



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 28, 2020
 ORM Number: LRL-2020-102-sea
 Associated JDs: N/A
 Review Area Location¹:
 State/Territory: Kentucky City: Louisville County/Parish/Borough: Jefferson County
 Center Coordinates of Review Area: Latitude 38.261555 Longitude -85.432814

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)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	35 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 six feet wide with one to three-foot bank heights and silt, sand, gravel, and cobble substrate. NWPR INT 1 flows into a perennial unnamed Tributary (UT) of Brush Run to Brush Run. Brush Run flows into Floyds Fork, which flows into the Salt River, a Section 10 water that flows into the Ohio River, a Traditional Navigable Water (TNW). During the field assessment in March 2018, NWPR INT 1 contained flowing water with pools of water up to a half-foot in depth.
NWPR INT 2	150 feet	(a)(2) Intermittent tributary contributes surface water flow	NWPR INT 2 ranges from one to two feet wide with less than six-inch bank heights and silt, sand, and cobble

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

² If the navigable water is not subject to the ebb and flow of the tide and 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.

³ 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.

⁴ 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.

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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		directly or indirectly to an (a)(1) water in a typical year	substrate. NWPR INT 2 flows through two UTs of Brush Run to Brush Run. Brush Run flows into Floyds Fork, which flows into the Salt River, a Section 10 water that flows into the Ohio River, a TNW. During the field assessment in March 2018, NWPR INT 2 contained flowing water with pools of water up to two inches in depth. However, during the field assessment in September 2019, it was dry.
NWPR INT 3	1090 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	NWPR INT 3 ranges from two to six feet wide with one to three foot banks and silt, sand, gravel, cobble, and bedrock substrate. NWPR INT 3 flows through a perennial UT of Brush Run to Brush Run. Brush Run flows into Floyds Fork, which flows into the Salt River, a Section 10 water that flows into the Ohio River, a TNW. During the field assessment in March 2018, NWPR INT 3 contained flowing water with pools of water up to two inches in depth. However, during the field assessment in September 2019, Intermittent Stream 3 was dry.
NWPR INT 4	310 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	NWPR INT 4 ranges from 12 to 13 feet wide with two to three foot banks and silt, cobble, boulder, and bedrock substrate. NWPR INT 4 flows through a perennial UT of Brush Run to Brush Run. Brush Run flows into Floyds Fork, which flows into the Salt River, a Section 10 water that flows into the Ohio River, a TNW. During the field assessment in March 2018, NWPR INT 4 contained flowing water with pools of water up to four inches in depth.
NWPR INT 5	75 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	NWPR INT 5 ranges from one to two feet wide with less than six-inch bank heights and silt, sand, and cobble substrate. NWPR INT 5 flows through two UTs of Brush Run to Brush Run. Brush Run flows into Floyds Fork, which flows into the Salt River, a Section 10 water that flows into the Ohio River, a TNW. During the field assessment in March 2018, NWPR INT 5 contained flowing water with pools of water up to two inches in depth. However, during the field assessment in September 2019, it was dry.
NWPR PER 1	530 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	NWPR PER 1 ranges from 12 to 15 feet wide with one to four-foot bank heights and silt, gravel, cobble, boulders, and bedrock substrate. NWPR PER 1 flows to Brush Run. Brush Run flows into Floyds Fork, which flows into the Salt River, a Section 10 water that flows into the Ohio River, a TNW. During the field assessment in March 2018, NWPR PER 1 contained flowing water with pools of water up to two feet in depth.

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
NWPR OW 1	0.738 acres	(a)(3) Lake/pond or impoundment of a jurisdictional water contributes surface water flow directly or	NWPR OW 1 is an impoundment of NWPR INT 4 which contributes surface water flow directly or indirectly to an (a)(1) water in a typical year. NWPR INT 4 flows

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		indirectly to an (a)(1) water in a typical year	through a perennial UT of Brush Run to Brush Run. Brush Run flows into Floyds Fork, which flows into the Salt River, a Section 10 water that flows into the Ohio River, a TNW.
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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
NWPR EPH 1	180 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	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	480 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	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 3	145 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	NWPR Eph 3 only contains surface water flowing or pooling in direct response to precipitation. NWPR Eph 3 is a (b)(3) 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: Request for JD submitted August 16, 2019; Addendum to JD submitted October 16, 2019, PCN for NWP 29 submitted June 3, 2020, and Request for AJD and Permit modification dated July 20, 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 and Other: kygisserver.ky.gov (2016) and site photographs on March 19 and 20, 2018 and Sept.13, 2019.

Corps Site visit(s) conducted on: February 11, 2020

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: SSURGO, Jefferson County, KY (2008)

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

USGS topographic maps: 1:24,000- Crestwood, KY Quad

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 Historic Precipitation Data (WUHPD)

- B. Typical year assessment(s):** The Antecedent Precipitation Tool (APT) was utilized for the applicant stream assessment dates of March 19 and 20, 2018, September 13, 2019 and Corps site visit date, February 11, 2020. On March 19 and 20, 2018, when both intermittent and ephemeral streams were flowing, the data shows that the photos were taken during the wet season during wetter than normal conditions. On September 13, 2019, when no water was observed flowing in the intermittent or ephemeral streams, the data shows that the photos were taken during the dry season during drier than normal conditions. On February 11, 2020 during the Corps site visit when ephemeral and intermittent streams were flowing, the data shows that it was during the wet season under normal conditions.
- C. Additional comments to support AJD:** WUHPD was reviewed for March 19 and 20, 2018, September 13, 2019, and February 11, 2020 to see the precipitation totals for the days leading up to the assessment dates and site visits. In March 19 and 20, 2018, the Louisville International Airport Station, located approximately 18 miles away from the review area, recorded 0.03” of rain in the 5 days prior to the assessment date. On March 20, 2018, 0.28 inches of rain was recorded indicating that the presence of water in ephemeral tributaries would not be unusual given the function of ephemeral tributaries in the landscape. No rain was recorded 5 days prior to the September 13, 2019 site visit. Before the Corps site visit on February 11, 2020, 0.43 inches of rain was recorded in the 5 days prior to the site visit. The day prior to the site visit, 0.17 inches of rain was recorded. During the Corps site visit, the ephemeral and intermittent streams were flowing. Again, due to 0.17 inches of rain recorded the day prior, the presence of water in ephemeral tributaries would not be unusual given the function of ephemeral tributaries in the landscape.

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