



**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): 11/4/2020

ORM Number: LRL-2020-00196-mlk

Associated JDs: N/A

Review Area Location¹: State/Territory: KY City: Louisville County/Parish/Borough: Jefferson County

Center Coordinates of Review Area: Latitude 38.098569°N Longitude 85.610558°W

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.	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.	N/A.

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
Int 1	1,293	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Int 1 contributes flow to Cedar Creek, to Floyds Fork, to the Salt River which is a tributary to the Ohio River (a Traditionally Navigable Water (a)(1) water)). Int 1 ranges from four to seven feet wide with bank heights of six inches to one foot and substrate that consists of silt, cobble, and bedrock. During the Agent’s delineation site visit on January 22, 2020, the channel contained flowing and pooled water.
Int 2	22	linear feet	(a)(2) Intermittent tributary	Int 2 contributes flow to Int 1, to Cedar Creek, to Floyds Fork, to the Salt River which is a tributary to

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 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.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
			contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	the Ohio River (a Traditionally Navigable Water (a)(1) water)). Int 2 ranges from one to three feet wide with substrate that consists of silt, sand, and gravel. During the Agent's delineation site visit on January 22, 2020 the channel contained flowing and pooled water.
Int 3	371	linear feet	N/A.	Int 3 contributes flow to Int 1, to Cedar Creek, to Floyds Fork, to the Salt River which is a tributary to the Ohio River (a Traditionally Navigable Water (a)(1) water)). Int 3 ranges from two to four feet wide with substrate that consists of silt and clay. During the Agent's delineation site visit on January 22, 2020 the channel contained flowing water.

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
OW 1	0.304	acre(s)	(a)(3) Lake/pond or impoundment of a jurisdictional water contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	OW 1 has a direct hydrologic connection to up and downstream (a)(2) streams. OW1 is an impoundment of Int 1, an (a)(2) water.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Wet 1	0.034	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wet 1 is directly abutting Int 1, which is an (a)(2) water, which flows to Cedar Creek, to Floyds Fork, to the Salt River which is a tributary to the Ohio River (a Traditionally Navigable Water (a)(1) water))..
Wet 2	0.009	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wet 2 is directly abutting Int 2, an (a)(2) water, which flows directly into Int 1 (a)(2) water.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Eph 1	77	linear feet	(b)(3) Ephemeral feature, including	Eph 1 only contains surface water flowing or pooling in direct response to precipitation.

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.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
		an ephemeral stream, swale, gully, rill, or pool.	During the Agent’s delineation site visit on January 22, 2020, the channel contained no flowing water within the reach. Therefore, Eph 1 is a (b)(3) water and is therefore excluded from the rule.
Eph 2	215	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. Eph 2 only contains surface water flowing or pooling in direct response to precipitation. During the Agent’s delineation site visit on January 22, 2020, the channel had no flowing water at the very upstream point, however, some water was observed in the upper-midsection of the stream. Eph 2 then lost water halfway down the stream reach and the lower end was completely dry. Therefore, Eph 2 is a (b)(3) water and is therefore excluded from the rule.
Eph 3	211	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. Eph 3 only contains surface water flowing or pooling in direct response to precipitation. During the Agent’s delineation site visit on January 22, 2020, the channel had no water flowing at the upper section of the stream and some water was observed in the upper to mid-section of the stream, then lost water towards the bottom of the channel. Therefore, 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 Jurisdictional Determination dated February 20, 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: **Aerial and Other:** kygisserver.ky.gov ArcGIS services (2019) and site photographs January 22, 2020 in submitted Request for JD dated February 20, 2020.
- Corps site visit(s) conducted on: **Date(s).**
- Previous Jurisdictional Determinations (AJDs or PJDs): **LRL-2020-00196 PJD dated May 5, 2020.**
- Antecedent Precipitation Tool: **provide detailed discussion in Section III.B.**
- USDA NRCS Soil Survey: 1:24,000 - Brooks and Mt Washington, KY Quad
- USFWS NWI maps: **Title(s) and/or date(s).**
- USGS topographic maps: 1:24,000 - Brooks and Mt Washington, 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.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

Data Source (select)	Name and/or date and other relevant information
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	NOAA, Louisville Weather Forecast Office, https://w2.weather.gov/climate/xmacis.php?wfo=lmk , accessed on November 3, 2020.

- B. Typical year assessment(s):** The APT was run for 1/22/2020 (the day the delineation was performed by the agent). Based on the APT, conditions were wetter than normal.
- C. Additional comments to support AJD:** According to NOAA, Louisville Weather Forecast Office, 0.36 inches of precipitation was recorded on 1/18/2020 (4 days prior to the delineation site visit by the agent) and trace amounts on 1/19/2020, 1/20/2020 and 1/22/2020. The 0.36 inches of precipitation 4 days prior to the delineation visit and the wetter than normal conditions as determined by the APT tool as described in Section IIIB, would explain the pooled areas within the Eph 2 & 3 channels. Due to a wetter than normal time of year, the ground would be saturated, allowing some water to pool and slowly infiltrate into the channel. In addition, the upper and lower portions of Eph 2 & 3 had no flowing water at the time of the delineation, indicating ephemeral stream flow.