



**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): 3/2/2021

ORM Number: LRH-2021-00121-OHR

Associated JDs: N/A

Review Area Location<sup>1</sup>: State/Territory: West Virginia City: Middlebourne County/Parish/Borough: Tyler

Center Coordinates of Review Area: Latitude 39.513542 Longitude -80.917313

**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)<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
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.

<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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**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_Stream04	9	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	It has been determined that ASE_Stream04 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_Stream14	168	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	See Rationale for ASE_Stream04.

**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 the Pursley Slides \(MOERS007\), Wetzel and Tyler Counties, West Virginia, dated February 1, 2021, prepared by AllStar Ecology LLC, on behalf of Eureka Midstream, LLC, with additional information received on February 15, 2021.](#)

This information is sufficient for purposes of this AJD.

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

- Data sheets prepared by the Corps: [N/A](#)
- Photographs: [Aerial and Other: Figure 2 Potentially Jurisdictional Waters Map \(January 2021\); Appendix B: Potentially Jurisdictional Aquatic Features & Data Points Photos \(January 2021\)](#)
- 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: [Appendix C: Desktop Findings Map \(January 2021\)](#)
- USFWS NWI maps: [Appendix C: Desktop Findings Map \(January 2021\)](#)
- USGS topographic maps: [Figure 1: Vicinity Map \(January 2021\)](#)

**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="#">National Hydrography Dataset (NHD) accessed 17 February 2021; Huntington District Regulatory Viewer</a>
<a href="#">USDA Sources</a>	<a href="#">Other than the Web Soil Survey Report listed above, no other USDA sources were used.</a>
<a href="#">NOAA Sources</a>	<a href="#">N/A.</a>

<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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Data Source (select)	Name and/or date and other relevant information
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	National Flood Hazard Layer Map included in the Delineation Report

- 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. One (1) point-in-time data source, 5 January 2021, with a corresponding APT report, was included in the evaluation for the excluded ephemeral streams, ASE\_Stream04 and ASE\_Stream14, listed in Section II D. According to the APT report for 5 January 2021, wetter than normal conditions were observed during the wet season with a Palmer Drought Severity Index (PDSI) Value of 0.68 (incipient wetness). The antecedent precipitation condition with a score of 15 is considered “wetter than 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, Middlebourne 3 ESE, and W Union 2) within the Upper Ohio-Little Kanawha River watershed in the Hydrologic Unit Code (HUC) 05030201. This geographic range is appropriate because it is the same 8-digit HUC as the aquatic resource within the geographic boundary of the AJD Review Area.
- C. Additional comments to support AJD:** 33 CFR 328.3(b)(3) - In January 2021, during wetter than normal conditions of the wet season, flow was observed in ESI\_Stream12 and ESI\_Stream14, with moderate and poor bank definition respectively, and no aquatic fauna detected, supporting the fact 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 a water of the United States per 33 CFR 328.3(b)(3), and are not subject to regulation under Section 404 of the Clean Water Act (Section 404).