicted on the USGS topographic map or NHD. LT-1 is not located in a natural drainage area within the site topography. The stream channel is narrow and shallow which is indicative of low flow for short duration. No physical or

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.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

Excluded waters ((b)(1) – (b)(12)): ⁴ within the AJD boundary.			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			biological indicators of intermittent flow were observed.
LT-4	278	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. LT-4 was observed with no flow in November 2019 and February 2020 during normal and drier than normal conditions. LT-4 is not on depicted on the USGS topographic map or USGS NHD. LT-4 is not located in a natural drainage area within the site topography. The stream channel is narrow and shallow which is indicative of low flow for short duration. No physical or biological indicators of intermittent flow.

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: Alliance Consulting Inc; AJD report dated March 2020 titled "Request for Jurisdictional Determination Stream and Wetland Delineation Report, Itmann No.5 Deep Mine U-3013-18 IBR No. 2".

This information is sufficient for purposes of this AJD.

Rationale: Streams reviewed by two agents. Additional information provided to clarify site conditions.

The information provided is sufficient to verify stream locations and flow regime.

- Data sheets prepared by the Corps: Title(s) and/or date(s).
- Photographs: Other: Photos in AJD reports submitted for LRH-2018-576 and LRH-2019-461
- Corps site visit(s) conducted on: Date(s).
- Previous Jurisdictional Determinations (AJDs or PJDs): PJD LRH-2018-576 and PJD LRH-2019-461
- 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: USGS Mullens, WV 1:24K

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	USGS 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. Flow regimes for the stream channels were assessed on 1 November 2019 and 5 February 2020. Based on the antecedent precipitation tool, 1 November 2019 is included during the



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

WebWIMP wet season and has a Palmer Drought Severity Index of mild wetness. The 30-day rolling total for precipitation was higher than the 30-year normal range. However, the antecedent condition calculation determined 1 November 2019 was within normal conditions. Therefore, the flow regimes for the stream observed on 1 November 2019 are within typical year conditions. Based on the antecedent precipitation tool, 4 February 2020 is included during the WebWIMP wet season and has a Palmer Drought Severity Index of moderate wetness. The 30-day rolling total for precipitation was lower than the 30-year normal range. The antecedent condition calculation determined 4 February 2020 was within drier than normal conditions. Therefore, the perennial flow regime for Still Run observed on 4 February 2020 during a drier than normal condition is indicative of a perennial flow regime.

- C. Additional comments to support AJD:** Attached “Figure 1: “Stream and Wetland Delineation Map, Itmann No. 5 Deep Mine – IBR No. 2” dated 4/20/2020, has been determined to be accurate.