



**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): 8/23/2020

ORM Number: SWL 2020-00028

Associated JDs: N/A

Review Area Location¹: State/Territory: Arkansas City: Hunt County/Parish/Borough: Johnson County

Center Coordinates of Review Area: Latitude 35.524243 N Longitude -93.658054 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.

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
UT to Dirty Creek (INT-A)	243	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
			Estimated average width of 15 feet and an average depth of 2 feet. The substrate of the creek consisted of bedrock with some silt deposits and some vegetation growth. Flows into an ~4-acre pit that is incidental to coal mining activities, the discharges to an ephemeral feature into POND-D that is incidental to coal mining activities, then discharges through a culvert into INT-B, which leaves the project review site to a perennial stream, Dirty Creek, which flows into a perennial stream, Horsehead Creek, which flows into the Arkansas River, a TNW.

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.



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Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
UT to Dirty Creek (INT-B)	116 linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Estimated average width of 3.5 feet and an average depth of 1 feet. The substrate of the channel consisted of sandstone cobble. Intermittent stream flowing out of Pond D through a culvert, underneath the main entrance of project before exiting the southern boundary of the project area to a perennial stream, Dirty Creek, which flows into a perennial stream, Horsehead Creek, which flows into the Arkansas 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
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
EPHH-A	42 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral feature that exhibits surface water flow only in direct response to storm related precipitation events. 2-foot width by 0.5-foot OHWM depth. Clay/Vegetation substrate.
EPHH-B	51 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral feature that exhibits surface water flow only in direct response to storm related precipitation events. 1-foot width by 1-foot OHWM depth. Shale substrate.
EPHH-C	80 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral feature that exhibits surface water flow only in direct response to storm related precipitation events. 3-foot width by 1-foot OHWM depth. Vegetative debris substrate.
EPHH-D	275 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral feature that exhibits surface water flow only in direct response to storm related precipitation events. 1-foot width by 0.5-foot OHWM depth. Vegetative debris substrate.

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.



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination	
EPHH-E	90	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral feature that exhibits surface water flow only in direct response to storm related precipitation events. 1.5-foot width by 1-foot OHWM depth. Sandstone pebbles substrate.
EPHH-F	71	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral feature that exhibits surface water flow only in direct response to storm related precipitation events. 1.5-foot width by 0.5-foot OHWM depth. Vegetative debris substrate.
EPHH-G	181	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral feature that exhibits surface water flow only in direct response to storm related precipitation events. 1-foot width by 0.5-foot OHWM depth. Vegetative debris substrate.
EPHH-H	379	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral feature that exhibits surface water flow only in direct response to storm related precipitation events. 6-foot width by 2.5-foot OHWM depth. Vegetation/shale substrate.
POND-A	0.3	acre(s)	(b)(9) Water-filled depression constructed/excavated in upland/non-jurisdictional water incidental to mining/construction or pit excavated in upland/non-jurisdictional water to obtain fill/sand/gravel.	Excavated pond in upland incidental to Title V coal mining activities.
POND-B	0.06	acre(s)	(b)(9) Water-filled depression constructed/excavated in upland/non-jurisdictional water incidental to mining/construction or pit excavated in upland/non-jurisdictional	Excavated pond in upland incidental to Title V coal mining activities.



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination	
		water to obtain fill/sand/gravel.		
POND-C	0.09	acre(s)	(b)(9) Water-filled depression constructed/excavated in upland/non-jurisdictional water incidental to mining/construction or pit excavated in upland/non-jurisdictional water to obtain fill/sand/gravel.	Excavated pond in upland incidental to Title V coal mining activities.
POND-D	0.23	acre(s)	(b)(9) Water-filled depression constructed/excavated in upland/non-jurisdictional water incidental to mining/construction or pit excavated in upland/non-jurisdictional water to obtain fill/sand/gravel.	Excavated pond in upland incidental to Title V coal mining activities.
PIT	4	acre(s)	(b)(9) Water-filled depression constructed/excavated in upland/non-jurisdictional water incidental to mining/construction or pit excavated in upland/non-jurisdictional water to obtain fill/sand/gravel.	Excavated pit in upland incidental to Title V coal mining activities.



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
WETLAND-A	0.07 acre(s)	(b)(1) Non-adjacent wetland.	Forested wetland connected to pit by a series of ephemeral channels. Does not abut or otherwise connect to a (a)(2) tributary. This wetland is only connected to a (b)(3) ephemeral feature which is categorically excluded under the NWPR.

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: [Delineation of Potential Section 404 Issues Proposed Hunt Town South Mine Reclamation \(November 26, 2019\)](#)

This information is and is not sufficient for purposes of this AJD.

Rationale: [Delineation was conducted on January 22, 2019, by FTN and Associates. The delineation report was written in accordance with guidance under Section 404 of the Clean Water Act prior to the Navigable Waters Protection Rule.](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial and Other: Site Photos 1-17, Delineation Report, FTN; Google Earth Imagery, Digiglobe Imagery](#)
- 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: [SCS Soil Survey of Johnson County, Arkansas, 1977; NRCS Web Soil Survey 3.2, 2018.](#)
- USFWS NWI maps: [USFWS National Wetlands Inventory – Wetlands Mapper](#)
- USGS topographic maps: [USGS Hunt-AR](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	USGS The National Map – 3DEP, August 23, 2020
USDA Sources	NRCS Web Soil Survey; NRCS National List of Hydric Soils (all states; February 2011)
NOAA Sources	NOAA Daily Global Historical Climatology
USACE Sources	USACE ArcMAP
State/Local/Tribal Sources	N/A.
Other Sources	DHS-FEMA NFHL FIRMette; USACE 1987 manual and <i>Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (Version 2.0)</i> (USACE Engineer Research and Development Center 2012).

B. Typical year assessment(s): [Wetter than Normal Conditions; SWL 2020-00028 APT Report for FTN field delineation date of January 22, 2019.](#)



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C. Additional comments to support AJD: This jurisdictional determination is specific to an ~51-acre parcel of land within an abandoned coal mine site. The project area is located in Johnson County, Arkansas, approximately 0.16 miles south of Hunt, Arkansas, and south of the intersection of Johnson County Roads 264 and Highway 164 North. The area of the delineation is mapped on U.S. Geologic Survey (USGS) topographic quadrangle for Hunt, AR (7.5-minute series). Legal description of the project area is part of Sections 16, Township 10 North, Range 25 West. Center coordinates of the project area are 35.524243° N, -93.658054° W (NAD 83). The project area is located in the Dardanelle Reservoir watershed (Hydrologic Unit Code [HUC] 11110202), a watershed of approximately 1,865 square miles. The review area contains fourteen non-jurisdictional aquatic features that are incidental to previous Title V coal mining efforts that pre-dated the Clean Water Act including a 4-acre coal mine pit, four ponds (Pond-A, B, C, D), and eight ephemeral streams (EPH-A, B, C, D, E, F, G, H). The review area contains two jurisdictional intermittent streams (INT-A, ~243 linear feet; INT-B, ~116 linear feet). There are no portions of the project review area located within a FEMA mapped floodplain and floodway.