



**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): 10/26/2020

ORM Number: LRP-2019-890

Associated JDs: N/A

Review Area Location¹: State/Territory: West Virginia City: Keyser County/Parish/Borough: Mineral County

Center Coordinates of Review Area: Latitude 39.430632 Longitude -79.043674

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.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³			
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.

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

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.

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
W101	0.07	acre(s)	(b)(1) Non-adjacent wetland.	Feature does not abut or have a surface connection to an a(1) to a(4) water.
W102	0.01	acre(s)	(b)(1) Non-adjacent wetland.	Feature does not abut or have a surface connection to an a(1) to a(4) water
W103 PEM	0.17	acre(s)	(b)(1) Non-adjacent wetland.	Feature does not abut or have a surface connection to an a(1) to a(4) water
W103 PFO	0.114	acre(s)	(b)(1) Non-adjacent wetland.	Feature does not abut or have a surface connection to an a(1) to a(4) water
W105	0.007	acre(s)	(b)(1) Non-adjacent wetland.	Feature does not abut or have a surface connection to an a(1) to a(4) water
W106	0.046	acre(s)	(b)(1) Non-adjacent wetland.	Feature does not abut or have a surface connection to an a(1) to a(4) water
W107 PEM	0.103	acre(s)	(b)(1) Non-adjacent wetland.	Feature does not abut or have a surface connection to an a(1) to a(4) water
W107 POW	0.012	acre(s)	(b)(1) Non-adjacent wetland.	Feature does not abut or have a surface connection to an a(1) to a(4) water
W108	0.01	acre(s)	(b)(1) Non-adjacent wetland.	Feature does not abut or have a surface connection to an a(1) to a(4) water
DC 101	28	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.	Rip-rap lined channel which conveys flow from W107 to an adjacent forested area before flow dissipates overland with no direct or indirect connection to an (a)(1) water in a typical year.

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: [Pinnacle Wind Repowering Project, June 2, 2020 prepared for Pinnacle Wind, LLC by Stantec Consulting Services, Inc.](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A](#)

Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).

Photographs: [Other: Photos 1 through 9 in Pinnacle Wind Repowering Project Wetland Investigation Report, June 2, 2020](#)

Corps site visit(s) conducted on: [Date\(s\)](#).

Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\)](#).

Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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- USDA NRCS Soil Survey: [Web Soil Survey accessed 10/21/2020](#).
- USFWS NWI maps: [Wetlands Mapper accessed 10/21/2020](#).
- USGS topographic maps: [Westernport, WV 7.5 minute USGS quadrangle](#)

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	N/A.

B. Typical year assessment(s): The Corps ran the Antecedent Precipitation Tool for both a point location (the coordinates of DC 101) as well as the HUC 8 (02070002 Potomac River- Mid Atlantic Region) for the sampling date of June 2, 2019; the results indicated climactic conditions were normal for both the HUC 8 as well as the point located within the project area at the time of sampling. The periodic range of the assessments was the three 30-day periods preceding the observation date, and the assessment did not deviate from the 30th to 70th percentile of precipitation totals.

C. Additional comments to support AJD: The investigation area is located along the Allegheny Front and encompasses three watersheds- Piney Swamp Run, New Creek, and Limestone Run- all of which drain to the Potomac River. W107 and DC101 are noted as being remnants of an abandoned sediment basin constructed during the construction of the Pinnacle Wind Farm in 2009. The Corps has followed the JD guidance as enumerated within the "Interim Approved Jurisdictional Determination Form User Manual- Navigable Waters Protection Rule" dated July 29, 2020 and other applicable guidance.