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Regulatory Program



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

This form should be completed by following the instructions provided in the Interim Approved Jurisdictional Determination Form User Manual.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD): November 1, 2018

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): LRP 2011-1773

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State:PA County/parish/borough: West Moreland City: Rostraver

Center coordinates of site (lat/long in degree decimal format): Lat. 40.193582, Long. -79.764496.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: attached in report/map titled .

Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1): .

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office (Desk) Determination Only. Date: .

Office (Desk) and Field Determination. Office/Desk Dates: 9/1/18 Field Date(s): 9/7/18.

SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: West Newton Coal Logistics - Refuse Embankment Stabilization Project, October 15, 2018.

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date: .

Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon: .

Revised Title/Date: .

Data sheets prepared by the Corps. Title/Date: .

Corps navigable waters study. Title/Date: .

CorpsMap ORM map layers. Title/Date: ORM layer.

USGS Hydrologic Atlas. Title/Date: .

USGS, NHD, or WBD data/maps. Title/Date: ORM layer NHD dataset.

USGS 8, 10 and/or 12 digit HUC maps. HUC number: ORM layer USGS HUC 8 / 10.

USGS maps. Scale & quad name and date: West Newton Coal Logistics - Refuse Embankment Stabilization Project, October 15, 2018.

USDA NRCS Soil Survey. Citation: ORM layer NRCS state soil survey.

USFWS National Wetlands Inventory maps. Citation: ORM layer USFWS NWI layer.

State/Local wetland inventory maps. Citation: .

FEMA/FIRM maps. Citation: ORM layer FEMA floodprone zone area.

Photographs: Aerial. Citation: West Newton Coal Logistics - Refuse Embankment Stabilization Project, October 15, 2018. or Other. Citation: West Newton Coal Logistics - Refuse Embankment Stabilization Project, October 15, 2018.

LiDAR data/maps. Citation: .

Previous JDs. File no. and date of JD letter: LRP 2011-1773 June 25, 2012.

- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

SECTION III: SUMMARY OF FINDINGS

Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required

A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:

"navigable waters of the U.S." within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

- **Complete Table 1 - Required**

NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "waters of the U.S." within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. **Check all that apply.**

(a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters (TNWs))

- **Complete Table 1 - Required**

This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

(a)(2): All interstate waters, including interstate wetlands.

- **Complete Table 2 - Required**

(a)(3): The territorial seas.

- **Complete Table 3 - Required**

(a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.

- **Complete Table 4 - Required**

(a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 5 - Required**

(a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

- **Complete Table 6 - Required**

Bordering/Contiguous.

Neighboring:

(c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.

(c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.

(c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

(a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

(a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

C. NON-WATERS OF THE U.S. FINDINGS:

Check all that apply.

- The review area is comprised entirely of dry land.
- Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):
- **Complete Table 10 - Required**
- (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.
- (b)(2): Prior converted cropland.
- (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
- (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
- (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).
- (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.
- (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.
- (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.¹
- (b)(4)(iv): Small ornamental waters created in dry land.¹
- (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.
- (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.¹
- (b)(4)(vii): Puddles.¹
- (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.¹
- (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.¹
- (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.
- Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).
- **Complete Table 11 - Required.**

D. ADDITIONAL COMMENTS TO SUPPORT AJD: The project area is a heavily disturbed site that has been mined and abandoned. The site sits on a hill above the Youghiogheny River Valley (TNW). The average height above sea level is ~900'. The Youghiogheny river is 745' above sea level. The majority of the site is well above the floodplain of the Youghiogheny river. There are several large abandoned impoundments that have since developed hydric vegetation (wetlands). The soils are mainly coal refuse and disturbed fill. Water that drains from these features travels

¹ In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

through upland drainage swales comprised of coal refuse for an approximate distance of 1,600' before it impounds against a rail bed at the bottom of the hill in the river valley. The rail bed has been converted to a rail to trail and one culvert was discovered during a field investigation. The culvert was clogged and the intake was obscured. An outfall was found but was not flowing. Wetlands and upland ditches have formed against the landward side of the rail to trail. This area is an average elevation of 775' above seal level. It is on the edge of the 100year floodplain of the Youghiogheny River. Wetlands 10, 11, 12, 14, 18, 19, 20, and 26 have portions of their boundary within the 100 year floodplain of the Youghiogheny and they are within 1,500' of the Youghiogheny. They are jurisdictional by rule. Wetlands 9a, 15, 16, 17, 21, and 22 are within 1,500' of the Youghiogheny but outside the 100 year floodplain. They are not jurisdictional by rule and require a significant nexus determination. These wetlands are on a bench outside of the 100 year floodplain of the Youghiogheny river. It is within 1,500' but the drainage/flow path leads to wetland 10/11 and then impounds against the rail bed (rail to trail). As mentioned above, the rail bed has one culvert underneath but it is permanently clogged. Water does not appear to be flowing under the rail bed. If water were to flow under the railbed, it would've had to travel over 1900' from the subject waters before it reached the Youghiogheny river. When considering volume, duration, and frequency of flow, as well as habitat, sediment reduction, export of organic matter, and export of food resources; Wetlands 9a, 15, 16, 17, 21, and 22 do not have more than a speculative effect on the chemical, physical, or biological integrity of the Youghiogheny (TNW). These wetlands are close in proximity but functions performed by these wetlands do not significantly effect the TNW.

Jurisdictional Waters of the U.S.

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where applicable for waters/features present in the review area.

Table 1. (a)(1) Traditional Navigable Waters

(a)(1) Waters Name	(a)(1) Criteria	Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.
N/A	Choose an item.	N/A

Table 2. (a)(2) Interstate Waters

(a)(2) Waters Name	Rationale to Support (a)(2) Designation
N/A	N/A

Table 3. (a)(3) Territorial Seas

(a)(3) Waters Name	Rationale to Support (a)(3) Designation
N/A	N/A

Table 4. (a)(4) Impoundments

(a)(4) Waters Name	Rationale to Support (a)(4) Designation
N/A	N/A
N/A	N/A

Table 5. (a)(5) Tributaries

(a)(5) Waters Name	Flow Regime	(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows	Tributary Breaks	Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A

Table 6. (a)(6) Adjacent Waters

(a)(6) Waters Name	(a)(1)-(a)(5) Water Name to which this Water is Adjacent	Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.
W10	Youghiogheny River	Subject water is within both 1,500' and the 100year floodplain of the Youghiogheny River, a traditionally navigable waterway.
W11	Youghiogheny River	Subject water is within both 1,500' and the 100year floodplain of the Youghiogheny River, a traditionally navigable waterway.
W12	Youghiogheny River	Subject water is within both 1,500' and the 100year floodplain of the Youghiogheny River, a traditionally navigable waterway.
W14	Youghiogheny River	Subject water is within both 1,500' and the 100year floodplain of the Youghiogheny River, a traditionally navigable waterway.
W18	Youghiogheny River	Subject water is within both 1,500' and the 100year floodplain of the Youghiogheny River, a traditionally navigable waterway.
W19	Youghiogheny River	Subject water is within both 1,500' and the 100year floodplain of the Youghiogheny River, a traditionally navigable waterway.

W20	Youghiogheny River	Subject water is within both 1,500' and the 100year floodplain of the Youghiogheny River, a traditionally navigable waterway.
W26	Youghiogheny River	Subject water is within both 1,500' and the 100year floodplain of the Youghiogheny River, a traditionally navigable waterway.

Table 7. (a)(7) Waters

SPOE Name	(a)(7) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Table 8. (a)(8) Waters

SPOE Name	(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Non-Jurisdictional Waters

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where applicable for waters/features present in the review area.

Table 9. Non-Waters/No Significant Nexus

SPOE Name	Non-(a)(7)/(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus	Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.
W8spoe	W8	Youghioghney River	W8 is within 1500' of the youghioghney river, but it is outside the 100year floodplain. Because of the size and geogrpahic situating of the subject water, there is not more than a speculative or insubstantial effect on the Youghioghney river. Flow from the subject water traverses through an abandoned mine site thorough slag piles and non-operating impoundments. It drains to bench wetlands which collect the water and disperse it. The bench wetlands are linear in nature and abut an old railroad bed converted into a bike trail. The rail bed had a culvert but it is permanently clogged. Water does not appear to be flowing under the rail bed. If water were to flow under the railbed, it would've had to travel over 1600' from the subject water before it reached the Youghioghney river.
W7spoe	W7	Youghioghney River	W7 is within 1500' of the youghioghney river, but it is outside the 100year floodplain. Because of the size and geogrpahic situating of the subject water, there is not more than a speculative or insubstantial effect on the Youghioghney river. Flow from the subject water traverses through an abandoned mine site thorough slag piles and non-operating impoundments. It drains to bench wetlands which collect the water and disperse it. The bench wetlands are linear in nature and abut an old railroad bed converted into a bike trail. The rail bed had a culvert but it is permanently clogged. Water does not appear to be flowing under the rail bed. If water were to flow under the railbed, it would've had to travel over 1600' from the subject water before it reached the Youghioghney river.
W9spoe	W9	Youghioghney River	W9 is within 1500' of the youghioghney river, but it is outside the 100year floodplain. Because of the size and geogrpahic situating of the subject water, there is not more than a speculative or insubstantial effect on the Youghioghney river. Flow from the subject water traverses through an abandoned mine site thorough slag piles and non-operating impoundments. It drains to bench wetlands which collect the water and disperse it. The bench wetlands are linear in nature and abut an old railroad bed converted into a bike trail. The rail bed has one culvert underneath but it is

			permanently clogged. Water does not appear to be flowing under the rail bed. If water were to flow under the railbed, it would've had to travel over 1600' from the subject water before it reached the Youghiogheny river.
W9Aspoe	W9A	Youghiogheny River	W9A is within 1500' of the youghiogheny river, but it is outside the 100year floodplain. Because of the size and geogrpahic situating of the subject water, there is not more than a speculative or insubstantial effect on the Youghiogheny river. Flow from the subject water traverses through an abandoned mine site thorough slag piles and non-operating impoundments. It drains to bench wetlands which collect the water and disperse it. The bench wetlands are linear in nature and abut an old railroad bed converted into a bike trail. The rail bed has one culvert underneath but it is permanently clogged. Water does not appear to be flowing under the rail bed.
spoeEast	W15	Youghiogheny River	W15 is on a bench outside of the 100 year floodplain of the Youghiogheny river. It is wtihin 1,500' but the drainage/flow path leads to wetland 10/11 and then impounds against a rail bed (rail to trail). The rail bed has one culvert underneath but it is permanently clogged. Water does not appear to be flowing under the rail bed. If water were to flow under the railbed, it would've had to travel over 1900' from the subject water before it reached the Youghiogheny river.
spoeEast	W16	Youghiogheny River	W16 is on a bench outside of the 100 year floodplain of the Youghiogheny river. It is wtihin 1,500' but the drainage/flow path leads to wetland 10/11 and then impounds against a rail bed (rail to trail). The rail bed has one culvert underneath but it is permanently clogged. Water does not appear to be flowing under the rail bed. If water were to flow under the railbed, it would've had to travel over 1900' from the subject water before it reached the Youghiogheny river.
spoeEast	W17	Youghiogheny River	W17 is on a bench outside of the 100 year floodplain of the Youghiogheny river. It is wtihin 1,500' but the drainage/flow path leads to wetland 10/11 and then impounds against a rail bed (rail to trail). The rail bed has one culvert underneath but it is permanently clogged. Water does not appear to be flowing under the rail bed. If water were to flow under the railbed, it would've had to travel over 1900' from the subject water before it reached the Youghiogheny river.
spoeEast	W21	Youghiogheny River	W21 is on a bench outside of the 100 year floodplain of the Youghiogheny river. It is wtihin 1,500' but the drainage/flow path leads to wetland 10/11 and then impounds against a rail bed (rail to trail). The rail bed has one culvert underneath but it is permanently clogged. Water does not appear to be flowing under the rail bed. If water were to flow under the railbed, it would've had to travel over 1900' from the subject water before it reached the Youghiogheny river.
spoeEast	W22	Youghiogheny River	W22 is on a bench outside of the 100 year floodplain of the Youghiogheny river. It is wtihin 1,500' but the drainage/flow path leads to wetland 10/11 and then impounds against a rail bed (rail to trail). The rail bed has one culvert underneath but it is permanently clogged. Water does not appear to be flowing under the rail bed. If water were to flow under the railbed, it would've had to travel over 1900' from the subject water before it reached the Youghiogheny river.

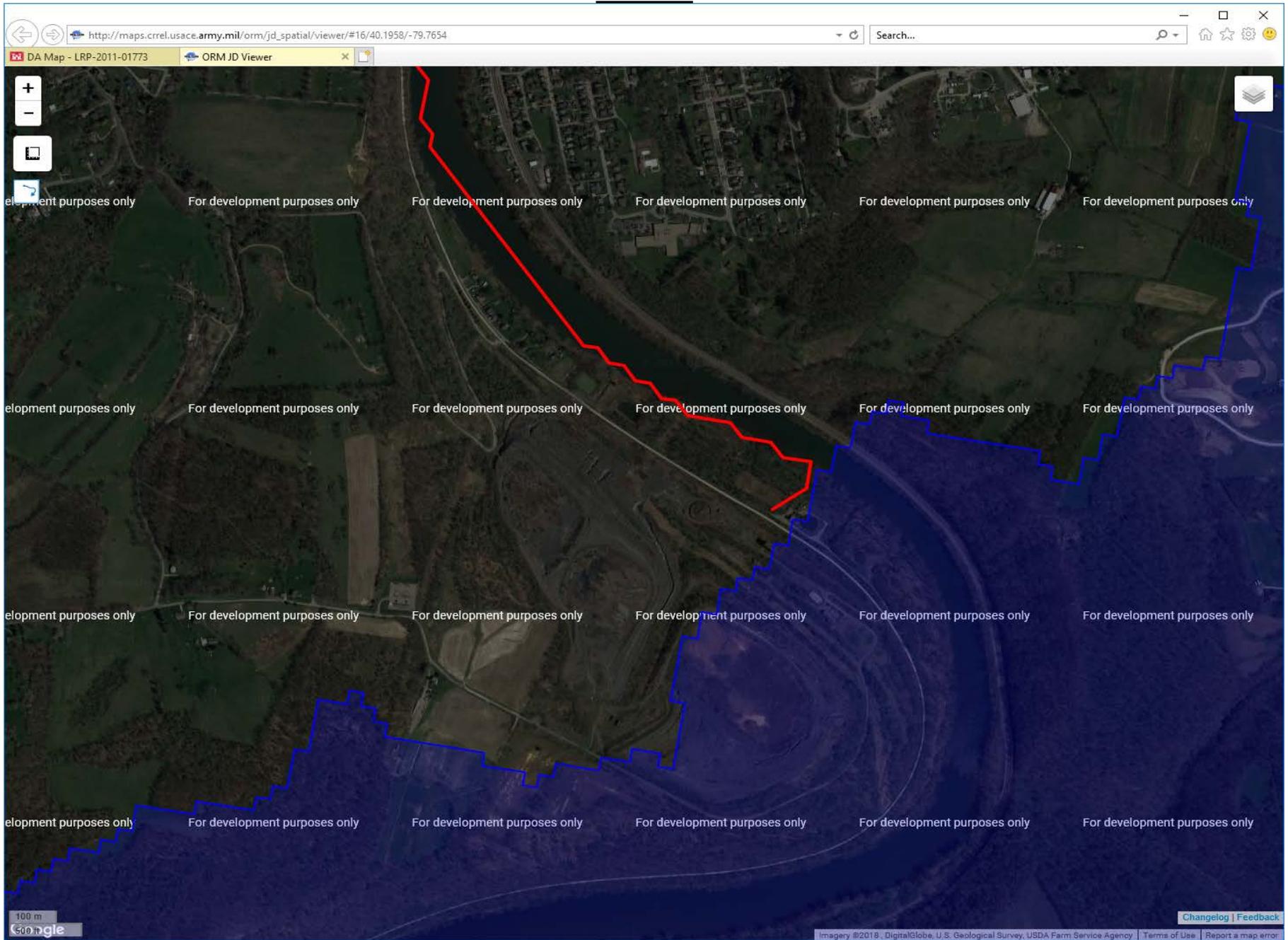
Table 10. Non-Waters/Excluded Waters and Features

Paragraph (b) Excluded Feature/Water Name	Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.
N/A	N/A
N/A	N/A

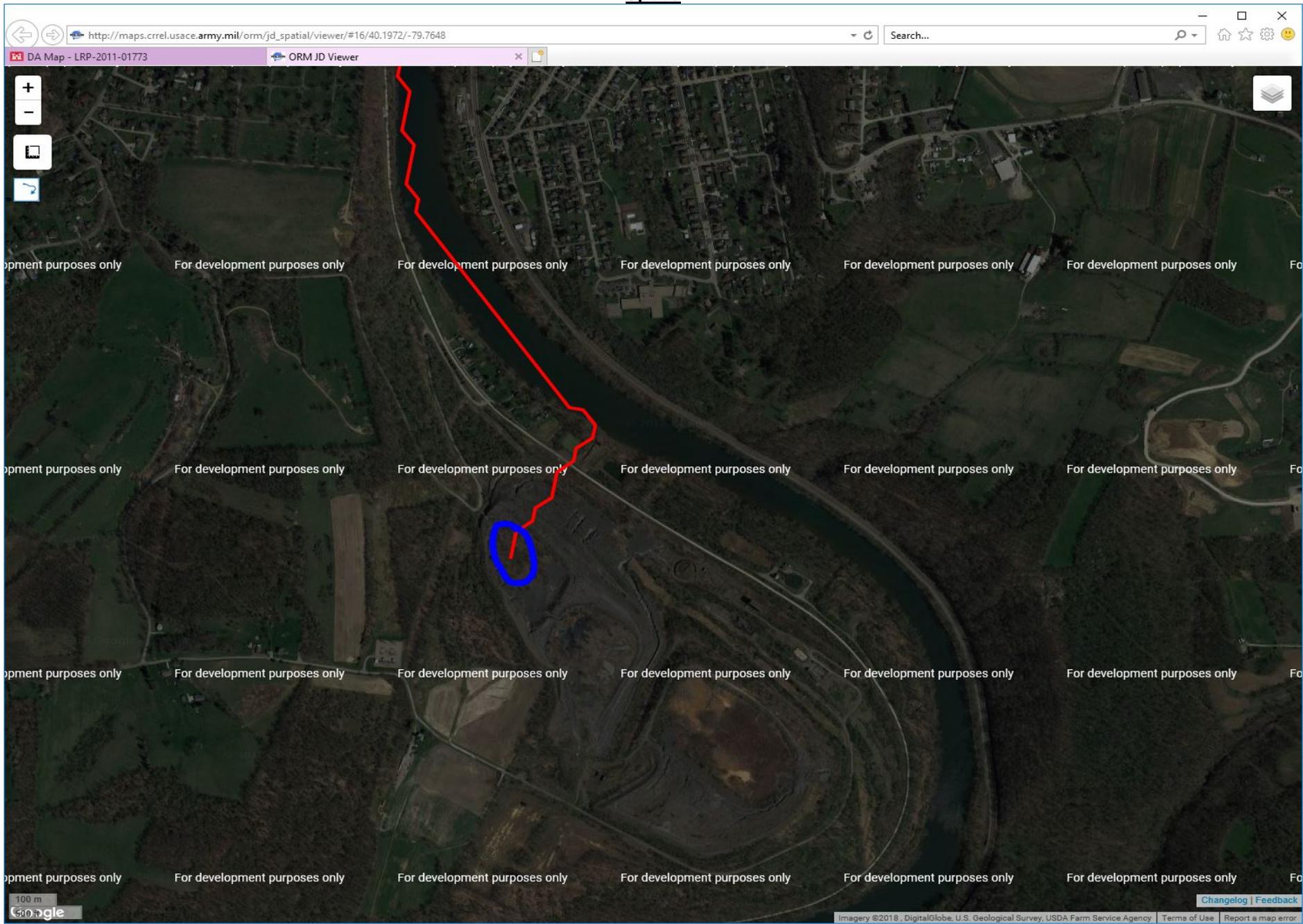
Table 11. Non-Waters/Other

Other Non-Waters of U.S. Feature/Water Name	Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.
N/A	N/A

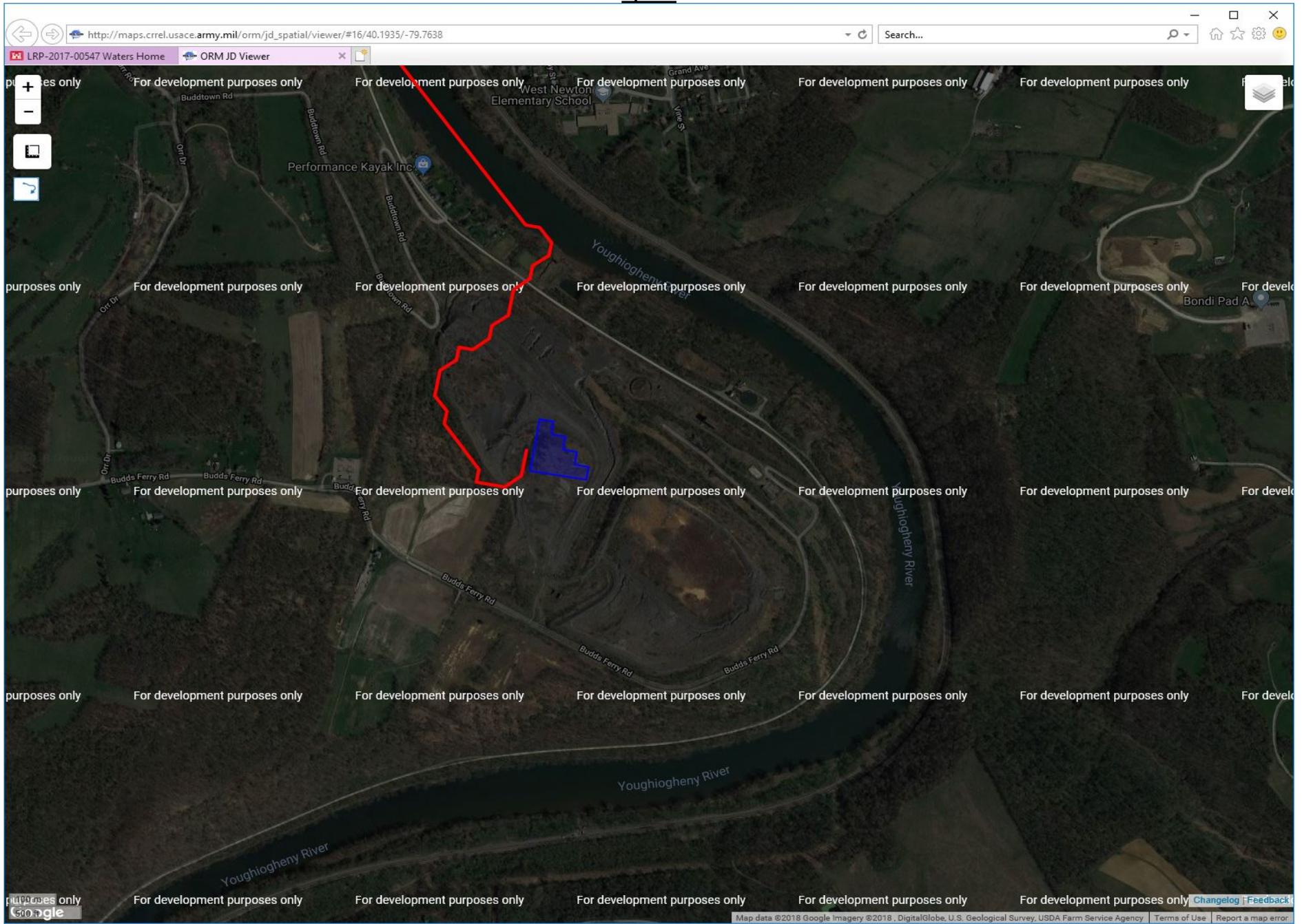
SPOE East



Spoe9



Spoe8



Spoe7

