



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): September 16, 2020
ORM Number: LRL-2018-246-sea
Associated JDs: N/A
Review Area Location¹:
State/Territory: Kentucky City: Shepherdsville County/Parish/Borough: Bullitt County
Center Coordinates of Review Area: Latitude 37.966658 Longitude -85.691813

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 or describe rationale.
- 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
NWPR INT 1	2505 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	NWPR INT 1 ranges from four to eighteen feet wide with bank heights ranging from one to six feet. The stream substrate is dominated by silt/clay, sand, and gravel with some cobble in the downstream portion. Water was observed in the channel January 31, 2017 and August 6 and 20, 2020. NWPR INT 1 flows directly into perennial stream Buffalo Run. Buffalo Run flows into the Salt River, a Section 10 water that flows into the Ohio River, a Traditional Navigable Water.
NWPR INT 2	1080 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1)	NWPR INT 2 ranges from four to six feet wide with bank heights ranging from half a foot to two feet. The stream substrate is dominated by silt/clay and gravel

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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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		water in a typical year	with some areas with cobble. Water was observed in the channel January 31, 2017 and August 6 and 20, 2020. NWPR INT 2 flows directly into NWPR INT 1 then into Buffalo Run. Buffalo Run flows into the Salt River, a Section 10 water that flows into the Ohio River, a Traditional Navigable Water.
NWPR INT 3 (previously EPH 3)	25 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	NWPR INT 3 is approximately 2 feet wide with banks ranging from half a foot to a foot. The stream substrate consists primarily of silt/clay and gravel. NWPR INT 3 drains NWPR WET 4, a 2.9 acre wetland. Water was observed flowing in the channel January 31, 2017 and August 6 and 20, 2020 directly into NWPR INT 1, an (a)(3) water. NWPR INT 1 flows directly into perennial stream Buffalo Run. Buffalo Run flows into the Salt River, a Section 10 water that flows into the Ohio River, a Traditional Navigable Water. Further discussion can be found in III B and C.

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
NWPR WET 1	0.052 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	NWPR WET 1 is an emergent wetland that directly abuts NWPR INT 1, an (a)(2) water.
NWPR WET 3	0.04 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	NWPR WET 3 is a scrub shrub wetland that directly abuts NWPR INT 1, an (a)(2) water.
NWPR Wet 4	2.927 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	NWPR WET 4 is an emergent wetland that abuts NWPR INT 3, an (a)(2) water.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
NWPR EPH 1	1075 feet	(b)(3) Ephemeral feature, including an Ephemeral stream, swale, gully, rill, or pool	No water was observed during the January 30, 2017 site visit and water was observed during the April 4, 2018 site visit. NWPR EPH 1 only contains surface water flowing or pooling in direct response to precipitation. NWPR EPH 1 is a (b)(3) water and is therefore excluded from the rule.
NWPR EPH 2	405 feet	(b)(3) Ephemeral feature, including an Ephemeral stream, swale, gully, rill, or pool	No water was observed during the January 30, 2017 site visit and water was observed during the April 4, 2018 site visit. NWPR EPH 2 only contains surface water flowing or pooling in direct response to precipitation. NWPR EPH 2 is a (b)(3) water and is therefore excluded from the rule.
NWPR EPH 4	145 feet	(b)(3) Ephemeral feature, including an Ephemeral stream, swale, gully, rill, or pool	No water was observed during the January 30, 2017 site visit and water was observed during the April 4, 2018 site visit. NWPR EPH 4 only contains surface

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			water flowing or pooling in direct response to precipitation. NWPR EPH 4 is a (b)(3) water and is therefore excluded from the rule.
NWPR EPH 5	210 feet	(b)(3) Ephemeral feature, including an Ephemeral stream, swale, gully, rill, or pool	No water was observed during the January 30, 2017 site visit and water was observed during the April 4, 2018 site visit. NWPR EPH 5 only contains surface water flowing or pooling in direct response to precipitation. NWPR EPH 5 is a (b)(3) water and is therefore excluded from the rule.
NWPR EPH 6	15 feet	(b)(3) Ephemeral feature, including an Ephemeral stream, swale, gully, rill, or pool	No water was observed during the January 30, 2017 site visit and water was observed during the April 4, 2018 site visit. NWPR EPH 6 only contains surface water flowing or pooling in direct response to precipitation. NWPR EPH 6 is a (b)(3) water and is therefore excluded from the rule.
NWPR EPH 7	390 feet	(b)(3) Ephemeral feature, including an Ephemeral stream, swale, gully, rill, or pool	No water was observed during the January 30, 2017 site visit and water was observed during the April 4, 2018 site visit. NWPR EPH 7 only contains surface water flowing or pooling in direct response to precipitation. NWPR EPH 7 is a (b)(3) water and is therefore excluded from the rule.
NWPR EPH 8	200 feet	(b)(3) Ephemeral feature, including an Ephemeral stream, swale, gully, rill, or pool	No water was observed during the January 30, 2017 site visit and water was observed during the April 4, 2018 site visit. NWPR EPH 8 only contains surface water flowing or pooling in direct response to precipitation. NWPR EPH 8 is a (b)(3) water and is therefore excluded from the rule.
NWPR EPH 9	180 feet	(b)(3) Ephemeral feature, including an Ephemeral stream, swale, gully, rill, or pool	No water was observed during the January 30, 2017 site visit and water was observed during the April 4, 2018 site visit. NWPR EPH 9 only contains surface water flowing or pooling in direct response to precipitation. NWPR EPH 9 is a (b)(3) water and is therefore excluded from the rule.
NWPR OW 1	0.471 acres	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6)	NWPR OW 1 was excavated in an upland prior to 2004 according to historic aerials and topographic maps.
NWPR OW 2	0.48 acres	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6)	NWPR OW 2 was excavated in an upland area prior to 1964 according to historic aerials and topographic maps.
NWPR OW 3	0.135 acres	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year	NWPR OW 3 was created in-line in NWPR INT 2, according to a topographic map from 1987. Between 1987 and 1992, the NWPR INT 2 was moved to the north and berms were constructed around NWPR OW 3, isolating it from NWPR INT 2. NWPR OW 3 does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an

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NWPR OW 4	0.299 acres	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6)	(a)(1)-(a)(3) water in a typical year. NWPR OW 4 was excavated in an upland prior to 1987 according to historic aeriels and topographic maps.
NWPR WET 2	0.634 acres	(b)(1) Non-adjacent wetland	NWPR WET 2 does not physically abut an (a)(1)-(a)(3) water and is not inundated by water from an (a)(1)-(a)(3) water in a typical year.
NWPR WET 5	0.049 acres	(b)(1) Non-adjacent wetland	NWPR WET 5 does not physically abut an (a)(1)-(a)(3) water and is not inundated by water from an (a)(1)-(a)(3) water in a typical year.

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: Water/Wetland Location Map dated August 25, 2020.

This information is sufficient for purposes of this AJD.

Rationale: *N/A*

Data sheets prepared by the Corps: *Title(s) and/or date(s)*.

Photographs: Aerial- World Imagery, ESRI and the GIS User Community (2016); Site Photographs – January 31, 2017, April 4, 2018, August 6 and 20, 2020.

Corps Site visit(s) conducted on: April 4, 2018 and August 6 and 20, 2020.

Previous Jurisdictional Determinations (AJDs or PJDs): LRL-2018-246 (PJD dated May 25, 2018; 2 AJDs dated May 29, 2018).

Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*

USDA NRCS Soil Survey: SSURGO Bullitt Co, KY (2008)

USFWS NWI maps: *Title(s) and/or date(s)*.

USGS topographic maps: 1:24,000 – ShEPHerdsville, Kentucky

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	Weather Underground Historic Precipitation Data (WUHPD), Historic Aeriels.com accessed September 11, 2020.

B. Typical year assessment(s): The Antecedent Precipitation Tool was utilized for the applicant's stream assessment date of January 31, 2017 as well as for Corps site visit dates of April 4, 2018 and

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August 6 and 20, 2020. The data for January 31, 2017 shows normal conditions during the wet season. The April 4, 2018 date showed wetter than normal conditions during the wet season. The two August 2020 dates showed wetter than normal conditions during the dry season.

- C. Additional comments to support AJD:** WUHPD was reviewed for January 30 and 31, 2017, April 4, 2018 and August 6 and 20, 2020 to see the precipitation totals for the days leading up to the assessment date and site visits. In January 2017, the Louisville International Airport Station, located approximately 15 miles away from the review area, recorded no rainfall more than a week prior to the assessment date. The Corps conducted a site visit on April 4, 2018 and water was observed flowing in the ephemeral streams. In the week prior to that visit, 4.56" of rain was recorded. Within two days of the site visit, 0.68" was recorded. On the day of the visit, 0.41" was recorded indicating that the presence of water in ephemeral tributaries would not be unusual given the function of ephemeral tributaries in the landscape. In the week prior to the August 6, 2020 site visit, 3.49 inches of rain were recorded. Within two days of the site visit, 0.02 inches of rain was recorded. In the week prior to the August 20, 2020 site visit, 2.42 inches of rain were recorded. No rainfall was recorded 4 days prior to this site visit.

During the January 31, 2017 and August 6 and 20, 2020 dates, water was observed in NWPR INT 3 (formerly Ephemeral 3). NWPR INT 3 drains NWPR WET 4 which is a 2.9 acre PEM wetland located in an agricultural field. Although significant rain totals were recorded in the week prior to the assessment dates in August 2020 (3.49 inches and 2.42 inches), ephemeral streams only flow for 24-48 hours in direct response to precipitation events. During the August 20, 2020 site visit, although there had been no rain recorded for 4 days, water was flowing from NWPR WET 4 to NWPR INT 1 through NWPR INT 3. NWPR INT 3 maintains intermittent flow from water retained during rain events by NWPR WET 4.

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