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): 6/17/2021
ORM Number: LRP-2021-00067
Associated JDs: N/A
Review Area Location[1]: State/Territory: West Virginia City: Martinsburg County/Parish/Borough: Berkeley County
Center Coordinates of Review Area: Latitude 39.5390786 Longitude -77.9125234

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
- ☐ 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.	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.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

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.	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.	N/A.

[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.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Wetland WA	0.15	acre(s)	(b)(1) Non-adjacent wetland.	Wetland WA was found to be non-adjacent and isolated from other waters. The wetland was located near Williamsport Pike and was connected to ditches, though these ditches served as a source of waters as opposed to a way for any surface waters to exit. Any surface water within the wetland area would theoretically sheetflow northwest through the field area where it can enter Stream SA near one of its upper reaches or infiltrate through soils as it descends in elevation. During the site visit, no waterways or wetland areas were identified down slope of the wetland where surficial water could flow out of the wetland. The wetland area is not subject to flooding from an (a)(1-3) water and is non-adjacent to other water features. Wetland WA is a (b)(1) non-adjacent wetland.
Stream SA, Reach 1	176	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream SA, Reach 1 was identified as a (b)(3) ephemeral feature. Climatic Baseline: A field review of the resources was conducted on 1 June 2021. WebWIMP & Palmer Drought Severity Indices indicated that the site visit occurred within the dry season following on the heels of May 2021, which was rated as a period of incipient drought. The PSDI value of -0.61 indicates a slightly dryer than normal condition for the area for the month of May; however, the beginning and end of the month were punctuated by >0.5 inch precipitation events that pushed the rolling 30-day precipitation total into the 30-year normal range within the last week of the month of May 2021. On the day of the field visit, the Antecedent Precipitation Tool rated the previous 90 days of precipitation as an 11 – with the range of "normal conditions" occurring within the range of 10-14. January 2021 Delineation: Analysis of antecedent precipitation of 11 Jan. 2021 found that the previous 90 days of precipitation

[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.

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				exceeded the 30-year normal range and was rated a 15 “wetter than normal” score. The previous 30 days saw 5.36 inches of precipitation, exceeding the 30-year normal range of 1.86 to 2.72 inches. Persistent precipitation events throughout the month of December 2020 had likely led to greater groundwater storage and a higher water table. Surface water is observed in photographs in the delineation report. Physical Condition Baseline: Stream SA is broken into four reaches. Due to soil and karst geology influences, the stream is believed to go “subterranean” between the reaches of Stream SA which has an effect on surficial flow regime within the waterway. It is likely that the stream flows during heavy rain events, when rainfall rate exceeds soil infiltration rates and allows upland runoff to occur here. A Walmart north of this site is believed to contribute some hydrology via stormwater runoff; however, there is no clear waterway/wetland feature which physically extends identifiable water features further north of Reach 1. Reach 1 Conditions: Reach 1 consists of a 176 LF stream feature with bed & bank. Though clearly lower than the surrounding land, the stream feature was partially obscured from abundant understory vegetation growing within the channel. The stream lacked any significant sorted substrate materials, and no evidence was found of macroinvertebrates that typically require intermittent or perennial flow to complete their life cycle. No flow or saturation was observed at the surface of this feature. Physical & biological characteristics of the stream are not characteristic of perennial or intermittent flow. No flow was observed at the time of the visit. Evidence supports that this is an ephemeral waterway and, as such, is a (b)(3) excluded feature.
Stream SA, Reach 2	156	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream SA, Reach 2 was identified as a (b)(3) ephemeral feature. See discussions above: Climatic Baseline, January 2021 Delineation, & Physical Condition

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				Baseline. Reach 2: Reach 2 consists of a 156 LF stream feature with bed & bank. Though clearly lower than the surrounding land, the stream feature was partially obscured from abundant understory vegetation growing within the channel. The stream lacked any significant sorted substrate materials, and no evidence was found of macroinvertebrates that typically require intermittent or perennial flow to complete their life cycle. No flow or saturation was observed at the surface of this feature. Physical & biological characteristics of the stream are not characteristic of perennial or intermittent flow. No flow was observed at the time of the visit. Evidence supports that this is an ephemeral waterway and, as such, is a (b)(3) excluded feature.
Stream SA, Reach 3	130	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream SA, Reach 3 was identified as a (b)(3) ephemeral feature. See discussions above: Climatic Baseline, January 2021 Delineation, & Physical Condition Baseline. Reach 3: Reach 3 consists of a 130 LF stream feature with bed & bank. Though clearly lower than the surrounding land, the stream feature was partially obscured from understory vegetation growing within the channel. The stream lacked any significant sorted substrate materials, and no evidence was found of macroinvertebrates that typically require intermittent or perennial flow to complete their life cycle. Reach 3 had evidence of less dense vegetation as more evidence of saturation was present (dense, cracked soils of now dry saturated stream bed). Between Reaches 3 & 4, washed out soil and rock materials were observed as evidence of previous flow. Physical & biological characteristics of the stream are not characteristic of perennial or intermittent flow. No flow was observed at the time of the visit. Evidence supports that this is an ephemeral waterway and, as such, is a (b)(3) excluded feature.

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Stream SA, Reach 4	648	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream SA, Reach 4 was identified as a (b)(3) ephemeral feature. See discussions above: Climatic Baseline, January 2021 Delineation, & Physical Condition Baseline. Reach 4: Reach 4 consists of a 648 LF stream feature with bed & bank. This reach contained intermittent stretches of thick vegetation with other sections being more exposed. Stream substrate contained a mix of exposed soils, rock, and mossy areas. This area contained more evidence of flow and an emerging stream substrate, but no evidence was found of macroinvertebrates that typically require intermittent or perennial flow to complete their life cycle. At the base of Reach 4, physical characteristics of the stream are a bit unusual: particularly with the presence of a 6+ foot sink hole in the stream channel with the remaining stream leading to a perched culvert above a small basin area. For flow to continue into the culvert, water must first become impounded within the basin and sinkhole area. Accumulated large woody material was found to be caught within old metal fence debris below the culvert indicating that flow into the culvert may occur. The sinkhole likely provides a reliable entry point for groundwater recharge when flow does occur here and when the water table allows for infiltration. Though groundwater influences are largely unknown because they are not observable at the surface, it is apparent that stream flow at this location must first overcome groundwater infiltration and gravity (perched culvert above small basin) before it can contribute surface waters downstream. No surface water or flow was observed in any of the stream features of Reach 4. Physical & biological characteristics of the stream are not characteristic of perennial or intermittent flow. Evidence supports that this is an ephemeral waterway and, as such, is a (b)(3) excluded feature.

III. SUPPORTING INFORMATION

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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: "Waters of the U.S. Delineation Report: Martinsburg Property", 21 January 2021.

This information is sufficient for purposes of this AJD.

Rationale: Information in regard to delineated wetland and stream features used as baseline for site investigation and desktop review.

☐ Data sheets prepared by the Corps: Title(s) and/or date(s).

☒ Photographs: Aerial and Other: Site photographs provided with 21 January 2021 delineation. Site photographs taken by the Corps during 1 June 2021 site visit. Aerial photographs: Google Earth – Oct. 2017, Sept./Jan. 2015, May 2013, Nov. 2011.

☒ Corps site visit(s) conducted on: 1 June 2021

☐ Previous Jurisdictional Determinations (AJDs or PJDs): n/a

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

☐ USDA NRCS Soil Survey: Title(s) and/or date(s).

☐ USFWS NWI maps: Title(s) and/or date(s).

☐ USGS topographic maps: Title(s) and/or date(s).

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	Elevation Contours (1 foot) WV – WV GIS Technical Center (Sourced from FEMA LiDAR projects, 2012)

B. Typical year assessment(s): See Climatic Baseline & January 2021 Delineation from Section II.D above. Wetness condition was rated and weighted for the rolling 90-day period prior to the 1 June 2021 site visit and found that precipitation was within the normal range of the 30-year average. Normal average climatic conditions were present during the site visit. Though this evidence is used during the evaluation of these aquatic resources, an establishment of typical year flow to and from different resources was not required. The Stream SA reaches were all found to be excluded under (b)(3) because they are ephemeral based on physical and biological characteristics. They will remain excluded under (b)(3) even if they contribute surface water downstream in a typical year. There are no "upstream" aquatic features to delineate, thus the determination that these reaches are non-jurisdictional does not threaten the jurisdictional status of "upstream" resources (the jurisdictionality of those theoretical resources would require a higher flow regime than ephemeral and surficial flow to occur within a typical year to a downstream (a)(1-3) water). Wetland WA is non-adjacent and not subject to inundation from an (a)(1-3) water and thus no analysis was made to evaluate if this inundation would occur within a typical year.

C. Additional comments to support AJD: n/a

BASE MAPPING SOURCE: POINTFINDER SUITE

LEGEND

~~INTERMITTENT~~ STREAM CHANNEL ~~(R4)~~

PALUSTRINE EMERGENT (PEM) WETLAND

DP-# WETLAND DATAPOINT LOCATION

AJD Review Area

*WATER FEATURES WERE DELINEATED BY ECS ON JANUARY 11, 2021 AND LOCATED USING A SUB-METER ACCURACY GPS UNIT.

**WATER FEATURES DEPICTED HEREIN SHOULD BE CONSIDERED PRELIMINARY UNTIL CONFIRMED BY REGULATORY PERSONNEL.

Resource and jurisdiction evaluation found in AJD Form

N
W E
S

SCALE (IN FEET)
60 120
120 0

ECS - MID-ATLANTIC, LLC
1340 CHERWOOD ROAD
SUITE B
HANOVER, MD 21076
1-800-822-3489
410-859-4300
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BERKELEY COUNTY, WEST VIRGINIA

WATERS OF THE U.S. DELINEATION MAP
NOVA VENTURES

ECS REVISIONS

ENGINEER	DRAFTING
AMM	LSC

SCALE: 1" - 120'

PROJECT NO.: 47:11434

SHEET: 1 OF 1

DATE: 1/18/2021