

Public Notice

U.S. Army Corps of Engineers
Huntington District
Regulatory Division

In reply refer to Public Notice No.:

LRH-2012-147

Issuance date:

March 2, 2012

Stream:

n/a

Closing Date:

April 2, 2012

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-RD-S Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

**PROPOSED REGIONAL PERMIT FOR STREAM RESTORATION ACTIVITIES TO
BE PERFORMED BY THE WEST VIRGINIA CONSERVATION AGENCY WITHIN
THE HUNTINGTON AND PITTSBURGH DISTRICTS
IN THE STATE OF WEST VIRGINIA**

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for the re-issuance of the above referenced regional permit. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest.

REGULATORY PROGRAM: Since its early history, the United States Army Corps of Engineers (USACE) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the USACE Regulatory Program.

SECTION 10: The USACE is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The USACE is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the U.S., including wetlands. The intent of this law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: In accordance with Title 33 CFR 322.2(f), 323.2(h), and 325.2(e)(2) published on November 13, 1986, Federal Register, Volume 51, Number 219, the District Engineer is considering the authorization of a regional permit for stream restoration

activities to be performed by the West Virginia Conservation Agency (WVCA) pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

BACKGROUND: The WVCA provides assistance to public and private landowners in alleviating hazards to life and property resulting from sudden watershed impairments. This typically requires the discharge of dredged or fill material into waters of the U.S. and therefore requires authorization from the USACE under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. The purpose of this regional permit is to expedite USACE review of requests for authorizations for the WVCA to perform projects in waters under the jurisdiction of the USACE for the purposes of alleviating hazards to life and property. Such projects would include debris and deposition removal, bank stabilization, stream erosion repair, and restoration of bridges or utilities. This regional permit would apply to all streams under the jurisdiction of the USACE within the Huntington and Pittsburgh Districts in West Virginia, except those excluded by special and general permit conditions, or conditions imposed by the state water quality certification.

Prior to the closing date of a given disaster declaration, a list of all potential projects resulting from sudden watershed impairments associated with the declaration will be provided to the respective USACE District. Prior to initiating restoration work, the following information will be provided by the WVCA to the respective USACE District concerning each project:

- 1) Date of the disaster declaration with associated declaration number or other identification;
- 2) Counties listed in the disaster declaration;
- 3) Whether or not the proposed restoration work would take place during or after the closing date of the disaster declaration;
- 4) Name of the property owner;
- 5) Exact location of the work, include location map on a USGS 7.5-minute topographic map with latitude and longitude noted;
- 6) Project plan and cross sectional views depicting boundaries of waters of the U.S. and boundaries of the proposed work;
- 7) Brief description of all work proposed;
- 8) Amount of material to be discharged into waters of the U.S. expressed in linear feet (streams) or acres (wetlands), in addition to the proposed volume of material to be discharged expressed in cubic yards; and
- 9) Any other appropriate information, such as agency coordination concerning compliance with Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.

The WVCA is responsible for ensuring the work is performed in accordance with the terms and conditions of the authorizations allowed under this regional permit. The District Engineer may suspend, modify or revoke any authorization under this regional permit in accordance with 33 CFR 325.7 if a later determination is made by the USACE that the information provided was inaccurate, incomplete or submitted in bad faith. In the event of such a determination, the District Engineer may initiate an enforcement action.

WATER QUALITY CERTIFICATION: This Public Notice will serve as a request to the West Virginia Department of Environmental Protection to act on a Section 401 Water Quality Certification for this regional permit. The policies of this regional permit are subject to review and reconsideration at any time. At a minimum of every five years, this regional permit will undergo a comprehensive reevaluation in accordance with the regulations governing the establishment and use of regional permits.

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320-332, the Regulatory Program of the USACE, and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U.S. Environmental Protection Agency pursuant to Section 404(b) (1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

SOLICITATION OF COMMENTS: The USACE is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the USACE to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water

quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to:

U. S. Army Corps of Engineers Huntington District
ATTN: Amy Ferguson, CELRH-RD-S
502 Eighth Street
Huntington, West Virginia 25701-2070

Please note, the names and addresses of those who submit comments in response to this public notice become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our nation's water resources. If you have any questions concerning this Public Notice, please contact Amy Ferguson at 304-399-5710.



Ginger Mullins, Chief
Regulatory Division

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**SPECIAL CONDITIONS FOR STREAM RESTORATION ACTIVITIES
TO BE PERFORMED BY THE WVCA**

- a. The permit will apply only in counties declared to be disaster areas by the Governor of West Virginia for the specific sudden watershed impairment. Projects qualifying for this permit must be completed within 6 months from the closing date of the associated disaster declaration. The WVCA shall immediately notify the USACE in cases when declarations are extended.
- b. Notice shall be given to resource agencies, including the USACE, U.S. Environmental Protection Agency (USEPA), U.S. Fish and Wildlife Service (USFWS), West Virginia Division of Natural Resources (WVDNR), and West Virginia Department of Environmental Protection (WVDEP), inviting them to field reviews of all proposed exigency projects. At the earliest possible date, WVCA shall provide location and construction details of exigency projects to the resource agencies. For non-exigency projects, the WVCA shall invite resource agencies to all field reviews and provide the USEPA, USFWS, and WVDNR construction and location details for review a minimum of 15 days prior to initiation of work.
- c. The maximum length of a single and complete project per landowner is limited to 500 linear feet, unless otherwise approved by all the resource agencies listed above. Projects approved by the resource agencies shall not, in any case, exceed 1,000 linear feet per landowner.
- d. The WVCA must indicate in the information submitted to the USACE when a series of proposed projects occurring consecutively along the same stream exceeds a total of 5,000 linear feet. Similarly, concerning non-consecutive reaches of stream, the WVCA must also provide notification in the same manner to the USACE if the total amount of proposed work on a given stream exceeds 5,000 linear feet.
- e. The work shall be performed in an environmentally, technically, and economically sound manner. For non-exigency projects, Natural Stream Channel Design principles shall be incorporated into project design to the maximum extent practicable. Only clean, uncontaminated material may be used. Acceptable materials include durable stone and concrete rubble. Any reinforcing rods extending from rubble must be cut flush with the concrete surfaces. Blast furnace slag, asphalt, wood, waste metal, bituminous pavement, solid waste, glass and ceramic wastes, tires, appliances, automobile bodies, and other deleterious materials are not acceptable.
- f. In-stream work will be limited to that absolutely necessary for completion of restoration activities.
- g. Exigency work under this regional permit requires notification to the USFWS. Due to potential for adversely affecting threatened or endangered species, this permit will not apply to non-emergency (non-exigency) work on streams listed in Appendix A.

- h. For non-exigency projects, the WVCA will invite resource agencies to all field reviews and provide WVDNR and USFWS construction and location details for review a minimum of 30 days prior to initiation of work on streams supporting protected freshwater mussels. The most current list of streams known to support state protected freshwater mussel species is available from the Inter-Agency Coordination Supervisor, WVDNR, P.O. Box 67, Elkins, West Virginia, 26241. A list of these streams current as of this correspondence can be found in Appendix B.
- i. For low bedload streams, stabilization will typically consist of the placement of random large boulders situated along the toe of the stream bank at a rate of one per 5 meters, or other rate determined to be appropriate given site conditions. For high bedload streams, random boulder placement results in aggradation and increases in stream bank shear stress. Therefore, for high bedload streams, the WVCA should contact WVDNR for technical assistance in accessing proper stabilization. Revegetation must include seeding and mulching of all disturbed areas and the establishment of permanent vegetative cover as deemed appropriate. Planting of native shrub and/or tree seedlings along the top of the bank (1 seedling per 2 meters) is strongly encouraged. Only native vegetation will be used in re-vegetation efforts.
- j. A copy of this permit must be posted on-site during construction activities.
- k. This regional permit will not authorize:
 - 1. Normal operation and maintenance activities;
 - 2. Work associated with impairments that existed prior to the disaster;
 - 3. Channel modification that increases the pre-disaster flow capacity;
 - 4. Repair, construction or maintenance of “rock piles” that are not constructed in accordance with approved dike criteria;
 - 5. Projects where, following on-site review, the WVCA and resource agencies are in disagreement over construction methods or mitigative measures. These projects must be authorized by Individual Permit;
 - 6. Activities that would affect historic, cultural or archaeological sites listed or eligible for listing in the National Register of Historic Places, unless coordination is required by Section 106 of National Historic Preservation Office and the Advisory Council on Historic Preservation. The WVCA will contact the WV Division of Culture and History (WVDCH) to determine if historic, cultural or archaeological sites within the proposed work areas are eligible for or listed on the National Register. The response from the WVDCH shall be provided to the USACE;

7. Activities at sites that may affect proposed or listed endangered species or their designated critical habitat, unless consultation under Section 7(c) of the Endangered Species Act has been completed. The WVCA will contact the USFWS to determine if listed endangered species may occur within the area of the proposed work. The response from the USFWS must be provided to the USACE before a permit decision can be finalized;
8. Fills in designated components of the National or State Wild and Scenic Rivers Systems, Federal or State designated wildlife management areas or at sites included in the National Registry of Natural Landmarks will not be authorized, unless approval is granted from the administering agency;
9. Work in Nationwide Rivers Inventory streams, unless coordinated with the National Park Service. Inventory Rivers within the State of West Virginia include: Big Sandy Creek (Preston County), Blackwater River, Cheat River, Dry Fork of Cheat River, Glady Fork of Cheat River, Shavers Fork of Cheat River, South Fork of Cheat River, Cherry River, South Fork of Cherry River, North Fork of Cherry River, Cranberry River, Elk River, Left Fork of Elk River, Gauley River, Greenbrier River, East Fork of Greenbrier River, West Fork of Greenbrier River, Holly River, Left Fork of Holly River, Hughes River, North Fork of Hughes River, Laurel Fork (Randolph County), Little Kanawha River, Middle Fork River, Mud River, New River, North River, Otter Creek, Potomac River, North Fork of South Branch of Potomac River, South Branch of Potomac River, South Fork of the South Branch of Potomac River, Red Creek, Seneca Creek, Shavers Fork, Tygart Valley River, and Williams River;
1. Prior to commencement of stream restoration work, Miss Utility of West Virginia should be contacted at 1-800-245-4848 to determine the location of underground utility lines in the project area.

General Conditions for Stream Restoration Activities to be Performed by the WVCA

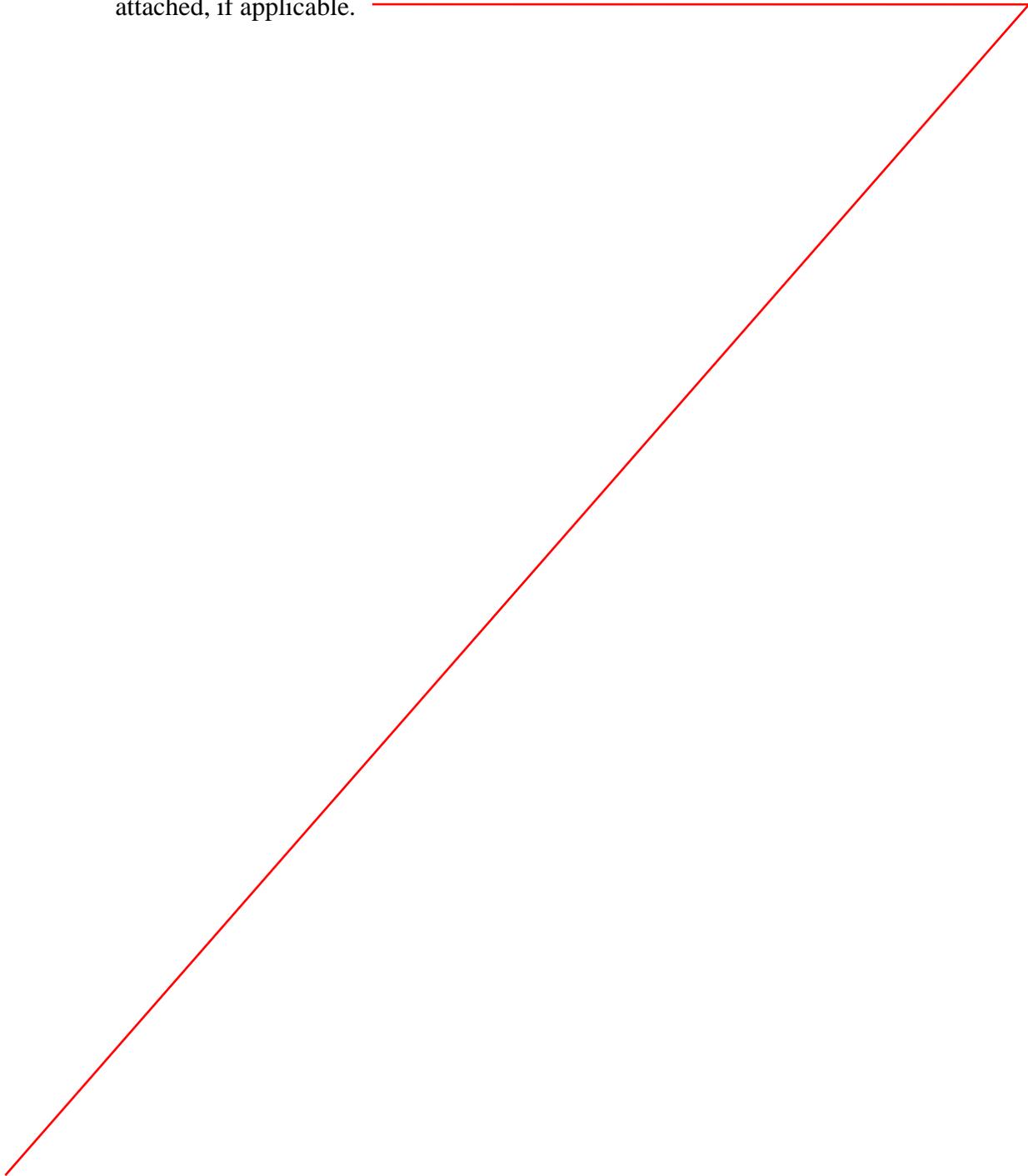
- a. If any previously unknown historic or archaeological remains are discovered while accomplishing the activity authorized by this permit, work must immediately cease and notification must be provided to this office detailing what has been found. The USACE will initiate the required Federal and state coordination to determine if the site is eligible for listing in the National Register of Historic Places.
- b. Representatives from the USACE will be allowed to inspect the authorized activity at any time deemed necessary to insure that it is being or has been accomplished in accordance with the terms and conditions.
- c. Further Information:
 1. Congressional Authorities: This activity has been authorized pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

2. Limits of this authorization:
 - (a) This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - (b) This permit does not grant any property rights or exclusive privileges.
 - (c) This permit does not authorize any injury to the property or rights of others.
 - (d) This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:
 - (a) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - (b) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the U.S. in the public interest.
 - (c) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - (d) Design or construction deficiencies associated with the permitted work.
 - (e) Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that the activity is not contrary to the public interest was made in reliance on the information provided pursuant to the notification requirement. Any change to the proposed work may make the project ineligible for authorization by this regional permit.
5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - (a) Failure to comply with the terms and conditions of this permit.
 - (b) The information provided with the submitted permit application proves to have been false, incomplete, or inaccurate (See 4 above).

- (c) Significant new information becomes available which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5.

- 6. Consent to easement over and under land identified as a flowage easement is attached, if applicable.



APPENDIX A

Streams with potential presence of Federally endangered species or their habitats

HUNTINGTON DISTRICT:

- Kanawha River (Kanawha Falls Wheeler Islands, River Mile 75.5) Fayette and Kanawha Counties (Tubercled-blossum pearl mussel, *Epioblasma torulosa*; Pink mucket pearl mussel, *Lampsilis abrupta*; and Fanshell, *Cyprogenia stegaria*)
- Potts Creek, Monroe County
(James spinymussel, *Pleurobema collina*)
- South Fork Potts Creek, Monroe County
(James spinymussel, *Pleurobema collina*)
- Elk River (Sutton Dam to slackwater below Coonskin Park) Braxton, Clay and Kanawha Counties (Clubshell, *Pleurobema clava*, Pink mucket pearl mussel; *Lampsilis abrupta*; and Northern riffleshell, *Epioblasma torulosa rangiana*)
- Meathouse Fork Middle Island Creek, Doddridge County
(Clubshell, *Pleurobema clava*)
- Middle Island Creek, Doddridge, Tyler and Pleasants Counties
(Clubshell, *Pleurobema clava*)
- Ohio River (Upper Greenup, R.C. Byrd, Racine, and Bellville Navigation Pools) Cabell, Mason, Jackson and Wood Counties (Pink mucket pearl mussel, *Lampsilis abrupta*; and Fanshell, *Cyprogenia stegaria*)
- Lower Gauley River (Summersville to Swiss), Nicholas and Fayette Counties
(Virginia spiraea, *Spiraea virginiana*)
- Bluestone River (Bluestone Gorge to slackwater Bluestone Reservoir) Mercer and Summers Counties (Virginia spiraea, *Spiraea virginiana*)
- Greenbrier River, Pocahontas and Greenbrier Counties
(Virginia spiraea, *Spiraea virginiana*)
- Lower Meadow River (Nallen to Gauley River) Nicholas and Fayette Counties
(Virginia spiraea, *Spiraea virginiana*)
- Dingess Branch of Marsh Fork and associated palustrine emergent and scrub-shrub wetlands – Raleigh County (Virginia spiraea, *Spiraea virginiana*)

- Millers Camp Branch of Marsh Fork and associated palustrine emergent scrub-shrub wetlands - Raleigh County (Virginia spiraea, *Spiraea virginiana*)
- South Fork Hughes River – Ritchie County
(Clubshell, *Pleurobema clava*)

PITTSBURGH DISTRICT:

- Sleepy Creek, and associated riverine emergent wetland habitat, Morgan County
(Harperella, *Ptilimnium nodosum*)
- Great Cacapon River and associated riverine emergent wetland habitat, Morgan County
(Harperella, *Ptilimnium nodosum*)
- Back Creek and associated riverine emergent wetland habitat Berkeley County
(Harperella, *Ptilimnium nodosum*)
- Hackers Creek of West Fork River, Lewis County
(Clubshell, *Pleurobema clava*)
- Wetlands Hardy and Berkeley Counties
Northeastern bulrush, *Scirpus ancistrochaetus*)
- Evitts Run watershed, Jefferson County
(Madison cave isopod, *Antrolana lira*)
- Rippon and Leetown areas near sinkholes spring seeps, or other groundwater/surface water interfaces, Jefferson County (Madison cave isopod, *Antrolana lira*)

APPENDIX B**Streams with potential presence of state protected “no take” mussel species****HUNTINGTON DISTRICT**

James River Drainage
 South Fork of Potts Creek

Kanawha River Drainage
 Pocatalico River
 Kanawha River above Charleston
 Coal River
 Elk River (downstream of Webster Springs)
 Big Sandy Creek

New River
 Bluestone River
 Greenbrier River
 Indian Creek

Little Kanawha River Drainage
 Little Kanawha River
 Hughes River
 North and South Fork of Hughes River
 Steer Creek
 Cedar Creek
 Leading Creek
 Reedy Creek
 Spring Creek
 Spruce Creek
 Henry’s Fork
 Goose Creek

Middle Island Creek Drainage
 Middle Island Creek
 Meathouse Fork (below Indian Fork)
 Buckeye Creek

Mud River Drainage
 Mud River
 Middle Fork
 Trace Fork

Ohio Direct Drainage
 Twelvepole Creek
 Beech Fork
 Tug Fork River (up stream of Kermit, WV)
 Mill Creek (Jackson County)
 Hurricane Creek

PITTSBURGH DISTRICT

Ohio River Direct Drainage

Wheeling Creek

Fishing Creek

Fish Creek

Monongahela River Drainage

Dunkard Creek

West Fork River

Hackers Creek of Tygart Valley River

Kincheloe Creek

Potomac River Drainage

Cacapon River (below Wardensville)

North River of Cacapon River

Patterson Creek