



**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): 10/19/2020  
 ORM Number: LRH-2020-610-OHR-UNT Mud River  
 Associated JDs: No  
 Review Area Location<sup>1</sup>: State/Territory: West Virginia City: Ona County/Parish/Borough: Cabell  
 Center Coordinates of Review Area: Latitude 38.418865 Longitude -82.226542

**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)<sup>2</sup>**

§ 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): <sup>3</sup>			
(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
ASE_Stream 02	179 (665-486 [culvert])	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
			ASE_Stream 02 is an intermittent, direct tributary to the Mud River, an (a)(2) water and direct tributary to the Guyandotte River, an (a)(1) TNW, at a location outside of the area of interested (AOI). Through this path, ASE_Stream 02 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). Approximately 179 linear feet (lf) (665 lf – 486 culverted lf ) of ASE_Stream 02 within the AOI is conveyed off-site towards the Mud River.

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

<sup>2</sup> 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.

<sup>3</sup> 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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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
ASE_Wetland 02	0.166	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	ASE_Wetland 02 directly ASE_Stream 02, an intermittent direct tributary to the Mud River an (a)(2) water, as described above. ASE_Wetland 02 directly abuts a water identified in 33 CFR 328.3(a)(2).

**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>				
Exclusion Name	Exclusion Size		Exclusion <sup>5</sup>	Rationale for Exclusion Determination
ASE_Stream 01	321	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	ASE_Stream 01 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
ASE_Wetland 01	0.028	acre(s)	(b)(1) Non-adjacent wetland.	ASE_Wetland 01 is a physically remote and isolated wetland. Reference Section III B of this AJD form for typical year assessments.
ASE_Wetland 03	0.011	acre(s)	(b)(1) Non-adjacent wetland.	ASE_Wetland 03 is a physically remote and isolated wetland. Reference Section III B of this AJD form for typical year assessments.
ASE_Wetland 04	0.013	acre(s)	(b)(1) Non-adjacent wetland.	ASE_Wetland 04 is a physically remote and isolated wetland. Reference Section III B of this AJD form for typical year assessments.
ASE_Ditch 01	968	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	ASE_Ditch 01 was constructed in uplands to control water run off. Reference Section III B of this AJD form for typical year assessments.
ASE_Ditch 02	152	Linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch	ASE_Ditch 02 was constructed in uplands to control water run off. Reference Section III B of this AJD form for typical year assessments.

<sup>4</sup> 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.

<sup>5</sup> 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)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
		constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	

**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: [Nationwide Permit 39 Preconstruction Notification, Choyce Peterson, Inc., WV-BTS-Ona, Cabell County, West Virginia \(1 September 2020\)](#)  
This information **Select.** sufficient for purposes of this AJD.  
Rationale: [N/A](#)
- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
- Photographs: [Aerial and Other: Attachment B Impact Map WV-BTS-Ona included in the report, Nationwide Permit 39 Preconstruction Notification, Choyce Peterson, Inc., WV-BTS-Ona, Cabell County, West Virginia \(1 September 2020\) and Appendix B: WV-BTS-Ona, Impact Photo Exhibit taken May 18, 2020 and July 14, 2020.](#)
- 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: [Custom Soil Resource Report included in the original report titled Nationwide Permit 39 Preconstruction Notification, Choyce Peterson, Inc., WV-BTS-Ona, Cabell County, West Virginia.](#)
- USFWS NWI maps: [Regulatory JD Viewer](#)
- USGS topographic maps: [WV Milton](#)

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
<a href="#">USGS Sources</a>	<a href="#">N/A.</a>
<a href="#">USDA Sources</a>	<a href="#">N/A.</a>
<a href="#">NOAA Sources</a>	<a href="#">N/A.</a>
<a href="#">USACE Sources</a>	<a href="#">N/A.</a>
<a href="#">State/Local/Tribal Sources</a>	<a href="#">N/A.</a>
<a href="#">Other Sources</a>	<a href="#">N/A.</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. Two point-in-time data sources, one for 18 May 2020 and one for 14 July 2020, with a corresponding APT report, were included in the evaluation for the excluded ephemeral stream, excluded isolated wetlands, and excluded ephemeral ditches listed in Section II D (ASE\_Stream 01, ASE\_Wetland 01, ASE\_Wetland 03, ASE\_Wetland 04, ASE\_Ditch 01, and ASE\_Ditch 02), and a jurisdictional wetland and stream listed in Section II C



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(ASE\_Wetland 02 and ASE\_Stream 02). According to the APT report for 18 May 2020, normal conditions were observed during the wet season with a PSDI Value of 4.21 (extreme wetness) and an ARC score of 12. According to the APT report of 14 July 2020, normal conditions were observed during the dry season with a PSDI Value of 3.47 (severe wetness) and an ARC score of 11. On 18 May 2020, during normal conditions of the wet season, little to no flow was observed, supporting the fact that ASE\_Stream 01 does not meet the flow requirements of a jurisdictional tributary. Additionally, in the 14 July 2020 observation, during normal conditions of the dry season, little to no flow was observed, supporting the fact that the ASE\_Stream 01 does not meet the flow requirements of a jurisdictional tributary. It has been determined that the stream, ASE\_Stream 01, listed in Section II D, above, exhibit ephemeral flow, and is not a water of the United States per 33 CFR 328.3(b)(3), and is not subject to regulation under Section 404. Additionally, it has been determined that ASE\_Wetland 01, ASE\_Wetland 03, and ASE\_Wetland 04, listed in Section II D, above, do not meet the definition of adjacent wetlands (33 CFR 328.3(c)(1)(i)-(iv)), are not considered a water of the United States per 33 CFR 328.3(b)(1), and are not subject to regulation under Section 404. Furthermore, ASE\_Ditch 01 and ASE\_Ditch 02, listed in Section II D, above, demonstrate they are manmade ditches constructed to control water runoff. It has been determined that the ditches listed in Section II D, above, are ditches constructed to control the water runoff and are not waters of the United States per 33 CFR 328.3(b)(5), and are not subject to regulation under Section 404. On 18 May 2020, during normal conditions of the wet season, intermittent flow was observed, supporting the fact that ASE\_Stream 02 meets the flow requirements of a jurisdictional tributary. Additionally, in the 14 July 2020 observation, during normal conditions of the dry season, intermittent flow was observed, supporting the fact that ASE\_Stream 02 does meet the flow requirements of a jurisdictional tributary. It has been determined that the stream, ASE\_Stream 02, listed in Section II C, above, exhibit intermittent flow, and is a water of the United States per 33 CFR 328.3(a)(2), and is subject to regulation under Section 404. Additionally, it has been determined that ASE\_Wetland 02, listed in Section II C, above, abuts a water identified in 33 CFR 328.3(a)(2), is a water of the United States per 33 CFR 328.3(a)(4), and is subject to the regulation under Section 404.

**C. Additional comments to support AJD:** According to the FEMA National Flood Hazard Layer on the Regulatory Viewer, the review area is in the "Area of Minimal Flood Hazard" zone.