



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): October 29, 2020

ORM Number: LRL-2020-779-sea

Associated JDs: N/A

Review Area Location¹:

State/Territory: KY City: Shelbyville County/Parish/Borough: Shelby County

Center Coordinates of Review Area: Latitude 38.199257 Longitude -85.197326

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
INT 1	435 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	INT 1 originates from WET 1 and flows through WET 2, OW 1, OW2, WET 3, and OW 3 before flowing off-site through a UT of Clear Creek to Brashears Creek to the Salt River, a Section 10 water, to the Ohio River, a Traditional Navigable Water (TNW). Upstream, INT 1 ranges from one to two feet wide with 6 inch banks and a silt substrate. Downstream, INT 1 ranges to four to six feet wide with one to two foot banks and a silt, cobble, and boulder substrate.
INT 2	140 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1)	INT 2 originates from OW 5 and ranges from two to three feet wide with one to three foot banks and silt, gravel, and cobble substrate. INT 2 flows off-site

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		water in a typical year	through a UT of Clear Creek to Brashears Creek to the Salt River, a Section 10 water, to the Ohio River, a TNW.
INT 3	295 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	INT 3 ranges from two to three feet wide with half foot to two foot banks and a silt substrate. INT 3 flows off-site through a UT of Clear Creek to Brashears Creek to the Salt River, a Section 10 water, to the Ohio River, a TNW.
INT 4	40 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	INT 4 ranges from two to four feet wide with one to four foot banks and silt, cobble, and boulder substrate. INT 4 flows into INT 5 then flows off-site through a UT of Clear Creek to Brashears Creek to the Salt River, a Section 10 water, to the Ohio River, a TNW.
INT 5	485 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	INT 5 ranges from three to four feet wide with one to four feet banks and silt, cobble, and boulder substrate. INT 5 flows off-site through a UT of Clear Creek to Brashears Creek to the Salt River, a Section 10 water, to the Ohio River, a TNW.

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	0.476 acres	(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 is an impoundment of INT 1. INT 1 is an (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
OW 2	0.599 acres	(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 2 is an impoundment of INT 1. INT 1 is an (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
OW 3	0.224 acres	(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 3 is an impoundment of INT 1. INT 1 is an (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
OW 5	0.287 acres	(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 5 is an impoundment of INT 2. INT 1 is an (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.

Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
WET 1	0.018 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	WET 1 abuts INT 1. INT 1 is an (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
WET 2	0.082 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	WET 2 abuts INT 1. INT 1 is an (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.

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WET 3	0.601 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	WET 3 abuts INT 1. INT 1 is an (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
WET 4	0.345 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	WET 4 abuts OW 5 which is an impoundment of INT 2. INT 2 is an (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
WET 5	0.077 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	WET 5 abuts INT 2. INT 2 is an (a)(2) Intermittent tributary 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
EPH 1	40 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	EPH 1 only contains surface water flowing or pooling in direct response to precipitation. EPH 1 is a (b)(3) water and is therefore excluded from the rule.
EPH 2	70 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. EPH 2 is a (b)(3) water and is therefore excluded from the rule.
EPH 3	70 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. EPH 3 is a (b)(3) water and is therefore excluded from the rule.
EPH 4	80 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	EPH 4 only contains surface water flowing or pooling in direct response to precipitation. EPH 4 is a (b)(3) water and is therefore excluded from the rule.
EPH 5	20 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	EPH 5 only contains surface water flowing or pooling in direct response to precipitation. EPH 5 is a (b)(3) water and is therefore excluded from the rule.
EPH 6	25 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	EPH 6 only contains surface water flowing or pooling in direct response to precipitation. EPH 6 is a (b)(3) water and is therefore excluded from the rule.
OW 4	1.486 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	OW 4 was constructed in the upper portion of the watershed of INT 2 between 1952 and 1959. OW 4 seeps through the existing dam into WET 4 but does not contribute surface flow directly or indirectly into an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year.
WET 6	0.066 acres	(b)(1) Non-adjacent wetland	WET 6 does not physically abut an (a)(1)-(a)(3) water and is not inundated by water from an (a)(1)-(a)(3) water in a typical year.

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: Preconstruction Notification for Nationwide Permit #29 dated September 10, 2020.
This information is sufficient for purposes of this AJD.

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Rationale: N/A

- Data sheets prepared by the Corps: *Title(s) and/or date(s)*.
- Photographs: Aerial and Other: kygisserver.ky.gov (2018) and site photographs June 7, 2018 and May 11, 2020.
- Corps Site visit(s) conducted on: *Date(s)*.
- 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: SSURGO, Shelby Co, KY (2008).
- USFWS NWI maps: *Title(s) and/or date(s)*.
- USGS topographic maps: 1:24,000 – Shelbyville, 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	Weather Underground Historic Precipitation Data (WUHPD)

- B. Typical year assessment(s):** The Antecedent Precipitation Tool (APT) was utilized for the stream assessment date of May 11, 2020. The data shows that the assessment was conducted and photos were taken during the wet season during normal conditions.
- C. Additional comments to support AJD:** WUHPD was reviewed for May 11, 2020 to see the precipitation totals for the days leading up to the assessment date and site visit. The Louisville International Airport Station, located approximately 30 miles away from the review area, recorded 0.93 inches of rain within 5 days of the site visit, 0.84 inches of which was recorded 2 days prior to the site visit. Therefore, the presence of water in ephemeral channels during the May 11, 2020 is not unusual given the function of ephemeral tributaries in the landscape

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