



**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): 1/27/2021  
 ORM Number: LRH-2021-83-GUY  
 Associated JDs: N/A or ORM numbers and identifiers (e.g. HQS-2020-00001-MSW-MITSITE).  
 Review Area Location<sup>1</sup>: State/Territory: WV City: Gilbert County/Parish/Borough: Mingo  
 Center Coordinates of Review Area: Latitude 37 36' 21.8" Longitude -81 53' 34.2"

**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):within the AJD Boundary			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
4th Left UNT Skillet Creek	2794	linear feet (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	The streams are intermittent tributaries to Skillet Creek and Neds Branch, which are direct perennial tributaries to the Guyandotte River, an (a)(1) - navigable water of the U.S. The streams were observed to no flowing water during the site visit but did exhibit areas of standing water during the November 2020 site visits. The stream channels exhibited a clear bed and bank and ordinary high water mark. The streambeds did not present large amounts of leaf litter and presented evidence that sufficient water flowed through the
5th Left UNT Skillet Creek	2352		
9th Left UNT Skillet Creek	1106		
1st Left UNT Neds Branch	2371		

<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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Tributaries ((a)(2) waters):within the AJD Boundary				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
2 <sup>nd</sup> Left UNT Neds Branch	2714			channels for extended periods of time. Refer to the enclosed map entitled "Skillet Surface Operation - Stream Delineation Map – November 2020.
3 <sup>rd</sup> Right UNT Neds Branch	152			

Tributaries ((a)(2) waters):within the AJD Boundary				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.		linear feet		

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.	acre(s)	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.	acre(s)	N/A.	

**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12)): <sup>4</sup> within the AJD boundary.				
Exclusion Name	Exclusion Size		Exclusion <sup>5</sup>	Rationale for Exclusion Determination
3 <sup>rd</sup> Left UNT Skillet Creek	1865	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	These channel segments only provide ephemeral flow, are narrow and shallow, and have large amounts of leaf litter and debris which is indicative of low flow for only short durations. These channel segments do not present any physical or biological indicators of intermittent flow. Refer to the enclosed map entitled "Skillet Surface Operation – Stream Delineation Map - November 2020.
1 <sup>st</sup> Left UNT Skillet Creek	165			
2 <sup>nd</sup> Left UNT Skillet Creek	185			
1 <sup>st</sup> Right UNT Skillet Creek	229			
1 <sup>st</sup> Left UNT Skillet Creek	344			

<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> within the AJD boundary.			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
2 <sup>nd</sup> Right UNT Skillet Creek	634		
2 <sup>nd</sup> Right 5 <sup>th</sup> Left UNT Skillet Creek	84		
6 <sup>th</sup> Left UNT Skillet Creek	600		
7 <sup>th</sup> Left UNT Skillet Creek	858		
8 <sup>th</sup> Left 1 <sup>st</sup> Right UNT Skillet Creek	667		
8 <sup>th</sup> Left UNT Skillet Creek	986		
9 <sup>th</sup> Left UNT Skillet Creek	618		
2 <sup>nd</sup> Left UNT Skillet Creek	200		
10 <sup>th</sup> Left UNT Skillet Creek	388		
11 <sup>th</sup> Left UNT Skillet Creek	2300		
1 <sup>st</sup> Right UNT Skillet Creek	500		
2 <sup>nd</sup> Right UNT Skillet Creek	484		
2 <sup>nd</sup> Left UNT Skillet Creek	255		
3 <sup>rd</sup> Left UNT Skillet Creek	400		
1 <sup>st</sup> Left UNT Neds Branch	1355		
1 <sup>st</sup> Right UNT Neds Branch	1486		



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Excluded waters ((b)(1) – (b)(12)). <sup>4</sup> within the AJD boundary.			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
2 <sup>nd</sup> Right UNT Neds Branch	988		
1 <sup>st</sup> Right 2 <sup>nd</sup> Left UNT Neds Branch	445		
1 <sup>st</sup> Right UNT Skillet Creek	2743		
2 <sup>nd</sup> Right UNT Skillet Creek	365		
3 <sup>rd</sup> Right UNT Downtown Gilbert	3773		
1 <sup>st</sup> Left UNT Downtown Gilbert	865		
1 <sup>st</sup> Right UNT Downtown Gilbert	379		



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Excluded waters ((b)(1) – (b)(12)). <sup>6</sup> within the AJD boundary.				
Exclusion Name	Exclusion Size		Exclusion <sup>7</sup>	Rationale for Exclusion Determination
N/A.	N/A.	N/A.	N/A.	

**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: [Synterra, in a letter dated January 8, 2021, requested an AJD for streams identified in the report entitled “Preliminary Jurisdictional Determination for Reflectance Energy, LP – Skillet Surface Operation – Permit No. S-10-78” dated December 2020 and the attached delineation mapping entitled “Skillet Surface Operation – Stream Delineation Map - November 2020”.](#)

This information is sufficient for purposes of this AJD.

Rationale: [The consultant has provided all of the additional information requested to clarify site conditions. The information provided is sufficient to verify the stream locations.](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Other: Photos provided in the December 2020 Delineation Report](#)
- Corps site visit(s) conducted on: [Date\(s\).](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\).](#)

<sup>6</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>7</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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- Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- USDA NRCS Soil Survey: Title(s) and/or date(s).
- USFWS NWI maps: Title(s) and/or date(s).
- USGS topographic maps: Gilvert and Wharncliffe USGS Quadrangle

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
<a href="#">USGS/WBD/NHD data/maps</a>	<a href="#">NHD map accessed through LRH Regulatory GIS Viewers</a>
<a href="#">USDA Sources</a>	N/A.
<a href="#">NOAA Sources</a>	N/A.
<a href="#">USACE Sources</a>	N/A.
<a href="#">State/Local/Tribal Sources</a>	N/A.
<a href="#">Other Sources</a>	N/A

**B. Typical year assessment(s):** The antecedent precipitation tool was utilized to determine typical year for point-in-time data sources. The site delineation was conducted on November 3, 5-7, 10-11, and 20, 2020. No precipitation was observed during the site investigations or three days prior to the site investigations. Based on the antecedent precipitation tool, the 30-day rolling total for precipitation was lower than the 30-year normal range during the sampling period.

**C. Additional comments to support AJD:** The attache Skillet Surface Operation – Stream Delineation Map - November 2020 has been determined to be accurate.