



**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): 9/24/2020  
 ORM Number: LRL-2020-00170-mlk  
 Associated JDs: N/A  
 Review Area Location<sup>1</sup>: State/Territory: KY City: Louisville County/Parish/Borough: Jefferson  
 Center Coordinates of Review Area: Latitude 38.115646 Longitude -85.777079

**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.	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.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
Bee Lick Creek	300	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Contributes water to an (a)(1) indirectly. Perennial Stream 1 is Bee Lick Creek which is a tributary to Southern Ditch, to Pond Creek, to Salt River, to the Ohio River (a traditionally navigable water). Perennial Stream 1 is approximately 30 feet wide with 2 to 20-foot bank heights. Bee Lick Creek had flowing water with depths of one to two feet at the time of the agent’s delineation on November 20, 2018.
Int 1	360	linear feet	(a)(2) Intermittent tributary contributes	Contributes water to an (a)(1) indirectly. Intermittent Stream 1 is an unnamed tributary to Bee Lick Creek which is a tributary to Southern Ditch, to Pond Creek, to

<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):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
			surface water flow directly or indirectly to an (a)(1) water in a typical year.	Salt River, to the Ohio River (a traditionally navigable water). Intermittent Stream 1 ranges from two to three feet wide with eight to twelve foot bank heights and silt substrate. Intermittent Stream 1 contained flowing water at the time of the agent's delineation visit on November 20, 2018 and the Corps site visit on March 5, 2020.
Int 2	420	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Contributes water to an (a)(1) indirectly. Intermittent Stream 2 is an unnamed tributary to Bee Lick Creek which is a tributary to Southern Ditch, to Pond Creek, to Salt River, to the Ohio River (a traditionally navigable water). Intermittent Stream 2 is one to three feet wide with bank heights of a half foot to one foot and substrate consisting of mainly silt/clay and gravel. Intermittent Stream 2 contained flowing water at the time of the agent's delineation visit on November 20, 2018 and the Corps site visit on March 5, 2020.
Int 3	500	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Contributes water to an (a)(1) indirectly. Intermittent Stream 3 is an unnamed tributary to Bee Lick Creek which is a tributary to Southern Ditch, to Pond Creek, to Salt River, to the Ohio River (a traditionally navigable water). Intermittent Stream 3 is one to three feet wide with bank heights of a half foot to one foot and substrate consisting of mainly silt/clay and gravel. Intermittent Stream 3 drains to Intermittent Stream 4 through an erosional feature. The area in between these two tributaries had been impacted by a gas line project. However, flowing water in an erosional feature was noted between the two tributaries along with overland flow. Intermittent Stream 3 contained flowing water at the time of the agent's delineation visit on November 20, 2018 and the Corps site visit on March 5, 2020.
Int 4	300	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Int 4 contributes water to an (a)(1) indirectly. Intermittent Stream 4 is an unnamed tributary to Bee Lick Creek which is a tributary to Southern Ditch, to Pond Creek, to Salt River, to the Ohio River (a traditionally navigable water). Intermittent Stream 4 is one to three feet wide with bank heights of a half foot to one foot and substrate consisting of mainly silt/clay and gravel. During the USACE site visit on March 5, 2020, it was determined that the trickle flow in the stream represented intermittent flow.

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.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Wet 2	0.201	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland 1 directly abuts Intermittent Stream 4.



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Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Wet 4	0.76	acre(s)	(a)(4) Wetland inundated by flooding from an (a)(1)-(a)(3) water in a typical year.	Wetland 4 is located in the FEMA floodplain (Zone AE) of Perennial Stream 1 (Bee Lick Creek). The wetland varies from 15 to 100 feet away from the banks of the perennial channel. Based on aerials, it appears that this wetland was dug out of the floodplain sometime after December 2002. There is a natural berm/barrier between the wetland and the perennial stream. Based on the wetlands' location within the 100 year FEMA floodplain, it would be reasonable to assume that this wetland is inundated from flooding from Perennial Stream 1 ((a)(2)water) in a typical year. In addition, the Kentucky Watershed Viewer, by Kentucky Division of Water, was utilized to determine flow rates. The mean annual flow rate was 4.6 cubic feet per second for this watershed. The peak flow is expected to be 773 cubic feet per second on a 2 year interval. Given that this flow is generated on at least a 2-year interval and the close proximity of the wetland to Bee Lick Creek, it can be deduced that the wetland could receive inundation by the stream.
Wet 3	0.021	acre(s)	(a)(4) Wetland inundated by flooding from an (a)(1)-(a)(3) water in a typical year.	Wetland 3 is located in the FEMA floodplain (Zone AE) of Perennial Stream 1 (Bee Lick Creek). The wetland is approximately 125 linear feet from the banks of perennial stream 1 and within 25 feet of Wetland 4. This wetland is located within the floodplain of Perennial Stream 1 and near the confluence of Perennial Stream 1 and Int Stream 4. It is a low lying area that was determined to be a wetland by meeting vegetation, hydrology and soils parameters. Given that this wetland is similarly situated as Wetland 4 and within the FEMA floodplain of Perennial Stream 1 (Bee Lick Creek), it can be concluded that this wetland also receives inundation by perennial stream 1 when the stream experiences peak flow.

**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
Eph 1	100	linear feet	(b)(3) Ephemeral feature, including an ephemeral	Eph 1 only contains surface water flowing or pooling in direct response to precipitation. The ephemeral channel contains a mostly silt

<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	
		stream, swale, gully, rill, or pool.	substrate with some scattered gravel present. The channel was dry with some areas of pooled water or trickle flow less than one inch at the time of the agent's delineation site visit on November 20, 2018. Similar conditions were present during the Corp's site visit on March 5, 2020. Based on site photos, the streams direct response to precipitation and the APT assessment this feature is an ephemeral feature.	
Eph 2	435	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Eph 2 only contains surface water flowing or pooling in direct response to precipitation. The ephemeral channel contains a mostly silt substrate with some scattered gravel present. The channel was dry with some areas of pooled water or trickle flow less than one inch at the time of the agent's delineation site visit on November 20, 2018. Similar conditions were present during the Corp's site visit on March 5, 2020. Based on site photos, the streams direct response to precipitation and the APT assessment this feature is an ephemeral feature.
Eph 3	530	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Eph 3 only contains surface water flowing or pooling in direct response to precipitation. The ephemeral channel contains a mostly silt substrate with some scattered gravel present. The channel was dry with some areas of pooled water or trickle flow less than one inch at the time of the agent's delineation site visit on November 20, 2018. Similar conditions were present during the Corp's site visit on March 5, 2020. Based on site photos, the streams direct response to precipitation and the APT assessment this feature is an ephemeral feature.
Eph 4	150	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Eph 4 only contains surface water flowing or pooling in direct response to precipitation. The ephemeral channel contains a mostly silt substrate with some scattered gravel present. The channel was dry with some areas of pooled water or trickle flow less than one inch at the time of the agent's delineation site visit on November 20, 2018. Similar conditions were present during the Corp's site visit on March 5, 2020. Based on site photos, the streams direct response to precipitation and the APT assessment this feature is an ephemeral feature.
Eph 5	280	linear feet	(b)(3) Ephemeral feature, including an ephemeral	Eph 5 only contains surface water flowing or pooling in direct response to precipitation. The ephemeral channel contains a mostly silt



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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
		stream, swale, gully, rill, or pool.	substrate with some scattered gravel present. The channel was dry with some areas of pooled water or trickle flow less than one inch at the time of the agent's delineation site visit on November 20, 2018. Similar conditions were present during the Corp's site visit on March 5, 2020. Based on site photos, the streams direct response to precipitation and the APT assessment this feature is an ephemeral feature.
Eph 6	120	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. Eph 6 only contains surface water flowing or pooling in direct response to precipitation. The ephemeral channel contains a mostly silt substrate with some scattered gravel present. The channel was dry with some areas of pooled water or trickle flow less than one inch at the time of the agent's delineation site visit on November 20, 2018. Similar conditions were present during the Corp's site visit on March 5, 2020. Based on site photos, the streams direct response to precipitation and the APT assessment this feature is an ephemeral feature.
Eph 7	40	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. Eph 7 only contains surface water flowing or pooling in direct response to precipitation. The ephemeral channel contains a mostly silt substrate with some scattered gravel present. The channel was dry with some areas of pooled water or trickle flow less than one inch at the time of the agent's delineation site visit on November 20, 2018. Similar conditions were present during the Corp's site visit on March 5, 2020. Based on site photos, the streams direct response to precipitation and the APT assessment this feature is an ephemeral feature.
Eph 8	730	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. Eph 8 only contains surface water flowing or pooling in direct response to precipitation. Eph 8 is a (b)(3) water and is therefore excluded from the rule. only contains surface water flowing or pooling in direct response to precipitation. The ephemeral channel contains a mostly silt substrate with some scattered gravel present. The channel was dry with some areas of pooled water or trickle flow less than one inch at the time of the agent's delineation site visit on November 20, 2018. Similar conditions were present during the Corp's site visit on March 5, 2020. Based on site photos, the streams direct response to precipitation and the APT assessment this feature is an ephemeral feature.



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Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination	
Eph 9	520	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Eph 9 only contains surface water flowing or pooling in direct response to precipitation. The ephemeral channel contains a mostly silt substrate with some scattered gravel present. The channel was dry with some areas of pooled water or trickle flow less than one inch at the time of the agent's delineation site visit on November 20, 2018. Similar conditions were present during the Corp's site visit on March 5, 2020. Based on site photos, the streams direct response to precipitation and the APT assessment this feature is an ephemeral feature.
Eph 10	255	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Eph 10 only contains surface water flowing or pooling in direct response to precipitation. The ephemeral channel contains a mostly silt substrate with some scattered gravel present. The channel was dry with some areas of pooled water or trickle flow less than one inch at the time of the agent's delineation site visit on November 20, 2018. Similar conditions were present during the Corp's site visit on March 5, 2020. Based on site photos, the streams direct response to precipitation and the APT assessment this feature is an ephemeral feature.
Eph 11	125	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Eph 11 only contains surface water flowing or pooling in direct response to precipitation. The ephemeral channel contains a mostly silt substrate with some scattered gravel present. The channel was dry with some areas of pooled water or trickle flow less than one inch at the time of the agent's delineation site visit on November 20, 2018. Similar conditions were present during the Corp's site visit on March 5, 2020. Based on site photos, the streams direct response to precipitation and the APT assessment this feature is an ephemeral feature.
Wet 1	0.021	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 1 is adjacent to an ephemeral stream. It does meet the definition of adjacent wetlands per 33 CFR 328.3 (c)(1)(i)(ii)(iii) or (iv) and is therefore excluded per (b)(1) as non-adjacent wetland.

**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: PCN for NWP 29 submitted on February 19, 2020; subsequent addendum submitted on April 10, 2020 and May 26, 2020



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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 and Other: [kygisserver.ky.gov](http://kygisserver.ky.gov) (2018) and site photographs November 20, 2018 documented in the PCN dated February 19, 2020.
- Corps site visit(s) conducted on: March 5, 2020
- Previous Jurisdictional Determinations (AJDs or PJDs): N/A
- Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- USDA NRCS Soil Survey: SSURGO, Jefferson Co, KY (2008)
- USFWS NWI maps: Title(s) and/or date(s).
- USGS topographic maps: 1:24,000 Valley Station, 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) accessed on August 18, 2020. FEMA's National Flood Hazard Layer Viewer, accessed on August 18, 2020. LOJIC Floodplain Map, <a href="https://www.lojic.org/lojic-online">https://www.lojic.org/lojic-online</a> , accessed on August 18, 2020. Kentucky Watershed Viewer, <a href="https://watermaps.ky.gov/">https://watermaps.ky.gov/</a> accessed on September 9, 2020.

**B. Typical year assessment(s):** WUHPD was reviewed for precipitation totals leading up to the day of the Corps site visit on March 5, 2020. According to WUHPD, the Louisville International Airport Weather Station, located approximately 5 miles from the project site, recorded 0.79 inches of rain three days prior to the Corps site visit. The Antecedent Precipitation Tool was utilized for the day of the Corps site visit (March 5, 2020), March 5, 2019, March 5, 2018 and the agent's delineation visit (November 20, 2018) to determine the precipitation conditions and what the typical year would be at this location. The APT showed high precipitation for the three consecutive years exceeding the 70th percentile for the month of March, which indicated normal precipitation for the current year. The conditions during the March 5, 2020 site visit represented normal conditions for that time of year, and based on the APT results the prior two years were also normal conditions during March. Based on the APT results, March appears to have been wet which is why it can be considered typical conditions. Therefore, conditions during the Corps March 5, 2020 site visit were representative of a typical year. Because it had rained three days leading up to the Corps site visit and ephemerals contained pools and some flowing water, these tributaries would be representative of ephemeral stream flow.

**C. Additional comments to support AJD:** N/A