



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): February 22, 2021
 ORM Number: LRL-2020-00862-mlk
 Associated JDs: N/A or ORM numbers and identifiers (e.g. HQS-2020-00001-MSW-MITSITE)
 Review Area Location¹:
 State/Territory: KY City: County/Parish/Borough: Oldham County
 Center Coordinates of Review Area: Latitude 38.378412 Longitude -85.416543

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
Intermittent 1	730 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Intermittent 1 contributes water to an (a)(1) indirectly. This tributary is an unnamed tributary to North Fork Currys Fork, which is a tributary to Currys Fork, to Floyds Fork, to the Salt River, which is a direct tributary to the Ohio River (a Traditionally Navigable Water). Intermittent 1 ranges from four to eight feet wide with one to four feet bank heights and silt, gravel and cobble substrate. During the applicant’s field assessment, this stream exhibited pools of water at depths of one to four inches, with flowing water. Additionally, the stream has an order and morphology typical of intermittent streams in the region.

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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

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Ephemeral 1	225 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 1 only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 1 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 1 is a (b)(3) water and is therefore excluded from the rule.
Ephemeral 10	195 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 10 only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 10 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 10 is a (b)(3) water and is therefore excluded from the rule.
Ephemeral 11	75 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 11 only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 11 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 11 is a (b)(3) water and is therefore excluded from the rule.
Ephemeral 12	30 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 12 only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal

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			gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 12 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 12 is a (b)(3) water and is therefore excluded from the rule.
Ephemeral 13	425 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 13 only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 13 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 13 is a (b)(3) water and is therefore excluded from the rule.
Ephemeral 14	215 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 14 only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 14 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 14 is a (b)(3) water and is therefore excluded from the rule.
Ephemeral 15	255 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 15 only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 15 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 15 is a (b)(3) water and is therefore excluded from the rule.
Ephemeral 16	100 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 16 only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 16 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 16 is a (b)(3) water and is therefore excluded from the rule.
Ephemeral 17	75 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 17 only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary

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			function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 17 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 17 is a (b)(3) water and is therefore excluded from the rule.
Ephemeral 18	1015 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 18 only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 18 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 18 is a (b)(3) water and is therefore excluded from the rule.
Ephemeral 19	215 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 19 only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 19 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 19 is a (b)(3) water and is therefore excluded from the rule.
Ephemeral 2	205 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 2 only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 2 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 2 is a (b)(3) water and is therefore excluded from the rule.
Ephemeral 3	605 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 3 only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 3 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 3 is a (b)(3) water and is therefore excluded from the rule.
Ephemeral 4	360 feet	(b)(3) Ephemeral feature, including	Ephemeral 4 only contains surface water flowing or

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		an ephemeral stream, swale, gully, rill, or pool	pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 4 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 4 is a (b)(3) water and is therefore excluded from the rule.
Ephemeral 5	55 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 5 only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 5 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 5 is a (b)(3) water and is therefore excluded from the rule.
Ephemeral 6	105 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 6 only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 6 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 6 is a (b)(3) water and is therefore excluded from the rule.
Ephemeral 7	245 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 7 only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 7 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 7 is a (b)(3) water and is therefore excluded from the rule.
Ephemeral 8	50 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 8 only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 8 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 8 is a

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			(b)(3) water and is therefore excluded from the rule.
Ephemeral 9	115 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 9 only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. This stream exhibits silt bottoms with minimal gravel and cobble substrate. During the agent's delineation site visit on September 30, 2020, no water was observed within this tributary. Ephemeral 9 provides limited to no habitat for aquatic organisms and minimal overall ecological function. Ephemeral 9 is a (b)(3) water and is therefore excluded from the rule.
Open Water 1	0.477 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)	Open Water 1 was constructed between 1959 and 1969 and has a culvert outlet to Ephemeral 4. This Open Water appears to have been constructed within non-jurisdictional waters. Open Water 1 is a (b)(8) water and is therefore excluded from the rule.
Wetland 1	0.053 acres	(b)(1) Non-adjacent wetland	Wetland 1 is an emergent wetland that is adjacent to Open Water 1 and is considered a fringe wetland. Due to this wetlands adjacency to an excluded feature, Wetland 1 would be considered a (b)(1) water and is therefore excluded from the rule.

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: Preconstruction Notification for NWP 29 dated October 26, 2020 and Addendum to PCN for NWP 29 dated December 22, 2020.

This information *is* sufficient for purposes of this AJD.

Rationale: *N/A or describe rationale for insufficiency (including partial insufficiency).*

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

Photographs: *(NA, aerial, other, aerial and other) World Imagery—Esri (2019) and site photographs submitted with the PCN, September 30, 2020.*

Corps Site visit(s) conducted on: *Date(s).*

Previous Jurisdictional Determinations (AJDs or PJDs): *ORM Number(s) and date(s).*

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

USDA NRCS Soil Survey: *Title(s) and/or date(s). SSURGO, Oldham Co, KY (2014).*

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

USGS topographic maps: *Title(s) and/or date(s). 1:24,000 LaGrange, 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.

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USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	Weather Underground Precipitation Data (WUHPD) accessed on February 18, 2021.

- B. Typical year assessment(s):** The antecedent precipitation tool (APT) was utilized for the date of the agent's site delineation on September 30, 2020. Review of the APT determined that on the day of the delineation visit by the agent, conditions were normal during the dry season.
- C. Additional comments to support AJD:** Based on the APT results, it was normal for ephemeral tributaries to have little to no water in them during this time of year. In addition, based on the precipitation totals 5 days up to the delineation visit, approximately 0.25 inches of precipitation was recorded according to WUHPD at the Louisville International Airport Weather Station. The ephemeral streams within the project boundary only contains surface water flowing or pooling in direct response to precipitation and surface runoff from immediately adjacent land and the primary function is to convey stormwater during precipitation events. The agent stated that all of the ephemeral streams were dry at the time of the site visit. This is supported by the precipitation amounts and the results of the APT.

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