

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3/24/2010**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh District, American Mountaineer Mine and Refuse Site, 2009-1656**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: West Virginia County/parish/borough: Harrison City: Wallace  
Center coordinates of site (lat/long in degree decimal format): Lat. 39° 23' 20" ° **N**, Long. -80° 28' 04" ° **W**  
Universal Transverse Mercator:

Name of nearest waterbody: Jake Run

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Tenmile Creek

Name of watershed or Hydrologic Unit Code (HUC): 5020002

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.  
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

- Office (Desk) Determination. Date:  
 Field Determination. Date(s): September 3/4 2009

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

- Waters subject to the ebb and flow of the tide.  
 Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain: .

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

- TNWs, including territorial seas  
 Wetlands adjacent to TNWs  
 Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs  
 Non-RPWs that flow directly or indirectly into TNWs  
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs  
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs  
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs  
 Impoundments of jurisdictional waters  
 Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: linear feet: width (ft) and/or SEE TABLE IN SECTION IV, PART B acres.  
Wetlands: SEE TABLE AT END OF SECTION III, PART B, NUMBER 3 acres.

**c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual**

Elevation of established OHWM (if known): .

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: **The identified tributaies are NRPW's with ephemeral flow regimes. In addition, the segments are physically**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

and chemically isolated from downstream waters. These non-RPW's do not have more than a speculative effect on the chemical, biological, or physical integrity of the TNW, as there is no apparent flow that could be considered a connection to or from an RPW. During the site visit there was no observed hydrology, or hydrologic indicators (including macroinvertebrate.) The channels were choked with un-stained leaf litter. These N-RPW's do not seem to be anything more than a means of conveying upland/hilltop runoff; therefore, these N-RPW's are not a Significant Nexus to the TNW.

Wetland 2 is a depressional wetland located in a farm field. The hydrology in this wetland is primarily driven by precipitation flowing down slope. This wetland has no apparent discharge, as it flows down slope and disperses into upland farm field. Given the small size of the wetland, and the distance to the TNW, there is little to no capacity for this wetland to carry pollutants or store flood waters from the TNW. While this wetland may help eliminate certain pollutants before entering the water table, and does appear to support some hydrophytes (Narrow Leaf Cattail and Yellow Flag Iris); this wetland does not have more than a speculative effect on the chemical, biological, or physical integrity of the TNW, as there is no apparent connection to or from a NRPW or an RPW; therefore, this wetland can be deemed non-jurisdictional.

### SECTION III: CWA ANALYSIS

#### A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**

Identify TNW:

Summarize rationale supporting determination:

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent":

#### B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

(i) **General Area Conditions:**

Watershed size: 574 acres

Drainage area: 574 acres

Average annual rainfall: 44 inches

Average annual snowfall: inches

(ii) **Physical Characteristics:**

(a) **Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through 6 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.

Project waters are 1-2 river miles from RPW.

Project waters are 2-5 aerial (straight) miles from TNW.

Project waters are 1-2 aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW<sup>5</sup>: South to Southeast.

Tributary stream order, if known: First Order Channels.

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

- Tributary is:  Natural  
 Artificial (man-made). Explain:  
 Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

Average width: 1 to 2 feet  
Average depth: feet  
Average side slopes: **Vertical (1:1 or less).**

Primary tributary substrate composition (check all that apply):

- |   |  |                                   |
|---|--|-----------------------------------|
| <input type="checkbox"/> Silts  | <input type="checkbox"/> Sands                     | <input type="checkbox"/> Concrete |
| <input checked="" type="checkbox"/> Cobbles                                   | <input checked="" type="checkbox"/> Gravel         | <input type="checkbox"/> Muck     |
| <input checked="" type="checkbox"/> Bedrock                                   | <input type="checkbox"/> Vegetation. Type/% cover: |                                   |
| <input checked="" type="checkbox"/> Other. Explain: Leaf litter and branches. |  |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Relativity Stable.

Presence of run/riffle/pool complexes. Explain: Pool/Riffle complexes do not exist on this stream, at a relatively regular interval.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 40 to 50 %

(c) Flow:

Tributary provides for: **Ephemeral flow**

Estimate average number of flow events in review area/year: **1**

Describe flow regime:

Other information on duration and volume:

Surface flow is: **Confined.** Characteristics:

Subsurface flow: **Unknown.** Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

- |  |   |
|--|---|
| <input type="checkbox"/> Bed and banks   |   |
| <input checked="" type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply): |   |
| <input type="checkbox"/> clear, natural line impressed on the bank                       | <input checked="" type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil                                | <input type="checkbox"/> destruction of terrestrial vegetation        |
| <input type="checkbox"/> shelving  | <input type="checkbox"/> the presence of wrack line                   |
| <input type="checkbox"/> vegetation matted down, bent, or absent                         | <input type="checkbox"/> sediment sorting                             |
| <input type="checkbox"/> leaf litter disturbed or washed away                            | <input type="checkbox"/> scour  |
| <input type="checkbox"/> sediment deposition   | <input type="checkbox"/> multiple observed or predicted flow events   |
| <input type="checkbox"/> water staining  | <input type="checkbox"/> abrupt change in plant community             |
| <input type="checkbox"/> other (list):   |   |
| <input type="checkbox"/> Discontinuous OHWM. <sup>7</sup> Explain:                       |   |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> High Tide Line indicated by:   | <input checked="" type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects      | <input type="checkbox"/> survey to available datum;                    |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |  |
| <input type="checkbox"/> other (list):                             |  |

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: There was no flow, or hydrology indicators observed during the site visit.

Identify specific pollutants, if known:

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): Forested/SS 50 + feet.
- Wetland fringe. Characteristics:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: Isolated WL 2 = 0.03 acres

Wetland type. Explain: Emergent.

Wetland quality. Explain: These wetlands are not exceptional quality, and while they do exhibit wetland characteristics they are of average quality.

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **No Flow**. Explain:

Surface flow is: **Not present**

Characteristics:

Subsurface flow: **Unknown**. Explain findings:

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain: Wetland 2 is a depressional wetland located in a farm field. The hydrology in this wetland is primarily driven by precipitation flowing down slope. This wetland has no apparent discharge, as it flows down slope and disperses into upland farm field. Given the small size of the wetland, and the distance to the TNW, there is little to no capacity for this wetland to carry pollutants or store flood waters from the TNW. While this wetland may help eliminate certain pollutants before entering the water table, and does appear to support some hydrophytes (Narrow Leaf Cattail and Yellow Flag Iris); this wetland does not have more than a speculative effect on the chemical, biological, or physical integrity of the TNW, as there is no apparent connection to or from a NRPW or an RPW; therefore, this wetland can be deemed non-jurisdictional.

(d) Proximity (Relationship) to TNW

Project wetlands are **5-10** river miles from TNW.

Project waters are **5-10** aerial (straight) miles from TNW.

Flow is from: **No Flow**.

Estimate approximate location of wetland as within the **100 - 500-year** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: no water.

Identify specific pollutants, if known:

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width): farm field. 200+ feet.
- Vegetation type/percent cover. Explain: Narrow Leaf Cattail and Yellow Flag Iris 80%.
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately ( 0 ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Wetland 2	NO	0.03	location	39.39032 -80.4805

Summarize overall biological, chemical and physical functions being performed: Wetland 2 is a depressional wetland located in a farm field. The hydrology in this wetland is primarily driven by precipitation flowing down slope. This wetland has no apparent discharge, as it flows down slope and disperses into upland farm field. Given the small size of the wetland, and the distance to the TNW, there is little to no capacity for this wetland to carry pollutants or store flood waters from the TNW. While this wetland may help eliminate certain pollutants before entering the water table, and does appear to support some hydrophytes (Narrow Leaf Cattail and Yellow Flag Iris); this wetland does not have more than a speculative effect on the chemical, biological, or physical integrity of the TNW, as there is no apparent connection to or from a NRPW or an RPW; therefore, this wetland can be deemed non-jurisdictional.

### C. SIGNIFICANT NEXUS DETERMINATION

**A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.**

**Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:**

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

**Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:**

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:S The identified tributaries are a non-RPW with an ephemeral flow regime. These tributaries do not have more than a speculative effect on the chemical, biological, or physical integrity of the TNW, as there is no apparent flow that could be considered a connection to or from an RPW. While onsite there was no observed flowing water, or hydrologic indicators (macroinvertebrate, water stained leaves, or high water mark). The channels were choked with leaf litter and branches. These tributaries have poorly defined bed and banks, and do not seem to be anything more than a means of conveying upland (hilltop) runoff during storm events. These tributaries do not have/are not a Significant Nexus to the TNW, they do not flow on regular enough intervals to be considered seasonal. Given the small size of the NRPWS listed on this form and the distance to the TNW (5-10 river miles), there is little to no capacity for this tributary to carry pollutants or flood waters to the TNW. Being as these tributaries are ephemeral no fish, macroinvertebrate, or hydrological indicators were found in it. Lifecycle support functions would be extremely limited within a tributaries such as these, which is evidentially dry much of the year. A small amount of carbon may be transported by this tributary during heavy rain events but would amount to a negligible percentage for downstream foodwebs; therefore, the NRPW's listed on this form (all having similar flow regimes and general stream characteristics) do not have more than a speculative or insubstantial effect on the chemical, biological, or physical integrity of the TNW. It is for this reason that these NRPW's cannot be taken jurisdiction of.

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: Wetland 2 is a depressional wetland located in a farm field. The hydrology in this wetland is primarily driven by precipitation flowing down slope. This wetland has no apparent discharge, as it flows down slope and disperses into upland farm field. Given the small size of the wetland, and the distance to the TNW, there is little to no capacity for this wetland to carry pollutants or store flood waters from the TNW. While this wetland may help eliminate certain pollutants before entering the water table, and does appear to support some hydrophytes (Narrow Leaf Cattail and Yellow Flag Iris); this wetland does not have more than a speculative effect on the chemical, biological, or physical integrity of the TNW, as there is no apparent connection to or from a NRPW or an RPW; therefore, this wetland can be deemed non-jurisdictional.

**D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):**

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
  - TNWs: linear feet width (ft), Or, acres.
  - Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
  - Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
  - Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
  - Other non-wetland waters: acres.
- Identify type(s) of waters: .

3. **Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**
  - Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet width (ft).
  - Other non-wetland waters: acres.
- Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
  - Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
    - Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
    - Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
  - Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

<sup>8</sup>See Footnote # 3.

Provide acreage estimates for jurisdictional wetlands in the review area: \_\_\_\_\_ acres.

**6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: \_\_\_\_\_ acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or  
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or  
 Demonstrate that water is isolated with a nexus to commerce (see E below).

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY).<sup>10</sup>**

- which are or could be used by interstate or foreign travelers for recreational or other purposes.  
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.  
 which are or could be used for industrial purposes by industries in interstate commerce.  
 Interstate isolated waters. Explain: \_\_\_\_\_  
 Other factors. Explain: \_\_\_\_\_

**Identify water body and summarize rationale supporting determination:** \_\_\_\_\_

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).  
 Other non-wetland waters: \_\_\_\_\_ acres.  
Identify type(s) of waters: \_\_\_\_\_  
 Wetlands: \_\_\_\_\_ acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.  
 Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.  
 Prior to the Jan 2001 Supreme Court decision in “*SWANCC*,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).  
 Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: **The identified tributaries and Wetland are non-RPW with ephemeral flow regimes, located 5-10 river miles from the nearest TNW.**  
 Other: (explain, if not covered above): \_\_\_\_\_

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).  
 Lakes/ponds: \_\_\_\_\_ acres.  
 Other non-wetland waters: \_\_\_\_\_ acres. List type of aquatic resource: \_\_\_\_\_  
 Wetlands: \_\_\_\_\_ acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): **see table in section IV, part B 6168** linear feet, **1-2** width (ft).  
 Lakes/ponds: \_\_\_\_\_ acres.  
 Other non-wetland waters: \_\_\_\_\_ acres. List type of aquatic resource: \_\_\_\_\_  
 Wetlands: **see table in section III, part B, NUMBER 3, 0.03** acres.

<sup>9</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup> Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

**SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
- Office concurs with data sheets/delineation report.
- Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas:
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name:
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date):  
or  Other (Name & Date): On site Photos.
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**

Segment ID	Length(ft)	Order	Latitude	Longitude
MR-T1 (Mill Run)	1016	1st	39.38361	80.4681
MR-T1A	35	1st	39.38267	80.5787
MR-T1B	47	1st	39.38258	80.5789
MR-T1C	70	1st	39.38245	80.5794
MR-T1D	95	1st	30.38254	80.5796
MR-T2A	50	1st	39.38111	80.576
MR-T2B	200	1st	39.38111	80.4642
MR-T4	265	1st	39.37968	80.578
MR-T5	160	1st	39.38037	80.5796
JR-T1A (Jakes Run)	65	1st	39.38565	80.5838
JR-T1BA	84	1st	39.38557	80.5866
JR-T1BB	97	1st	39.38567	80.5863
JR-T1C	50	1st	39.38403	80.5862
JR-T1D	60	1st	39.38391	80.5864
JR-T2C	100	1st	39.38643	80.5795
JR-T6	380	1st	39.38909	80.5796
JR-T7A	100	1st	39.38794	80.5874
JR-T10	463	1st	39.39117	80.5931
JR-T11	344	1st	39.38936	80.5928
JR-T12	392	1st	39.38941	80.5952
JR-T12A	40	1st	39.38969	80.5942
JR-T13	100	1st	39.38941	80.5952
JR-RF-T1 Right Fork	100	1st	39.395	80.4822
JR-RF-T2	120	1st	39.39241	80.5816
JR-RF-T3	200	1st	39.39237	80.5889
JR-RF-T4	100	1st	39.39312	80.5899
JR-RF-T5	175	1st	39.39373	80.5904
JR-RF-T6	120	1st	39.39325	80.5915
JR-LF-T1 Left Fork	100	1st	39.38787	80.5909
JR-LF-T2	120	1st	39.38443	80.5864
JR-LF-T2A	120	1st	39.38546	80.5938
JR-LF-T2B	120	1st	39.3857	80.5942
JR-LF-T3	160	1st	39.38568	80.5949
LF-LF-T4	120	1st	39.38503	80.5898
JR-LF-T5	100	1st	39.38598	80.5947

JR-LF-T6	100	1st	39.38637 80.594
JR-LF-T7	200	1st	39.38691 80.5937

Pictures of Wetland 2, and all of the NRPW's are included.













































































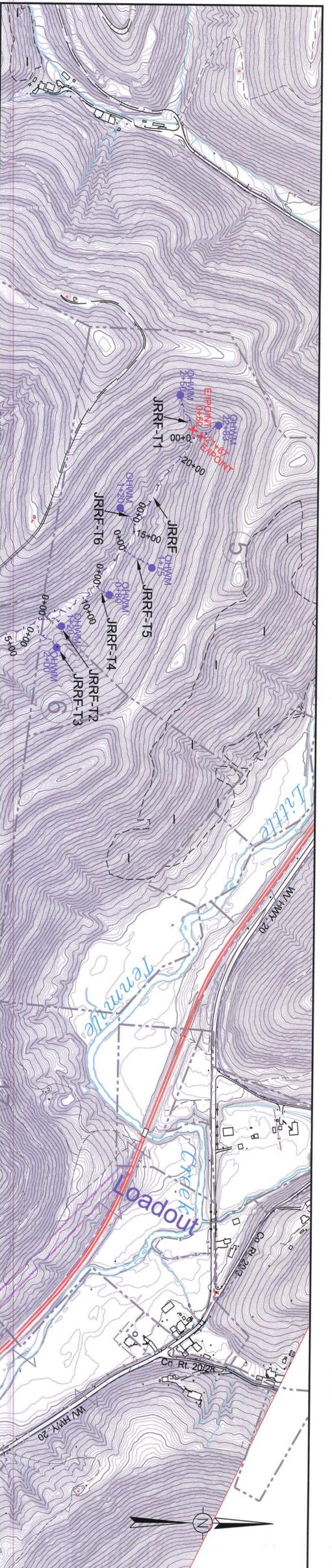


TABLE 3. STREAM LOCATION SUMMARY

Stream	Latitude	Longitude	Elevation
JR-T1	39° 23' 23"	80° 28' 20"	1040'
JR-T2	39° 23' 27"	80° 28' 58"	1162'
JR-T3	39° 23' 27"	80° 29' 02"	1248'
JR-T4	39° 23' 04"	80° 28' 30"	1161'
JR-T5	39° 23' 04"	80° 28' 30"	1265'
JR-T6	39° 23' 01"	80° 28' 31"	1091'
JR-T7	39° 23' 11"	80° 28' 21"	1232'
JR-T8	39° 23' 11"	80° 28' 35"	1148'
JR-T9	39° 23' 02"	80° 28' 22"	1144'
JR-T10	39° 23' 00"	80° 28' 22"	1233'
JR-T11	39° 23' 16"	80° 28' 07"	1054'
JR-T12	39° 23' 16"	80° 28' 07"	1054'
JR-T13	39° 23' 11"	80° 28' 07"	1170'
JR-T14	39° 23' 15"	80° 28' 04"	1089'
JR-T15	39° 23' 15"	80° 28' 03"	1103'
JR-T16	39° 23' 11"	80° 28' 05"	1172'
JR-T17	39° 23' 11"	80° 28' 05"	1083'
JR-T18	39° 23' 09"	80° 28' 56"	1253'
JR-T19	39° 23' 29"	80° 28' 30"	1114'
JR-T20	39° 23' 25"	80° 28' 20"	1052'
JR-T21	39° 23' 23"	80° 28' 08"	1059'
JR-T22	39° 23' 24"	80° 28' 05"	1103'
JR-T23	39° 23' 19"	80° 28' 33"	1249'
JR-T24	39° 23' 18"	80° 28' 34"	1284'
JR-T25	39° 23' 32"	80° 28' 54"	1184'
JR-T26	39° 23' 25"	80° 28' 53"	1269'
JR-T27	39° 23' 25"	80° 28' 02"	1278'
JR-T28	39° 23' 28"	80° 28' 58"	1190'
JR-T29	39° 23' 28"	80° 28' 58"	1190'
JR-T30	39° 23' 43"	80° 28' 53"	1185'
JR-T31	39° 23' 44"	80° 28' 54"	1232'
JR-T32	39° 23' 42"	80° 28' 54"	1280'
JR-T33	39° 23' 36"	80° 28' 40"	1108'
JR-T34	39° 23' 36"	80° 28' 39"	1132'
JR-T35	39° 23' 39"	80° 28' 42"	1139'
JR-T36	39° 23' 41"	80° 28' 44"	1189'
JR-T37	39° 23' 39"	80° 28' 44"	1182'
JR-T38	39° 23' 39"	80° 28' 44"	1182'
JR-T39	39° 23' 39"	80° 28' 44"	1182'
JR-T40	39° 23' 39"	80° 28' 44"	1182'
JR-T41	39° 23' 39"	80° 28' 44"	1182'
JR-T42	39° 23' 39"	80° 28' 44"	1182'
JR-T43	39° 23' 39"	80° 28' 44"	1182'
JR-T44	39° 23' 39"	80° 28' 44"	1182'
JR-T45	39° 23' 39"	80° 28' 44"	1182'
JR-T46	39° 23' 39"	80° 28' 44"	1182'
JR-T47	39° 23' 39"	80° 28' 44"	1182'
JR-T48	39° 23' 39"	80° 28' 44"	1182'
JR-T49	39° 23' 39"	80° 28' 44"	1182'
JR-T50	39° 23' 39"	80° 28' 44"	1182'
JR-T51	39° 23' 39"	80° 28' 44"	1182'
JR-T52	39° 23' 39"	80° 28' 44"	1182'
JR-T53	39° 23' 39"	80° 28' 44"	1182'
JR-T54	39° 23' 39"	80° 28' 44"	1182'
JR-T55	39° 23' 39"	80° 28' 44"	1182'
JR-T56	39° 23' 39"	80° 28' 44"	1182'
JR-T57	39° 23' 39"	80° 28' 44"	1182'
JR-T58	39° 23' 39"	80° 28' 44"	1182'
JR-T59	39° 23' 39"	80° 28' 44"	1182'
JR-T60	39° 23' 39"	80° 28' 44"	1182'
JR-T61	39° 23' 39"	80° 28' 44"	1182'
JR-T62	39° 23' 39"	80° 28' 44"	1182'
JR-T63	39° 23' 39"	80° 28' 44"	1182'
JR-T64	39° 23' 39"	80° 28' 44"	1182'
JR-T65	39° 23' 39"	80° 28' 44"	1182'
JR-T66	39° 23' 39"	80° 28' 44"	1182'
JR-T67	39° 23' 39"	80° 28' 44"	1182'
JR-T68	39° 23' 39"	80° 28' 44"	1182'
JR-T69	39° 23' 39"	80° 28' 44"	1182'
JR-T70	39° 23' 39"	80° 28' 44"	1182'
JR-T71	39° 23' 39"	80° 28' 44"	1182'
JR-T72	39° 23' 39"	80° 28' 44"	1182'
JR-T73	39° 23' 39"	80° 28' 44"	1182'
JR-T74	39° 23' 39"	80° 28' 44"	1182'
JR-T75	39° 23' 39"	80° 28' 44"	1182'
JR-T76	39° 23' 39"	80° 28' 44"	1182'
JR-T77	39° 23' 39"	80° 28' 44"	1182'
JR-T78	39° 23' 39"	80° 28' 44"	1182'
JR-T79	39° 23' 39"	80° 28' 44"	1182'
JR-T80	39° 23' 39"	80° 28' 44"	1182'
JR-T81	39° 23' 39"	80° 28' 44"	1182'
JR-T82	39° 23' 39"	80° 28' 44"	1182'
JR-T83	39° 23' 39"	80° 28' 44"	1182'
JR-T84	39° 23' 39"	80° 28' 44"	1182'
JR-T85	39° 23' 39"	80° 28' 44"	1182'
JR-T86	39° 23' 39"	80° 28' 44"	1182'
JR-T87	39° 23' 39"	80° 28' 44"	1182'
JR-T88	39° 23' 39"	80° 28' 44"	1182'
JR-T89	39° 23' 39"	80° 28' 44"	1182'
JR-T90	39° 23' 39"	80° 28' 44"	1182'
JR-T91	39° 23' 39"	80° 28' 44"	1182'
JR-T92	39° 23' 39"	80° 28' 44"	1182'
JR-T93	39° 23' 39"	80° 28' 44"	1182'
JR-T94	39° 23' 39"	80° 28' 44"	1182'
JR-T95	39° 23' 39"	80° 28' 44"	1182'
JR-T96	39° 23' 39"	80° 28' 44"	1182'
JR-T97	39° 23' 39"	80° 28' 44"	1182'
JR-T98	39° 23' 39"	80° 28' 44"	1182'
JR-T99	39° 23' 39"	80° 28' 44"	1182'
JR-T100	39° 23' 39"	80° 28' 44"	1182'

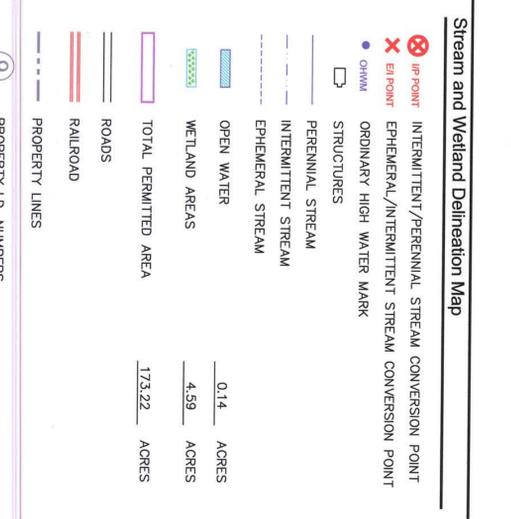


TABLE 1. SUMMARY OF EMERGENT WETLAND ACREAGE

Wetland ID	Latitude	Longitude	Total Acreage
Wetland No. 1	39° 23' 23"	80° 28' 19"	0.70
Wetland No. 4	39° 23' 27"	80° 28' 28"	0.05
Wetland No. 5	39° 23' 28"	80° 28' 36"	2.52
Wetland No. 6	39° 23' 22"	80° 27' 50"	1.30
Wetland No. 7	39° 23' 08"	80° 28' 27"	0.02
<b>Total Acreage</b>			<b>4.59</b>

Open Water Area	Latitude	Longitude	Total Acreage
Area No. 1	39° 22' 53"	80° 27' 59"	0.03
Area No. 2	39° 23' 07"	80° 28' 27"	0.09
Area No. 3	39° 23' 17"	80° 28' 07"	0.01
Area No. 4	39° 23' 30"	80° 28' 39"	0.14
<b>Total Acreage</b>			<b>0.27</b>

COORDINATE SYSTEM: WEST VIRGINIA NORTH STATE PLANE, NAD 83

REVISION: DATE DESCRIPTION P.M.

Prepared By: \_\_\_\_\_

Checked By: \_\_\_\_\_

Approved By: \_\_\_\_\_

CAD BY: TW 12/09

CHECKED BY: WH 12/09

APPROVED BY: JAA 12/09

Scale in Feet: 1" = 300'

Scale in Feet: 1" = 600'

Stream and Wetland Delineation Map

American Mountaineer Mine  
WALLACE QUADRANGLE  
HARRISON COUNTY, WEST VIRGINIA  
SARDIS DISTRICT  
Prepared For:  
AMERICAN MOUNTAINEER ENERGY, INC.  
ROUTE 2 BOX 406, SUITE 115, CLARKSBURG, WV 26301

Marshall Miller and Associates  
Geology, Environmental Sciences & Engineering, Geospatial  
 □ Bedford, VA · □ Lexington, KY · □ Raleigh, NC  
 □ Ashland, VA · □ Charleston, WV · □ Comp Hill, PA  
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