



**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): 7/6/2020  
 ORM Number: LRL-2014-836-SM  
 Associated JDs: NA  
 Review Area Location<sup>1</sup>: State/Territory: Indiana City: Cloverdale County/Parish/Borough: Owen  
 Center Coordinates of Review Area: Latitude 39.4630 Longitude -86.7742

**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
Intermittent A	1600 linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	“Intermittent A” contributes intermittent surface flow to a downstream, offsite A(1) water (Mill Creek).

<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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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
N/A.	N/A.	N/A.	N/A.	N/A.

**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
Ephemeral A	465	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral A is an ephemeral channel not regulated under the Navigable Waters Protection 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: Title(s) and date(s)  
This information Select. 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: Aerial: Aerial Photographs: dated 2/28/05; 11/15/19, 12/19/19
- Corps site visit(s) conducted on: 10/23/14; 1/17/20
- 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: Owen County Soil Survey – Sheet 4, 1964
- USFWS NWI maps: Title(s) and/or date(s).
- USGS topographic maps: Cataract Quad; 1:24k

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

Data Source (select)	Name and/or date and other relevant information
<u>USGS Sources</u>	<u>N/A.</u>
<u>USDA Sources</u>	<u>N/A.</u>
<u>NOAA Sources</u>	<u>N/A.</u>
<u>USACE Sources</u>	<u>N/A.</u>
<u>State/Local/Tribal Sources</u>	<u>N/A.</u>
<u>Other information (specify)</u>	<u>Photos from Site Visits of 10/23/14 and 1/17/20</u>

<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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- B. Typical year assessment(s):** Two site visits were conducted onsite, one in October 2014 and one in February 2020. In both cases water was seen flowing in the intermittent stream downstream. A review of the climate data through the APT indicates that both sites visits were conducted under wet conditions for rainfall. This means that the conditions are wetter than normal. A review of the October 2014 data shows that the wetness factor was a result of higher rainfall the two previous months. The month of October was under normal conditions. In addition to these data points, the APT was used to assess the climate data for February 28, 2005; Nov 15, 2019; and December 19, 2019; the dates of aerial photography where flow can be seen moving through the system. In review the APT data for these three dates, normal conditions existed. The data indicates that intermittent A contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
- C. Additional comments to support AJD:** This JD is for an enforcement case where Intermittent A was dammed up and created an in-line open water lake. Intermittent A, is an intermittent channel capable of carrying a large amount of water, sediment, and gravel downstream and shows evidence of ordinary high water marks, bed and banks, has sorting, gravel substrate, and enough flow to create meanders and scour of the banks. Intermittent A flows flows offsite into a perennial named stream (Sand Branch) which then flows into Mill Creek, a TNW, approximately 1.5 miles from the project area.

Mill Creek is a TNW. In a stand alone review, Mill Creek is the source of Cagle Mills Reservoir, a 1,400-acre Corps owned reservoir within Lieber State Park. Large numbers of visitors from around the country visit the reservoir to boat, fish and camp. In addition, bird watchers from around the country visit the facility annually to view the Bald Eagles that nest around Reservoir. Mill Creek and the reservoir provide interstate commerce and is considered a TNW.

Ephemeral A is an ephemeral channel where the ordinary high water mark begins onsite with the watershed beginning just offsite. It flows only in direct response to rainfall for a short period of time.