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): 13-AUG-2020
ORM Number: LRL-2019-00888-MAD
Associated JDs: N/A
Review Area Location[1]:
State/Territory: KY City: Morgantown County/Parish/Borough: Butler County
Center Coordinates of Review Area: Latitude 37.21418 Longitude -86.720852

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	418 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Intermittent Stream 1 is located in the eastern portion of the site, originating at the confluence of Ephemeral Streams 11 and 12. Intermittent Stream 1 measures three to four feet wide, with bank heights ranging from one to three feet and a substrate consisting of silt, sand, gravel, and cobble. During the April 2019 site visit, the stream exhibited flowing water measuring three to four inches in depth but were generally dry during the June 2019 site visit during the dry season. Stream morphology is consistent with an intermittent stream in the region.
Intermittent 2	394 feet	(a)(2) Intermittent tributary	Intermittent Stream 2 originates from a groundwater

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[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.

		contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	seep and measures three feet wide, with bank heights ranging from one to three feet, and a substrate mainly consisting of silt, sand, gravel, and cobble. The stream flow south into Intermittent 3, and (a) (2) water. During the April 2019 site visit, the stream exhibited flowing water measuring three to four inches in depth but were generally dry during the June 2019 site visit during the dry season. Stream morphology is consistent with an intermittent stream in the region.
Intermittent 3	1211 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Intermittent Stream 3 is located in the northeastern portion of the site and drains generally south for 1,211 linear feet before turning into Perennial 1, and (a) (2) tributary. Intermittent Stream 3 measures six feet wide, with bank heights ranging from two to three feet, and a substrate consisting of sand, gravel, and cobble. During the April 2019 site visit, the stream exhibited flowing water measuring three to four inches in depth but were generally dry during the June 2019 site visit during the dry season. Stream morphology is consistent with an intermittent stream in the region.
Intermittent 4	156 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Intermittent Stream 4 originates at the downstream end of Ephemeral Stream 15, and flows into Perennial Stream 1. Intermittent Stream 4 measures three feet wide, with bank heights ranging from two to three feet, and a substrate consisting of silt and gravel. During the April 2019 site visit, the stream exhibited flowing water measuring three to four inches in depth but were generally dry during the June 2019 site visit during the dry season. Stream morphology is consistent with an intermittent stream in the region. This stream flows directly into Perennial 1 an (a) (2) tributary.
Intermittent 5	54 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Intermittent Stream 5 flows into Perennial Stream 1. The stream measures six feet wide, with bank heights of up to four feet, and a substrate consisting of silt, sand, gravel, and cobble. The During the April 2019 site visit, the stream exhibited flowing water measuring three to four inches in depth but were generally dry during the June 2019 site visit during the dry season. Stream morphology is consistent with an intermittent stream in the region.
Perennial 1	306 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Perennial Stream 1 ranges from 8 to 10 feet wide, with bank heights ranging from four to six feet and a substrate consisting of silt, gravel, and cobble and begins at the confluence of Intermittent Streams 3 and 4. Flowing water measuring up to six inches in depth was observed during the April 2019 assessment and with lower water levels during a June 2019 visit during the dry season. The stream exhibits a morphology typical of perennial stream in the region. This stream flows directly into Renfrow Creek, and then into the Green River, an (a)(1) water.

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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	583 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 10	139 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 11	87 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 12	180 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 13	271 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 14	347 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in

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			pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 15	1147 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 16	64 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 17	100 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 18	492 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 19	115 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 2	104 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 20	27 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.

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Ephemeral 21	1 foot	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 22	329 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 3	49 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 4	26 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 5	570 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 6	319 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 7	675 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Ephemeral 8	187 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in

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Ephemeral 9	31 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral stream ranges from one to three feet in width, with bank heights ranging from one inch to three feet and substrates consisting mainly of silt and gravel. The ephemeral stream exhibited trickle flow or water in pools at depths ranging from less than one inch to three inches during the April 2019 site visit, and was dry during the Corps visit.
Open Water 1	0.004 acres	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year	This feature is an old borrow pit associated with historic coal mining activities on the site. This feature is physically isolated in the landscape and has no connection to any downstream waters.
Open Water 2	0.01 acres	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year	This feature is an old borrow pit associated with historic coal mining activities on the site. This feature is physically isolated in the landscape and has no connection to any downstream waters.
Open Water 3	0.045 acres	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year	This feature is an old borrow pit associated with historic coal mining activities on the site. This feature is physically isolated in the landscape and has no connection to any downstream waters.
Open Water 4	0.066 acres	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year	This feature is an old borrow pit associated with historic coal mining activities on the site. This feature is physically isolated in the landscape and has no connection to any downstream waters.
Open Water 5	0.076 acres	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year	This feature is an old borrow pit associated with historic coal mining activities on the site. This feature is physically isolated in the landscape and has no connection to any downstream waters.
Open Water 6	0.006 acres	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year	This feature is an old borrow pit associated with historic coal mining activities on the site. This feature is physically isolated in the landscape and has no connection to any downstream waters.
Open Water 7	0.07 acres	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year	This feature is an old borrow pit associated with historic coal mining activities on the site. This feature is physically isolated in the landscape and has no connection to any downstream waters.
Open Water 8	0.018 acres	(b)(1) Lake/pond or impoundment	This feature is an old borrow pit associated with historic

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		that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year	coal mining activities on the site. This feature is physically isolated in the landscape and has no connection to any downstream waters.
Open Water 9	0.336 acres	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year	This feature is an old borrow pit associated with historic coal mining activities on the site. This feature is physically isolated in the landscape and has no connection to any downstream waters.
Wetland 1	0.019 acres	(b)(1) Non-adjacent wetland	Wetland 1 is located along the fringe of Open Water 3 in the northeastern portion of the site. The wetland does not have an outlet that could connect the wetlands to downstream waters.
Wetland 2	0.239 acres	(b)(1) Non-adjacent wetland	Wetland 2 is located along the fringe of Open Water 7 in the northern portion of the site. The wetland does not have an outlet that could connect the wetlands to downstream waters.
Wetland 3	0.018 acres	(b)(1) Non-adjacent wetland	Wetland 3 is located along an old mining road that drains to Ephemeral Stream 15, and is physically isolated from any jurisdictional waters.
Wetland 4	0.007 acres	(b)(1) Non-adjacent wetland	Wetland 4 is located in an old borrow pits associated with the historic coal mining activities on the site. The wetland does not have an outlet that could connect the wetlands to downstream waters.
Wetland 5	0.062 acres	(b)(1) Non-adjacent wetland	This feature is a linear wetlands that lack a direct connection to any downstream waters, and is physically isolated in the landscape.
Wetland 6	0.09 acres	(b)(1) Non-adjacent wetland	This feature is a linear wetlands that lack a direct connection to any downstream waters, and is physically isolated in the landscape.

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.

_x_ Information submitted by, or on behalf of, the applicant/consultant: "Request for Jurisdictional Determination, Owl's Head-Butler" by Redwing Ecological Services, Inc. dated September 18, 2019.
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).*

_x_ Photographs: Google Earth aerials dated 6/4/2018, 4/16/2014, 2/27/1997. Site photographs dated April 2 and 3, 2019 submitted with the request.

_x_ Corps Site visit(s) conducted on: 10/22/2019

_x_ Previous Jurisdictional Determinations (AJDs or PJDs): LRL-2019-0088-mad, AJD and PJD issued 11/11/2019.

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[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.

_x_ Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
_x_ USDA NRCS Soil Survey: https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx
_x_ USFWS NWI maps: NWI mapper
_x_ USGS topographic maps: 24k Morgantown, KY

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): The Antecedent Precipitation Tool was utilized for the Corps site visit on 10/22/2019 and the applicant site assessment dated 4/2/2019. The data shows that the Corps site visit was during the normal conditions in the wet season. The applicant's' assessment April 2019 date was during normal conditions in the wet season and the June 2019 assessment date was in wetter than normal conditions during the dry season. The Corps' site assessment and the applicant's April 2019 was considered during a typical year condition.

C. Additional comments to support AJD: Redwing Ecological Services performed site assessments in April and June 2019, and a Wetland Delineation dated 4/2/2019 on the property by Redwing Ecological Services and submitted with the request.

[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.