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): 7/15/2021
ORM Number: LRP-2021-00088
Associated JDs: N/A
Review Area Location[1]: State/Territory: West Virginia City: Great Cacapon
County/Parish/Borough: Morgan County
Center Coordinates of Review Area: Latitude 39.617 Longitude -78.2747

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.	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
Stream A	1,653	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Intermittent tributary that contributes surface water flow directly to an (a)(1) water, Potomac River. Stream A extends, generally, across the entire JD boundary area (flowing south to north) within the wooded eastern extent of the site. Waterway contained bed & bank, sorted stream substrates, and a saturated bed. Much of the reach was found to be pooled in flatter areas with a trickle of flow found between them in spots. Macroinvertebrates

[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.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
				found attached to flipped rocks within pooled & saturated sections. No pooling or surficial flow is evident at the bottom of this stream's on-site reach, though the stream bed was saturated. It is suspected that some flow would occur subsurface; however, evidence of intermittent surficial flow is still strong even at bottom area. Flow off-site: Surficial flow would occur off-site first by flowing across a railway ditch and then through a culvert under neath a double-tracked rail bed. Approximately 500 feet later, this stream feature empties directly into the Potomac River.
Stream B (Intermittent Reach)	220	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Intermittent tributary that contributes surface water flow directly to an (a)(1) water, Potomac River. Stream B (Intermittent) begins near the road to the south first as an ephemeral feature and then becoming an intermittent feature near where Stream A passes close by Stream B. Stream B becomes an (a)(2) tributary at this location and it is suspected that Stream A may contribute some waters to B at this location causing (via spilling over its shallow banks) it to have more intermittent characteristics. Intermittent section of Stream B was found to include bed & bank, sorted stream substrate (primarily mineral outwash), and minor bed saturation. Flow from Stream B intersects with Stream A to then contribute surficial waters downstream). See "Flow off-site" section in Stream A description.
Stream D	199	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Perennial tributary that contributes surface water flow directly to an (a)(1) water, Potomac River. Stream D is the Cacapon River. The AJD review area captures 199 linear feet of this river which clearly contributes significant, perennial surficial waters to the Potomac River.

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.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Stream B (Ephemeral Reach)	162	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	The upper 162 linear feet of Stream B on-site is an ephemeral (b)(3) feature. Stream B is believed to become an intermittent feature further downstream where Stream A passes close by and may contribute waters to Stream B by overtopping of the shallow banks. The stretch of Stream B above this "overtop" area is believed to be ephemeral (162 linear feet). During a site visit, the ephemeral reach was observed as dry and full of small leaf & woody debris – indicating that surficial flow had not occurred recently enough to empty the debris. Some bed saturation was noted within the intermittent stretch of Stream B but not within the upper, ephemeral stretch.
Stream C	687	linear feet	(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream C does not contribute surface water flow directly or indirectly into an (a)(1) water and is excluded under (b)(1). Stream C originated below an old logging road as a hillside seep which was found flowing at the time of my site visit (2 June 2021). The upper reaches of this stream consisted of mixed pool/saturated upland area without evidence of bed & bank. Two seep "forks" originate on the hillside and combine into one saturated area. This saturated area shortly becomes a channel feature with flow, though the stream physically contains weak bed & bank and sorting indicators. Observed flow occurred during normal wetness conditions (per 90 day rolling total falling within the normal 30-70th percentile for 30-year average). Local weather observations showed no precipitation within the past 72 hours of the field visit. Absent flowing water, I would have pinned the physical conditions of the stream to be closer to an ephemeral. Similar to Stream A, the bottom of Stream C appears to flow subsurface as evidence of surficial flow vanishes as you approach the bottom of the site. However,

[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
				Stream C has such a low-flow, that as evidence of surficial flow disappears, so do the physical stream characteristics. Any remaining bed & bank or sorted substrates disappear into upland area, and it is unclear where subsurface flow occurs. Any surface flows from Stream C into Stream A would need to occur as overland sheet flow. Overland sheet flow cannot sustain a regular predictable surface water connection between upstream and downstream waters. Stream C lacks a surficial connection to downstream (a)(1-3) waters and would be excluded as (b)(1) water.
Wetland A	0.31	acre(s)	(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) subcategories.	Wetland A was found to be non-adjacent and isolated from other waters. The wetland is located in the middle of a hayfield following a low contour in the field. The low laying contour area extends from this wetland to the northeast corner of the hayfield (appx. 500 linear feet away) where it meets the “Ephemeral Draw Drainage Channel” (see below); however, this low area lacks any distinct stream or wetland features that have the potential to connect Wetland A with any downstream (a)(1-3) waters. The wetland area is not subject to flooding from an (a)(1-3) water. Wetland A is a (b)(1) non-adjacent wetland.
Ephemeral Draw Drainage Channel	175	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral Draw Drainage Channel is a 175 linear foot ephemeral stream channel which drains upland areas and directs flow into the railroad ditch & Stream A. Ephemeral Draw lays lowest within the eastern extent of the hayfield and does not contain any stream or wetland features above its origin at the field/forest transition. Ephemeral Draw contains bed & bank, exposed clayey soils with little plant growth in the channel, and little evidence of recent saturation. Given this stream’s position on the landscape, it is evident that it primarily serves to drain overland flow from the adjacent hayfield. Ephemeral Draw Drainage Channel is an excluded (b)(3) ephemeral feature.
Railroad Drainage Ditch	3,405	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that	Railroad Drainage Ditch is a linear drainage feature that is excluded as a (b)(5) drainage ditch. This ditch extends across the landscape adjacent to an existing double-tracked railroad bed and runs, generally, with the Potomac River along the upland. The ditch does not relocate a tributary, was not constructed in a tributary*, nor

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
			do not satisfy the conditions of (c)(1).	was it constructed within a wetland. Though the railroad is quite old and would pre-date the Clean Water Act, it appears to have been constructed within upland and would be excluded as a (b)(5) ditch. *There is a small footprint of the ditch that crosses Stream A & Ephemeral Draw Drainage as both features exit the AJD review area through a culvert under the railroad bed. The extent which the Railroad Drainage Ditch exists within the footprint of these streams would be considered a part of those respective streams and is subject to the jurisdictional determination of those waterways. For clarification: the portion of the ditch that crosses Stream A would be a part of that (a)(3) jurisdictional tributary, while the ditch portion that connects Ephemeral Draw Drainage Channel to the railroad culvert would be (b)(3) excluded ephemeral feature. The remaining Railroad Drainage Ditch within the AJD review area appears to have been constructed entirely within upland and would be excluded as a (b)(5) ditch.

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: Wetland Delineation Report: Great Cacapon KOA, 18 January 2021. Delineation Report Addendum, 28 June 2021.

This information is sufficient for purposes of this AJD.

Rationale: Delienation information inventories aquatic resources on-site.

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

☒ Photographs: Aerial and Other: Delineation & addendum photographs, 18 January 2021 & 28 June 2021; site visit photographs 2 June 2021

☒ Corps site visit(s) conducted on: 2 June 2021

☐ 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: 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.

Data Source (select)	Name and/or date and other relevant information
USDA Sources	N/A.
NOAA Sources	NOAA Local Climatological Data Station Details; Martinsburg, Cumberland, Hagerstown - previous 72 hours
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A

B. Typical year assessment(s): Antecedent Precipitation Tool (APT) was utilized at Lat/Long: 39.617, -78.2747 to determine the range of normal precipitation and ground conditions for various dates corresponding to the time of data collection. APT reviews the rolling 30-day total of precipitation over the previous 90-day period weighted against the previous 30-year average. Deviations from this average would indicate a level of "wetness" that is either wetter or dryer than the normal range.
13 January 2021, original delineation: rated as "wetter than normal" by APT & "mild wetness" by the PDSI
2 June 2021, Corps site visit: rated as "normal conditions" by APT & "normal" by the PDSI
24 June 2021, delineation addendum: rated as "wetter than normal" by APT & "normal" by PDSI
Conclusions drawn from observations are considered with the wetness rating for these times.

Typical year assessment was not necessary to determine jurisdictionality of above aquatic features: jurisdictional streams did not contain breaks or other severing natural or man-made features that would need to consider typical year assessments. Non-jurisdictional features: Wetland A is non-adjacent and not subject to inundation from an (a)(1-3) water and thus no typical year assessment was necessary to determine jurisdictionality. Stream B (ephemeral) and the Ephemeral Draw Drainage Channel are excluded via (b)(3) and did not contain breaks that would need to consider typical year assessments. The Railroad Drainage Ditch constructed within upland is excluded under (b)(5), and its exclusion status is not affected by water flow in a typical year. Physical characteristics of Stream C are discontinuous and technically sever at the base of the site; however, any downstream surficial connection from Stream C to Stream A within a typical year would have to occur over diffuse overland sheetflow and not through a defined channel and thus a typical year assessment was not required in order to make jurisdictional determinations for Stream C.

C. Additional comments to support AJD: N/A