

# United States Army Corps of Engineers Regulatory Program

## Waters of the United States

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US Army Corps of Engineers  
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# US Army Corps of Engineers

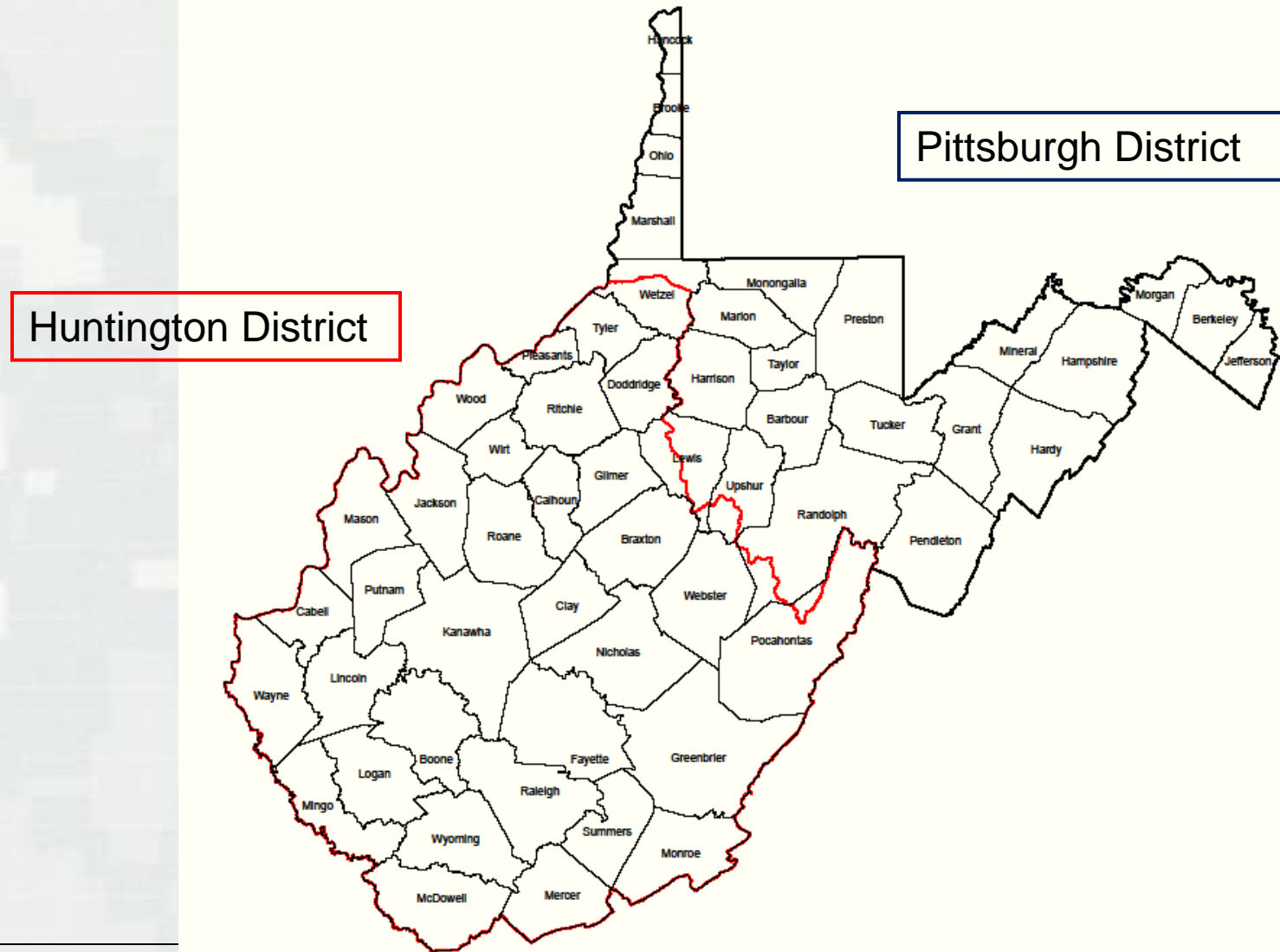
What does the Corps do?



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# Regulatory Boundaries



# USACE Regulatory Authorities



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# Statutory Authorities

- **Section 10 of the Rivers and Harbors Act of 1899**
  - ▶ Requires approval prior to any work in, on, over or under navigable waters of the United States, or which affects the course, location, condition or capacity of such waters
- **Section 404 of the Clean Water Act**
  - ▶ Requires approval prior to discharging dredged or fill material into the waters of the United States



# Jurisdiction



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# Jurisdiction

- Navigable Waters (Section 10)
  - ▶ Each District has a list with limits
- Waters of the US (Section 404)
  - ▶ Jurisdiction extends to ordinary high water mark for:
    - Section 10 waters
    - Relatively Permanent Waters
      - ▷ Lakes
      - ▷ Streams (Perennial, Seasonally Intermittent)
  - ▶ Adjacent Wetlands
  - ▶ Others require a case-specific determination
    - Streams (Intermittent, Ephemeral)

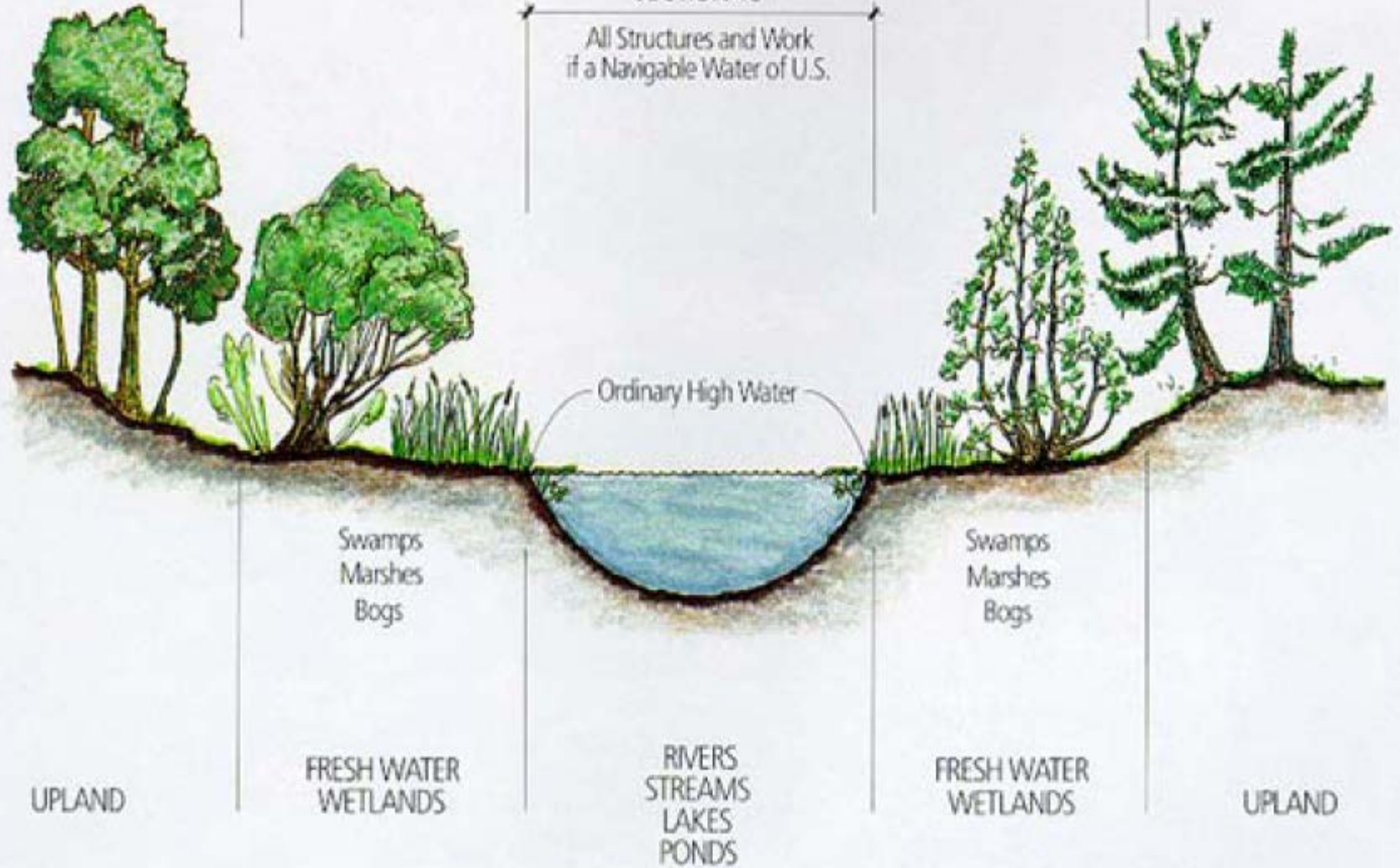


SECTION 404

Discharge of Dredged or Fill Material

SECTION 10

All Structures and Work  
if a Navigable Water of U.S.



Corps of Engineers Regulatory Jurisdiction in **FRESH WATERS**



# Section 404 Waters

- Navigable waters of the United States
  - All Section 10 Waters
- Interstate waters & interstate wetlands
- Other waters such as intrastate lakes, rivers, streams, mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds.....
  - the use, degradation or destruction of which could affect interstate or foreign commerce



# Section 404 Jurisdiction Streams



# Definitions

- Perennial – Flows year round during a typical year. Groundwater table is located above stream bed.
- Intermittent – Flows during certain times of the year when groundwater provides water for stream flow. May not have flow during dry periods.
- Ephemeral – Only flows during and a short time after a precipitation event. Located above the groundwater table; groundwater is not a source of flow.



# Acronyms

- OHWM – Ordinary High Water Mark
- TNW – Traditional Navigable Water
  - ▶ Section 10 waters
  - ▶ Non-Section 10 TNWs
- SND – Significant Nexus Determination



# Jurisdictional Streams

- Section 10 waters
- TNWs
- Relatively permanent waters
  - ▶ Perennial Streams
  - ▶ Seasonally Intermittent Streams
  - ▶ Open Water Areas





**Ordinary High Water - Perennial**



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**Intermittent Stream Reach**



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**Intermittent Streams may not always have flow.**



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**Unnamed Intermittent Tributary**





**Ordinary High Water Mark – Open Water**



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# Potentially Jurisdictional Streams

- Non-RPWs
  - ▶ Intermittent Streams
    - Those that flow less than 3 months continually
  - ▶ Ephemeral Streams
- Require SND





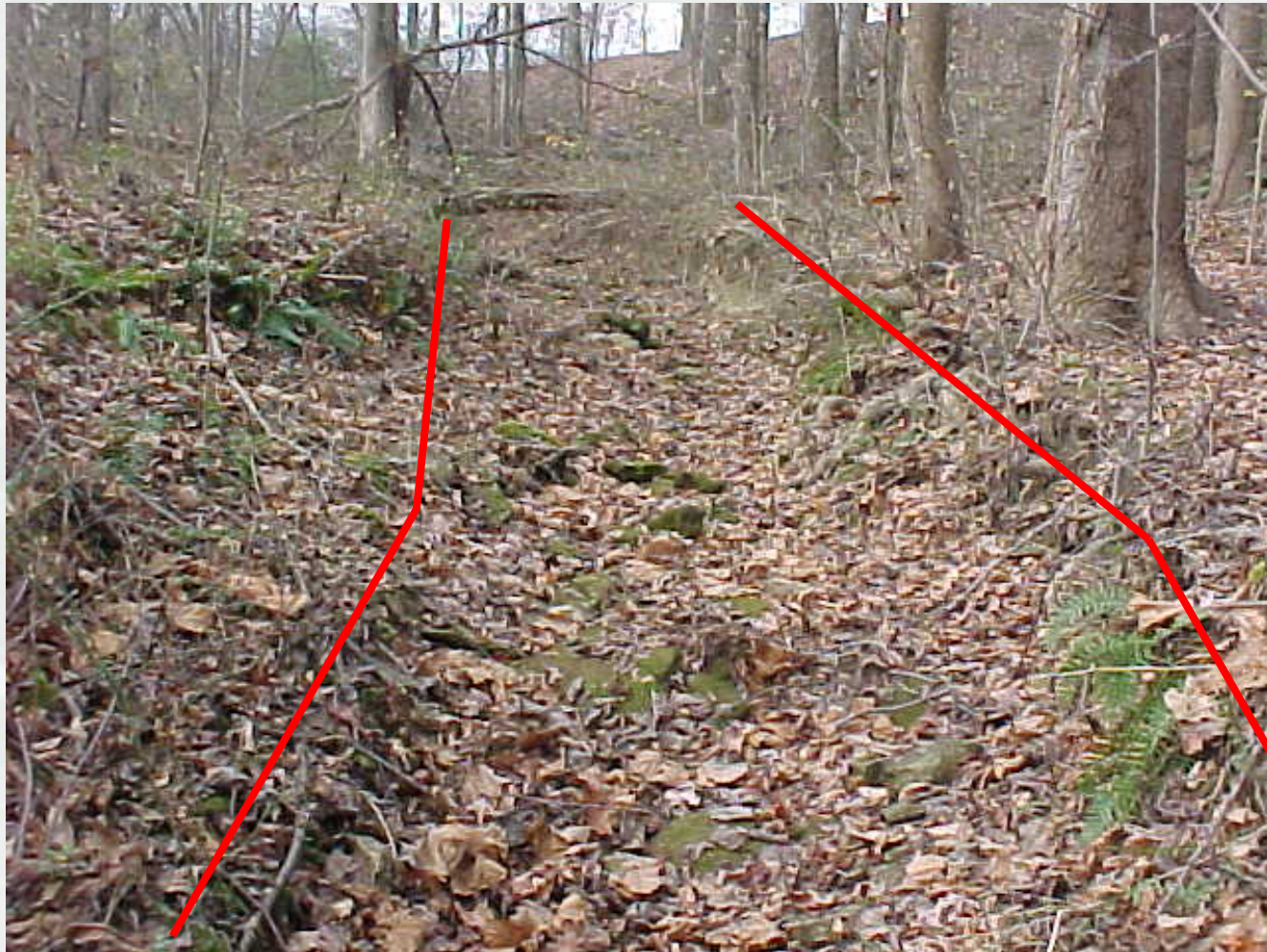
**Ordinary High Water - Intermittent**



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**Ephemeral Stream through Uplands**



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**Ephemeral Channel covered by leaf litter.**



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# Section 404 Jurisdiction Wetlands



# Wetlands

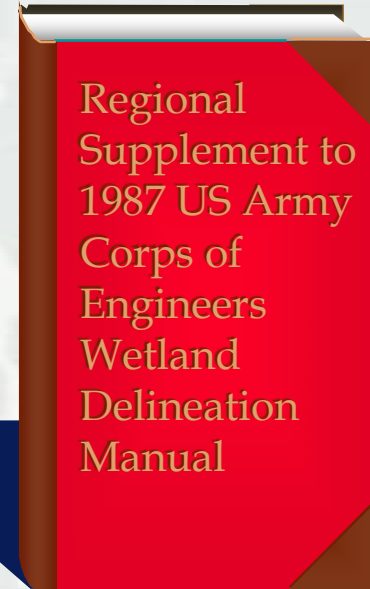
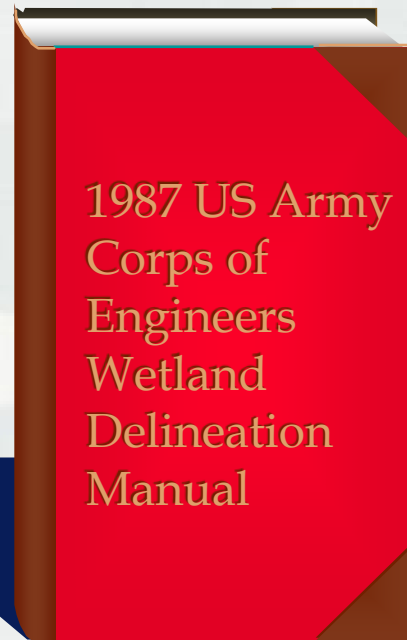


Those areas inundated or saturated by surface or groundwater at a frequency sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.



# Wetland Criteria

- 1987 US Army Corps of Engineers Wetland Delineation Manual and any applicable Regional Supplement
- Three Parameters
  - ▶ Vegetation
  - ▶ Soil
  - ▶ Hydrology
- Eastern Mountains & Piedmont Region Supplement



# Wetlands

- Jurisdictional:
  - ▶ Wetlands abutting or adjacent to TNWs
  - ▶ Wetlands abutting RPWs
- Require SND
  - ▶ Wetlands adjacent to RPWs
  - ▶ Wetlands abutting or adjacent to non-RPWs





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# USEPA Coordination

- All SNDs
- All isolated wetland determinations
- Coordination timeframes depend on request and determination
- USEPA has final decision



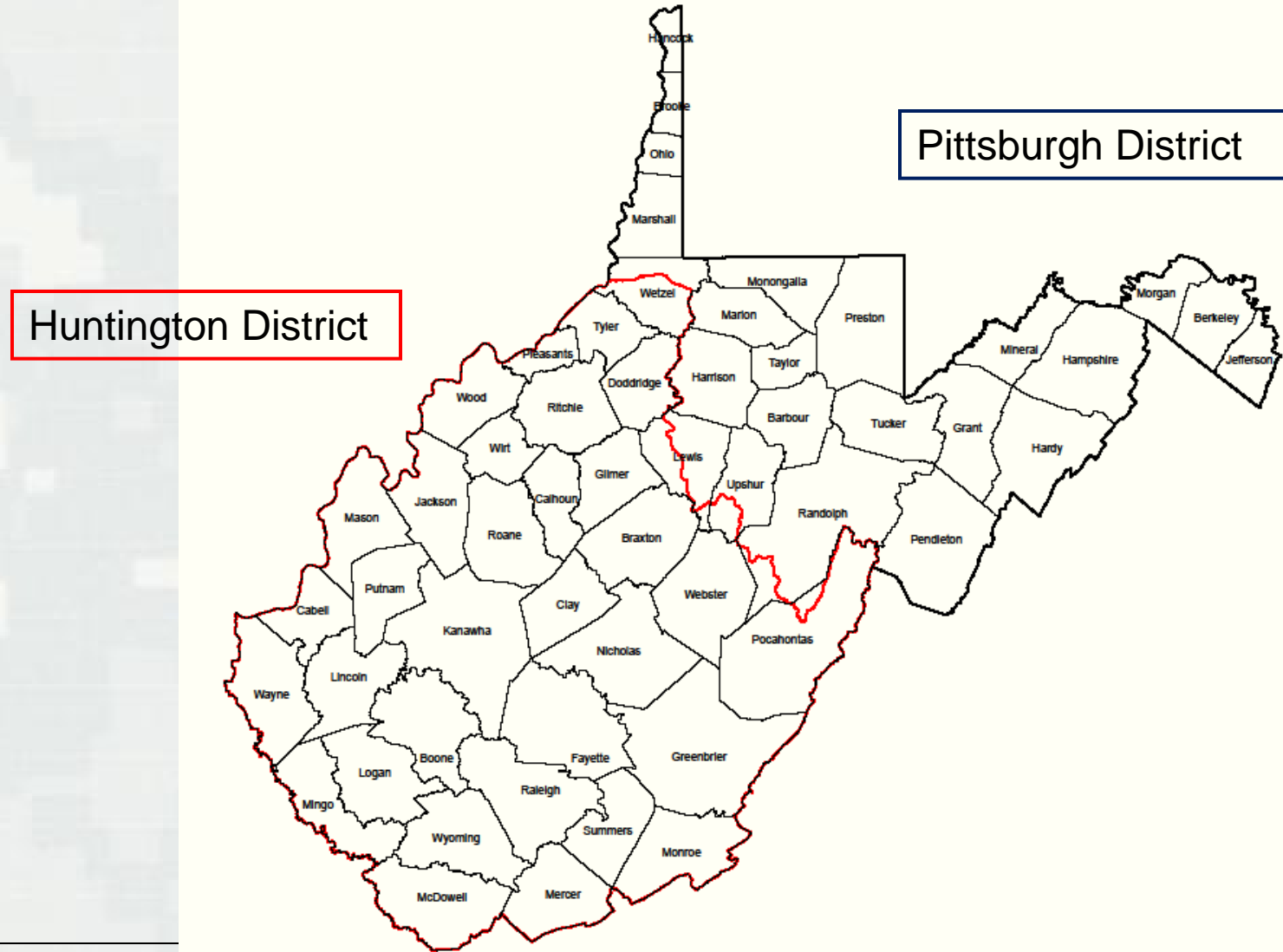


# Jurisdictional Determinations

- Preliminary Jurisdictional Determinations (PJDs)
  - ▶ Identified resources “may” be jurisdictional waters of the US
  - ▶ Not appealable
- Approved Jurisdictional Determinations (AJD)
  - ▶ Defines waters of the US
  - ▶ Appealable



# Regulatory Boundaries



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# District Contacts in WV

- **Huntington District (CELRH)**

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- **Pittsburgh District (CELRP)**

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# Websites

- USACE Regulatory Headquarters  
[www.usace.army.mil](http://www.usace.army.mil)
- Huntington District  
[www.lrh.usace.army.mil](http://www.lrh.usace.army.mil)
- Pittsburgh District  
[www.lrp.usace.army.mil](http://www.lrp.usace.army.mil)





# QUESTIONS



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