



**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): 5/20/2021  
 ORM Number: LRH-2021-00139-MUS  
 Associated JDs: N/A  
 Review Area Location<sup>1</sup>: State/Territory: Ohio City: Lawrence Township  
 County/Parish/Borough: Tuscarawas  
 Center Coordinates of Review Area: Latitude 40.589456 Longitude -81.493848

**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
Wetland WD-A	0.27	acre(s)	(b)(1) Non-adjacent wetland.	The subject wetland, Wetland WD-A, 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.
EWI-1	1.60	acre(s)	(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) subcategories.	The subject feature is a water filled depression/pit was constructed in uplands incidental to previous mining activities. Mining activities have ceased on-site. The subject water feature is not an (a)(1)-(a)(4) water. The subject water feature does not contribute surface water flow directly or indirectly to an (a)(1) - (a)(3) water and is not inundated by flooding from an (a)(1) - (a)(3) water in a typical year.
EWI-2	0.91	acre(s)	(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) subcategories.	Refer to the rationale under EWI-1.
EWI-3	0.10	acre(s)	(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) subcategories.	Refer to the rationale under EWI-1.
EWI-4	0.38	acre(s)	(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) subcategories.	Refer to the rationale under EWI-1.
EWI-10	0.44	acre(s)	(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet	Refer to the rationale under EWI-1.

<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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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
		the other (b)(1) subcategories.	
EWI-14	0.07	acre(s)	(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) subcategories.
			Refer to the rationale under EWI-1.

**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: [The “Jurisdictional Determination Report for CCU Coal and Construction LLC, Lawrence Township, Tuscarawas County, Ohio, Strasburg” \(Delineation Report\), dated 2 February 2021 and revised 18 May 2021, prepared by Buckeye Mineral Services., Inc., on behalf of CCU Coal and Construction LLC.](#)

This information is sufficient for purposes of this AJD.

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

- Data sheets prepared by the Corps: [N/A](#)
- Photographs: [Aerial and Other: Aerial imagery accessed in the Huntington District Regulatory Viewer and Google Earth.](#)
- 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 \(Delineation Report\).](#)
- USFWS NWI maps: [Accessed from the Huntington District Regulatory Viewer.](#)
- USGS topographic maps: [USGS Topo Map \(Delineation Report\).](#)

**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 in the 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>
<a href="#">USACE Sources</a>	<a href="#">N/A.</a>
<a href="#">State/Local/Tribal Sources</a>	<a href="#">N/A.</a>
<a href="#">Other Sources</a>	<a href="#">National Flood Hazard Layer Map accessed in the Huntington District Regulatory Viewer.</a>



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**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 periodic range (seasonally or annually) for a specific geographic region where the aquatic resource occurs. One (1) point-in-time data source, 13 May 2021, with a corresponding APT report, was included in the evaluation for the excluded non-adjacent wetland and the excluded (b)(1) water features, listed in Section II. D. According to the APT report for 13 May 2021, normal conditions were observed during the WebWIMP wet season with a Palmer Drought Severity Index (PDSI) Value of mild drought. 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 station (New Philadelphia FLD, Dover 1.0E, Dover 4.6 WNW, New Philadelphia 1 A, New Philadelphia, Louisville, Dennison WTR WKS) within the Muskingum River watershed in the 8-digit HUC (05040001). 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

**C. Additional comments to support AJD:** 33 CFR 328.3(b)(1) - The subject wetland, Wetland WD-A, has 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 wetland does 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 wetland persists in a depressional landform in the landscape, corresponds to widely spaced contour lines, and is entirely surrounded by uplands on all sides. No (a)(1)-(3) waters were observed within the immediate vicinity of the perimeter of the subject wetland or the AJD boundary, therefore, the subject wetland is 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 immediate vicinity of the subject wetland. Based on a review of mapping resources and aerial photographs, the nearest potential mapped (a)(1)-(3) water is a stream approximately 1,000 feet northwest of the subject parcel. Additionally, the subject parcel is located outside of the Federal Emergency Management Agency 500-year floodplain. The Delineation Report and remoting sensing resources do not indicate the subject wetland is prone to being inundated by flooding from a paragraph (a)(1)-(3) water, the subject wetland has been determined to not meet adjacency criteria (ii).

■ (iii) The subject wetland persists in a depressional landform in the landscape, corresponds to widely spaced contour lines, and is entirely surrounded by uplands on all sides. The subject wetland is not separated from a paragraph (a)(1)-(3) water by a natural berm, bank, dune, or similar natural feature and, therefore, it does not meet adjacency criteria (iii).

■ (iv) The subject wetland persists in a depressional landform in the landscape, corresponds to widely spaced contour lines, and is 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 wetland nor were there any artificial features (e.g. culverts) documented within or stemming from the subject wetland. The subject wetland is not separated



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from a paragraph (a)(1)-(3) water by an artificial dike, barrier, or similar artificial structure and, therefore, it does not meet adjacency criteria (iv).

The six water features, EWI-1, EWI-2, EWI-3, EWI-4, EWI-10, and EWI-14, are water filled depressions/pits that were constructed in uplands incidental to previous mining activities. Mining activities have ceased on-site. The subject waters are not (a)(1) - (a)(4) waters. The subject water features do not contribute surface water flow directly or indirectly to an (a)(1) - (a)(3) water and are not inundated by flooding from an (a)(1) - (a)(3) water in a typical year. The water features are not subject to regulation under Section 404 of the Clean Water Act.