



**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): 3/5/2021

ORM Number: LRH-2021-00189-OHR

Associated JDs: N/A

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

Center Coordinates of Review Area: Latitude 39.437105 Longitude -80.943216

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.

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
ASE_Stream02	189	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 the typical year assessment. Refer to Section III C for additional documentation for the ephemeral stream determination.

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 Meadville Tar10 Slide, Tyler County, West Virginia,” Dated 8 February 2021, prepared by Allstar Ecology, LLC (Delineation Report) on behalf of Eureka Midstream, LLC, with additional information submitted on 3 and 4 March 2021.

This information is sufficient for purposes of this AJD.

Rationale: The information provided accurately reflects the district’s conclusions on the one (1) aquatic resource within the geographic boundary of the AJD Review Area.

- Data sheets prepared by the Corps: N/A
- Photographs: Aerial and Other: Appendix B of the Delineation Report and photographs submitted on 3 March 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: “Custom Soil Resources Report Map” provided in the Delineation Report
- USFWS NWI maps: Huntington District Regulatory Viewer – NWI Mapping
- USGS topographic maps: Figure 1: Vicinity Map Meadville TAR10 Slide provided in the 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.

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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Data Source (select)	Name and/or date and other relevant information
Other Sources	National Flood Hazard Layer and Lidar Aerial Imagery 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, 20 February 2020, with a corresponding APT report, was included in the evaluation for the excluded ephemeral stream ASE_Stream02 as listed in Section II D. According to the APT report for 20 February 2020, wetter than normal conditions were observed during the wet season with a Palmer Drought Severity Index (PDSI) of mild wetness. The antecedent precipitation condition with a score of 16 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 (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 resources within the geographic boundary of the AJD Review Area.
- C. Additional comments to support AJD:** 33 CFR 328.3(b)(3) - In February 2020, during wetter than normal conditions of the wet season, no flow was observed in ASE_Stream02 supporting the determination that the ephemeral stream does not meet the flow requirements of a jurisdictional tributary. It has been determined that the ephemeral stream listed in Section II D above exhibits ephemeral flow, is not a water of the U.S. per 33 CFR 328.3(b)(3), and is not subject to regulation under Section 404 of the Clean Water Act (Section 404).