



**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): 2/8/2021

ORM Number: LRL-2020-1006-MKD

Associated JDs: N/A

Review Area Location<sup>1</sup>: State/Territory: Indiana City: Leavenworth County/Parish/Borough: Crawford

Center Coordinates of Review Area: Latitude 38.244675 Longitude -86.358728

**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
S-1	777	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
			S-1 is an intermittent tributary that originates in wetland W-2. The stream channel averages 30 inches in width and 10 inches in bank height. The stream bed consists of cobble, gravel, silt, and detritus. During the Corps’ site visit water was pooled throughout the stream channel with little to no flow. The stream flows into a known karst feature. Evidence gathered from the site visit, summarized in the “Summary of Site Visit for LRL-2020-1006-MKD, confirms that S-1 flows underground to an open water feature that flows into Jabby Creek (a

<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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Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
			perennial feature that indirectly flows into the Ohio River).

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
W-2	0.06 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland W-1 is a forested wetland located at the headwater of S-1. W-1 collects surface water from the surrounding area and drains directly into S-1.

**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
S-2	91 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	S-2 is an ephemeral stream that flows into S-1. During the Corps' site visit the channel, the stream channel was mostly dry, with minor pooling at the confluence of the two streams.
W-1	0.07 acre(s)	(b)(1) Non-adjacent wetland.	Wetland W-1 is a depressional emergent wetland located on the western side of the project site. W-1 is not adjacent to any "waters of the U.S."

**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: [Love's Travel Stops, Natural Resources Technical Report, June 5, 2020](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A](#)

- Data sheets prepared by the Corps: [Summary of Site Visit for LRL-2020-1006-MKD, December 10, 2020](#)
- Photographs: [Aerial and Other: Photos and Aerials provided by applicant, Photos and aerials in Summary of Site Visit for LRL-2020-1006-MKD, December 10, 2020](#)
- Corps site visit(s) conducted on: [December 10, 2020](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\)](#).
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

<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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- USDA NRCS Soil Survey: [NRCS WebSoil Survey](#)
- USFWS NWI maps: [USFWS NWI](#)
- USGS topographic maps: [1:24K](#), [Leavenworth](#)

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

Data Source (select)	Name and/or date and other relevant information
<a href="#">USGS Sources</a>	N/A.
<a href="#">USDA Sources</a>	N/A.
<a href="#">NOAA Sources</a>	N/A.
<a href="#">USACE Sources</a>	N/A.
<a href="#">State/Local/Tribal Sources</a>	N/A.
<a href="#">Other Sources</a>	<a href="#">Weather Underground</a> <a href="#">Historic Weather</a> <a href="#">IDEM Karst Sinkhole Inventory</a> <a href="#">NHD Maps</a>

**B. Typical year assessment(s):** The ATP tool was utilized for the date of the Corps’ site visit, December 10, 2020, conditions were considered normal and within the 30 year normal range. Weather Underground’s website indicated that the last measurable rainfall for the area prior to the site visit was approximately 0.63 inches on November 30th through December 1st.

**C. Additional comments to support AJD:** Per the Navigable Waters Protection Rule (NWPR) definition of an intermittent stream, “flowing continuously during certain times of the year and more than in direct response to precipitation,” S-1 appears to be a well-defined intermittent tributary. S-1 maintains hydrology throughout most of the channel nine days after the most recent rainfall. Per the NWPR definition of an ordinary high water mark (OHWM), “means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.” S-1 maintains a clear OHWM through out the channel; except in one location where channel fans out but is still present and hydrophytic vegetation is growing within the stream channel.

Though the stream S-1 flows into a karst feature, the stream is connected to a “water of the U.S.,” by a subsurface flow. According to the NWPR Preamble 33 CFR Part 328: SUPPLEMENTARY INFORMATION (III)(A)(3), “subsurface flow, though it remains non-jurisdictional, may serve as a connection between upstream and downstream jurisdictional waters. The agencies note that a subterranean river does not sever jurisdiction of the upstream reach of a tributary if it contributes surface water flow in a typical year to a downstream jurisdictional water.” The features identified in the Summary of Site Visit for LRL-2020-1006-MKD, sink hole, underground concrete structure, and the soil bore hole, all appear within the same topographic feature. From the karst feature, the topography forms a shallow draw, sloping down towards the large off-site pond. The combined evidence of the maps, aerials, concrete structure, and soil bore pit, indicate the presence of subsurface flow between the sinkhole and the pond. This subsurface flow would indicate that stream S-1 and wetland W-2 are connected to the pond by the karst feature.