



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): August 11, 2020

ORM Number: LRL-2019-444-sea

Associated JDs: LRL-2019-444-sea: PJD dated August 10, 2020

Review Area Location<sup>1</sup>:

State/Territory: KY City: Brandenburg County/Parish/Borough: Meade County

Center Coordinates of Review Area: Latitude 38.008576 Longitude -86.141404

**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)<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

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<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 independent 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.

<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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**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
NWPR S-01	198 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	NWPR S-01 is physically isolated in the landscape and has no surface or subsurface connection to “waters of the United States U.S.”
S-02	150 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-02 only contains surface water flowing or pooling in direct response to precipitation. S-02 is a (b)(3) water and is therefore excluded from the rule.
NWPR S-03	319 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	NWPR S-03 is physically isolated in the landscape and has no surface or subsurface connection to “waters of the United States U.S.”
S-04 eph	1108.1 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-04 only contains surface water flowing or pooling in direct response to precipitation. S-04 is a (b)(3) water and is therefore excluded from the rule.
S-06	1712 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-06 only contains surface water flowing or pooling in direct response to precipitation. S-06 is a (b)(3) water and is therefore excluded from the rule.
S-07	1389 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-07 only contains surface water flowing or pooling in direct response to precipitation. S-07 is a (b)(3) water and is therefore excluded from the rule.
S-08	91 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-08 only contains surface water flowing or pooling in direct response to precipitation. S-08 is a (b)(3) water and is therefore excluded from the rule.
S-09	82 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-09 only contains surface water flowing or pooling in direct response to precipitation. S-09 is a (b)(3) water and is therefore excluded from the rule.
S-12	554 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-12 only contains surface water flowing or pooling in direct response to precipitation. S-12 is a (b)(3) water and is therefore excluded from the rule.
S-13	212.1 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-13 only contains surface water flowing or pooling in direct response to precipitation. S-13 is a (b)(3) water and is therefore excluded from the rule.
S-14	45 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-14 only contains surface water flowing or pooling in direct response to precipitation. S-14 is a (b)(3) water and is therefore excluded from the rule.
S-15	93 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-15 only contains surface water flowing or pooling in direct response to precipitation. S-15 is a (b)(3) water and is therefore excluded from the rule.
S-16	190 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-16 only contains surface water flowing or pooling in direct response to precipitation. S-16 is a (b)(3) water and is therefore excluded from the rule.
S-18	188 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-18 only contains surface water flowing or pooling in direct response to precipitation. S-18 is a (b)(3) water and is therefore excluded from the rule.
S-19	158 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-19 only contains surface water flowing or pooling in direct response to precipitation. S-19 is a (b)(3) water and is therefore excluded from the rule.
S-20	52 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully,	S-20 only contains surface water flowing or pooling in direct response to precipitation. S-20 is a (b)(3) water

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		rill, or pool	and is therefore excluded from the rule.
S-21	93 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-21 only contains surface water flowing or pooling in direct response to precipitation. S-21 is a (b)(3) water and is therefore excluded from the rule.
S-23	60 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-23 only contains surface water flowing or pooling in direct response to precipitation. S-23 is a (b)(3) water and is therefore excluded from the rule.
S-24	197 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-24 only contains surface water flowing or pooling in direct response to precipitation. S-24 is a (b)(3) water and is therefore excluded from the rule.
S-25	61 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-25 only contains surface water flowing or pooling in direct response to precipitation. S-25 is a (b)(3) water and is therefore excluded from the rule.
S-26	34.5 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-26 only contains surface water flowing or pooling in direct response to precipitation. S-26 is a (b)(3) water and is therefore excluded from the rule.
S-27	72 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-27 only contains surface water flowing or pooling in direct response to precipitation. S-27 is a (b)(3) water and is therefore excluded from the rule.
S-28	18 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-28 only contains surface water flowing or pooling in direct response to precipitation. S-28 is a (b)(3) water and is therefore excluded from the rule.
S-29	16 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-29 only contains surface water flowing or pooling in direct response to precipitation. S-29 is a (b)(3) water and is therefore excluded from the rule.
S-30	121 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-30 only contains surface water flowing or pooling in direct response to precipitation. S-30 is a (b)(3) water and is therefore excluded from the rule.
S-31	1018 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-31 only contains surface water flowing or pooling in direct response to precipitation. S-31 is a (b)(3) water and is therefore excluded from the rule.
S-32	22 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-32 only contains surface water flowing or pooling in direct response to precipitation. S-32 is a (b)(3) water and is therefore excluded from the rule.
S-33	501 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-33 only contains surface water flowing or pooling in direct response to precipitation. S-33 is a (b)(3) water and is therefore excluded from the rule.
S-34	557 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	S-34 only contains surface water flowing or pooling in direct response to precipitation. S-34 is a (b)(3) water and is therefore excluded from the rule.
W-1a	0.14 acres	(b)(1) Non-adjacent wetland	Wetland-1a 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.
W-1b	0.15 acres	(b)(1) Non-adjacent wetland	Wetland-1b 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.
W-2a	0.07 acres	(b)(1) Non-adjacent wetland	Wetland-2a 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.
W-2b	0.17 acres	(b)(1) Non-adjacent wetland	Wetland-2b 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.

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W-3a	0.08 acres	(b)(1) Non-adjacent wetland	Wetland-3a 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.
W-3b	0.05 acres	(b)(1) Non-adjacent wetland	Wetland-3b 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 W-4a	0.06 acres	(b)(1) Non-adjacent wetland	NWPR W-4a is physically isolated in the landscape and has no surface or subsurface connection to "waters of the United States U.S."
NWPR W-4b	0.08 acres	(b)(1) Non-adjacent wetland	NWPR W-4b is physically isolated in the landscape and has no surface or subsurface connection to "waters of the United States U.S."
NWPR W-6	0.39 acres	(b)(1) Non-adjacent wetland	NWPR W-6 is physically isolated in the landscape and has no surface or subsurface connection to "waters of the United States U.S."
NWPR W-7	0.04 acres	(b)(1) Non-adjacent wetland	NWPR W-7 is physically isolated in the landscape and has no surface or subsurface connection to "waters of the United States U.S."
NWPR W-8	0.35 acres	(b)(1) Non-adjacent wetland	NWPR W-8 is physically isolated in the landscape and has no surface or subsurface connection to "waters of the United States U.S."
NWPR W-9	0.10 acres	(b)(1) Non-adjacent wetland	NWPR W-9 is physically isolated in the landscape and has no surface or subsurface connection to "waters of the United States U.S."
W-10a	0.06 acres	(b)(1) Non-adjacent wetland	Wetland-10a 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.
W-10b	<0.001 acres	(b)(1) Non-adjacent wetland	Wetland-10b 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.
W-10c	0.31 acres	(b)(1) Non-adjacent wetland	Wetland-10c 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.
W-12	0.15 acres	(b)(1) Non-adjacent wetland	Wetland-12 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 W-16	0.01 acres	(b)(1) Non-adjacent wetland	NWPR W-16 is physically isolated in the landscape and has no surface or subsurface connection to "waters of the United States U.S."
W-15	0.19 acres	(b)(1) Non-adjacent wetland	Wetland-15 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 W-18	0.003 acre	(b)(1) Non-adjacent wetland	NWPR W-18 is physically isolated in the landscape and has no surface or subsurface connection to "waters of the United States U.S."
W-19	0.12 acres	(b)(1) Non-adjacent wetland	Wetland-19 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.
W-22	0.05 acres	(b)(1) Non-adjacent wetland	Wetland-22 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 W-23	1.71 acres	(b)(1) Non-adjacent wetland	NWPR W-23 is physically isolated in the landscape and

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			has no surface or subsurface connection to "waters of the United States U.S."
NWPR W-24	0.03 acres	(b)(1) Non-adjacent wetland	NWPR W-24 is physically isolated in the landscape and has no surface or subsurface connection to "waters of the United States U.S."
NWPR W-25a	0.04 acres	(b)(1) Non-adjacent wetland	NWPR W-25a is physically isolated in the landscape and has no surface or subsurface connection to "waters of the United States U.S."
NWPR W-25b	00 acres	(b)(1) Non-adjacent wetland	NWPR W-25b is physically isolated in the landscape and has no surface or subsurface connection to "waters of the United States U.S."
NWPR W-26	0.01 acres	(b)(1) Non-adjacent wetland	NWPR W-26 is physically isolated in the landscape and has no surface or subsurface connection to "waters of the United States U.S."
W-28	0.04 acres	(b)(1) Non-adjacent wetland	Wetland-28 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.
W-29	1.81 acres	(b)(1) Non-adjacent wetland	Wetland-29 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 W-30	0.15 acres	(b)(1) Non-adjacent wetland	NWPR W-30 is physically isolated in the landscape and has no surface or subsurface connection to "waters of the United States U.S."
W-35	1.35 acres	(b)(1) Non-adjacent wetland	Wetland-35 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 W-36	0.04 acres	(b)(1) Non-adjacent wetland	NWPR W-36 is physically isolated in the landscape and has no surface or subsurface connection to "waters of the United States U.S."
NWPR W-37	0.02 acres	(b)(1) Non-adjacent wetland	NWPR W-37 is physically isolated in the landscape and has no surface or subsurface connection to "waters of the United States U.S."
NWPR W-38	0.16 acres	(b)(1) Non-adjacent wetland	NWPR W-38 is physically isolated in the landscape and has no surface or subsurface connection to "waters of the United States U.S."
NWPR W-39	0.07 acres	(b)(1) Non-adjacent wetland	NWPR W-39 is physically isolated in the landscape and has no surface or subsurface connection to "waters of the United States U.S."

**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: Figure 1 Waters/Wetland Impacts dated June 26, 2020

This information is sufficient for purposes of this AJD.

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

Photographs: kygisserver.ky.gov ArcGIS services (2016) and site photographs April 29, 2019-May 6, 2019.

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- Corps Site visit(s) conducted on: July 2, 2019 and August 14, 2019
- Previous Jurisdictional Determinations (AJDs or PJDs): LRL-2019-444: AJD dated October 21, 2019, AJD dated January 28, 2020, and PJD dated January 28, 2020.
- 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: 1:24,000; Mauckport, KY

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

Data Source (select)	Name and/or date and other relevant information
USGS Sources	USGS National Map 3D Elevation Program (3DEP) accessed via Louisville District Regulatory Viewer accessed July 24, 2020.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	Peak River Elevation Data: McAlpine L&D (2004-2020) and Cannelton L&D (1972-2019).
State/Local/Tribal Sources	N/A.
Other Sources	Weather Underground Historic Precipitation Data (WUHPD),

**B. Typical year assessment(s):** The Antecedent Precipitation Tool (APT) was utilized for the applicant stream assessment dates of April 29, 2019 to May 7, 2019. The data shows that the assessment was conducted and photos were taken during the wet season. April 29, 2019 indicated normal conditions however April 30, 2019 to May 7, 2019 indicated wetter than normal conditions. The drought index (PDSI) for this time period indicated extreme wetness.

Ohio River Peak River Elevation data from McAlpine Lock and Dam (McAlpine) and Cannelton Lock and Dam (Cannelton) was reviewed and extrapolated to determine the average peak elevation of the Ohio River at the project location (RM 644.7) which is located between McAlpine (RM 607) and Cannelton (RM 720.7). The data indicates that the average peak river elevation was met/surpassed 47% of the time in the last 15 years (McAlpine and Cannelton) and 53% of the time in the last 47 years (Cannelton). The average annual peak elevation for the project area was determined to be 414.2 NAVD88.

**C. Additional comments to support AJD:** WUHPD was reviewed for April 2019 to see the precipitation totals for the days leading up to the site visit. The Louisville International Airport Station, located approximately 25 miles away from the review area, recorded 6.62 inches of rain for the 28 days prior to the site visit. This included 1.27 inches of rain 4 days prior to the site visit. The (b)(3) waters identified above did not contain any flowing or pooled water during the assessment dates despite wetter than normal conditions and documented rain events.

<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 independent 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.

<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.



U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE

The 3DEP Elevation digital elevation model (DEM) was used to evaluate the wetlands located along the Ohio River. Approximately 260-450 feet away from the riverbank, there is a sharp change in elevation of approximately 15 feet. Evaluation of this topographic feature in conjunction with the flood elevation data, it was determined that wetlands on the lower bench adjacent to the Ohio River are inundated by the Ohio River (an (a)(1) water) during a typical year, but wetlands above this bench are not.

<sup>1</sup> Map(s)/Figure(s) are attached to the AJD provided to the requestor.

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