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): 5/25/21
ORM Number: SPA-2021-00108
Associated JDs: N/A
Review Area Location[1]:
State/Territory: NM City: Pinedale Chapter County/Parish/Borough: McKinley County
Center Coordinates of Review Area: Latitude 35.590092 Longitude -108.477652

## 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 independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.
[4] Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.
[5] Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.

## D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))[4]:

| Exclusion Name | Exclusion Size | Exclusion[5] | Rationale for Exclusion Determination |
|---|---|---|---|
| Unnamed Tributary to Puerco River | 15000 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral feature |

## 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:
___ Data sheets prepared by the Corps:
__X__ Photographs: *Aerial Google Earth (2014, 2016), Digital Globe (2017, 2018, 2020) On-site photographs (2021)*
__X__ Corps Site visit(s) conducted on: *4/1/2021*
___ Previous Jurisdictional Determinations (AJDs or PJDs):
___ Antecedent Precipitation Tool:
___ USDA NRCS Soil Survey:
___ USFWS NWI maps:
___ USGS topographic maps:

**Other data sources used to aid in this determination:**

| Data Source (select) | Name and/or date and other relevant information |
|---|---|
| USGS Sources | National Hydrography Dataset (2021), WaterWatch (2021) |
| NOAA Sources | U.S. Drought Monitor (2021), Western Regional Climate Center (2021) |
| USACE Sources | National Wetland Plant List (2021), A Field Guide to the Identification of the Ordinary High-Water Mark (OHWM) in the Arid West Region of the Western United States (2008) |
| EPA Sources | The Ecological and Hydrological Significance of Ephemeral and Intermittent Streams in the Arid and Semi-arid American Southwest (2008). |
| Other Sources | A. Park Williams, Edward R. Cook, Jason E. Smerdon, Benjamin I. Cook, John T. Abatzoglou, Kasey Bolles, Seung H. Baek, Andrew M. Badger, Ben Livneh. 2018. Large Contribution from Anthropogenic Warming to an Emerging North American Megadrought. Science. Vol. 368 Issue 6488. Pp. 314-318. |
| | USGCRP, 2018: Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018. |

B. **Typical year assessment(s):** According to the 2018 National Climate Assessment parts of the Southwest recorded high temperatures in 2012, 2014, 2015, 2016, and 2017 that have not been observed since 1895. Increasing temperatures associated with drought and amplified by climate change have led to hydrological droughts in California, the Colorado River Basin, and the Rio Grande.

[1] Map(s)/Figure(s) are attached to the AJD provided to the requestor.
[2] If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.
[3] A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.
[4] Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.
[5] Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.

In the Colorado Basin these conditions have contributed to lower runoff and to 17%-50% of the record-setting streamflow reductions between 2000 and 2014 (USGCRP, 2018). The only stream gage within McKinley County that is maintained by the U.S. Geological Society (USGS) is currently reporting *below normal* flows (USGS, 2021).

Current and historic conditions in this region are also discussed in a peer reviewed study conducted by Columbia University titled “Large Contribution from Anthropogenic Warming to an Emerging North American Megadrought”. The study indicates that the Southwest is experiencing a historic “megadrought” with the last 20 years ranking as the second-driest period in the last 1200 years (A. Park. Williams, 2018).

The National Oceanic and Atmospheric Administration (NOAA) categorizes drought conditions by intensity, and data over the last 20 years indicates that the Albuquerque District has experienced consistent drought conditions throughout this period. Current conditions reflect *exceptional drought* across an estimated 43% of McKinley County and conditions are expected to persist (NOAA, 2021).

Drought has been prevalent across this region over the last 20 years, and while data indicates a continuing progression towards drier conditions, the current conditions and trend are typical for this region.

**C. Additional comments to support AJD:** N/A or provide additional discussion as appropriate.

**SETTING**

Elevation in the project area is approximately 7100 feet above mean sea level, and the review area receives approximately 10.75 inches of precipitation annually; primarily during the months of July, August, September, and October (WRCC, 2021). Based on aerial imagery of the project area in 2014, 2015, 2017, 2018, 2020, and a site visit conducted on April 1, 2021, the assessed feature did not exhibit any evidence of seasonal flow. There are no riparian corridors that suggest that water flows more frequently than in response to storm events or that the water table is near the surface for portions of the year.

Plant species within the project area were identified and classified in accordance with the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0) and the National Wetland Plant List. Classifications range from Obligate (OBL), Facultative Wetland (FACW), Facultative (FAC), Facultative Upland (FACU), and Upland (UPL) and are differentiated by the frequency in which each plant species occurs in wetlands. Table 1 identifies the species and indicator of vegetation found within the project area.

[1] Map(s)/Figure(s) are attached to the AJD provided to the requestor.
[2] If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.
[3] A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.
[4] Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.
[5] Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.

**Table 1.**

| Common Name | Scientific Name | Indicator |
|---|---|---|
| Four-wing saltbush | Atriplex canescens | UPL |
| Blue grama | Bouteloua gracilis | UPL |
| Yellow rabbitbrush | Chrysothamnus viscidiflorus | FAC |
| Mormon tea | Ephedra viridis | UPL |
| Rubber rabbitbrush | Ericameria nauseosa | UPL |
| Buckwheat | Eriogonum spp. (two) | UPL |
| Fluffgrass | Dasyochloa pulchella | UPL |
| Pincushion cactus | Escobaria vivipara | UPL |
| Snakeweed | Gutierrezia sarothrae | UPL |
| One-seed juniper | Juniperus monosperma | UPL |
| Winterfat | Kraschninnikovia lanata | UPL |
| Plains pricklypear | Opuntia phaeacantha | UPL |
| Russian thistle | Salsola tragus | FACU |
| Scarlet globemallow | Sphaeralcea coccinea | UPL |
| Sand dropseed | Sporobolus cryptandrus | FACU |
| Cottonwood (dead) | Populus angustifolia | FACW (DEAD) |
| Big sagebrush | Artemisia tridentata | UPL |

## JURISDICTIONAL DETERMINATION

Based on the review of aerial imagery, climate data, and site observations, this feature appears to flow in response to highly variable precipitation events driven primarily by convection during the summer months. As a result, the Corps has determined the aquatic resource evaluated as part of this AJD is an ephemeral stream channel. In accordance with 33 CFR 328.3 and the June 22, 2020 implementation of the NWPR, this waterway does not meet the definition of "Waters of the United States" and, therefore, is not currently subject to regulation under Section 404 of the Clean Water Act.

[1] Map(s)/Figure(s) are attached to the AJD provided to the requestor.
[2] If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.
[3] A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.
[4] Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.
[5] Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.