



**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): 11/23/2020
 ORM Number: LRH-2020-796-GAU; UNT South Fork Cherry River
 Associated JDs: N/A
 Review Area Location¹: State/Territory: WV City: Richwood County/Parish/Borough: Greenbrier
 Center Coordinates of Review Area: Latitude 38 09' 46" Longitude -80 24' 46"

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
UNTs South Fork Cherry River, Little Blizzard Creek & UNTs, Little Rocky Run & UNTs, Rocky Run & UNTs	13,815 linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	The streams are intermittent tributaries of South Fork Cherry River, which flows into the Gauley River, a navigable water of the U.S. The streams were observed to have flowing water during the March 2019 site visits. Stream flow was driven by surface and groundwater inputs. Refer to the enclosed map entitled "Rocky Run Surface Mine (S-3012-19) – Preliminary Stream & Wetland Map – September

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
			2020". See attached AJD Table 1 for further description of each stream.

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
Open Waters AA, E, G, & 2-5	0.82	acre(s)	(a)(3) Lake/pond or impoundment of a jurisdictional water inundated by flooding from an (a)(1)-(a)(3) water in a typical year.
			The open waters are located in depressional areas that directly abut intermittent stream channels which contribute to their hydrology, via flooding, in a typical year. Refer to the enclosed map entitled "Rocky Run Surface Mine (S-3012-19) – Preliminary Stream & Wetland Map – September 2020". See attached AJD Table 1 for each open water description.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
Wetlands A, D-H, L-N, Q-S, AA, DD, GG, & HH	2.01	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.
			The wetlands directly abut intermittent stream channels and meet the three criteria required to meet the definition of a wetland. Refer to the enclosed map entitled "Rocky Run Surface Mine (S-3012-19) – Preliminary Stream & Wetland Map – September 2020". See attached AJD Table 1 for each wetland description.

D. Excluded Waters or Features



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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
UNT's Little Rocky Run, Rough Fork, Blizzard Run, & South Fork Cherry River	2,363 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	The streams provide only ephemeral flow and have no evidence of physical or biological indicators of intermittent flow. Reference Section III B of this AJD form for typical year assessment

Excluded waters ((b)(1) – (b)(12)): ⁶ within the AJD boundary.			
Exclusion Name	Exclusion Size	Exclusion ⁷	Rationale for Exclusion Determination
Wetlands B, C, BB, CC, EE, GG, A, X, Y, W, U, V, T, P, O M, K, J	1.34 acre(s)	(b)(1) Non-adjacent wetland.	The wetlands do not abut or lie adjacent to an a(1), (2), or (3) water. See attached AJD Table 2 for each wetland description.
Open Water #1 and U	0.49 acre(s) near feetline ar feet	(b)(9) Water-filled depression constructed or excavated in upland/non-	The open waters are located in depressed areas constructed incidental to pre-SMCRA mining activities and are not located abutting or adjacent to an a(1), (2), or (3) water. See attached AJD Table 2 for description.

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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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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Excluded waters ((b)(1) – (b)(12)). ⁶ within the AJD boundary.			
Exclusion Name	Exclusion Size	Exclusion ⁷	Rationale for Exclusion Determination
CWA Channel A	1,445	jurisdictional water incidental to mining (b)(1) Water or water features not identified in (a)(1), (2), (3), or (4)	This channel is part of a permitted diversion channel utilized as part of a CWA water treatment system under NPDES Permit WV0096725. See attached AJD Table 2 for description.
Scoured Channel Features A, B, C, D, E, F, G, H, I J, K, L, M, N, O, and P	3,507	(b)(1) Water or water features not identified in (a)(1), (2), (3), or (4)	These features have a defined channel and provide ephemeral flow but do not have a hydrological connection to an (a)(1), (2), (3) or (4) water. See attached AJD Table 2 for description.

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: [Doss Engineering](#), in a letter dated September 23, 2020, requested an AJD for streams, wetlands, and open waters identified in the report entitled “Preliminary Jurisdictional Determination Report for South Fork Coal Company, LLC – Rocky Run Surface Mine – SMA S-3012-19 – dated September 2020” and attached delineation mapping entitled “Rocky Run Surface Mine – S-3012-19 – Preliminary Stream & Wetland Delineation Map – September 2020”.

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 September 23, 2020 Delineation Report](#)
- 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: [Greenbrier County, WV USDA Soil Survey](#)
- USFWS NWI maps: [Title\(s\) and/or date\(s\)](#).



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USGS topographic maps: [Fork Mountain 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 delineation was conducted between March 11 and April 1, 2019 during a period of below average precipitation. The applicant indicated that while there was no rainfall during the period of the site investigation, however, there were two days of snowfall. 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 “Rocky Run Surface Mine – S-3012-19 – Preliminary Stream & Wetland Delienation Map – September 2020” had determined to be accurate.