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): 08-JUL-2021
ORM Number: LRL-2021-00511-MAD
Associated)
Review Area Location[1]:
State/Territory: KY City: County/Parish/Borough: Fleming County
Center Coordinates of Review Area: Latitude 38.442778 Longitude -83.76537

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
Channel 10	1409 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Channel 10 originates offsite and enters the project area in the central-northern portion of the Site flowing southwest toward Channel 12 and then northwest where it exits the project area and continues offsite. Channel 10 is depicted on the USGS and NHD as a perennial tributary to Johnson Creek. Channel 10 exhibits perennial flow with continuous OHWM and bed and bank for approximately 1,409 linear feet within the project area. Channel 10 flows directly into Johnson Creek, which flows into the Licking River, an (a)(1) water.
Channel 11	2239 feet	(a)(2) Perennial tributary contributes	Channel 11 originates from flow from Feature 13

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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.

		surface water flow directly or indirectly to an (a)(1) water in a typical year	consolidates into a defined channel as the valley narrows. Channel 11 is depicted on USGS, NHD, and NWI as a perennial stream and was field identified as flowing north for approximately 2,239 linear feet from its origin at Feature 13 to the confluence with Channel 10, an (a)(2) water. Channel 11 exhibits perennial flow with well-defined bed and banks with continuous OHWM and exhibited year-round flow.
Channel 12	1180 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Channel 12 originates onsite in the central-northern portion of the project area and flows northwest to its confluence with Channel 10, an (a)(2) water. Channel 12 exhibits intermittent flow with continuous OWHM and bed and banks, and a morphology typical of intermittent streams in the region.
Channel 16	113 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Channel 16 exhibits intermittent flow and has a morphology typical of intermittent stream in the region. Channel 16 flows north for approximately 113 linear feet with intermittent flow from Feature 10 and is impounded by Pond 8. Pond 8 contributes surface water flow in a typical year to Channel 12, an (a)(2) water, through Channel 14 and 15.
Channel 20	3079 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Channel 20 originates from an offsite pond southwest of the project area and enters the project area from a culvert on Convict Pike. Channel 20 is depicted on the USGS, NWI, and NHD as a perennial stream, exhibited continuous year-round flow and has a morphology typical of perennial stream in the region. Channel 20 flows north bisecting the western portion of the Site for approximately 3,079 linear feet where it continues to flow off-site into an unnamed tributary of Johnson Creek. Johnson Creek flows directly into the Licking River, an (a)(1) water.
Channel 21	263 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Channel 21 originates onsite in the western portion of the project area where groundwater discharges to the surface and forms a continuous OHWM and bed and bank. Channel 21 exhibits intermittent flow, and morphology typical of intermittent streams in the region. Channel 21 flows directly into Channel 20, an (a)(2) water.
Channel 23	676 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Channel 23 originates offsite and enters the southwest project area north of Convict Pike where it flows for approximately 676 linear feet to its confluence with Channel 20, an (a)(2) water. Cattle activity has altered the substrate material of the channel bed; however, continuous OWHM was observed throughout the incised and eroded channel, and the stream exhibited flow more than in response to precipitation.
Channel 26	67 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Channel 26 originates onsite in the southwestern portion of the northern project area at concrete box and spring. Cattle have altered this feature, and OHWM and bed and bank were not visible at the time of the delineation. However, flowing surface water was

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			observed within Channel 26 more than in response to precipitation. Channel 26 flows west intermittently for 67 linear feet where it flows offsite and into an offsite pond. This pond outlets to an UNT of Johnson Creek.
Channel 27	8 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Channel 27 originate at a headcut below Channel 27E where ground water influence changes the stream morphology and flow regime. Channel 27 exhibits intermittent flow for approximately eight linear feet to its confluence with Channel 26, an (a)(2) water.
Channel 28	305 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Channel 28 originates onsite downgradient of Pond 10 and exhibited a continuous OHWM and bed and banks flowing intermittently more than in response to precipitation. Channel 28 flows offsite to Town Branch, which flows to Fleming Creek, then to the Licking River, an (a)(1) water.
Channel 29	59 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Channel 29 originates at a headcut that intercepts ground water below Channel 29E. Channel 29 flows intermittently exhibiting a continuous OHWM and bed and bank for approximately 59 linear feet to its confluence with Channel 28, an (a)(2) water.
Channel 30	117 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Channel 30 originates at the confluence of Channel 30E and 31. The stream exhibits flow more than in response to precipitation and had a morphology typical of intermittent streams in the region. The stream flows flow northeast for approximately 117 linear feet to the project boundary and into an intermittent UNT of Mill Creek. Mill Creek flows directly into the Licking River, an (a)(1) water.
Channel 34	65 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Channel 34 originates onsite at the spring with a concrete box in the northeastern project area and flows for approximately 65 linear feet into Feature 21. Channel 34 exhibited a flow more than in response to precipitation and with a defined OHWM and bed and banks.

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
Pond 5	1.78 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	Pond 5 is an approximately 1.78 acre constructed pond in the southwest portion of the Site. Pond 5 is an impoundment of Channel 11, an (a)(2) water.
Pond 8	0.42 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.	Pond 8 is an impoundment of Channel 16, an (a)(2) water. Pond 8 contributes surface flow downstream to Channel 12, an (a)(2), in a typical year through Channel 14 and Channel 15. Pond 8 is jurisdictional under the NWPR as it is an impoundment of waters and has a direct surface connection to Channel 12.

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

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(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
Feature 8	1.96 acres	(a)(4) Wetland abuts an (a)(1) - (a)(3) water	Feature 8 originates onsite within the central portion of the project area at the toe-of-slope of the abandoned railroad right-of-way. The feature exhibits all three wetland parameters and directly abuts Channel 12, an (a)(2) water.
Feature 10	0.67 acres	(a)(4) Wetland abuts an (a)(1) - (a)(3) water	Features 10 meet all three wetland parameters and directly abuts Pond 8, an (a)(3) water.
Feature 12	0.16 acres	(a)(4) Wetland separated from an (a)(1) -(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetland and the (a)(1) - (a)(3) water in a typical year	Feature 12 originates onsite at a concrete box well within a cattle field in the southern portion of the project area. Feature 12 is separated from an off-site intermittent tributary by an artificial berm created by the roadbed of Convict Pike. A culvert under Convict Pike carries flows in a typical year from Feature 12 to the offsite intermittent tributary to Town Branch, an (a)(2) water.
Feature 13	1.69 acres	(a)(4) Wetland abuts an (a)(1) - (a)(3) water	Feature 13 originates onsite at the overflow pipe outlet and toe-of-slope of Pond 5, an (a)(3) water, and drains to Channel 11 an (a)(2) water.
Feature 16	0.09 acres	(a)(4) Wetland abuts an (a)(1) - (a)(3) water	Feature 16 is a wetland that abuts the right bank of Channel 20, an (a)(2) water.
Feature 18	0.02 acres	(a)(4) Wetland abuts an (a)(1) - (a)(3) water	Feature 18 is a wetland located along the stream inner berm that abuts the northern portion of Channel 20, an (a)(2) water.
Feature 20	0.43 acres	(a)(4) Wetland abuts an (a)(1) - (a)(3) water	Feature 20 is a forested wetland in the in the northern portion of the project area and continues offsite. The feature abuts an unnamed intermittent tributary to Johnson Creek, an (a)(2) water.
Feature 21	0.1 acres	(a)(4) Wetland abuts an (a)(1) - (a)(3) water	Feature 21 originates onsite and flows northeast out of the project area to a mapped unnamed intermittent tributary to Mill Creek, an (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
Channel 1	652 feet	(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year	Channel 1E transitions to Channel 1 at a headcut where OHWM and bed and bank become contiguous, and flow becomes intermittent. Channel 1 flows south for approximately 652 linear feet where it exits the southern Site boundary and dissipates into sheetflow prior to crossing Convict Pike. Historical aerial imagery and Google Earth Street View were reviewed and no evidence of Channel 1 continuing to, or beyond, Convict Pike was observed. During the March 17-18, 2021 delineation, ERP observed no evidence of a surface connection from Channel 1 to downstream waters. According to the APT, this observation took place during the wet season, in wetter than normal conditions for a typical year. No sinkholes or subterranean streams are located within the project area.

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Channel 1E	170 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 1E flows directly into Channel 1, a (b)(1) excluded feature. Channel 1E exhibits ephemeral flow and a non-contiguous OHWM and bed and bank. Channel 1E transitions to Channel 1 at a headcut where OHWM and bed and bank become contiguous, and flow becomes intermittent.
Channel 2	818 feet	(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year	Channel 2 originates onsite in the southern portion of the project area. Channel 2 exhibits an intermittent flow until ground water is no longer able to reach the surface, and the flow regime changes from intermittent to ephemeral and becomes Channel 2E. Channel 2E exhibits an ephemeral flow regime and flow goes subsurface into ground water. There is no evidence Channel 2 provides flow to an (a)(1) –(a)(3) water in a typical year.
Channel 2E	391 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 2E continues 391 linear feet below the flow regime change on Channel 2 where it goes subsurface to groundwater. Field observations found no evidence of the channels returning to the surface after they flow underground. Field observations found no evidence of Channel 2E returning to the surface after it flows underground. Based on a review of current and historical aerial imagery and the University of Kentucky Speleological Survey of Sinkhole Coverage for the Karst Areas of Kentucky, flow from Channel 2E remains underground until it intercepts groundwater. Based on ephemeral flow the Channel 2E is a (b) (3) excluded feature.
Channel 3	119 feet	(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year	Channel 3 originates onsite where Channel 3E begins to exhibit intermittent flow. Channel 3 flows directly into Channel 2, a (b)(1) excluded feature, that flows into Channel 2E which goes subsurface. There is no evidence Channel 3 provides flow to an (a)(1) –(a)(3) water in a typical year.
Channel 3E	172 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 3E originates as an erosional channel with ephemeral flow for approximately 172 linear feet and exhibits non-continuous OHWM and bed and bank. As flow continues down slope the channel intercepts ground water and begins to flow south intermittently becoming Channel 3, a (b)(1) excluded feature.
Channel 4	140 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 4 is an approximately 140 linear foot stream located on a hillside with no OHWM or bed and bank. Channel 4 appear to be a ditch excavated in the uplands with ephemeral flow that drains southeast and dissipates into sheet flow. There is no evidence of a connections to downstream jurisdictional waters.
Channel 5	122 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 5 is an approximately 122 linear foot erosional feature with ephemeral flow located on a hillside northeast of Channel 4. Channel 5 appears to have been created by erosional process from cattle activity and is absent of OHWM or bed and banks. There is no evidence of a connections to downstream jurisdictional waters.

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Channel 6	1574 feet	(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year	Channel 6 originates onsite at the confluence of Feature 7 and Channel 7. The stream exhibits intermittent flow and follows the berm from an abandoned railroad for approximately 1,574 linear feet before going subsurface to groundwater. Field observations found no evidence of Channel 6 returning to the surface after it flows underground. Based on a review of current and historical aerial imagery and the University of Kentucky Speleological Survey of Sinkhole Coverage for the Karst Areas of Kentucky, Channel 6 remains underground until it intercepts groundwater. There is no evidence Channel 6 provides flow to an (a)(1) –(a)(3) water in a typical year.
Channel 7	728 feet	(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year	Channel 7 originates onsite in the central-eastern portion of the project area and exhibits and intermittent flow. The channel flows directly into Channel 6, a (b)(1) excluded feature.
Channel 8	125 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 8 does not exhibit flow more than in response to precipitation and has a morphology typical of ephemeral streams in the region including non-continuous OHWM and bed and banks.
Channel 9	170 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 9 originates onsite within the northern-central portion of the project area and exhibits a non-continuous OHWM and bed and bank, and ephemeral flow that was not more than in response to precipitation. The stream flows directly into Pond 9, a (b)(8) excluded feature.
Channel 13	191 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 13 originates onsite in the central-northern portion of the project area and exhibits ephemeral flow northeastward to its confluence with Channel 12. Channel 13 exhibited a morphology typical of a ephemeral stream including absent of OHWM and bed and bank.
Channel 14	61 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 14 originates onsite from an outlet pipe of Pond 8 and does not exhibit flow more than in response to precipitation and has a morphology typical of ephemeral streams in the region including non-continuous OHWM and bed and banks.
Channel 15	97 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 15 is a constructed overflow outlet channel from Pond 8 and does not exhibit flow more than in response to precipitation and has a morphology typical of ephemeral streams in the region including non-continuous OHWM and bed and banks.
Channel 17	213 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 17 flows north for approximately 213 linear feet from Feature 11 to Feature 10. Channel 17 does not exhibit flow more than in response to precipitation and has a morphology typical of ephemeral streams in the region including non-continuous OHWM and bed and banks.
Channel 18	331 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 18 flows along a hillside west of Feature 10. Channel 18 does not display a continuous OHWM or bed and bank, has a morphology typical of ephemeral

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Channel 19	65 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 19 enters the project area from a culvert on Convict Pike and flows north for approximately 65 linear feet to Pond 5. Channel 19 is a ditched feature that connects a constructed offsite pond with Pond 5. Channel 18 does not display a continuous OHWM or bed and bank, has a morphology typical of ephemeral streams in the region, and does not exhibit flow more than in response to precipitation.
Channel 21E	217 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 21E originates onsite within the same topographic draw as Channel 21 and flows east for approximately 217 linear feet. Channel 21E does not exhibit flow more than in response to precipitation and has an eroded channel with no OHWM or bed and bank. The stream flow dissipates into sheet flow approximately 243 feet west from the origin point of Channel 21.
Channel 22	588 feet	(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year	Channel 22 originates offsite and enters the western portion of the project area where it flows east towards Channel 20. Channel 22 exhibits intermittent flow with a continuous OHWM and bed and bank for approximately 588 linear feet to a pipe approximately 30 feet west of Channel 21. The pipe serves an unpaved farm road and appears to be reinforced with natural stones from the surrounding area. The pipe is crushed at the outlet and surface water, bed and bank, and OHWM do not continue downslope of the pipe. Surface flow from Channel 22 is separated from downstream waters by the pipe and approximately 20 feet of sheet flow. Channel 22 was observed during the wet season in wetter than normal conditions and there is no evidence that Channel 22 contributes flow to Channel 21 or another (a)(1)-(3) water in a typical year.
Channel 24	229 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 24 is an erosional feature located along a hillslope in the western portion of the project area approximately 154 feet east of Channel 20. Channel 24 did not exhibit flow more than in response to precipitation, and no OHWM or bed and bank was observed. Channel 24 flows west for approximately 229 linear feet towards Channel 20 but dissipates into sheet flow on the upland hillside.
Channel 25	104 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 25 originates at Feature 14 and terminates into Feature 15, a (b)(1) excluded feature. Channel 25 does not exhibit flow more than in response to precipitation and has a morphology typical of ephemeral stream in the region.
Channel 27E	34 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 27E is an erosional feature that does not exhibit flow more than in response to precipitation and has a morphology typical of ephemeral stream in the region. The stream flows 34 feet into Channel 27

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			where a headcut results in a ground water connection and a change in channel morphology and flow regime.
Channel 29E	68 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 29E is an erosional feature does not exhibit flow more than in response to precipitation and has a morphology typical of ephemeral stream in the region. The stream flows for approximately 68 linear feet to Channel 29.
Channel 30E	222 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 30E is an erosional feature located in the northern project area that does not exhibit flow more than in response to precipitation and has a morphology typical of ephemeral stream in the region. Channel 30E flows north for approximately 222 linear feet to its confluence with Channel 30.
Channel 31	192 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 31 is an erosional feature located in the northern project area that does not exhibit flow more than in response to precipitation and has a morphology typical of ephemeral stream in the region. Channel 31 flows north for approximately 192 linear feet to its confluence with Channel 30.
Channel 32	242 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 32 is an overflow outlet structure of Pond 11 that flows west for approximately 242 linear feet to confluence with Channel 30. Channel 32 does not exhibit flow more than in response to precipitation and has a morphology typical of ephemeral stream in the region.
Channel 33	72 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 33 does not exhibit flow more than in response to precipitation and has a morphology typical of ephemeral stream in the region. Channel 33 flows northeast for approximately 72 linear feet into Pond 11, a (b)(8) excluded feature.
Channel 34E	50 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 34E originates onsite in the northeastern corner of the project area and is the headwaters of Channel 34. Channel 35 does not exhibit flow more than in response to precipitation and has a morphology typical of ephemeral stream in the region.
Channel 35	139 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 35 is an erosional feature located on a hillslope in the western portion of the project area approximately 164 feet east of Channel 20. Channel 35 does not exhibit flow more than in response to precipitation and there is no evidence of OHWM or bed and bank. Channel 35 flows west for approximately 139 linear feet towards Channel 20 but dissipates into sheet flow on the upland hillside.
Channel 36	643 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 36 is an erosional feature located on a hillslope in the western portion of the project area approximately 129 feet east of Channel 20. Channel 36 does not exhibit flow more than in response to precipitation and there is no evidence of OHWM or bed and bank. Channel 36 flows west for approximately 643 linear feet towards Channel 20 but dissipates into sheet flow on the upland hillside.
Channel 37	764 feet	(b)(3) Ephemeral feature, including	Channel 37 originates onsite as an erosional feature

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		an ephemeral stream, swale, gully, rill, or pool	and flows northwest to the Project boundary where it has been artificially straightened along a manmade berm. Channel 37 flows north before dissipating into Feature 23, a (b)(1) excluded feature. Channel 37 does not exhibit flow more than in response to precipitation and there is no evidence of OHWM or bed and bank.
Channel 38	61 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channels 38 forms where sheet flow concentrates within Feature 24 and continues off site until its intersection with Channel 12. Channel 38 does not exhibit flow more than in response to precipitation and has a morphology typical of ephemeral stream in the region.
Channel 39	30 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channels 39 form where sheet flow concentrates within Feature 24. Channel 39 does not exhibit flow more than in response to precipitation and has a morphology typical of ephemeral stream in the region.
Channel 40	185 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 40 is an swale that exhibits ephemeral flow, lacks an OHWM and bed and bank, and flows west for approximately 185 linear feet to Feature 24, a (b)(1) excluded feature.
Feature 1	0.23 acres	(b)(1) Non-adjacent wetland	Feature 1 originates onsite in a valley in the southeastern portion of the project area. The feature exhibits wetland characteristics in an unconfined linear shape that follows the valley until flow is consolidated and Channel 1E is formed. Channel 1E is a (b)(3) excluded feature and does not contribute surface water directly to a jurisdictional feature.
Feature 2	0.09 acres	(b)(1) Non-adjacent wetland	Feature 2 exhibits wetland characteristics and is located along the left bank of Channel 1 in the southeastern portion of the project area. Channel 1 is a (b)(1) excluded feature and does not contribute surface water directly to a jurisdictional feature in a typical year.
Feature 3	0.01 acres	(b)(1) Non-adjacent wetland	Feature 3 is a constructed wet basin located downgradient of Pond 2 along the left bank of Channel 6, a (b)(1) excluded feature that does not contribute surface water directly to a jurisdictional feature in a typical year.
Feature 4	0.09 acres	(b)(1) Non-adjacent wetland	Feature 4 is a constructed wet basin located downgradient of Pond 2 along the left bank of Channel 6, a (b)(1) excluded feature that does not contribute surface water directly to a jurisdictional feature in a typical year.
Feature 5	0.12 acres	(b)(1) Non-adjacent wetland	Feature 5 is a fringe wetland abutting Pond 2, a (b) (8) excluded feature. The wetland does not meet the definition of adjacent to any (a)(1)-(3) waters.
Feature 6	0.23 acres	(b)(1) Non-adjacent wetland	Feature 6 is a fringe wetland abutting Pond 2, a (b) (8) excluded feature. The wetland does not meet the definition of adjacent to any (a)(1)-(3) waters..
Feature 7	0.08 acres	(b)(1) Non-adjacent wetland	Feature 7 originates onsite within the central portion of the project area at the toe-of-slope of the abandoned railroad right-of-way. Feature 7 flows southeast to the

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			confluence of Channel 6 and Channel 7, (b)(1) excluded waters, and does not contribute flow to Feature 8 even during wetter than normal conditions. The wetland does not meet the definition of adjacent to any (a)(1)-(3) waters.
Feature 9	0.15 acres	(b)(1) Non-adjacent wetland	Feature 9 is located in a valley downgradient from Pond 9. A concrete cistern or well is located in the central portion of Feature 9. Feature 9 abuts Channel 8, a (b)(3) excluded feature which flows to Feature 9. The wetland does not meet the definition of adjacent to any (a)(1)-(3) waters.
Feature 11	0.06 acres	(b)(1) Non-adjacent wetland	Feature 11 originates onsite in the central portion of the project area and abuts Channel 17, a (b)(3) excluded feature which flows to Feature 9. The wetland does not meet the definition of adjacent to any (a)(1)-(3) waters.
Feature 14	0.1 acres	(b)(1) Non-adjacent wetland	Features 14 is the southwestern portion of the Site, east of Channel 20, and is hydrologically connected to Feature 15 a (b)(1) excluded feature by Channel 25, a (b)(3) excluded feature. The wetland does not meet the definition of adjacent to any (a)(1)-(3) waters.
Feature 15	0.18 acres	(b)(1) Non-adjacent wetland	Features 15 is located in the southwestern portion of the Site, east of Channel 20. Flow from Feature 15 dissipates into sheet flow approximately 100 feet east of Channel 20. Based on the size and morphology of Channel 20, and landscape position of the two resources, there is no evidence that Feature 15 could receive flooding from Channel 20 in a typical year. The wetland does not meet the definition of adjacent to any (a)(1)-(3) waters.
Feature 17	0.08 acres	(b)(1) Non-adjacent wetland	Feature 17 is located approximately 25 feet east of Channel 20. The wetland is physical isolated in the landscape and based on the size and morphology of Channel 20, and landscape position of the two resources, there is no evidence that Feature 17 could receive flooding from Channel 20 in a typical year. The wetland does not meet the definition of adjacent to any (a)(1)-(3) waters.
Feature 19	0.27 acres	(b)(1) Non-adjacent wetland	Feature 19 is located entirely onsite in a closed depression along the western boundary of the northern portion of the project area. The feature is physically isolated in the landscape and does not meet the definition of adjacent to any (a)(1)-(3) waters.
Feature 22	0.1 acres	(b)(1) Non-adjacent wetland	Feature 22 is located in a depression in the hillslope approximately 400 feet upgradient of Channel 3E. The hillslope between Feature 22 and Channel 3E lacks all wetland indicators and is generally comprised of upland vegetation. The wetland does not meet the definition of adjacent to any (a)(1)-(3) waters.
Feature 23	0.45 acres	(b)(1) Non-adjacent wetland	Feature 23 is located in the northwestern corner of the

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			Project area and is separated from an unnamed tributary to Johnson Creek by an artificial berm. During the March delineation, ERP observed that Feature 23 does not have potential to contribute flow to the UNT to Johnson Creek. Observation of confinement took place in during the wet season and during wetter than normal conditions. The berm shows signs of being artificially constructed based on adjacent land use and features and presence of a fence line. There a no structures which would allow a surface water connection through the berm.
Feature 24	0.07 acres	(b)(1) Non-adjacent wetland	Feature 24 flows northwest as flow concentrates into Channels 38 and 39, which flow north, intersect with each other, and continue off site. Channel 38 and 39 are (b)(3) excluded features.
Pond 1	0.15 acres	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6)	Pond 1 is a farm pond constructed in an upland within the southeastern portion of the project area, upgradient of Channel 1 and Channel 1E. Pond 1 has earthen berms on all sides with no outlet pipes and is physically isolated in the landscape.
Pond 2	0.89 acres	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6)	Pond 2 is an impoundment of Channel 6, a (b) (1) excluded feature.
Pond 3	0.34 acres	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6)	Pond 3 is located in a valley in the central-southern portion of the project area. There are no outlets from the pond, and it is physically isolated in the landscape.
Pond 4	0.3 acres	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6)	Pond 4 is a constructed farm pond. A swale conveys overflow water to a roadside ditch and culvert which flow south under Convict Pike outside of the project area. Aerial photography shows that Pond 4 was constructed in the uplands sometime between 1950 and 1983.
Pond 6	0.24 acres	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6)	Pond 6 is a farm pond constructed in an upland in the southwest portion of the project area. Pond 6 is used by cattle and has a berm on all sides with no outlet structure. The pond was constructed in the uplands and is physically isolated in the landscape.
Pond 7	0.2 acres	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6)	Pond 7 was constructed in an upland for farm use located in the western portion of the Site, approximately 212 feet west of Channel 21E. Pond 7 has an overflow outlet pipe that contributes water to Channel 21 and Channel 21E. Aerial photography shows that Pond 4 was constructed in the uplands sometime between 1985 and 1995.

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Pond 9	0.37 acres	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6)	Pond 9 is an approximately 0.37-acre constructed pond in an upland identified on USGS, NHD, and NWI. A berm with an earthen driveway is located on the downgradient portion of the pond with no constructed outlet resulting in the pond being physically isolated in the landscape from other aquatic resources
Pond 10	0.85 acres	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6)	Pond 10 is a constructed farm pond and is physically isolated in the landscape from other aquatic resources.
Pond 11	0.57 acres	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6)	Pond 11 is a farm pond constructed sometime between 1985 and 1995. The pond was constructed in a portion of the stream identified as Channel 33. Based on the existing morphology of Channel 33 above Pond 11, and Channel 31 and 32 below the Pond, this feature was constructed in a non-jurisdictional water.

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: *Jurisdictional Waters of the U.S. Assessment Fleming Solar Project* dated April 2021 and *Request for Approved Jurisdictional Determination Fleming Solar Project, Fleming County, Kentucky* dated June 2, 2021 prepared by Energy Renewal Partners, LLC, and Additional Information dated July 19, 2021.
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: *(aerial and other) Applicant photographs 12/14-16/2020 and 3/17-18/2021. Google Earth aerials dated 9/21/2016, 12/30/2015, 6/14/2006, 6/19/2004, 6/20/2003, 12/30/1994. historicaerials.com/viewer aerials dated 1947, 1950, 1983, 1985.*

___ Corps Site visit(s) conducted on: *Date(s).*

___ Previous Jurisdictional Determinations (AJDs or PJDs): *ORM Number(s) and date(s).*

_x_ Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*

_x_ USDA NRCS Soil Survey: *Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey. Available online at http://websoilsurvey.sc.egov.usda.gov/. Accessed 07/07/2021*

_x_ USFWS NWI maps: *USFWS NWI maps: National Wetlands Inventory website. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. Available online at http://www.fws.gov/wetlands/. Accessed 07/07/2021*

_x_ USGS topographic maps: *1:24,000 – Elizaville, Kentucky Quadrangle.*

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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	The University of Kentucky's Speleological Survey of Sinkhole Coverage for the Karst Areas of Kentucky

B. Typical year assessment(s): The Antecedent Precipitation Tool was utilized the applicant's site assessment dates from December 14-16, 2021 and March 17-18, 2021. The data shows that the December assessment was during drier than normal conditions during the wet season, and the March assessment during wetter than normal conditions during the wet season. The December assessment was during drier than typical year conditions and the March assessment dates were during wetter than typical year conditions.

C. Additional comments to support AJD: N/A.

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