



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, PHILADELPHIA DISTRICT
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

December 14, 2020

Regulatory Branch
Applications Section II

SUBJECT: CENAP-OPR 2020-00741 (91)
Branchdale Mine SC
Latitude and Longitude: 40.6776° N, -76.3380° W

Rausch Creek Coal Mining Branchdale, LLC.
c/o Mr. Robert Rivkin
978 Gap Street
Valley View, Pennsylvania 17983

Dear Mr. Rivkin:

This letter is in regard to your request for a verification of a delineation of waters and wetlands performed by Musser Engineering, Inc. on your behalf. The project area is located approximately 3,000 feet west of the intersection of New Mines St and School Row, Reilly Township, Schuylkill County, Pennsylvania.

The plans identified on the following page depict the extent of Federal jurisdiction on the subject property. The basis of our determination of jurisdiction is also provided (Enclosure 1).

Pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, a Department of the Army permit is required for work or structures in navigable waters of the United States and the discharge of dredged or fill material into waters of the United States including adjacent and isolated wetlands. Any proposal to perform the above activities within the area of Federal jurisdiction requires the prior approval of this office.

The delineation included herein has been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation and/or jurisdictional determination 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 a certified wetland determination with the local USDA service center, prior to starting work.

This letter is valid for a period of five (5) years. This jurisdictional determination is issued in accordance with current Federal regulations and is based upon the existing site conditions and information provided by you in your application. This office reserves the right to reevaluate and modify the jurisdictional determination at any time should the existing site conditions or Federal

regulations change, or should the information provided by you prove to be false, incomplete or inaccurate.

This letter contains an approved jurisdictional determination for your subject site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR 331. Enclosed you will find a combined Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form (Enclosure 2). If you request to appeal this determination, you must submit a completed RFA form to the North Atlantic Division Office at the following address:

Mr. James W. Haggerty
Regulatory Program Manager (CENAD-PD-OR)
U.S. Army Corps of Engineers
Fort Hamilton Military Community
301 General Lee Avenue
Brooklyn, New York 11252-6700
Telephone number: 347-370-4650

In order for an RFA to be accepted by the Corps, the Corps 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 of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by February 12, 2020.

It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this letter.

Due to the Corps need to work remotely in response to the COVID 19 global pandemic we are only issuing you an electronic copy of your AJD. Please print and/or save this document for your records. If you require a physical copy of this document please inform your Project Manager and a physical copy of this document will be mailed to you when conditions allow.

If you have any questions regarding this matter, please contact Mr. Nathan Fronk at 267-284-6564 or by email at Nathan.r.fronk@usace.army.mil.

Sincerely,

Michael H. Hayduk
Chief, Applications Section II

SUBJECT PROPERTY: Approved jurisdictional determination is for the wetlands and waters located within the project area defined in “Unnamed Tributary “B” Detail, Rausch Creek Coal Mining Branchdale, LLC Branchdale Mine, Schuylkill County, PA”.

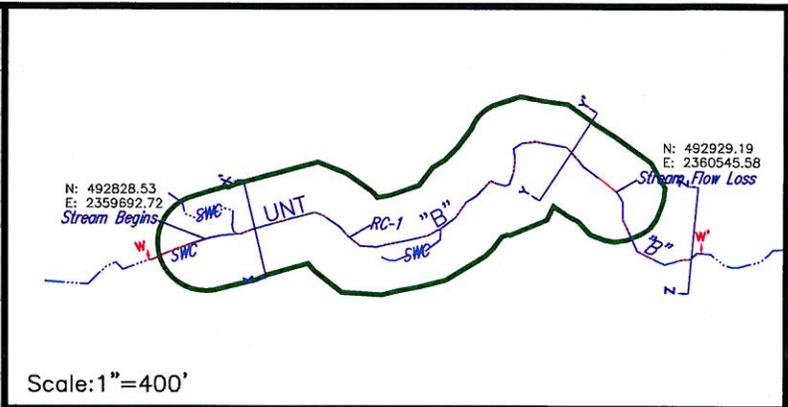
SURVEY DESCRIPTION: “Unnamed Tributary “B” Detail, Rausch Creek Coal Mining Branchdale, LLC Branchdale Mine, Schuylkill County, PA”, Scale As Noted, Prepared by Musser Engineering, Inc. Also identified as “US Army Corps of Engineers, CENAP-OPR 2020-00741, Approved Plan Sheet 1 of 1”.

COMMENTS: Site inspection by representative of this office on October 30, 2020.

Enclosures

Copies Furnished:

PADEP (NERO)
Schuylkill County Conservation District
Reilly Township
Musser Engineering, Inc.



US Army Corps of Engineers
 CENAP-OPR 2020-00741
 Approved Plan Sheet 1 of 1

Scale: 1"=2000'

Unnamed Tributary "B" Detail
Rausch Creek Coal Mining Branchdale, LLC
Branchdale Mine
 Schuylkill County, PA

7785 Lincoln Highway, Central City, PA 15926-8032
 (814) 754-8477 musserengineering.com





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

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 12/14/2020

ORM Number: CENAP-OPR 2020-00741

Associated JDs: N/A

Review Area Location¹: State/Territory: PA City: Reilly Township County/Parish/Borough: Schuylkill

Center Coordinates of Review Area: Latitude 40.6776 Longitude -76.3380

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A	N/A.	N/A	N/A.

C. Clean Water Act Section 404

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

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

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):			
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A	N/A	N/A.	N/A

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

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

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



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
UNT B	1,043	linear feet	(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year.	Intermittent feature that infiltrates into the ground after flowing approximately 1,043 feet. The watercourse never reconnects to a downstream tributary system.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

- Information submitted by, or on behalf of, the applicant/consultant: **Title(s) and date(s)**
This information **is** sufficient for purposes of this AJD.
Rationale: **N/A**
- Data sheets prepared by the Corps: **Title(s) and/or date(s)**.
- Photographs: **Other: Title(s) and/or date(s)**.
- Corps site visit(s) conducted on: **October 30, 2020**
- Previous Jurisdictional Determinations (AJDs or PJDs): **ORM Number(s) and date(s)**.
- Antecedent Precipitation Tool: **provide detailed discussion in Section III.B.**
- USDA NRCS Soil Survey: **Title(s) and/or date(s)**.
- USFWS NWI maps: **Title(s) and/or date(s)**.
- USGS topographic maps: **Title(s) and/or date(s)**.

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): The Antecedent Precipitation Tool (APT) was used to determine hydrologic site conditions. Based on the results of the APT, the site visit was conducted in drier than normal conditions (APT Value = 8) despite the rainfall in the 24 hours prior to the site visit.

C. Additional comments to support AJD: The site has been affected by previous surface and deep mining within the project area. The stream’s course has been largely been driven by the placement of coal spoil piles. The stream makes it’s way downslope for approximately 1,000 feet before infiltrating into the ground.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.
⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Based on available weather data, the site received approximately 2 inches of rain in the 24 hours prior to the site visit. There was some evidence that the stream will continue further after heavy rain events, however, no bed and bank was observed and the flow would be classified as overland sheet flow.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Rausch Creek Coal Mining Branchdale, LLC.	File Number: CENAP 2020-00741	Date: December 14, 2020
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/appeals.aspx> 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. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. 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: 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.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **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.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: 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.

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. 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.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Nathan Fronk
(267) 284-6564, or
Nathan.R.Fronk@usace.army.mil

If you only have questions regarding the appeal process you may also contact:

Mr. James W. Haggerty
Regulatory Program Manager (CENAD-PD-OR)
U.S. Army Corps of Engineers
Fort Hamilton Military Community
301 General Lee Avenue
Brooklyn, New York 11252-6700
Telephone number: 347-370-4650

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.

Signature of appellant or agent.

Date:

Telephone number: