SUMMIT
ARCHITECTS+ENGINEERS

April 17, 2026

Thomas Barbour
Division Of Mine Permits
300 Sower Boulevard
Frankfort, Kentucky 40601

RE: Nally & Hamilton Enterprises, LLC
WQC Application No. 848-0425-WQC-1
USACE #LRN-2025-00763
Cawood Strip #1

Dear Mr. Barbour:

The above-referenced proposed mining operation is located on Crummies Creek near Cawood. The mining operation will contour the Darby, Wilson and Harlan seams in the areas in Unnamed Tributaries of Crummies Creek. In this proposal there are eighteen (18) temporary road crossings over jurisdictional streams in this area. There will be no other disturbances in the jurisdictional streams other than the road crossings. The Notifications and WQC Requests are included in this application. The Proposed MRP map delineating these crossing is also attached. This was previously submitted with only 14 stream crossings. The updated pages and maps are attached.

If you have any questions or need anything further, please call me.

Sincerely,

Byrd Copley

Byrd Copley
Vice-President

SUMMIT
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March 24, 2026

Thomas Barbour
Division Of Mine Permits
300 Sower Boulevard
Frankfort, Kentucky 40601

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WQC Application No. 848-0425-WQC-1
USACE #LRN-2025-00763
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Dear Mr. Barbour:

The above-referenced proposed mining operation is located on Crummies Creek near Cawood. The mining operation will contour the Darby, Wilson and Harlan seams in the areas in Unnamed Tributaries of Crummies Creek. In this proposal there are fourteen (14) temporary road crossings over jurisdictional streams in this area. There will be no other disturbances in the jurisdictional streams other than the road crossings. The Notifications and WQC Requests are included in this application. The Proposed MRP map delineating these crossing is also attached.

If you have any questions or need anything further, please call me.

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Byrd Copley

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Vice-President

KENTUCKY ENERGY & ENVIRONMENT CABINET

§401 Water Quality Certification Pre-Filing Meeting Request Form

Federal regulation 40 CFR 121.4 requires the applicant to submit a pre-filing meeting request before filing a *Certification Request*. More information may be viewed on the U.S. EPA Overview of §401 Certification webpage.

This form may be used to request the pre-filing meeting and submitted to the Division of Mine Permits. The information requested below will allow the Division of Mine Permits to provide guidance for filing a *§401 Water Quality Certification Request*.

Contact the Division of Mine Permits at Thomas.Barbour@ky.gov, or 502-782-6549 with any questions.

SECTION I – Applicant Information (property owner or easement holder)

Applicant Name: Nalley & Hamilton Enterprises, Inc.	E-mail Address: jmiller@nallyandhamilton.com
The ***Application for Water Quality Certification for Surface Coal Mining Activities*** is required for Individual Water Quality Certification.	☒ Attached ☐ Submitted
AI Number (leave blank if unknown):	
Date: 03-24-26	

SECTION II – Alternate Contact/ Consultant Information (Optional, a consultant is not required)

Alternate Name: Summit / Byrd Copley	E-Mail Address: bcopley@summit-engr.com

SECTION III – The federal license or permit(s) required for the activity (check all that apply)

☐ Section 404 Permit ☐ Section 10 Permit ☒ Nationwide Permit (NWP) No.: 14 ☐ LOP (Section 10/404)

☐ Section 10/404 Regional General Permit ☐ TVA 26a Permit ☐ Federal Energy Regulatory Commission

SECTION IV – Project Site Information

Site or Project Name: Cawood Strip #1	Latitude & Longitude (decimal degrees): 36.818333 N 83.652333 W

4a.	Water Resource proposed for alteration: ☒ Stream/River ☐ Wetland
4b.	Name of Water Resource (access watermaps.ky.gov for more information): Tributaries of Crummies Creek
4c.	Surface Water Resource Impacts (permanent and temporary): Linear feet of stream/river: 700' Average stream/river width (feet): 3' Acreage of wetland: 0.0
4d.	Has a Jurisdictional Determination been received from the U.S. Army Corps of Engineers? ☒ Yes ☐ No
4e.	Are the streams and/or wetlands that will be impacted identified by the Division of Water as Outstanding State or National Resource Water, Cold Water Aquatic Habitat, or Exceptional Waters? (access watermaps.ky.gov and Special Use Waters for more information) ☐ Yes ☒ No

Form continues on the next page

SECTION V – Project Description (some items may not apply)		
5a.	Description of the proposed project, including but not limited to the size, depth, length of the project, types of materials proposed for use, and anticipated timeline for construction and operation.	☒ Attached
5b.	Table of impacts: If there are multiple discharge locations that are not continuous, please include a separate table or figure listing the coordinate location (in decimal degrees) of each surface water impact, linear feet/ acreage of impact, name of waterbody, and stream flow type (ephemeral, intermittent, perennial).	☒ Attached
5c.	Site plans and description of site development, including but not limited to maps of surface waters and proposed surface water impacts within the project area.	☒ Attached
5d.	Proposed temporary impacts to surface waters: linear feet of temporary stream impacts, acreage of temporary wetland impacts, and the proposed plans for restoration.	☒ Attached
5e.	Preliminary Jurisdictional Determination (PJD) and/or Approved Jurisdictional Determination (AJD) issued by the U.S. Army Corps of Engineers.	☒ Attached
5f.	Compensatory mitigation proposal or compensatory mitigation statement for impacts to surface waters.	☐ Attached
5g.	Description of best management practices (BMPs) to be implemented to minimize the impacts to surface waters, including sedimentation and erosion control measures.	☐ Attached
5h.	For dredge activities in Section 10 waters: Dredge methods, disposal areas, proposed volume of material to be extracted, record of the most recent mussel survey if available.	☐ Attached
5i.	Endangered Species Act (ESA) Section 7 consultation or concurrence documentation, biological surveys, and/or other pertinent information regarding the presence of federally threatened or endangered aquatic species.	☐ Attached
5j.	Other information pertinent to the project.	☐ Attached

Submit the completed form and attachments through email to Thomas.Barbour@ky.gov.

KENTUCKY ENERGY & ENVIRONMENT CABINET

Individual §401 Water Quality Certification Request Form

More information regarding federal regulation 40 CFR 121 and the nine components listed in this form may be viewed on the U.S. EPA Overview of §401 Certification webpage.

This form may be used to request §401 Water Quality Certification and submitted to the Division of Mine Permits and to the licensing or permitting Federal agency. For the U.S. Army Corps of Engineers contact information, please review the District map.

Contact Thomas Barbour at Thomas.Barbour@ky.gov, or 502-782-6549 with any questions.

Component (1) - Identify the project proponent(s) (applicant) and a point of contact

Applicant Name: Nally & Hamilton Enterprises, Inc.

Phone No.: 502-348-0084	E-mail Address: jmiller@nallyandhamilton.com

An Application for Permit to Construct Across or Along A Stream and/or Water Quality Certification (Form DOW 7116, July 2008) is required for Individual Water Quality Certification. Date submitted: 03-24-26

Component (2) - Identify the proposed project

Brief Description of the activity: Contour surface mining with temporary stream crossings

Component (3) - Identify the applicable federal license or permit

☒ Nationwide Permit (NWP) Permit Number: 14	☐ §404 Individual Permit	☐ §10 Individual Permit
☐ §10/ §404 Letter of Permission (LOP)	☐ §10/ §404 Regional General Permit Number:	
☐ Federal Energy Regulatory Commission	☐ TVA 26a Permit	

Component (4) – Identify the location and nature of any potential discharge that may result from the proposed project and the location of receiving waters

4a.	Linear feet of stream impacts: 700' (14 crossings 50' or less per crossing)	Acreage of wetland impacts: 0.0
4b.	Surface Water Body Name: Unnamed Tributaries of Crummies Creek	
4c.	Latitude & Longitude (decimal degrees): 83.652611 W 36.818333N	

Component (5) – Include a description of any methods and means proposed to monitor the discharge and the equipment or measures planned to treat, control, or manage the discharge

5a.	Brief description of best management practices (BMPs) to be implemented to minimize the impacts to surface waters, including sediment and erosion control measures.: See Application

Component (6) - Include a list of all other federal, interstate, tribal, state, territorial, or local agency authorizations required for the proposed project, including all approvals or denials already received

Authorization/ Permit Name	Issuing Agency	Status (approved, denied, application submitted)
US COE AP JD / PJD	USCOE	Approved 10-16-2025

Component (7) - Include documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. ☐ Attached

[This can include the email containing the *Application for Permit to Construct Across or Along A Stream and/or Water Quality Certification (Form DOW 7116, July 2008)*]

Components (8) and (9) – *'The project proponent hereby certifies that all information contained herein is true, accurate, and complete to the best of my knowledge and belief'*; and *'The project proponent hereby requests that the certifying authority review and take action on this CWA 401 certification request within the applicable reasonable period of time.'*	
Print Project Proponent Name (applicant):	Stephen Hamilton
Project Proponent Signature (applicant):	X  Date: 03-24-2026

Submit the completed form and attachments through email to Thomas.Barbour@ky.gov.

Commonwealth of Kentucky
Department for Natural Resources
Division of Mine Permits

Application for Water Quality Certification for Surface Coal Mining Activities

The Clean Water Act Section 401 Water Quality Certification (WQC) program in Kentucky ensures that activities which may involve a discharge into waters of the Commonwealth which require federal permit or license are consistent with Kentucky's water quality standards in 401 KAR Chapter 5. The Energy and Environment Cabinet has authorized the Department for Natural Resources to issue water quality certifications related to surface coal mining operations. The project may not start until all necessary approvals are obtained. For questions concerning the WQC process, contact the WQC Coordinator at (502)-564-2320.

1. **Applicant Name:** Nally & Hamilton Enterprises, Inc.
   Mailing Address: PO Box 157, 109 South 4th Street, Bardstown, KY 40004

   Contact Person: "Jay" Jerry D. Miller
   Telephone No: (606) 620-6412
   E Mail Address: jmiller@nallyandhamilton.com

2. **Consultant Name & Address:** Summit Architects & Engineers, LLC, PO Box 3007, 160 Lank Branch, KY 41501

   Telephone No. (606) 432-1447
   E Mail Address: bcopley@summit-engr.com

3. **Provide a brief description of the proposed activity and stream impact.**
   Contour Surface Mining with Temporary Stream Crossings

4. **Project Location Information:**

   County Bell ; **USGS Quadrangle Name** Evarts

   Nearest Community & Road Intersection: Cawood / KY 1137 & KY 987

   Longitude 83.652611^0 W **Latitude** 36.818333^0 N **(Approximate center of the project area)**

5. **List the names of all streams affected by the proposed project:** Unnamed Tributaries of Crummies Creek

6. **For each affected watershed provide the acreage above the toe of the lowest permanent structure.**
   See Attached page

7. **For each affected stream provide the linear feet of impact, whether the impact is temporary or permanent and indicate if the stream reach is classified as ephemeral, intermittent, or perennial.**
   See Attached page
   900'

8. **Provide the acreage of wetlands that would be impacted:** 0.0

9. **Beginning at the nearest intersection of two public roads, provide directions to the project site:**

   From Frankfort take US 421 S for 4.5 miles to I 64 E, Take I 75 S in Lexington for 82 miles, Turn onto US 25/25E S at exit 29 for 48 miles, Turn onto US 119 S/ Harlan Rd for 29 miles, Turn onto US 421 S for 11 miles then left onto KY 985, Turn onto KY 3001/KY 9875for 0.5 mile. Turn right onto St Hwy 1137 for 2 miles to site

10. **Has application been submitted to the U.S. Army Corps of Engineers for this project? Yes** X **No** ____. **If yes, indicate type of application:**

    NW 12 ____ **NW 14** X **NW 21** ____ **NW 27** ____ **NW 49** ____
    NW 50 ____ **Individual** ____ **Other** ____

11. **Provide the following permit numbers associated with this mining activity: SMCRA Permit No.** 848-0425**, KPDES No.** Pending

12. **The following attachments must be provided:**

    a. A watershed map showing all ponds and hollowfills to scale with all intermittent, and perennial stream reaches clearly identified.
    b. A 7.5-minute topographic map delineating the proposed project area.
    c. A copy of the complete Compensatory Mitigation Plan

List all other plans and profiles included with this application:

401 Water Quality Certification Pre-Filling Meeting Request Form (previously)
Watershed Map
Topo General Location Map
US COE NWP #14 PCN

I hereby request approval for construction across or along a stream as described in this application and supporting attachments. All of the information provided with this application is true and accurate to the best of my belief and knowledge.

Applicant's Signature:

Scott Hamilton, **Date: 03-24-26**

If signed by applicant's agent, attach power of attorney

SUBMIT APPLICATION AND ATTACHMENTS TO:

WQC COORDINATOR
DIVISION OF MINE PERMITS
#2 HUDSON HOLLOW
FRANKFORT, KENTUCKY 40601

STREAM RESTORATION PLAN

General Description

As part of the proposed project, Nally & Hamilton Enterprises, LLC (Nalley) will construct twenty-one mining seam connectors (SCA-1 thru SCA-18) across unnamed tributaries of Crummies Creek. A Stream Restoration Plan for these crossings is provided below.

Pre-existing Conditions

Prior to developing the stream restoration plan for the road crossings, the physical and chemical characteristics of the unnamed tributary of Crummies Creek were assessed. This information aids in the determination of pre-existing conditions in the watershed, which can be used as a baseline in the development of aquatic habitat restoration plans.

The riparian vegetation in the location of these road crossings is composed of beech and poplar trees. Additionally, a variety of other shrubs and herbaceous species are present.
The unnamed tributaries of Crummies Creek have recently been disturbed by logging activities.

Existing Substrate and Riparian Vegetation

The unnamed tributaries of Crummies Creek have been heavily logged, and log roads traversed the stream in many locations. Therefore, the substrate in these unnamed tributaries consisted of mostly dry cobbles. Typical substrate was pretty much non-existent in the ephemeral unnamed tributaries. The substrate ranged from 12 inch rocks to sand and gravel. The rocks and pebbles were few due to heavy flooding of recent times. There were many portions of the stream that was washed down to bedrock in many places.

The riparian vegetation was sparse in most of these areas due to recent logging by a third party. There were some shrubbery and small trees along the stream banks.

Construction Methods, Timing, and Sequence

Detailed engineering plans have been developed for this project. Included in these designs are:

- Boundaries and approximate existing and proposed grades at the project sites
- The location, size, and design of riparian zones
- Channel design and sizing with surface hydrology
- The best existing substrate material will be removed from the stream beds prior to culvert placement.
  Thes material will be stored by the road embankment to be used for stream restoration.
- Identification of water control structures, including design specifications and operation details (where appropriate)
- Detailed description of the location and design specifications of other structures that may be necessary to execute the mitigation plan.

Reclamation of the road crossing areas, and thus the jurisdictional waters, will follow cessation of operations. The jurisdictional waters to be restored in the location of the pond will be restored only after approval is granted from KDNR.

Proposed Vegetation

The riparian zone will be planted using trees, shrubs, and grasses for a distance of at least 25 feet from the top of the bank on both sides of the mitigation channel. The plantings will start at normal water height (ordinary high-water-mark).The species to be planted are provided below. The native planting will consist of a minimum of 70% woody tree stems and no more than 25% of these trees should be soft mast producers. Woody stems should be irregularly spaced along the corridor and low growing shrubs should be planted between the trees.

RIPARIAN ZONE PLANTING PLAN

Ground Cover (choose at least 4)		
Common Name	**Scientific Name**	**Plant Source Type**
Rice cutgrass	*Leersia oryzoides*	Bare root
Fowl mannagrass	*Glyceria striata*	Sprigs
Spangle grass	*Chasmanthium latifolium*	Seed, bare root
Redtop	*Agrostis stolonifera*	Seed, sod, sprigs
Switchgrass	*Panicum virgatum*	Seed
Annual rye	*Secale cereale*	Seed
Virginia wild rye	*Elymus virginicus*	Seed
Deertongue grass	*Dichanthelim clandestinum*	Seed
Panic grass	*Panicum microcarpon*	Seed, sprigs
Sow seeds 2-5 lbs/acre for each species. Sprigs and bare root plantings should be on 18-24" centers.		
Trees (choose at least 4)		
Common Name	**Scientific Name**	**Plant Source Type**
Pin oak	*Quercus palustris*	Bare root, container
Shellbark hickory	*Carya laciniosa*	Bare root, container
Swamp chestnut oak	*Quercus michauxii*	Bare root, container
Red maple	*Acer rubrum*	Plants
Green ash	*Fraxinus pennsylvanica*	Plants, seed (0.3 oz/acre)
Sycamore	*Plantanus occidentalis*	Plants, cutting, seed (0.03 oz/acre)
Yellow Buckeye	*Aesculus flava*	Plants, seed (12 lb/acre)

Trees should be planted on 8' centers or sown.		
Shrubs (choose at least 3)		
Common Name	**Scientific Name**	**Plant Source Type**
Silky willow	*Salix sericea*	Plants, cuttings
Black willow	*Salix nigra*	Fascines, stakes, poles, brushmats, layering, cuttings, root cutting, plants
Silky dogwood	*Cornus amomum*	Stakes, brushmats, layering, cutting, plants, seed (0.5 oz/acre)
Flowering dogwood	*Cornus florida*	Plants, seed (1.5 oz/acre)
Gray dogwood	*Cornus recemosa*	Stakes, brushmats, layering, cutting, plants, seed (0.6 oz/acre)
Common persimmon	*Diospyros virgniana*	Plants, seed (0.25 oz/acre)
Northern spice bush	*Lindera benzoin*	Plants, seed (1.5 oz/acre)
American plum	*Prunus Americana*	Plants, seed (0.5 lb/acre)
Viburnums	*Viburnum dentatum*	Layering, cuttings, plants
Common elderberry	*Sambucus nigra* ssp. *canadensis*	Plants, seed (0.25 oz/acre)
Shrubs should be planted on 8' centers or sown.		

Allowance for Natural Regeneration

Fertilizer, grass and legume seed, and hydro-mulch will be applied to the exposed banks and floodplain area. The combination of mulch and the selection of grass and ground covers should be sufficient to allow for natural vegetation to re-establish itself. The avoidance of exotic species, both woody and herbaceous, will further promote the succession of native species from adjacent natural seed sources.

Elevations and Slopes

To reduce the immediate threat and long-term potential of degradation, no identified invasive species will be planted in the mitigation sites. Only plant materials commonly used in the region shall be used.

Erosion Control

Best Management Practices shall be used during all phases of construction and restoration:

- To the maximum extent practicable, all work in jurisdictional waters will be performed during low flow.
- Runoff and soil erosion to the watercourse will be controlled and minimized during earthwork operations. Staked straw bales and/or silt fences will be used where necessary.

- Heavy equipment will be operated in such a manner and duration as to minimize resuspension of sediments and disturbance to substrates and bank or riparian vegetation.
- Erosion control blankets should be used to stabilize restored channel banks to the ten-year flood level or top, whichever is lower.
- Removal of existing riparian vegetation should be restricted to the minimum necessary for project construction.
- The rock used for inlet and outlet protection of the culverts would need to remining in the streambed to provide velocity dissipaters for the stream restoration.

Work Plan

The roads are proposed as temporary structures. They will be removed after sufficient growing time following reclamation within its respective watershed. The pond will be removed during dry periods with little or no flow, if practicable. Prior to removal operations, temporary sediment control will be provided by construction of straw bale silt checks with silt fence, if necessary and practicable.

The road embankments will be dewatered by pumping or siphoning or the embankment will be breached to a level above the pipe levels and the impounded water will be allowed to flow into the natural drainway.

The embankment will be pushed back into the existing pool area and graded in such a manner as to not impound any water. During the road embankment removal procedure, care will be taken to conform to appropriate backfilling and grading requirements.

The stream within the restoration area will be re-established to the pre-mining profile configuration and be enhanced by placement of root wads, j-hooks, cross-vanes, etc. The restored stream will have step-pool morphology, which is the natural morphology for streams with gradients in excess of 2% (Rosgen, 1996). The stream channel will be restored to its pre-mining profile, pattern, and dimension. Additionally, the stream riparian zone will be replaced.

The best substrate material excavated during creation of the culverts will be placed in an appropriate location beside the road embankment so that it can be retrieved during the latter stages of stream restoration. Following recreation of the stream channel through the road areas, the best substrate material excavated during creation of the road embankment area in that channel will be used to line the restored channel. Following lining of the channel, the material will be compacted to reduce saturation of material beneath the channel. This will protect against saturation of the restored banks and subsequent erosion and destabilization.

<u>Enhancement Structures – Construction and Application</u>

Cross vanes are to be constructed within the bank full cross-sectional area of the stream reach and should be located in transitional areas between bends of streams. Cross vanes are to be constructed of rock from within the stream channel and adjacent areas when practicable. Shot rock from the mining area may be used if it is non-toxic/non-acidic. Additionally, wood may be used to construct cross vanes. The construction of a cross vane will flush sediment away from the substrate within the streambed and provide pool areas and vertical drops rather than a uniform stream depth.

Random boulders are to be constructed with rock from areas adjacent to the streambed. The random boulders are to be placed within rifles, run, and glides and should be one to two feet in diameter. The placement of the boulders will diversify stream flow patterns and provide additional habitat within the biological community.

An occasional small root wad will be used. Root wads provide immediate bank stabilization, protect the toe of the bank slope, and provide shelter for aquatic species. Root wads collect sediment and debris that will enhance bank structure over time. The root wad will be installed by excavating a trench in the bank deep enough to accommodate the tree bole, placing the bole in the trench, and backfilling the trench. The bole will be embedded at the level of the channel bed and perpendicular to the water flow. The root wad will be submerged or partially submerged below the bank full level.

A minimum 50-foot (25 feet from each bank) riparian buffer will be established using the grass, shrub, and tree species specified above. Revegetation will be performed in a random/scattered method to achieve a density of at least 300 trees and shrubs/acre. Materials such as chicken wire, hardware cloth, or repellants may be used, as necessary, to achieve 80 percent success in areas where wildlife compromise successful revegetation.

The specifications listed below apply to the restoration of the natural stream channels in the locations of the ponds.

- The channels will be constructed so as to have a series of steps and pools. These features will allow for energy dissipation as water moves downstream.

- The goal of this on-site mitigation is to reconstruct jurisdictional waters that mimic the step-pool sequences of natural channels as much as topography and project goals allow.

- The gradient of the reconstructed channel will not change from the pre-mining gradient due to the nature of the impacts. It is important to note that the gradient of the channel determines the rate at which the water in the channel flows which affects a variety of biotic and abiotic characteristics.

- Natural materials (stone and wood) shall be used for reconstruction purposes as is practicable. This plan will avoid artificial channel linings such as concrete or quarry rock, which is uniform in size, shape, and distribution. The use of geotextile cloth may be required in the locations of the root wads.

- During restoration of the channel, substrate will be provided to a depth of approximately 6 inches in each channel. This will consist of materials being non—toxic, non-acidic and durable. The best substrate removed from the existing stream prior to placing the culverts will be recovered and used for substrate in the restored streams.

- A permanent vegetated buffer zone shall be maintained and/or re-established along the channel banks for all disturbed areas within 25 feet of the ordinary high water mark (OHWM) on either side of the channel. Woody vegetation species shall be added or

replaced where necessary to meet this requirement.

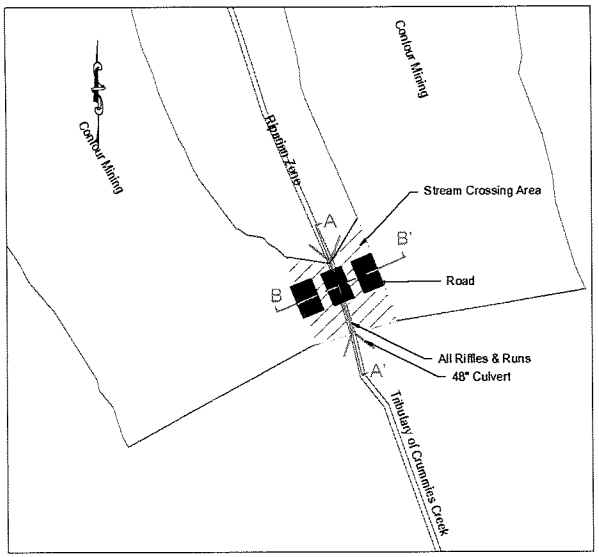
- Sediments shall be removed from the reconstructed channels to the greatest extent practicable. The presence of some soil and sand is acceptable. Work should be performed during low flow conditions only and should proceed in a downstream direction to avoid sediment transport into restored reaches. Equipment to be used may include excavators, spider excavators, track hoes, draglines, gradealls, loaders, dump trucks, pumps, and inflatable dams. Excavated sediment will be hauled to a permitted area, allowed to dry, and then placed into its final configuration. If water must be bypassed around the site during work, water pumps and piping, and cofferdams of earth, gravel, sandbags, hay bales, rubber or other appropriate material may be used. In some cases, a bypass channel is appropriate to isolate a site.

- Upon removal of the road embankments from the channels, it will be placed on the flat areas surrounding the streams. It will not be placed on the slopes above the streams. In the event there is no flat area around the streams, it will be taken away from the pond sites, placed within the permit area, allowed to dry, and covered.

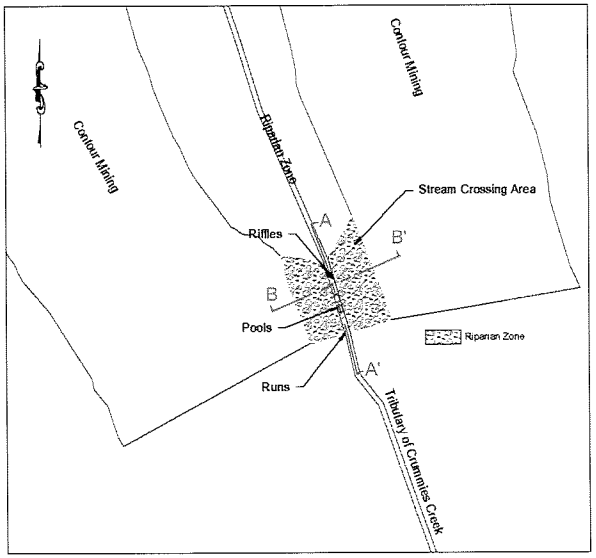
The following table provides the bank full dimensions for the restored stream channel.

BANKFULL DIMENSIONS OF STREAM RESTORATION

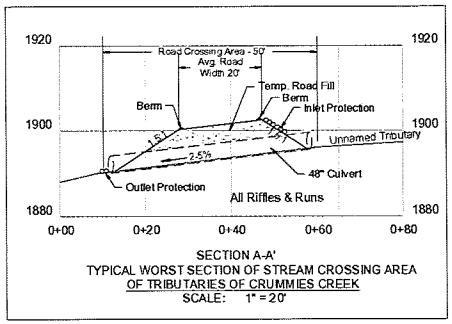
SITE	BANKFULL WIDTH (FT)	MEAN DEPTH (FT)	X-SECTIONAL AREA (FT^2)	WIDTH/DEPTH RATIO	MAXIMUM DEPTH (FT)	WIDTH OF FLOOD PRONE AREA (FT)	ENTRENCHMENT RATIO
Road Crossings & Mining Connectors	Restored to pre-mining profile, pattern, and dimension, as is practicable. See Attached page for more information						



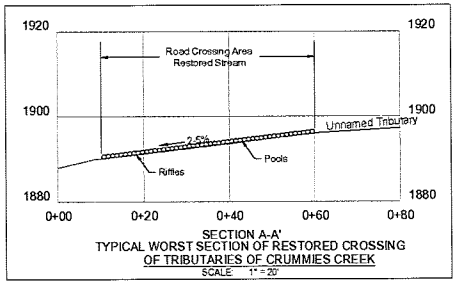
TYPICAL PLAN VIEW DURING MINING
SCALE: 1"=50'



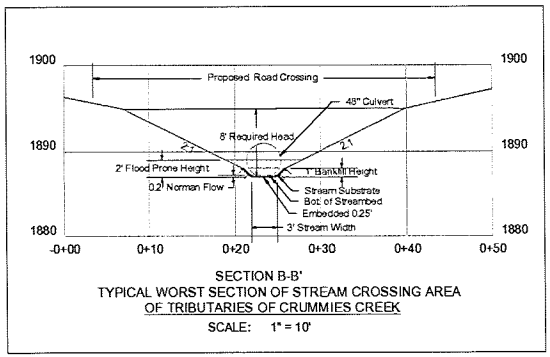
TYPICAL PLAN VIEW POST MINING
SCALE: 1"=50'



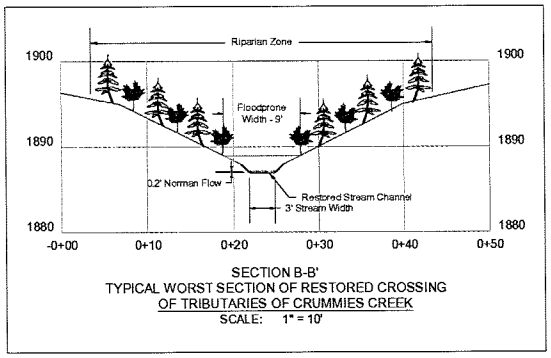
SECTION A-A'
TYPICAL WORST SECTION OF STREAM CROSSING AREA
OF TRIBUTARIES OF CRUMMIES CREEK
SCALE: 1" = 20'



SECTION A-A'
TYPICAL WORST SECTION OF RESTORED CROSSING
OF TRIBUTARIES OF CRUMMIES CREEK
SCALE: 1" = 20'



SECTION B-B'
TYPICAL WORST SECTION OF STREAM CROSSING AREA
OF TRIBUTARIES OF CRUMMIES CREEK
SCALE: 1" = 10'



SECTION B-B'
TYPICAL WORST SECTION OF RESTORED CROSSING
OF TRIBUTARIES OF CRUMMIES CREEK
SCALE: 1" = 10'

DN: cn=Albon W. Meade, o=Summit-AE, ou=Mining/Civil, email=wmeade@summit-ae.com, c=US
Date: 2025.10.16 13:41:05 -04'00'

SIGNATURE REGISTRATION

HEREBY CERTIFY, IN ACCORDANCE WITH 405 KAR 7:040, SECTION 8, THAT THIS DOCUMENT IS CORRECT AS DETERMINED BY ACCEPTED ENGINEERING PRACTICES AND INCLUDES ALL THE INFORMATION REQUIRED OF IT BY KRS CHAPTER 350 AND KAR TITLE 405.

NALLY & HAMILTON ENTERPRISES, INC.
109 SOUTH FOURTH ST., P.O. BOX 157
BARDSTOWN, KY 40004

STREAM RESTORATION PLANS
UNNAMED TRIBUTARIES OF CRUMMIES CREEK

ATTACHMENT_11_6A_SR

SUMMIT

Plot Date: OCTOBER 15 2025 - 8:23AM | SCALE: NOTED | ATT:

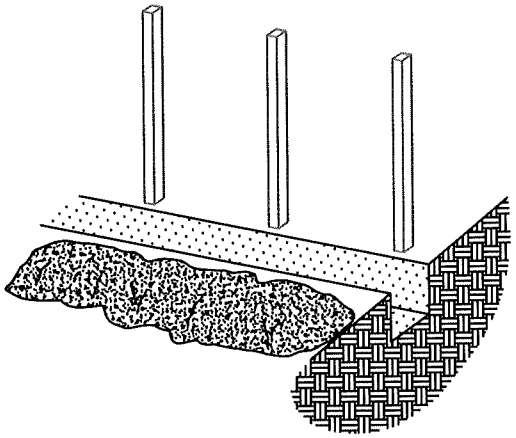
DRAWN BY: C.C | CHK BY: B.C. | APPRVD. BY: W.M. | PAGE NO:

Y:\Nally and Hamilton\848-0425 - Cawood Strip #1\848-0425 NW\DWG\8480425_ST_CROSSING.dwg

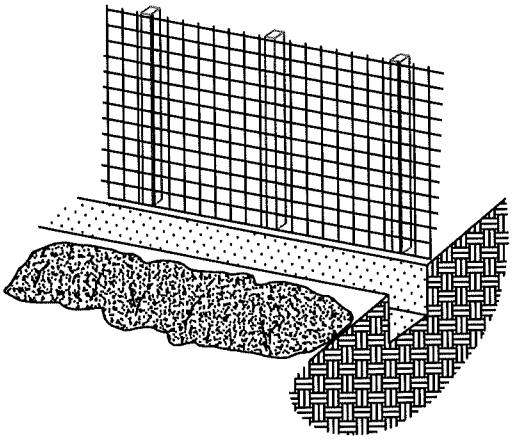
Y:\Nally and Hamilton\848-0425- Cawood Strip #1\848-0425 NW\DWG\8480425_ST_CROSSING.dwg

INSTALLATION PROCEDURES

1.



2.

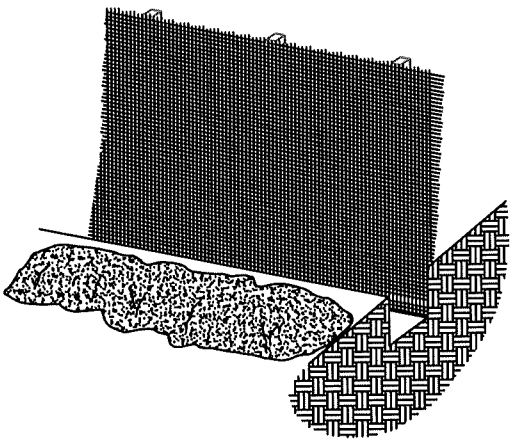


This step not necessary with reinforced cloths

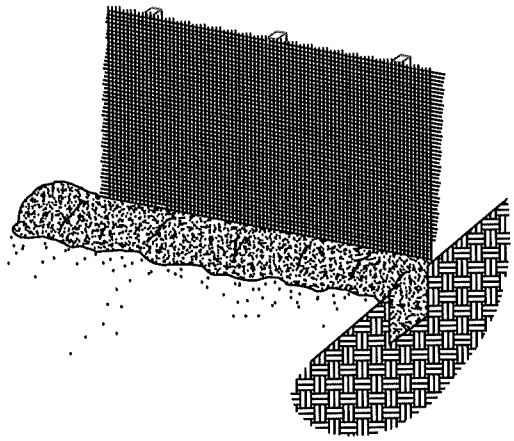
1) Drive fence posts a minimum of 12" deep along fence line. On uphill side of fence, dig a 6"x6" trench along the fence line.

2) If standard strength filter is used, it shall be securely fastened to the upslope side of the fence and extend at least 2" in trench.

3.



4.



3) Attach self supporting filter cloth or a combination of wire fencing and filter cloth to the poles with binding wires or heavy staples.

4) Bury the bottom 6" of fencing in the trench to prevent water from flowing under the fence.

	RGB Resources and Development, LLC 148 Sawdust Hill Premium, KY 41845	SUMMIT ENGINEERING INC. P.O. BOX 3007 PIKEVILLE, KY 41502 (606) 432-1447 Lexington,Ky S. Charleston,Wv
	TYPICAL SEDIMENT CONTROL STRUCTURE SILT FENCES	
Plot Date: 24 MARCH 2026 - 10:54 AM	Scale: N/A / Drawn By: A.T.	Permit No.:848-0425
File Name: Y:\Nally and Hamilton\848-0425- Cawood Strip #1\NW14\Typ Bale & Silt Fence.dwg		

Nally & Hamilton Enterprises, Inc.

Permit Number 848-0425 - Cawood

NWP #14 PCN

Crossing JD Stream	Crossing ID	Stream Name	Location	Culvert Size	Acreage (acres)	Length (ft.)	Width (ft.)	Acreage (acres)	Fill	Latitude	Longitud
13R	SCA-1	Unnamed Trib-Crummie Ck.	Darby seam	2-60"	294.3	50'	3'	0.0028	1.1 Cu. Yds.	36°48'02"	83°10'59"
11R	SCA-2	Unnamed Trib-Crummie Ck.	Wilson seam	2-60"	299.7	50'	3'	0.0028	1.1 Cu. Yds.	36°47'48"	83°11"09"
7R	SCA-3	Unnamed Trib-Crummie Ck.	Darby seam	30"	18.0	50'	3'	0.0028	1.1 Cu. Yds.	36°47'52"	83°11'25"
4R	SCA-4	Unnamed Trib-Crummie Ck.	Wilson seam	48"	79.5	50'	3'	0.0028	1.1 Cu. Yds.	36°47'43"	83°11'50"
2R	SCA-5	Unnamed Trib-Crummie Ck.	Darby seam	48"	52.8	50'	3'	0.0028	1.1 Cu. Yds.	36°47'38"	83°12'03"
1R	SCA-6	Unnamed Trib-Crummie Ck.	Wilson seam	30"	27.9	50'	3'	0.0028	1.1 Cu. Yds.	36°47'33"	83°12'11"
13R	SCA-7	Unnamed Trib-Crummie Ck.	Darby seam	60"	102.7	50'	3'	0.0028	1.1 Cu. Yds.	36°47'02"	83°10'36"
13R	SCA-8	Unnamed Trib-Crummie Ck.	Wilson seam	48"	81.7	50'	3'	0.0028	1.1 Cu. Yds.	36°48'03"	83°10'34"
12R	SCA-9	Unnamed Trib-Crummie Ck.	Darby seam	18"	4.7	50'	3'	0.0028	1.1 Cu. Yds.	36°47'53"	83°10'52"
12R	SCA-10	Unnamed Trib-Crummie Ck.	Wilson seam	18"	1.3	50'	3'	0.0028	1.1 Cu. Yds.	36°47'52"	83°10'52"
11R	SCA-11	Cutshin Hollow of Crummies Ck	Darby seam	48"	82.8	50'	3'	0.0028	1.1 Cu. Yds.	36°47'32"	83°10'52"
11R	SCA-12	Cutshin Hollow of Crummies Ck	Wilson seam	48"	76.0	50'	3'	0.0028	1.1 Cu. Yds.	36°43'31"	83°10'51"
10R	SCA-13	Cutshin Hollow of Crummies Ck	Harlan seam	36"	47.6	50'	3'	0.0028	1.1 Cu. Yds.	36°47'30"	83°11'02"
10R	SCA-14	Cutshin Hollow of Crummies Ck	Harlan seam	36"	45.2	50'	3'	0.0028	1.1 Cu. Yds.	36°47'29"	83°11'01"
4R	SCA-15	Unnamed Trib-Crummie Ck.	Harlan seam	18"	9.8	50'	3'	0.0028	1.1 Cu. Yds.	36°47'32"	83°11'50"
4R	SCA-16	Unnamed Trib-Crummie Ck.	Harlan seam	18"	8.3	50'	3'	0.0028	1.1 Cu. Yds.	36°47'31"	83°11'47"
2R	SCA-17	Unnamed Trib-Crummie Ck.	Harlan seam	18"	8.9	50'	3'	0.0028	1.1 Cu. Yds.	36°47'27"	83°11'58"
2R	SCA-18	Unnamed Trib-Crummie Ck.	Harlan seam	18"	11.0	50'	3'	0.0028	1.1 Cu. Yds.	36°47'26"	83°11'57"
					Total	**900**	**3'**	**0.0504**			

Nally & Hamilton Enterprises, LLC

LRN-2025-00763

Cawood Strip #1 #14 PCN

Direct and Indirect Impacts

The proposed mining operation is to mine three different coal seams by contour and auger methods. This mining will be conducted primarily along the upland contour of the Unnamed Tributaries of Crummies Creek. During this process there are several unnamed tributaries of Crummies Creek the will be crossed during the mining process. To get from one side of the hollow to the other, a road crossing with a culvert is proposed to provide continuous mining along the contour. All of these will have embedded culverts to ensure the substrate can be continuous and no adverse effects on the stream. The culverts are proposed to be large in diameter that would allow aquatic life to pass through. This should not affect the rifle/pool complexes of the affected streams. Each culvert will not exceed 40 feet in length. The culvert being embedded will provide substrate through the short culverts. Each stream crossing will be no longer than 50 feet in length of affected streams. Only the minimal time of culvert placements will the streams be affected. Most of all these streams are usually dry and no effects to the stream would be affected. It will be during the times of low flow that the stream that typically flows, that the culverts be placed in those streams. During the final bond release phase, the culverts will be removed from the stream and the stream bed restored as included in the plans. Temporary sediment control on the downstream side will be implemented during the time of culvert placement and removals. Therefore, only minimal impacts will be on the streams, only during the construction phases.

There are no wetlands in the areas of influence of this project. There were no aquatic resources to be adversely affected for the culvert placements.

Aquatic Life Movements

It is proposed that the culverts be slightly embedded so that the substrate could be reconnected together during a short time after culver placement. With high flows, the small substrate will wash through the culverts and sustain the movement of aquatic movement. Many of these culverts will be in areas that are dry and void of aquatic resources.

DEPARTMENT OF THE ARMY
NASHVILLE DISTRICT, CORPS OF ENGINEERS
REGULATORY DIVISION
3701 BELL ROAD
NASHVILLE, TENNESSEE 37214

October 16, 2025

SUBJECT: File No. LRN-2025-00763; Nally & Hamilton Enterprises, Inc.; Cawood Surface Mine; Cranks, Harlan County, Kentucky

Mr. Stephen Hamilton
Nally & Hamilton Enterprises, Inc.
195 Commercial Drive, Suite 105
London, KY 40744

Dear Mr. Hamilton:

This letter is in regard to the information you provided on July 31, 2025 and updated on September 25, 2025, which documented potential waters of the United States within the proposed mine area known as the Cawood Surface Mine. This project has been assigned File No. LRN-2025-00763, please refer to this number in any future correspondence.

The U.S. Army Corps of Engineers (USACE) has regulatory responsibilities pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). Under Section 10, the USACE regulates any work in, or affecting, navigable waters of the U.S. It appears the review area does not include navigable waters of the U.S. and would not be subject to the provisions of Section 10. Under Section 404, the USACE regulates the discharge of dredged and/or fill material into waters of the U.S., including wetlands.

a. Preliminary Jurisdictional Determination: Based on the September 2-3, 2025 site visits and information provided in the report titled "Cawood Surface Mine Approved Jurisdictional Determination Request", 7 reaches of stream totaling 15,930 linear feet of relatively permanent waters and were documented within the review area. This office has determined these features may be jurisdictional waters of the U.S. in accordance with 33 C.F.R. 331.2 and a PJD has been prepared. The PJD is non-binding, cannot be appealed and only provides a written indication that waters of the U.S., including wetlands, may be present on-site. For purposes of computation of impacts, compensatory mitigation requirements and other resource protection measures, a permit decision made on the basis of a PJD will treat all waters that would be affected in any way by the permitted activity on the site as if they are jurisdictional waters of the

U.S. This determination is only valid for the "PJD Review Area" shown on the attached map entitled "Figure 1: LRN-2025-00763", attached to this letter.

Enclosed with this letter is a copy of the PJD. If you agree with the findings of this PJD and understand your options regarding the same, please sign and date the form and return it to this office within 30 days of receipt of this letter. You should submit the signed copy to the following address:

US Army Corps of Engineers
Nashville District
3701 Bell Road
Nashville, TN 37214
Attn: Kari Weaver

b. Approved Jurisdictional Determination: Also enclosed is an approved jurisdictional determination for aquatic resources identified within the review area. The rationale for this determination is provided in the attached Approved Jurisdictional Determination form. This approved jurisdictional determination expires five years from the date of this letter, unless new information warrants revision of the determination before the expiration date, or the District Engineer identifies specific geographic areas with rapidly changing environmental conditions that merit re-verification on a more frequent basis. This approved jurisdictional determination is only valid for the "AJD Review Area" as shown on the enclosed map labeled "Figure 2: LRN-2025-00763".

The delineation included herein has been conducted to identify the location and extent of the aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of an NRCS Certified Wetland Determination with the local USDA service center, prior to starting work.

If you object to this decision, you may request an administrative appeal under USACE regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeals Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this decision you must submit a completed RFA form to the Great Lakes and Ohio River Division, Division Office at the following address:

Regulatory Appeal Review Officer
ATTN: Ms. Suzanne Chubb
Army Engineer Division
550 Main Street, Room 10-714

Cincinnati, OH 45202-3222
TEL (513) 218-1243
E-mail: suzanne.l.chubb@usace.army.mil

In order for an RFA to be accepted by the USACE, the USACE must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days (December 14, 2025) of the date listed on the RFA form. **It is not necessary to submit an RFA form to the Division Office if you do not object to the decision in this letter.**

We appreciate your awareness of the USACE regulatory program. If you have any questions, you may contact me or Kari Weaver at (629) 295-7537 or by e-mail at Kari.A.Weaver@usace.army.mil.

Sincerely,

William E Worrall, P.E.
Chief, Technical Services Branch
Regulatory Division

U.S. Army Corps of Engineers (USACE)

PRELIMINARY JURISDICTIONAL DETERMINATION (PJD)

For use of this form, see Sec 404 CWA, Sec 10 RHA, Sec 103 MPRSA; the proponent agency is CECW-COR.

Form Approved - OMB No. 0710-0024 Expires 2024-04-30

DATA REQUIRED BY THE PRIVACY ACT OF 1974

Authority Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Program of the U.S. Army Corps of Engineers; Final Rule for 33 CFR Parts 320-332.

Principal Purpose The information that you provide will be used in evaluating your request to determine whether there are any aquatic resources within the review area that may be subject to federal jurisdiction under the regulatory authorities referenced above.

Routine Uses This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public, and may be made available as part of a public notice or FOIA request as required by federal law. Your name and property location where federal jurisdiction is to be determined will be included in any resulting jurisdictional determination (JD), which may be made available to the public on the District's website and/or on the Headquarters USACE website.

Disclosure Submission of requested information is voluntary; however, if information is not provided, the request for a JD cannot be evaluated nor can a PJD be issued.

The Agency Disclosure Notice (ADN)

The public reporting burden for this collection of information, 0710-0024, is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or burden reduction suggestions to the Department of Defense, Washington Headquarters Services, at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

SECTION I - BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PJD: 2025-10-16

B. NAME AND ADDRESS OF PERSON REQUESTING PJD:
Byrd Copley
c/o Nally & Hamilton Enterprises Inc.
160 Lank Branch
Pikeville, KY 41501

C. DISTRICT OFFICE, FILE NAME, AND NUMBER:
Nashville District
Cawood Surface Mine
LRN-2025-00763

D. PROJECT LOCATION AND BACKGROUND INFORMATION:
(USE THE TABLE BELOW TO DOCUMENT MULTIPLE AQUATIC RESOURCES AND/OR AQUATIC RESOURCES AT DIFFERENT SITES)

State: Kentucky County/Parish/Borough: Harlan City: Cranks

Center coordinates of site (*lat/long in degree decimal format*): Latitude: 36.79915 ° Longitude: -83.18856 °

Universal Transverse Mercator: 17

Name of nearest waterbody: Crummies Creek

E. REVIEW PERFORMED FOR SITE EVALUATION (*CHECK ALL THAT APPLY*):

☒ Office (*Desk*) Determination. Date: 9/29/2025

☒ Field Determination

Date(s): September 2-3, 2025

TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH "MAY BE" SUBJECT TO REGULATORY JURISDICTION.

	Site Number	Latitude (*decimal degrees*)	Longitude (*decimal degrees*)	Estimated amount of aquatic resource in review area (*acreage and linear feet, if applicable*)	Type of aquatic resource (*i.e., wetland vs. non-wetland waters*)	Geographic authority to which the aquatic resource "may be" subject (*i.e., Section 404 or Section 10/404*)

	Site Number	Latitude (*decimal degrees*)	Longitude (*decimal degrees*)	Estimated amount of aquatic resource in review area (*acreage and linear feet, if applicable*)	Type of aquatic resource (*i.e., wetland vs. non-wetland waters*)	Geographic authority to which the aquatic resource "may be" subject (*i.e., Section 404 or Section 10/404*)
	1R	36.789939	-83.202301	2,140 LF	RPW	Section 404
	7R	36.796674	-83.190119	490 LF	RPW	Section 404
	11R	36.791416	-83.179905	3,610 LF	RPW	Section 404
	12R-1	36.797367	-83.180094	935 LF	RPW	Section 404
	13R	36.801294	-83.174901	3,050 LF	RPW	Section 404
	8L	36.810351	-83.182954	4,175 LF	RPW	Section 404
	9L	36.810305	-83.183010	1,530 LF	RPW	Section 404

1) The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.

2) In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD or no JD whatsoever, which do not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the USACE has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD or reliance on no JD whatsoever; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of USACE permit authorization based on a PJD or no JD whatsoever constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the USACE will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there *"may be"* waters of the U.S. and/or that there *"may be"* navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

F. SUPPORTING DATA. Data reviewed for PJD (*check all that apply*)

Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:

☒ Maps, plans, plots or plat submitted by or on behalf of the PJD requestor:

Map: Provided in report titled, "Cawood surface Mine JD Request" received 7/31/2025. Updated map and feature table received 9/25/2025

☐ Data sheets prepared/submitted by or on behalf of the PJD requestor.

☐ Office concurs with data sheets/delineation report.

☒ Office does not concur with data sheets/delineation report.

Rationale: Please see Section a.V of the AJD MFR. USACE concurs with the delineation map received on 9/25/2025.

☐ Data sheets prepared by the USACE:

N/A

☐ Corps navigable waters' study:

N/A

☐ U.S. Geological Survey Hydrologic Atlas:

N/A

☒ USGS NHD data.

☒ USGS 8 and 12 digit HUC maps.

☒ U.S. Geological Survey map(s). Cite scale & quad name:

7.5mn: Harlan

☐ USDA Natural Resources Conservation Service Soil Survey.

Citation: N/A

☒ National Wetlands Inventory map(s).

Cite Name:

☐ State/Local Wetland Inventory map(s):

N/A

☐ FEMA/FIRM maps:

N/A

☐ 100-year Floodplain Elevation is: N/A . (National Geodectic Vertical Datum of 1929)

☒ Photographs: ☒ Aerial (*Name & Date*): ESRI 2022 Aerial Imagery

or ☒ Other (*Name & Date*): Consultant photographs from site visits on 5-7-25, 5-9-25, 5-22-25, 5-23-25, and 6-13-25. USACE photographs from 9-2-25 and 9-3-25 site visit.

☒ Previous determination(s). File no. and date of response letter:

LRN-2020-00062 - Cranks Creek project, documenting the headwaters of Cutshin Hollow.

☐ Other information (*please specify*):

N/A

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the USACE and should not be relied upon for later jurisdictional determinations.

Name of Regulatory Staff Member Completing PJD	Date	Signature of Regulatory Staff Member Completing PJD
Kari A. Weaver	2025-10-16	WEAVER.KARI.ANNE.1602891468 Digitally signed by WEAVER.KARI.ANNE.1602891468 Date: 2025.10.16 14:17:12 -05'00'

Name of Person Requesting PJD	Date	Signatureof Person Requesting PJD *(REQUIRED, unless obtaining the Signature is Impracticable*

[1] Districts may establish timeframes for requester to return signed PJD forms. If the requester does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NASHVILLE DISTRICT
3701 BELL ROAD
NASHVILLE TENNESSEE 37214

CELRN-RDT

October 16, 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023),[1] LRN-2025-00763, MFR 1 of 1[2]

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.[3] AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.[4]

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),[5] the 2023 Rule as amended,

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[1] While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.
[2] When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), the Corps will use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. An identifier to indicate when there are multiple MFRs associated with a single AJD request will be used (i.e., 1, 2, 3).
[3] 33 CFR 331.2.
[4] Regulatory Guidance Letter 05-02.
[5] USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

   a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

      i. 2R Reach 1 is a water of the United States (Section 404)
      ii. 2R Reach 2 is a water of the United States (Section 404)
      iii. 4R is a water of the United States (Section 404)
      iv. 10R Reach 1 is a water of the United States (Section 404)
      v. 10R Reach 2 is a water of the United States (Section 404)
      vi. 1R-1 **is not** a water of the United States
      vii. 3R **is not** a water of the United States
      viii. 10R-1 **is not** a water of the United States
      ix. 11R-1 **is not** a water of the United States
      x. 12R **is not** a water of the United States
      xi. 14R **is not** a water of the United States
      xii. 4L **is not** a water of the United States

2. REFERENCES.

   a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")

   b. Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023)

   c. Sackett v. EPA, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The AJD review area includes the proposed permit boundary as shown on Figure 1 near Cranks, Harlan County, Kentucky (36.79915, -83.18856). The site has been used historically for surface mining and logging. USACE reviewed only the portions of the site labeled 'AJD Review Area' and 'PJD Review Area' on the attached figures labeled Figure 1: LRN-2025-00763 and Figure 2: LRN-2025-00763.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Cumberland River

Prior to the determination and listing of the Nashville District's navigable waters, detailed navigability studies were performed throughout the Nashville District to determine which waters meet the navigable waters definition found in 33 CFR Part 329. These studies are available for review in the Nashville District office. Upon completion of these navigability studies, the Nashville District issued Public Notice #86-23, dated May 8, 1986, listing all navigable waters within the district. The complete list of navigable waters can be found on the district's website at https://www.lrn.usace.army.mil/Missions/Regulatory/Navigable-Waters-List/.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

<table>
<tr><th>Resource Name</th><th colspan="3">Flows Into</th><th>Section 10</th></tr>
<tr><td>1R-1</td><td colspan="2">1R</td><td rowspan="14">Crummies Creek</td><td rowspan="14">Martins Fork Cumberland River</td></tr>
<tr><td>2R, Reach 1</td><td colspan="2" rowspan="2">2R, Reach 2</td></tr>
<tr><td>3R</td></tr>
<tr><td colspan="3">4R</td></tr>
<tr><td colspan="3">7R</td></tr>
<tr><td>10R-1</td><td rowspan="2">10R, Reach 2</td><td rowspan="2">11R</td></tr>
<tr><td>10R, Reach 1</td></tr>
<tr><td>11R-1</td><td colspan="2">11R</td></tr>
<tr><td>12R</td><td colspan="2">13R</td></tr>
<tr><td colspan="3">14R</td></tr>
<tr><td colspan="3">4L</td></tr>
<tr><td>9L</td><td colspan="2">8L</td></tr>
</table>

6. SECTION 10 JURISDICTIONAL WATERS[6]: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.[7] N/A

[6] 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.
[7] This MFR is not a determination that the water is a navigable water of the United States. Procedures to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA are outlined in 33 CFR part 329.14.

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

   a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A

   b. The Territorial Seas (a)(1)(ii): N/A

   c. Interstate Waters (a)(1)(iii): N/A

   d. Impoundments (a)(2): N/A

   e. Tributaries (a)(3):

The features described in the below table are natural, man altered, or man-made water bodies that flow directly or indirectly into (a)(1)(i)-(iii) waters or (a)(2) impoundments. See Section 5 for flow path information. These tributaries have been determined to meet the relatively permanent standard. The tributaries have flowing or standing water year round or continuously during certain times of year. The OHWM (Ordinary High Water Mark) represents the lateral limits of jurisdiction of the tributaries per 33CFR328.4. The OHWMs were determined using field indicators in RGL 05-05. The upstream and downstream limits of these tributaries are identified on the attached Figure 1. The flow regimes are based on multiple observations and data. USACE determined that the downstream limit of the tributaries best represent the overall flow regime for each of the reaches discussed below.		
Resource Name	Size	Rationale
2R Reach 1	1,538 LF	This tributary is a 1st order stream and had strong indicators of relatively permanent flow at the downstream limit of the tributary before reaching 2R Reach 2. 2R Reach 1 was determined to be 58% relatively permanent waters (RPW) (893 LF) and 42% non-relatively permanent waters (NRPW) (645 LF). 2R Reach 1 was

		determined to be a relevant reach from the headwater to the confluence with 2R-Reach 2. USACE reviewed the entirety of the reach. This determination is supported by surface flow, pooling, and saturation, observed in the downstream portion of the of the tributary during the September 2-3, 2025 site walk in addition to documentation provided by Summit indicating the downstream portion of the reach is a RPW. Baseflow was observed during the site visit. During the September 2-3, 2025 site walk USACE also observed the following OHWM indicators: strong bed and bank, sorting, wracking, disturbance of leaf litter, and destruction of terrestrial vegetation, scour, and changes in the character of the soil were observed within the channel. Based on the direct observations noted above, climatic conditions discussed in this form and within the administrative record, and documentation provided by Summit, USACE has determined utilizing a weight of evidence approach that the feature from the headwater to the downstream confluence with 2R Reach 2, is a RPW feature which flows at least seasonally. Based on the information above we have determined that the resource meets the definition of "waters of the United States".
2R Reach 2	1,207 LF	This tributary is a 2nd order stream and had strong indicators of relatively permanent flow at the downstream limit of the tributary before reaching Crummies Creek. The flow regime remained consistent throughout the entirety (100%) of the reach. 2R Reach 2 begins at the confluence of 2R Reach 1 and 3R and was determined to be a relevant reach to the confluence with Crummies Creek. USACE reviewed the entirety of the reach. This determination is supported by observations of surface flow, baseflow, pooling, saturation, and iron oxidizing bacteria observed during the September 2-3, 2025 site walk indicating relative permanence, and

		channel development documentation provided by Summit indicating the reach is RPW. The following OHWM indicators were also observed: strong bed and bank, sorting, wracking, disturbance of leaf litter, destruction of terrestrial vegetation, scour, and changes in the character of the soil were observed within the channel. Based on the direct observations noted above, climatic conditions discussed in this form and within the administrative record, and documentation provided by Summit, USACE has determined utilizing a weight of evidence approach that the feature from the start of the reach to the downstream confluence with Crummies Creek has relatively permanent flow. Based on the information above we have determined that the resource meets the definition of "waters of the United States".
4R	2,005 LF	This tributary is a 1st order stream and had strong indicators of relatively permanent flow at the downstream limit of the tributary before reaching Crummies Creek. 4R was determined to be 70% RPW (1400 LF) and 30% NRPW (605 LF). 4R was determined to be a relevant reach from the headwater to the confluence with Crummies Creek. USACE relied on documentation provided by Summit. This determination is supported by surface flow, pooling, and saturation, observed in the downstream portion of the of the tributary according to documentation provided by Summit indicating the downstream portion of the reach is a RPW. Based on information provided by Summit, the following OHWM indicators were present: strong bed and bank, sorting, wracking, disturbance of leaf litter, and destruction of terrestrial vegetation, scour, and changes in the character of the soil. Based on the observations noted above, climatic conditions discussed in this form and within the administrative record, and documentation provided by

		Summit, USACE has determined utilizing a weight of evidence approach that the feature from the headwater to the downstream confluence with Crummies Creek, inside and outside of the review area, is a RPW feature which flows at least seasonally. Based on the information above we have determined that the resource meets the definition of "waters of the United States".
10R Reach 1	1,225 LF	This tributary is a 1st order stream and had strong indicators of relatively permanent flow at the downstream limit of the tributary before reaching 10R Reach 2. 10R Reach 1 was determined to be 80% RPW (980 LF) and 20% NRPW (245 LF). 10R Reach 1 was determined to be a relevant reach from the headwater to the confluence with 10R-1. USACE reviewed the entirety of the reach. This determination is supported by surface flow, pooling, and saturation, observed in the downstream portion of the of the tributary during the September 2-3, 2025 site walk in addition to documentation provided by Summit indicating the downstream portion of the reach is a RPW. Baseflow was observed during the site visit. During the September 2-3, 2025 site walk USACE also observed the following OHWM indicators: strong bed and bank, sorting, wracking, disturbance of leaf litter, and destruction of terrestrial vegetation, scour, and changes in the character of the soil were observed within the channel. Based on the direct observations noted above, climatic conditions discussed in this form and within the administrative record, and documentation provided by Summit, USACE has determined utilizing a weight of evidence approach that the feature from the headwater to the downstream confluence with 10R Reach 2, inside and outside of the review area, is a RPW feature which flows at least seasonally. Based on the information above we have determined that the resource meets the definition of "waters of the United States".
10R Reach 2	200 LF	This tributary is a 2nd order stream and had strong indicators of relatively permanent flow at the downstream

		limit of the tributary before reaching 11R. The flow regime remained consistent throughout the entirety (100%) of the reach. 10R Reach 2 begins at the confluence of 10R Reach 1 and 10R-1 and was determined to be a relevant reach to the confluence with 11R. USACE reviewed the entirety of the reach. This determination is supported by observations of surface flow, baseflow, pooling, saturation, and iron oxidizing bacteria observed during the September 2-3, 2025 site walk indicating relative permanence, and channel development documentation provided by Summit indicating the reach is RPW. The following OHWM indicators were also observed: strong bed and bank, sorting, wracking, disturbance of leaf litter, destruction of terrestrial vegetation, scour, and changes in the character of the soil were observed within the channel. Based on the direct observations noted above, climatic conditions discussed in this form and within the administrative record, and documentation provided by Summit, USACE has determined utilizing a weight of evidence approach that the feature from the start of the reach to the downstream confluence with 11R has relatively permanent flow. Based on the information above we have determined that the resource meets the definition of "waters of the United States".

f. Adjacent Wetlands (a)(4): N/A

g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not "waters of the United States" even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature

within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).[8] N/A

b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

The features listed in the below table are natural, man altered, or manmade water bodies that flow directly or indirectly into (a)(1)(i)-(iii) waters or (a)(2) impoundment. The tributaries have been determined to not meet the relatively permanent standard. These tributaries generally flow for a short duration in direct response to precipitation. The OHWM (Ordinary High Water Mark) represents the lateral limits of jurisdiction of the tributaries per 33CFR328.4. The OHWMs were determined using field indicators in RGL 05-05. The upstream and downstream limits of the tributaries are identified on the attached figure. The flow regimes were based on multiple observations and USACE determined that the downstream limit of the tributaries best represent the overall flow regime for each of the reaches discussed below.

Resource Name	Size	Rationale
1R-1	705 LF	This tributary is a 1st order stream and had strong indicators of non-relatively permanent flow at the downstream limit of the tributary before reaching 1R and the flow regime remained consistent throughout the entirety (100%) of the reach. This determination is supported by USACE field observation on September 2-3, 2025 and documentation provided by Summit. USACE reviewed the entirety of the reach. The stream channel had a moderately defined bed and bank and ordinary high-water mark (OHWM), including presence of fibrous roots in the stream bed, along with wracking, some sediment sorting, and disturbed leaf litter. The feature lacked evidence of seasonal flow as it had no indicators of subsurface flow nor groundwater connection, which included upland soils within the stream bed, no macroinvertebrates and no other aquatic organisms.

[8] 88 FR 3004 (January 18, 2023)

		These factors indicate that the feature only flows in direct response to precipitation. Based on the direct observations noted above, climatic conditions discussed in this form and within the administrative record, and documentation provided by Summit, USACE has determined that this stream does not have relatively permanent flow based on the moderately defined channel, indicating infrequent flow events. Based on the information above, we have determined that the subject resource does not meet the definition of "waters of the United States".
3R	795 LF	This tributary is a 1st order stream and had strong indicators of non-relatively permanent flow at the downstream limit of the tributary before reaching 2R Reach 1 and the flow regime remained consistent throughout the entirety (100%) of the reach. This determination is supported by USACE field observation on September 2-3, 2025 and documentation provided by Summit. USACE reviewed the entirety of the reach. The stream channel had a moderately defined bed and bank and ordinary high-water mark (OHWM), including presence of fibrous roots in the stream bed, along with wracking, some sediment sorting, and disturbed leaf litter. The feature lacked evidence of seasonal flow as it had no indicators of subsurface flow nor groundwater connection, which included upland soils within the stream bed, no macroinvertebrates and no other aquatic organisms. These factors indicate that the feature only flows in direct response to precipitation. Based on the direct observations noted above, climatic conditions discussed in this form and within the administrative record, and documentation provided by Summit, USACE has determined that this stream does not have relatively permanent flow based on the moderately defined channel, indicating infrequent flow events. Based on the information above, we have determined that the subject resource does not meet the definition of "waters of the United States".

10R-1	1191 LF	This tributary is a 1st order stream and had strong indicators of non-relatively permanent flow at the downstream limit of the tributary before reaching 10R Reach 1 and the flow regime remained consistent throughout the entirety (100%) of the reach. This determination is supported by USACE field observation on September 2-3, 2025 and documentation provided by Summit. USACE reviewed the entirety of the reach. The stream channel had a moderately defined bed and bank and ordinary high-water mark (OHWM), including presence of fibrous roots in the stream bed, along with wracking, some sediment sorting, and disturbed leaf litter. The feature lacked evidence of seasonal flow as it had no indicators of subsurface flow nor groundwater connection, which included upland soils within the stream bed, no macroinvertebrates and no other aquatic organisms. These factors indicate that the feature only flows in direct response to precipitation. Based on the direct observations noted above, climatic conditions discussed in this form and within the administrative record, and documentation provided by Summit, USACE has determined that this stream does not have relatively permanent flow based on the moderately defined channel, indicating infrequent flow events. Based on the information above, we have determined that the subject resource does not meet the definition of "waters of the United States".
11R-1	215 LF	This tributary is a 1st order stream and had strong indicators of non-relatively permanent flow at the downstream limit of the tributary before reaching 11R and the flow regime remained consistent throughout the entirety (100%) of the reach. This determination is supported by USACE field observation on September 2-3, 2025 and documentation provided by Summit. USACE reviewed the entirety of the reach. The stream channel had a moderately defined bed and bank and ordinary high-water mark (OHWM), including

		presence of fibrous roots in the stream bed, along with wracking, some sediment sorting, and disturbed leaf litter. The feature lacked evidence of seasonal flow as it had no indicators of subsurface flow nor groundwater connection, which included upland soils within the stream bed, no macroinvertebrates and no other aquatic organisms. These factors indicate that the feature only flows in direct response to precipitation. Based on the direct observations noted above, climatic conditions discussed in this form and within the administrative record, and documentation provided by Summit, USACE has determined that this stream does not have relatively permanent flow based on the moderately defined channel, indicating infrequent flow events. Based on the information above, we have determined that the subject resource does not meet the definition of "waters of the United States".
12R	2,045 LF	This tributary is a 1st order stream determined to be 76% NRPW (1545 LF) and 24% RPW (500 LF). The upper reach of this stream had strong indicators of non-relatively permanent flow. The NRPW portion of this tributary transitions to RPW where flowing water and iron oxidizing bacteria were observed. This determination is supported by USACE field observation on September 2-3, 2025 and documentation provided by Summit. USACE reviewed the entirety of the reach. The stream channel had a moderately defined bed and bank and ordinary high-water mark (OHWM), including presence of fibrous roots in the stream bed, scour, along with wracking, some sediment sorting, and disturbed leaf litter. The upper portion of this feature lacked evidence of seasonal flow as it had no indicators of subsurface flow nor groundwater connection, upland soils within the stream bed, no macroinvertebrates and no other aquatic

		organisms. These factors indicate that the NRPW portion of this feature only flows in direct response to precipitation. Based on the direct observations noted above, climatic conditions discussed in this form and within the administrative record, and documentation provided by Summit, USACE has determined utilizing a weight of evidence approach that the majority of this stream (~76%) does not have relatively permanent flow based on the moderately defined channel, indicating infrequent flow events, and the lack of aquatic organisms which require seasonal or year-round flow. Therefore, the reach is determined to have non-relatively permanent flow. Based on the information above, we have determined that the subject resource does not meet the definition of "waters of the United States".
14R	855 LF	This tributary is a 1st order stream determined to be 53% NRPW (455 LF) and 47% RPW (400 LF). The upper reach of this stream had strong indicators of non-relatively permanent flow. The NRPW portion of this tributary transitions to RPW at a seep where a groundwater connection was observed. This determination is supported by USACE field observation on September 2-3, 2025 and documentation provided by Summit. USACE reviewed the entirety of the reach. The stream channel had a moderately defined bed and bank and ordinary high-water mark (OHWM), including presence of fibrous roots in the stream bed, scour, along with wracking, some sediment sorting, and disturbed leaf litter. The upper portion of this feature lacked evidence of seasonal flow as it had no indicators of subsurface flow nor groundwater connection, upland soils within the stream bed, no macroinvertebrates and no other aquatic organisms. These factors indicate that the NRPW portion of this feature only flows in direct response to precipitation.

		Based on the direct observations noted above, climatic conditions discussed in this form and within the administrative record, and documentation provided by Summit, USACE has determined utilizing a weight of evidence approach that the majority of this stream (~53%) does not have relatively permanent flow based on the moderately defined channel, indicating infrequent flow events, and the lack of aquatic organisms which require seasonal or year-round flow. Therefore, the reach is determined to have non-relatively permanent flow. Based on the information above, we have determined that the subject resource does not meet the definition of "waters of the United States".
4L	100 LF	This tributary is a 1st order stream and had strong indicators of non-relatively permanent flow at the downstream limit of the tributary before reaching Crummies Creek and the flow regime remained consistent throughout the entirety (100%) of the reach. This determination is supported by USACE field observation on September 2-3, 2025 and documentation provided by Summit. USACE reviewed the entirety of the reach. The stream channel had a weakly defined bed and bank and ordinary high-water mark (OHWM), including presence of fibrous roots in the stream bed, along with some sediment sorting, and disturbed leaf litter. The feature lacked evidence of seasonal flow as it had no indicators of subsurface flow nor groundwater connection, which included upland soils within the stream bed, no macroinvertebrates and no other aquatic organisms. These factors indicate that the feature only flows in direct response to precipitation. Based on the direct observations noted above, climatic conditions discussed in this form and within the administrative record, and documentation provided by Summit, USACE has determined that this stream does not have relatively permanent flow based on the weakly defined channel, indicating infrequent flow events. Based on the information above, we have determined that the

		subject resource does not meet the definition of "waters of the United States".

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

   a. Consultant report dated July 31, 2025
      I. Field photos (consultant field visit conducted May 7, 2025, May 9, 2025, May 22, 2025, May 23, 2025, and June 13, 2025)
      II. Feature Description Narratives
      III. Topographic Map
      IV. Watershed Map
      V. USACE disagreed with the jurisdictional assertions documented in the consultants' report of features 1R, 2R, 3R, 4R, 7R, 10R, 11R, 12R, and 14R, as headwater points were not correctly identified in the report. Additionally, four previously unmapped features were identified during the USACE field visit conducted on September 2-3, 2025 (1R-1, 10R-1, 11R-1, and 12R-1).

   b. Data provided by the consultant at later dates:
      I. Updated map, received September 25, 2025, addressing the discrepancies outlined in Section a.V above. This map was utilized for the AJD.

   c. USACE field visit conducted September 2-3, 2025
      I. Field Verification Photos
      II. Site Visit Notes
      III. APT, dated September 3, 2025: USACE utilized a USACE generated APT report which indicated normal conditions during the 90-day rolling average preceding the September 2-3, 2025 site visit. USACE determined that the site conditions on the day of the site visits were "normal" in the dry season and that the ordinary high water mark indicators were representative of the streams' normal condition. The observations did not seem to be heavily altered by drought conditions or unduly influenced by large flood events.
      IV. All the above aquatic features were considered together with the site visit observations and a review of the climatic data to determine the appropriate flow and jurisdictional determinations for the features listed above. A weight of evidence approach has been utilized.

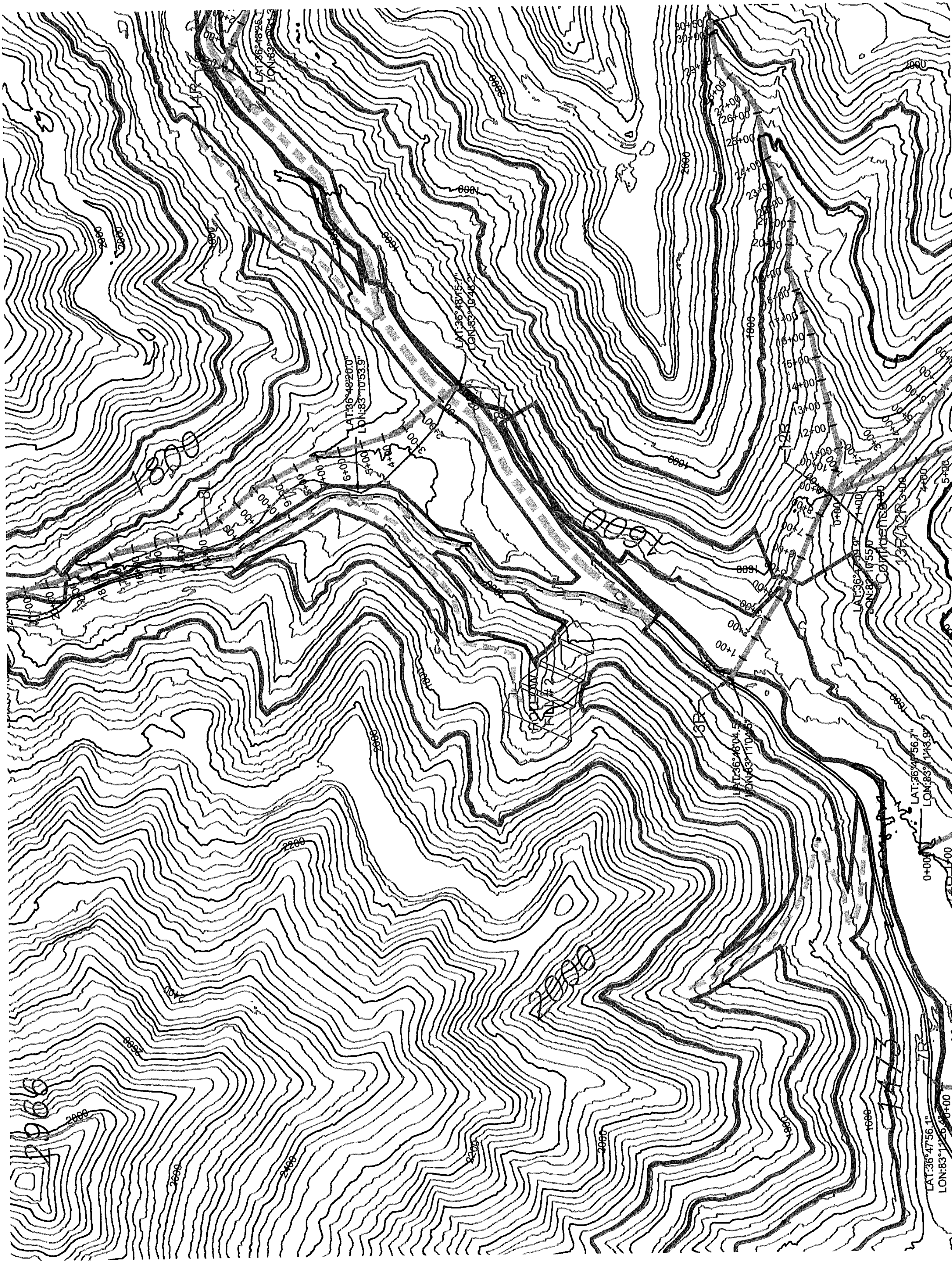
   d. National Regulatory Viewer Layers accessed September 29, 2025
      I. National Wetland Inventory

II. National Hydrography Dataset
III. USA Soils Map Units
IV. 3DEP Digital Elevation Model (DEM)
V. 3DEP Hill Shade

10. OTHER SUPPORTING INFORMATION.
    a. Headquarters Field Memos
        i. "Memorandum on MVS-2023-00288"
        Specifically, the Nashville District utilized the portion of the memorandum which stated that districts should follow the guidance in the preamble to the January 2023 rule which stated in part:

        "To determine the flow characteristics of a tributary for purposes of implementing this rule, the agencies will evaluate the entire reach of the tributary that is of the same Strahler stream order (i.e., from the point of confluence, where two lower order streams meet to form the tributary, downstream to the point such tributary enters a higher order stream; see Technical Support Document section IV.A.ii.1)... Consistent with the pre-2015 regulatory regime, the agencies will assess the flow characteristics of a particular tributary at the farthest downstream limit of such tributary (i.e., the point the tributary enters a higher order stream). Rapanos Guidance at 6 n.24. Where data indicate the flow characteristics at the downstream limit are not representative of the entire reach of the tributary, the flow characteristics that best characterize the entire tributary reach will be used."

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.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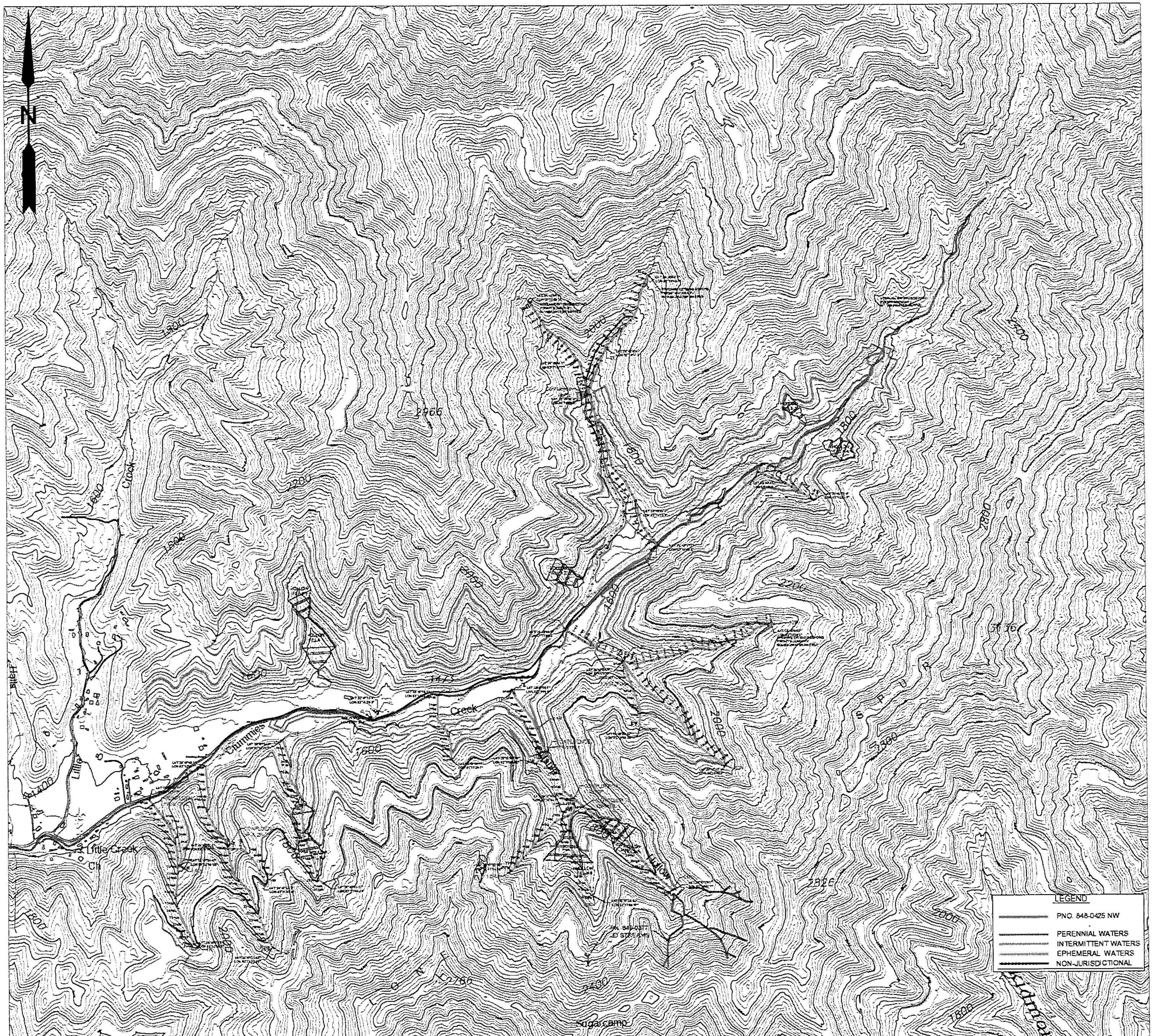

DRAWN BY: S.A.	NALLY & HAMILTON ENTERPRISES, INC. 103 SOUTH FOURTH ST., P.O. BOX 157 BARDSTOWN, KY 40004
CHECKED BY: B.C.	JD Determination Map
APPROVED BY: A.W.M.	Crummies Creek
PER. NO: 848-0425 NW	Cawood Strip #1

SUMMIT

SCALE: 1" = 500'

ATTACHMENT:

SHEET:

OF:

U.S. Army Corps of Engineers (USACE)

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

For use of this form, see Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, and Section 103 of the Marine Protection, Research, and Sanctuaries Act; the proponent agency is CECW-COR.

Form Approved -
OMB No. 0710-0003
Expires 2027-10-31

DATA REQUIRED BY THE PRIVACY ACT OF 1974

Authority	The authorities for requesting this information are Sections 9, 10, 13, and 14, Rivers and Harbors Act of March 3, 1899; Section 404, Clean Water Act; and Section 103 Marine Protection Research and Sanctuaries Act of 1972.
Principal Purpose	This information serves as notification to affected parties regarding the USACE administrative appeal options and process, as well as to facilitate requests for appeal of USACE decisions with which they disagree.
Routine Uses	Routine uses will include: (a) To serve as notification to affected parties of the Corps administrative appeal options and process and to facilitate requests for appeal of Corps decisions with which they disagree. (b) Records may be referred to the Department of Justice for possible criminal prosecution. (c) Records may be referred to other Federal, State, and local agencies for evaluation and enforcement purposes.
Disclosure	Disclosure of this information is voluntary on your part. However, failure of individual to provide requested information could result in inability to determine all pertinent information regarding a Department of the Army permit matter.

The Agency Disclosure Notice (ADN)

The Public reporting burden for this collection of information, 0710-0003, is estimated to average 1 hour per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or burden reduction suggestions to the Department of Defense, Washington Headquarters Services, at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

PURPOSE: This form is used to facilitate the initiation of the administrative appeals process. The appeals process allows an affected party to pursue an administrative appeal of certain Corps of Engineers decisions with which they disagree.

Upon release, this form will also be available on the Corps website https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/

Applicant: Nally & Hamilton Enterprises, LLC	File Number: LRN-2025-00763	Date: 2025-10-15

Documents Attached (*select all that apply*):		Form Reference Section:
☐	INITIAL PROFFERED PERMIT (*Standard Permit or Letter of Permission*)	A
☐	PROFFERED PERMIT (*Standard Permit or Letter of Permission*)	B
☐	PERMIT DENIAL WITHOUT PREJUDICE	C
☐	PERMIT DENIAL WITH PREJUDICE	D
☒	APPROVED JURISDICTIONAL DETERMINATION	E
☒	PRELIMINARY JURISDICTIONAL DETERMINATION	F

SECTION I

The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/appeals/ or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: *You may accept or object to the permit*

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: *You may accept or appeal the permit*

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C. PERMIT DENIAL WITHOUT PREJUDICE: *Not appealable*

You received a permit denial without prejudice because a required Federal, state, and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit before final action has been taken on the Army permit application. The permit denial without prejudice is not appealable. There is no prejudice to the right of the applicant to reinstate processing of the Army permit application if subsequent approval is received from the appropriate Federal, state, and/or local agency on a previously denied authorization and/or certification.

D: PERMIT DENIAL WITH PREJUDICE: *You may appeal the permit denial*

You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: APPROVED JURISDICTIONAL DETERMINATION: *You may accept or appeal the approved JD or provide new information for reconsideration*

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety and waive all rights to appeal the approved JD.

- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

- RECONSIDERATION: You may request that the district engineer reconsider the approved JD by submitting new information or data to the district engineer within 60 days of the date of this notice. The district will determine whether the information submitted qualifies as new information or data that justifies reconsideration of the approved JD. A reconsideration request does not initiate the appeal process. You may submit a request for appeal to the division engineer to preserve your appeal rights while the district is determining whether the submitted information qualifies for a reconsideration.

F: PRELIMINARY JURISDICTIONAL DETERMINATION: *Not appealable*

You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision you may contact:	If you have questions regarding the appeal process, or to submit your request for appeal, you may contact:
Name: Kari Weaver, Regulatory Specialist	Name: Suzanne Chubb, Regulatory Program Manager
Street Address, City, State: USACE Nashville District 3701 Bell Road Nashville, TN 37214	Street Address, City, State: USACE, Great Lakes & Ohio River Division 550 Main Street, Room 10-780, CELRD-PD-O Cincinnati, Ohio 45202-3222
Phone: (629)295-7537	Phone: (513) 218-1243
Email: kari.a.weaver@usace.army.mil	Email: suzanne.l.chubb@usace.army.mil

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (*Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. Use additional pages as necessary. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.*)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation and will have the opportunity to participate in all site investigations.

Email address of appellant and/or agent	Telephone number
Signature of appellant or agent	Date

SUMMIT

MINING AND RECLAMATION PLAN MAP

MAP LEGEND

NOTES

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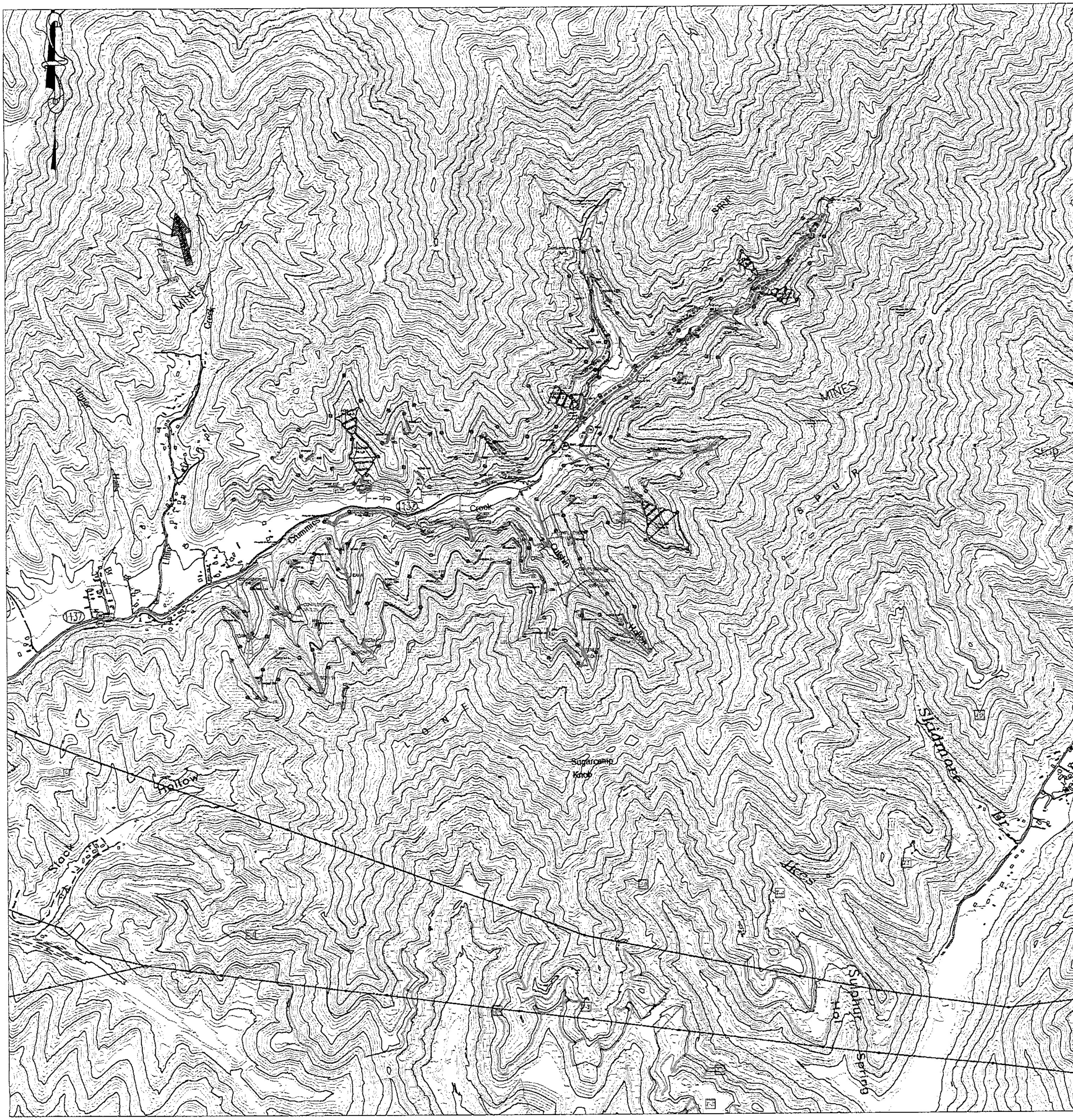

SUMMIT

MINING AND RECLAMATION PLAN MAP-NWP #14

MAP LEGEND

NOTES

LEGEND

- PNO. 848-0425 NW
- STUDY BOUNDARY
- PERENNIAL WATERS
- INTERMITTENT WATERS
- EPHEMERAL WATERS