



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): January 8, 2021

ORM Number: NAN-2020-00454-WOR

Associated JDs: N/A

Review Area Location¹:

State/Territory: NY City: Newburgh County/Parish/Borough: Orange County

Center Coordinates of Review Area: Latitude 41.574043 Longitude -73.968532

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
Hudson River	0.77 acres	(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act - RHA Tidal water is subject to the ebb and flow of the tide	A portion of the Hudson River, below the Mean Higher High Water (MHHW) line, is located within the project boundary.

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
Hudson River	0.77 acres	(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act - RHA Tidal water is subject to the ebb and flow of the tide	A portion of the Hudson River, below the Mean Higher High Water (MHHW) line, is located within the project boundary.

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
Stream S-WH-1	371 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Stream S-WH-1 is an intermittent, unnamed tributary to the Hudson River, as evidenced by observed bad and banks, ordinary high-water marks and running water during most times of the year.

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 independent 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.

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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Stream S-WH-8	602 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Stream S-WH-8 is an intermittent, unnamed tributary to the Hudson River, as evidenced by observed bad and banks, ordinary high-water marks and running water during most times of the year.
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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
Wetland W-WH-1	0.5 acres	(a)(4) Wetland separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetland and the (a)(1)-(a)(3) water in a typical year	Wetland W-WH-1 was delineated using the 87 Manual/Regional Supplement and is separated from the Hudson River by an existing railroad bed. Water from this wetland flows through a culvert, then into the Hudson River.
Wetland W-WH-2	0.09 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland W-WH-2 was delineated using the 87 Manual/Regional Supplement and is located within the floodway of the Hudson River.
Wetland W-WH-3	0.06 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland W-WH-3 was delineated using the 87 Manual/Regional Supplement and is separated from an intermittent, unnamed tributary to the Hudson River by an existing railroad bed. Water from this wetland flows through a culvert, then into the intermittent, unnamed tributary to the Hudson River.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
RP-WH-1	0.92 acres	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff	Aerial photography and information provided by the applicant show that RP-WH-1 was once part of a larger coal stockpiling area. In more recent years, RP-WH-1 has been used as a stormwater control feature for the former coal pile.
RP-WH-2	0.95 acres	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff	Aerial photography and information provided by the applicant show that RP-WH-2 was constructed from uplands as a stormwater control feature for a coal ash landfill.
RP-WH-3	0.8 acres	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff	Aerial photography and information provided by the applicant show that RP-WH-3 was constructed from uplands as a stormwater control feature for a coal ash landfill.

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S-WH-2	92 feet	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff	Information provided by the applicant, including ground-level photographs, show that S-WH-2 is part of a stormwater control feature that discharges to the Hudson River. This area appears to flow only when the stormwater system is discharging. This feature is labeled with a sign posted by the New York State Department of Environmental Conservation, stating that it is a SPDES permitted discharge point.
S-WH-3A	1999 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Information provided by the applicant, including ground-level photographs, show that Stream S-WH-3A is largely a rock-lined drainage feature that appears to flow only immediately after rain events.
S-WH-4A	651 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Information provided by the applicant, including ground-level photographs, show that Stream S-WH-4A is largely a rock-lined drainage feature that appears to flow only immediately after rain events.
S-WH-4B	610 feet	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff	Information provided by the applicant, including ground-level photographs, show that S-WH-4B was once part of a larger coal stockpiling area. In more recent years, S-WH-4B is a drainage feature that is part of a stormwater control feature for the former coal pile.
S-WH-5	1230 feet	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff	Aerial photography and information provided by the applicant show that S-WH-5 was constructed from uplands as a stormwater control feature for a coal ash landfill.
S-WH-6	407 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Information provided by the applicant, including ground-level photographs, show that Stream S-WH-6 is largely a rock-lined drainage feature that appears to flow only immediately after rain events.
S-WH-9	121 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Information provided by the applicant, including ground-level photographs, show that Stream S-WH-9 is largely a rock-lined drainage feature that appears to flow only immediately after rain events.

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: *Drawings entitled "Danskammer Energy, LLC Danskammer Energy Center Delineation Flagging Map Series Town of Newburgh Orange County, NY", Figure 6 and Figures 6-1 through 6-19, prepared by TRC, dated January 6, 2021; wetland and upland data sheets dated June 6, 2019; and ground level photographs taken on June 6, 2019, and August 4, 2020.*

This information is sufficient for purposes of this AJD.

Rationale: *N/A*

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

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- Photographs: *Aerials dated April 3, 1994, March 31, 2004, and September 18, 2019, acquired from Google Earth. Ground level photographs dated June 6, 2019, and August 4, 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.*
- USDA NRCS Soil Survey: *Generated at Web Soil Survey May 6, 2020.*
- 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	FEMA Map # 36071C0154E

- B. Typical year assessment(s):** N/A or provide typical year assessment for each relevant data source used to support the conclusions in the AJD.
- a. The antecedent precipitation tool (APT) was run for the three aerial photographs, dated April 3, 1994, March 31, 2004, and September 18, 2019. According to the APT, April 3, 1994, was wetter than normal, March 31, 2004, was drier than normal, and September 18, 2019, exhibited normal conditions.
 - b. The consultant provided wetland and stream data sheets that were generated during their site visit of June 6, 2019. The APT for that date indicates that hydrologic conditions were normal.
 - c. The consultant provided color photographs of the site, dated June 6, 2019, and August 4, 2020. The APT shows that normal conditions existed on both dates.
- C. Additional comments to support AJD:** N/A or provide additional discussion as appropriate.
- a. The aerial from April 3, 1994, shows a large coal pile which encompassed features RP-WH-1 and S-WH-4B. The aerials from March 31, 2004, and September 18, 2019, both show features RP-WH-1 and S-WH-4B as having been separated from a smaller coal pile.
 - b. The consultant-provided data sheets appear to support the mapped limits of the water features on site.
 - c. The consultant-provided color photographs appear to support the mapped limits of the water features on site.

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