



**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): 11/17/2020

ORM Number: LRH-2020-00765-OHR

Associated JDs: N/A

Review Area Location¹: State/Territory: West Virginia City: Reader County/Parish/Borough: Wetzel

Center Coordinates of Review Area: Latitude 39.557063 Longitude -80.731110

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.



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
ESI_Stream12	48	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	It has been determined that ESI_Stream12 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
ESI_Stream14	10	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	See Rationale for ESI_Stream12.
ESI_Wetland02	0.003	acre(s)	(b)(1) Non-adjacent wetland.	The subject wetland, ESI_Wetland02 has been determined to not be “adjacent” to a paragraph (a)(1), (2), or (3) water (33 CFR 328.3(c)(1)(i)-(iv)). Refer to Section III C. for an assessment of each adjacency criteria.
ESI_Wetland03	0.04	acre(s)	(b)(1) Non-adjacent wetland.	See Rationale for ESI_Wetland02.

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 Furbee Well Pad, Wetzel County, West Virginia, dated 9 September 2020, prepared by Environmental Solutions and Innovations, Inc., on behalf of Antero Resources Corporation, with additional information received on 4 November 2020](#)

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 \(Index Map through Sheet 5\) Delineation Map \(Sept. 2020\); Appendix B: Potentially Jurisdictional Aquatic Features & Data Points Photos \(Sept 2020\)](#)
- 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: [NRCS Soil Types Map \(Sept 2019\)](#)
- USFWS NWI maps: [Appendix C: Desktop Findings Map \(Sept. 2020\)](#)
- USGS topographic maps: [Figure 1: Site Location Map \(Sept. 2020\)](#)

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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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 2 Nov 2020; 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 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, 15 August 2018, with a corresponding APT report, was included in the evaluation for the excluded ephemeral streams, ESI_Stream12 and ESI_Stream14, listed in Section II D. According to the APT report for 15 August 2018, normal conditions were observed during the dry season with a Palmer Drought Severity Index (PDSI) Value of 3.79 (severe wetness). The antecedent precipitation condition with a score of 14 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, Middlebourne 3 ESE, New Martinsville 6.5 E, and Sisterville 6.1 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 resource within the geographic boundary of the AJD Review Area.

C. Additional comments to support AJD: 33 CFR 328.3(b)(3) - In August 2018, during normal conditions of the wet season, no flow was observed in ESI_Stream12 and ESI_Stream14, 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).

The subject wetlands, Wetlands ESI_Wetland02 and ESI_Wetland03, have been determined to not be “adjacent” to a paragraph (a)(1), (2), or (3) water (33 CFR 328.3(c)(1)(i)-(iv)). Each adjacency criteria is assessed below:

- (i) The subject wetlands do not abut a paragraph (a)(1), (2), or (3) water as evidenced by the submitted wetland delineation report and a review of remoting sensing resources. The subject wetlands persist in a hillside landform in the landscape, correspond to more widely spaced topographic contour lines, and are entirely surrounded by uplands on all sides. No (a)(1)-(3) waters were observed within the immediate vicinity of the perimeter of the subject wetlands or the AJD boundary, therefore, the subject wetlands are not abutting a paragraph (a)(1)-(3) water.
- (ii) No evidence of inundation by flooding from a paragraph (a)(1), (2), or (3) water was documented in the delineation report. Based on remoting sensing, no potential (a)(1)-(3) waters were observed within the



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immediate vicinity of the subject wetlands. Based on a review of mapping resources and aerial photographs, the nearest potential mapped (a)(1)-(3) water is a stream approximately 1,300 feet east of the subject parcel. Additionally, the subject parcel is located outside of the Federal Emergency Management Agency 500-year floodplain. The Delineation Report and remote sensing resources do not indicate the subject wetlands are prone to being inundated by flooding from a paragraph (a)(1)-(3) water, the subject wetlands have been determined to not meet adjacency criteria (ii).

■ (iii) The subject wetlands persist in a hillside landform in the landscape, correspond to more widely spaced topographic contour lines, and are entirely surrounded by uplands on all sides. The subject wetlands are not separated from a paragraph (a)(1)-(3) water by a natural berm, bank, dune, or similar natural feature and, therefore, do not meet adjacency criteria (iii).

■ (iv) The subject wetlands persist in a hillside landform in the landscape, correspond to more widely spaced topographic contour lines, and are entirely surrounded by uplands on all sides. Based on remote sensing resources and the Delineation Report, there were no artificial dikes, barriers, or similar artificial structures documented around the perimeter of the subject wetlands nor were there any artificial features (e.g. culverts) documented within or stemming from the subject wetlands. The subject wetlands are not separated from a paragraph (a)(1)-(3) water by an artificial dike, barrier, or similar artificial structure and, therefore, do not meet adjacency criteria (iv).