



**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): 2/19/2021

ORM Number: LRH-2021-00136-OHR

Associated JDs: N/A

Review Area Location¹: State/Territory: West Virginia City: Middlebourne County/Parish/Borough: Wetzel and Tyler

Center Coordinates of Review Area: Latitude 39.555157 Longitude -80.802117

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):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.

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.

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.

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**

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
ASE-Stream01	38	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	It has been determined that this is an ephemeral stream and meets the definition of “ephemeral” in paragraph 33 CFR 328.3 (c)(3). Reference Section III B of this AJD form for typical year assessments
ASE-Stream03	37	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	See Rationale for ASE-Stream01
ASE-Stream11	40	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	See Rationale for ASE-Stream01
ES Stream S-03	36	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	See Rationale for ASE-Stream01.
ES Stream S-04	52	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	See Rationale for ASE-Stream01
ES Stream S-05	46	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	See Rationale for ASE-Stream01
ES Stream S-07	40	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	See Rationale for ASE-Stream01

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: [“Wetland Delineation And Stream Identification Report For Wetzel/Tyler PH IV Wetzel And Tyler Counties, West Virginia,” Dated 8 February](#)

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**

2021 and prepared by Allstar Ecology, LLC (Feb 2021 Delineation Report), and the “Wetland Delineation And Stream Identification Report For The Wetzel-Tyler Road Pad Wetzel & Tyler Counties, West Virginia”, Dated 26 October 2020 and prepared by Envirosience, Inc. (Oct 2020 Delineation Report), on behalf of Antero Resources Corporation, with additional information received on 16 February 2021

This information is sufficient for purposes of this AJD.

Rationale: The information provided accurately reflects the district’s conclusions on the seven (7) aquatic resources within the geographic boundary of the AJD Review Area.

- Data sheets prepared by the Corps: N/A
- Photographs: Aerial and Other: Attachment C (Index Map through Sheet 10) and Figure 2 (Index Map through Sheet 5) provided in the Feb 2021 Delineation Report)
- Corps site visit(s) conducted on: N/A
- Previous Jurisdictional Determinations (AJDs or PJDs): N/A
- Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- USDA NRCS Soil Survey: “Custom Soil Resources Report Map” provided in the Feb 2021 Delineation Report
- USFWS NWI maps: Huntington District Regulatory Viewer – NWI Mapping
- USGS topographic maps: Figure 1: Vicinity Map Wetzel/Tyler PH IV of the Feb 2021 Delineation Report

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	National Hydrography Dataset (NHD) accessed in the Huntington District Regulatory Viewer
USDA Sources	Other than the Web Soil Survey Report listed above, no other USDA sources were used.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	National Flood Hazard Layer accessed in the Huntington District Regulatory Viewer

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 resources occur. One (1) point-in-time data source, 23 July 2020, with a corresponding APT report, was included in the evaluation for the excluded ephemeral streams ASE_Stream01, ASE_Stream03, ASE_Stream11, ES Stream S-03, ES Stream S-04, ES Stream S-05, and ES Stream S-07 as listed in Section II D. According to the APT report for 23 July 2020, normal conditions were observed during the dry season with a Palmer Drought Severity Index (PDSI) of severe wetness. The antecedent precipitation condition with a score of 10 is considered “normal” for that point in time. The periodic range used for this typical assessment was the three (3) 30-day periods preceding the observation date and the nearest available weather stations (Hannibal Locks and Dam, Mannington 8 WNW, and Middlebourne 3 ESE) within the Upper Ohio-Little Kanawha River watershed in the Hydrologic Unit Code (HUC) 050030201. This geographic range is appropriate because it is the same 8-digit HUC as the aquatic resources within the geographic boundary of the AJD Review Area.



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

C. Additional comments to support AJD: 33 CFR 328.3(b)(3) - In July 200, during normal conditions of the dry season, no flow was observed in ASE_Stream01, ASE_Stream03, ASE_Stream11, ES Stream S-03, ES Stream S-04, ES Stream S-05, and ES Stream S-07, supporting the determination that the ephemeral streams do not meet the flow requirements of jurisdictional tributaries. It has been determined that the ephemeral streams listed in Section II D above exhibit ephemeral flow, are not waters of the U.S. per 33 CFR 328.3(b)(3), and are not subject to regulation under Section 404 of the Clean Water Act (Section 404).