



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): 23-FEB-2021

ORM Number: NAO-2021-00197

Associated JDs: N/A

Review Area Location¹:

State/Territory: VA City: County/Parish/Borough: Buchanan County

Center Coordinates of Review Area: Latitude 37.285 Longitude -82.1292

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
LEVISA FORK RIVER	5510 feet	RHA Non-tidal water is on the district's Section 10 waters list	On our District Section 10 waters list.

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
UTLFR-4 int	310 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Agent determined tributary has flow in a typical year in June 2020 when doing field work, typical conditions. Flow observed during a site visit with DEQ and the agent on 2/10/21 under typical year conditions.
UTLFR-1 int	2350 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Agent determined tributary has flow in a typical year in June 2020 when doing field work, typical conditions. Flow observed during a site visit with DEQ and the agent on 2/10/21 under typical year conditions.
UTLFR-2 per	2960 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a	Agent determined tributary has flow in a typical year photos in report show water flowing on 11/24/20 during typical conditions. Flow observed during a site visit

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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.



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

		typical year	with DEQ and the agent on 2/10/21 under typical year conditions.
UTLFR-2A	320 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Agent determined tributary has flow in a typical year in June 2020 when doing field work, typical conditions. Flow observed/photographed during a site visit on 12/22/20 (APT shows rainfall below normal at this time) and with DEQ and the agent on 2/10/21 under typical year conditions.
UTLFR-2B	650 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Agent identified as jurisdictional. Photo in delineation submittal shows flow on 8/19/20, was a high rainfall period, and the agent and DEQ determined was intermittent in recent site visit during typical conditions.
UTLFR-3 int	1500 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Agent identified as jurisdictional. Photo in delineation submittal shows flow on 6/1/20, was a typical period, and the agent and DEQ determined was intermittent in recent site visit during typical conditions.
UTLFR-5 int	1870 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Agent identified as jurisdictional. Photo in delineation submittal shows flow on 12/21/20, was a typical period, and the agent and DEQ determined was intermittent in recent site visit during typical conditions.
UTLFR-5 per	1480 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Agent identified as jurisdictional. Photo in delineation submittal shows flow on 11/24/20 and 12/21/20, was a typical period, and the agent and DEQ determined was intermittent in recent site visit during typical conditions.
UTLFR-5A	1590 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Agent identified as jurisdictional. Photo in delineation submittal shows flow on 12/21/20, was a typical period, and the agent and DEQ determined was intermittent in recent site visit on 2/10/21 during typical conditions.
UTLFR-5B int	480 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Agent identified as jurisdictional. Photo in delineation submittal shows flow on 12/21/20, was a typical period, and the agent and DEQ determined was intermittent in recent site visit on 2/10/21 during typical conditions.
UTLFR-6 int	280 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Agent identified as jurisdictional. Photo in delineation submittal shows flow on 2/10/21, was a typical period, and the agent and DEQ determined was intermittent in recent site visit on 2/10/21 during typical conditions.

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

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
IOW-LFR-1	0.07 acres	(b)(1) Lake/pond or impoundment	Open water area with no surface connection up or

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U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

		that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year	downstream. Agent identifies these as man-made features as a result of prior mining activities.
IOW-LFR-2	0.07 acres	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year	Open water area with no surface connection up or downstream. Agent identifies these as man-made features as a result of prior mining activities.
UTLFR-1 eph	1130 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The agent determined this channel did not have flow in a typical year, photos in the delineation submittal dated 6/2/20 do not show flow in a typical period. DEQ confirmed this channel was ephemeral in a site visit on 2/10/21 in a typical period.
UTLFR-1A	440 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	The agent determined this channel did not have flow in a typical year, photos in the delineation submittal dated 6/2/20 do not show flow in a typical period. DEQ confirmed this channel was ephemeral in a site visit on 2/10/21 in a typical period.
UTLFR-1B	590 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The agent determined this channel did not have flow in a typical year, photos in the delineation submittal dated 6/2/20 do not show flow in a typical period. DEQ confirmed this channel was ephemeral in a site visit on 2/10/21 in a typical period.
UTLFR-1C	1250 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The agent determined this channel did not have flow in a typical year, photos in the delineation submittal dated 6/2/20 do not show flow in a typical period but some standing water in low spots is visible but not flowing. DEQ confirmed this channel was ephemeral in a site visit on 2/10/21 in a typical period.
UTLFR-1D	420 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The agent determined this channel did not have flow in a typical year, photos in the delineation submittal dated 6/2/20 do not show flow in a typical period. DEQ confirmed this channel was ephemeral in a site visit on 2/10/21 in a typical period.
UTLFR-2 eph	580 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The agent determined this channel did not have flow in a typical year, photos in the delineation submittal dated 2/10/21 do not show flow in a typical period. DEQ confirmed this channel was ephemeral in a site visit on 2/10/21 in a typical period.
UTLFR-3 eph	710 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The agent determined this channel did not have flow in a typical year, photos in the delineation submittal dated 6/1/20 do not show flow in a typical period. DEQ confirmed this channel was ephemeral in a site visit on 2/10/21 in a typical period.
UTLFR-4	640 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The agent determined this channel did not have flow in a typical year, photos in the delineation submittal dated 6/2/20 do not show flow in a typical period. DEQ confirmed this channel was ephemeral in a site visit on 2/10/21 in a typical period.

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 REGULATORY PROGRAM
 APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
 NAVIGABLE WATERS PROTECTION RULE**

UTLFR-5 eph	720 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The agent determined this channel did not have flow in a typical year, photos in the delineation submittal dated 12/21/20 do not show flow in a typical period. DEQ confirmed this channel was ephemeral in a site visit on 2/10/21 in a typical period.
UTLFR-5B eph	550 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The agent determined this channel did not have flow in a typical year. DEQ confirmed this channel was ephemeral in a site visit on 2/10/21 in a typical period. Photos in the delineation report from 10/24/14 show no flowing water, unsure of rainfall conditions at that time.
UTLFR-5C	730 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The agent determined this channel did not have flow in a typical year, photos in the delineation submittal dated 12/21/20 do not show flow in a typical period. DEQ confirmed this channel was ephemeral in a site visit on 2/10/21 in a typical period.
UTLFR-5D	320 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The agent determined this channel did not have flow in a typical year, photos in the delineation submittal dated 12/21/20 do not show flow in a typical period. DEQ confirmed this channel was ephemeral in a site visit on 2/10/21 in a typical period.
UTLFR-5E	230 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The agent determined this channel did not have flow in a typical year, photos in the delineation submittal dated 12/21/20 do not show flow in a typical period. DEQ confirmed this channel was ephemeral in a site visit on 2/10/21 in a typical period.
UTLFR-5F	500 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The agent determined this channel did not have flow in a typical year, photos in the delineation submittal dated 12/21/20 do not show flow in a typical period. DEQ confirmed this channel was ephemeral in a site visit on 2/10/21 in a typical period.
UTLFR-6 eph	690 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The agent determined this channel did not have flow in a typical year, photos in the delineation submittal dated 12/21/20 do not show flow in a typical period. DEQ confirmed this channel was ephemeral in a site visit on 2/10/21 in a typical period.
UTLFR-7	870 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The agent determined this channel did not have flow in a typical year, photos in the delineation submittal dated 6/22/20 do not show flow in a typical period. DEQ confirmed this channel was ephemeral in a site visit on 2/10/21 in a typical period.

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.

 X Information submitted by, or on behalf of, the applicant/consultant: Jurisdictional Delineation of Waters of the US, US Route 121/460-Poplar Creek Phase B revised February 2021.

 This information is sufficient for purposes of this AJD.

Rationale: Revised report accurately depicts limits of Federal jurisdiction in the review area.

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

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REGULATORY PROGRAM
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- Photographs: *(NA, aerial, other, aerial and other) Title(s) and/or date(s).*
- 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.*
- USDA NRCS Soil Survey: *Title(s) and/or date(s).*
- USFWS NWI maps: *Title(s) and/or date(s).*
- USGS topographic maps: in consultants report
-

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):** APT tool run from June 2020 into February 2021. Initial field work was done in June 2020 with follow up work in November and December 2020 and a site visit with DEQ on 2/10/21.
- C. Additional comments to support AJD:** The Corps PM, due to distance from the Norfolk office to the site, is conducting an office determination utilizing the consultant’s delineation report. The site was visited by the DEQ representative for the area who does have different criteria related to jurisdiction but has familiarity with the terrain and aquatic resources. The DEQ staff person removed some ephemeral channels from the originally submitted JD, which would not have been within Corps jurisdiction under NWPR.

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