



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

**1. ADMINISTRATIVE INFORMATION**

Completion Date of Approved Jurisdictional Determination (AJD): June 17, 2021  
 ORM Number: **LRH-2021-253-BCR; Fulton Creek of Clear Fork of BCR.**  
 Associated JDs: 2011-689-BCR: JD issued Dec 2012; and PJD 2012-779-BCR: JD issued Feb 2015.  
 Review Area Location<sup>1</sup>: State: WV City: 2.2 miles NW of Clear Creek County: Raleigh

**2. FINDINGS**

**A. Summary:**

- 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: [NA or describe](#).
- 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 the 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.	

**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.	

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
Fulton Creek between G and NPDES Pond.	Estim 4,200 LF (map meas.)	(a)(2) Intermittent tributary contributes surface water flow...	Delineated on USGS map as dashed line. Flow regime not determined on previous JDs.
Channel G	3,000 Linear Feet (LF)	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Flow observed to Sta 30+00. No change to previous JD.

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

<sup>2</sup> If a 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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1 <sup>st</sup> RUT of G	125 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed along entire channel. No change from previous JD.
2 <sup>nd</sup> RUT of G	450 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed along entire channel. No change from previous JD.
1 <sup>st</sup> LUT of G intermitt reach	100 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed along entire channel. No change from previous JD.
2 <sup>nd</sup> LUT of G intermitt reach	700 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed to Sta 7+00. No change from previous JD.
Channel H	253 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed along entire channel. No change from previous JD.
Channel I	450 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed along entire channel to Wetland 3 on mine bench. No change from previous JD.
F1 – intermittent reach	3,055 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed to Sta 30+55. No change from previous JD.
F1.1 intermittent reach	1,750 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed to Sta 17+50. No change from previous JD.
F1.2	470 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed along entire channel. No change from previous JD.
Bear Hollow – Perennial reach	3,750 LF	(a)(2) Perennial tributary contributes surface water flow...	USGS map & NHD shows dashed line. However, channel widens at Sta. 37+50 where mine drainage (believed perennial) enters stream. Flow estimated 3x greater than above 37+50. 3 <sup>rd</sup> order stream.
Bear Hollow – intermitt. reach	1,780 LF	(a)(2) Intermittent tributary contributes surface water flow...	Channel narrows above Sta. 37+50 with reduced flow and no seepage source. 2 <sup>nd</sup> order stream at that point. Dry above Sta.55+30.
BH1	250 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed to Sta. 2+50 where groundwater outflow observed. Dry above Sta 2+50. Not delineated on USGS map.
BH2	1,640 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed. Delineated on USGS as dashed line. No change from previous JD.
BH2.1	320 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed. No change from previous JD.
BH3	211 LF	(a)(2) Intermittent tributary contributes surface water flow...	
BH4	215 LF	(a)(2) Intermittent tributary contributes surface water flow...	
BH5	198 LF	(a)(2) Intermittent tributary contributes surface water flow...	
BH6	120 LF	(a)(2) Intermittent tributary contributes surface water flow...	
F2	155 LF	(a)(2) Intermittent tributary contributes surface water flow...	
F3	830 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed along entire channel. No change from previous JD.
F3.1	320 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed along entire channel.



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F4	145 LF	(a)(2) Intermittent tributary contributes surface water flow...	No change from previous JD.
F5	1,085 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed along entire channel. 1 <sup>st</sup> order high-gradient channel. No change from previous JD
CC3	656 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed along entire channel. No change from previous JD
CC4 intermittent reach	1,860 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed. No change in E/I from previous JD. First order, high gradient channel.
CC4.1 intermittent reach	1,488 LF	(a)(2) Intermittent tributary contributes surface water flow...	
CC5 intermittent reach	750 LF	(a)(2) Intermittent tributary contributes surface water flow...	
CC6 intermittent reach	2,900 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed. No change in E/I from previous JD.
CC6.1 intermittent reach	2,800 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed. No change in E/I from previous JD.
LF0 intermittent reach	470 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed to Sta 4+70. No change in E/I location from previous JD. Surface connection to Left Fork White Oak Creek, an (a)(2) water. <b>Wetland 1</b> abuts LF0 at mouth of stream.
LF1	1,075 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed along entire channel. No change from previous JD
LF2 intermittent reach	250 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed. No change in E/I from previous JD.
LF3	1,490 LF	(a)(2) Intermittent tributary contributes surface water flow...	Flow observed along entire channel. No change from previous JD
		N/A.	

<b>Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):</b>			
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
NA	NA	NA	

<b>Adjacent wetlands ((a)(4) waters):</b>			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale
Wetland 1	0.06 acre	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Abutting intermittent Channel LF0, an (a)(2) water of the U.S. Meets Corps definition of wetland.
Wetland 3	0.02 acre	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Abutting intermittent Channel I of Fulton Creek, an (a)(2) water of the U.S. Meets Corps definition of wetland.
Wetland 5	0.12 acre	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Abutting intermit. Channel G of Fulton Creek, an (a)(2) water of the U.S. Meets Corps definition of wetland.
		N/A.	



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**D. Excluded Waters or Features**

<b>Excluded Waters ((b)(1) thru (b)(12)).<sup>4</sup></b>			
<b>Exclusion Name</b>	<b>Exclusion Size</b>	<b>Exclusion<sup>5</sup></b>	<b>Rationale for determination</b>
Wetland 4	0.04 acre	(b)(1) Non-adjacent wetland.	No outflow channel. Drains into ground. Isolated (a)(1) waters.
Channel G – ephemeral section	436 LF	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Dry. No change in E/I from previous JD
1 <sup>ST</sup> LUT of G ephemeral section	20 LF	(b)(3) Ephemeral feature...	Dry. No change in E/I from previous JD
2 <sup>nd</sup> LUT of G ephemeral section	650 LF	(b)(3) Ephemeral feature...	Dry. No change in E/I from previous JD
3 <sup>rd</sup> LUT of G	44 LF	(b)(3) Ephemeral feature...	Dry. No change from previous JD.
Channel J	126 LF	(b)(3) Ephemeral feature...	
Channel K	665 LF	(b)(3) Ephemeral feature...	Dry, no clear bed, debris. No change from conditions documented in previous JD. [Note: Erroneously listed in previous JD verification as intermittent.]
F1 Fulton Cr. ephemeral section	905 LF	(b)(3) Ephemeral feature...	Dry above Sta 3+055. No change in E/I location from previous JD.
F1.1 ephemeral section	225 LF	(b)(3) Ephemeral feature...	Dry above Sta 17+50. No change in E/I location from previous JD.
F1.2	35 LF	(b)(3) Ephemeral feature...	Dry above Sta 4+70. No change from previous JD.
Bear Hollow ephemeral reach	830 LF	(b)(3) Ephemeral feature...	No change in E/I location from previous JD.
BH1 ephemeral section	1,098 LF	(b)(3) Ephemeral feature...	E/I point at Sta. 2+50 (where groundwater outflow observed). Channel above 2+50 dry with debris. No standing water. Not delineated on USGS map.
BH7	541 LF	(b)(3) Ephemeral feature...	Dry. No change from previous JD.
F2	101 LF	(b)(3) Ephemeral feature...	
F7	2,205 LF	(b)(3) Ephemeral feature...	
CC1	575 LF	(b)(3) Ephemeral feature...	
CC2	579 LF	(b)(3) Ephemeral feature...	
CC4 ephemeral section	717 LF	(b)(3) Ephemeral feature...	Dry. No change in E/I from previous JD.

<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 the 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 subcategories of the (b)(1) exclusions were administratively created for the purpose 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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CC4.1 ephemeral section	125 LF	(b)(3) Ephemeral feature...	Dry. No change in E/I from previous JD.
CC5 ephemeral section	600 LF	(b)(3) Ephemeral feature...	
CC6 ephemeral section	130 LF	(b)(3) Ephemeral feature...	
CC6.1 ephemeral section	90 LF	(b)(3) Ephemeral feature...	
CC6.2	571 LF	(b)(3) Ephemeral feature...	Dry along entire channel. No change from previous JD.
LF0 ephemeral section	270 LF	(b)(3) Ephemeral feature...	No change in E/I point from 2015 JD.
LF2 ephemeral section	321 LF	(b)(3) Ephemeral feature...	No change in E/I point from 2015 JD.
NPDES Pond on Fulton Creek	acreage not measured	(b)(12) Waste treatment system.	Pond constructed to meet NPDES permit WV1014951 which remains active as of date of this AJD. WQ samples still being collected from Fulton Creek.
Fulton Creek above NPDES Pond.	710 LF	(b)(12) Waste treatment system.	This section of Fulton Creek flows from toe of valley fill to NPDES pond (NPDES permit WV1014951). Pond still used to meet NPDES permit and therefore this section of the stream continues to be part of the active "waste treatment system".
LF4	140 LF	(b)(12) Waste treatment system.	Stream is located between valley fill and NPDES Ponds 1 & 2 (WV1014951) and therefor a component of the sediment control system.
NPDES in-stream Ponds 1 & 2	0.84 and 0.12 acre	(b)(12) Waste treatment system.	Ponds constructed to meet NPDES permit WV1014951 which remains active as of date of this AJD. WQ samples still being collected.

**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: [Navigator Environmental & Technical Services, Inc. submitted AJD report titled \*Updated: Fulton Creek Jurisdictional Determination\*, dated March 9, 2021.](#)

This information is sufficient for purposes of this JD.

\_\_ Rationale: [Sufficient to verify location, flow regime, connection to \(a\)\(2\) waters, jurisdiction.](#)

\_\_ Data sheets prepared by the Corps: [NA](#)

- Photographs: [Aerial and Other:](#)

\_\_ Corps site visit conducted on: [As conducted for previous JDs listed below.](#)

- Previous AJD and PJDs: [2011-689-BCR and 2012-779-BCR \(JD issued Feb 2015\).](#)

- Antecedent Precipitation Tool [[Provide detailed discussion in Section III.B.](#)]



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- USDA/NRCS Soil Survey:
- USFWS NWI Maps:
- USGS Topographic Maps

Other Data Sources Used to Aid in this Determination:

Data Source	
USGS Source	
USDA Source	
USACE Sources	
State/Local/Tribal Sources	
Other Sources	

**B. Typical Year Assessment:** Field reviews were conducted on March 9, 2021. The AJD report includes precipitation data collected at Beckley, WV (located 18 miles southeast), documenting that the AJD site had no precipitation or snowmelt on or within 4 days prior to the field review date. During that time, daily low temperatures were below freezing but daily high temperatures were 38 to 57 fahrenheit. This information indicates that streams flowing during the site investigation were likely not ephemeral flows.

**C. Additional Comments to Support AJD:** See attached JD Map titled: *Republic Energy, LLC, Fulton Jurisdictional Determination, Updated March 18, 2021.*

F6 delineated on previous JD was no longer present during this AJD field review (no clear channel or OHWM, evidenced by photo).