



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): May 14, 2021

ORM Number: LRL-2021-205-sea

Associated JDs: N/A

Review Area Location¹:

State/Territory: KY City: Frankfort County/Parish/Borough: Franklin County

Center Coordinates of Review Area: Latitude 38.222382 Longitude -84.860076

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
Kentucky River	307 feet	RHA Non-tidal water is on the district's Section 10 waters list	The Kentucky River is a Section 10 water that flows into the Ohio River, a traditional navigable water.

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
Stream 1	129 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) - (a)(3) water in a typical year.
Stream 11	303 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) - (a)(3) water in a typical year.
Stream 2 (Penitentiary Branch)	1312 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a	The perennial tributary contributes surface flow continuously to an (a)(1) water in a typical year. Stream 2 flows into the Kentucky River.

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 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.

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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		typical year	
Stream 5	650 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The perennial tributary contributes surface flow continuously to an (a)(1) water in a typical year.
Stream 6	696 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The perennial tributary contributes surface flow continuously to an (a)(1) water in a typical year.
Stream 9 (Int)	834 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) - (a)(3) water in a typical year.

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
Wetland A	0.9 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland A is a forested wetland that abuts Stream 2 (Penitentiary Branch). Stream 2 is an (a)(2) perennial tributary that contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Stream 10	218 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 10 only contains surface water flowing or pooling in direct response to precipitation. Stream 10 is a (b)(3) water and is therefore excluded from the rule.
Stream 3	129 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 3 only contains surface water flowing or pooling in direct response to precipitation. Stream 3 is a (b)(3) water and is therefore excluded from the rule.
Stream 4	246 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 4 only contains surface water flowing or pooling in direct response to precipitation. Stream 4 is a (b)(3) water and is therefore excluded from the rule.
Stream 7	48 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 7 only contains surface water flowing or pooling in direct response to precipitation. Stream 7 is a (b)(3) water and is therefore excluded from the rule.
Stream 8	258 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 8 only contains surface water flowing or pooling in direct response to precipitation. Stream 8 is a (b)(3) water and is therefore excluded from the rule.
Stream 9 (Eph)	916 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 9 (Eph) only contains surface water flowing or pooling in direct response to precipitation. Stream 9 (Eph) is a (b)(3) water and is therefore excluded from the rule.

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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: Waters of the U.S. Delineation report dated November 4, 2020 and request for jurisdictional determination signed February 19, 2021.
This information is not sufficient for purposes of this AJD.
Rationale: Additional information about Stream 9 was requested and received.
Data sheets prepared by the Corps: *Title(s) and/or date(s)*.
- Photographs: Aerial and other: ESRI and site visit photos taken May 31, 2019, June 3, 2019, September 9 and 16, 2020, and April 26, 2021.
Corps Site visit(s) conducted on: *Date(s)*.
- Previous Jurisdictional Determinations (AJDs or PJDs): *N/A*
- Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: *Title(s) and/or date(s)*.
- USFWS NWI maps: Wetlands in Kentucky. April 4, 2017. Washington, District of Columbia. U.S. Fish and Wildlife Service (accessed September 4, 2020).
- USGS topographic maps: 1:24,000; Frankfort East, Kentucky 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.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): N/A

C. Additional comments to support AJD: During a site visit on April 26, 2021 the upper reach of Stream 9 did not exhibit any flow up to the opening of a cave. At the cave outlet, flow was observed indicating additional sources of water making the lower portion of Stream 9 intermittent.

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