



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): 2-Dec-2020

ORM Number: SPA-2020-00260

Associated JDs: N/A or ORM numbers and identifiers

Review Area Location¹:

State/Territory: TX City: EL Paso County/Parish/Borough: El Paso County

Center Coordinates of Review Area: Latitude 31.957123 Longitude -106.422488

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

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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
SPA-2020-00260	10400 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	See Section III. C below for information supporting the exclusion determination.

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: *Moreno Cardenas Inc.*
This information *is* sufficient for purposes of this AJD.
Rationale: *N/A*
- Data sheets prepared by the Corps: *National Wetlands Plant List*
- Photographs: *Aerial: designated project area and stream imagery. Site Photographs: image of ephemeral stream as seen at ground level; drone imagery within project area.*
- Corps Site visit(s) conducted on: *August 6, 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: *Albuquerque District Regulatory Viewer.*
- USFWS NWI maps: *Albuquerque District Regulatory Viewer.*
- USGS topographic maps: *Albuquerque District Regulatory Viewer.*

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	Water Watch (2020)
USDA Sources	Land Resource Regions and Major Land Resource Areas of the United States, the Caribbean, and the Pacific Basin (USDA Handbook 296, issued 2006. pp 1-669)
NOAA Sources	U.S. Drought Monitor (2020)
USACE Sources	National Wetland Plant List (2018)
State/Local/Tribal Sources	Drought Monitoring report for Texas (2020)
USDA/NRCS; Digital Globe	USDA/ NRCS Plants Database (2020); Digital Globe, G-EGD/EVWHS aerial imagery (11-11-2020)
Other	GIS-ArcMap; National Geographic Society, 2013 (USA Topo Maps) (Figure 2)

B. Typical year assessment(s): The data provided by USGS and NOAA indicates that the project site resides within an arid region experiencing extreme hydrologic drought and the conditions are expected to continue. Additionally, the Antecedent Precipitation Tool (APT) indicates that this general area is drier than normal due to drought conditions. As such, the evaluation of the proposed project site for this AJD was conducted during drier than normal conditions. Therefore, additional data has been obtained and reviewed to support our jurisdictional determination.

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It is also worth noting that a recent study by Columbia University notes that the American Southwest is experiencing a historic “megadrought” not seen in centuries. In fact, for several western states, including New Mexico, the last twenty years ranks as the second-driest period in the past 1,200 years (A. Park. Williams, 2018). Based on this data, it seems reasonable that in New Mexico a typical year within the 30-year rolling period is characterized by drought conditions—even severe drought conditions.

C. Additional comments to support AJD: The review area for this AJD encompasses a planned project by Moreno Cardenas, Inc. on behalf of El Paso Water.

The review area is located northeast of El Paso, Texas. The unnamed single waterway identified in the review area is located within the arid Chihuahua desert. More specifically, the review area falls within MLRA 42-D; Southern Desertic Basins, Plains, and Mountains region (USDA Handbook 296, issued 2006). This region consists of a dry climate with a limited rainy season from midspring to mid-autumn. Weather patterns primarily consist of high intensity convective storm events. The average annual precipitation for this area is between 8 to 14 inches, with little winter precipitation, and snowfall is minimal to non-existent. Ground water resides more than 80 inches below the surface. Temperatures in this area range from 35 to 40° Celcius (C) (95 to 104°Fahrenheit [F]); and the average annual temperature is 24° C (75° F).

The single waterway identified within the review area for the proposed scope of work encompasses approximately 10,400 linear feet. The average width of the channel measures approximately 8.5 feet and has an approximate depth between 1-3 feet. It flows from west to east and has a linear alignment. It extends between Martin Luther King Jr. Boulevard on its west side and McCombs Street on its east side. Evidence of the stream channel is not present on either side of these roads. The stream channel does not have any connection to springs or other subsurface water.

Predominate soil types in the review area is indicative of both map units; Pajarito association, level (PAA) and Tourney-Berino association, undulating (TBB). The units are identified based on the area’s taxonomic classification of dominant soils.

PAA includes an estimated 100 percent Pajarito or similar soils. These soils can be found in landforms identified as alluvial fans situated on a linear down-slope shape. Pajarito soil profiles include well drained fine sandy loam soil profiles within the upper horizons measuring between 0-60 inches. The soil is characterized as having high infiltration rates and does not have the potential to pond or flood.

TBB includes an estimated 75% Turney and 20% Berino or similar soils. Soils can be found in landforms identified as basin floors situated on a linear down-slope shape. Turney soil profile includes

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an upper horizon between 0-10 inches consisting of a well-drained fine sandy loam and a lower soil horizon between 10-80 inches consisting of a clay loam structure. The soil is characterized as having high infiltration rates and does not have the potential to pond or flood. Berino soil profiles includes an upper soil horizon between 0-8 inches consisting of well drained fine sandy loam, mid-horizon between 8-37 inches consisting of a loam/clay loam, and a lower horizon between 37-80 inches consisting of well-drained fine sandy loam. TBB soils are also characterized as having high infiltration rates and does not have the potential to pond or flood.

Regulatory Division personnel conducted a site visit of the proposed review area on August 6, 2020. Although a light rain was occurring at the time, no surface water or flow was observed in the stream channel. Additionally, the vegetation observed and listed by the applicant consists predominantly of creosote bush (*Larrea tridentate*), honey mesquite (*Prosopis Mutica*), Tarbush (*Holocarpha vairegata*), Mariola (*Parthenium incanum*), Broomweed (*Amphiachyris*), Prickly-pear (family: Cactaceae), and Ratany (*Krameria L.*). Herbaceous plants identified were Coyote Gourd (*Cucurbita palmata*), Yellow Rain Lily (*N/A*), Locoweed (family: Fabaceae/Leguminosae), Bahia (*Bahia Lag.*), Long Flower Ipomopsis (*N/A*), Senna (family: Fabaceae/Leguminosae), Datura (family: Solanaceae), and Three Awn (*Aristida L.*). Grass species consisted of Needle Grama (*Bouteloua aristidoides*). The waterway does not exhibit a riparian corridor and only upland vegetative species were observed.

In addition to the field assessment, the APT was run for the date of the site visit (see documents 2020-260 APT 2020-8-6 and 2020-260 satellite imagery 2020-9-5). The APT was also run for the date of November 11, 2020 in conjunction with reviewing aerial imagery (see document 2020-260 APT 2020-11-11 and Figure 1 provided below). The APT data coincides with the aerial imagery taken on November 11, 2020, which shows that no flows or ponding was evident in the channel.

Based on the data provided by the applicant and obtained by the Corps Regulator, the waterway within the review area has been determined to be an ephemeral stream channel. As such, and in accordance with 33 CFR 328.3 and the June 22, 2020 implementation of the Navigable Waters Protection Rule, it does not meet the definition of "Waters of the United States" and is not subject to regulation under Section 404 of the Clean Water Act.

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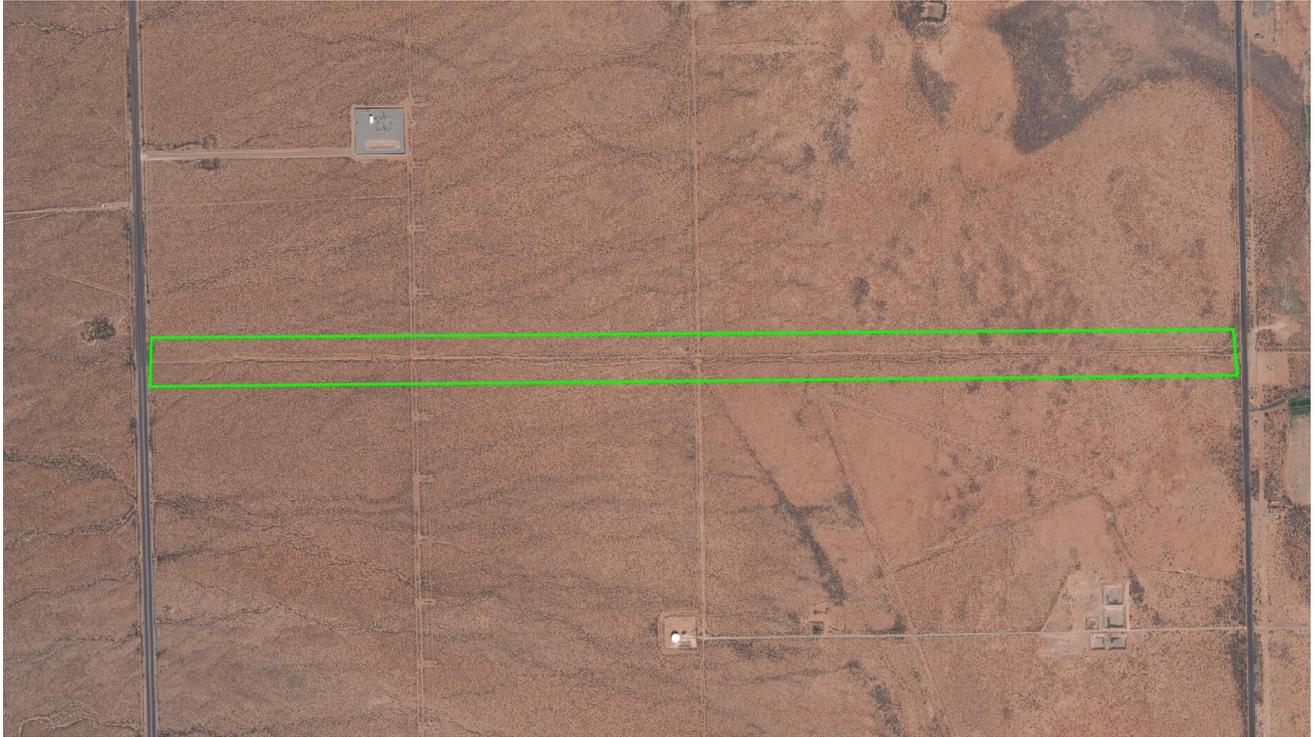
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(Figure 1) MCI 10,400 linear foot project area; Martin Luther King Jr. Blvd. (Left/West) and McCombs St. (Right/East); Digital Globe satellite imagery; November 11, 2020

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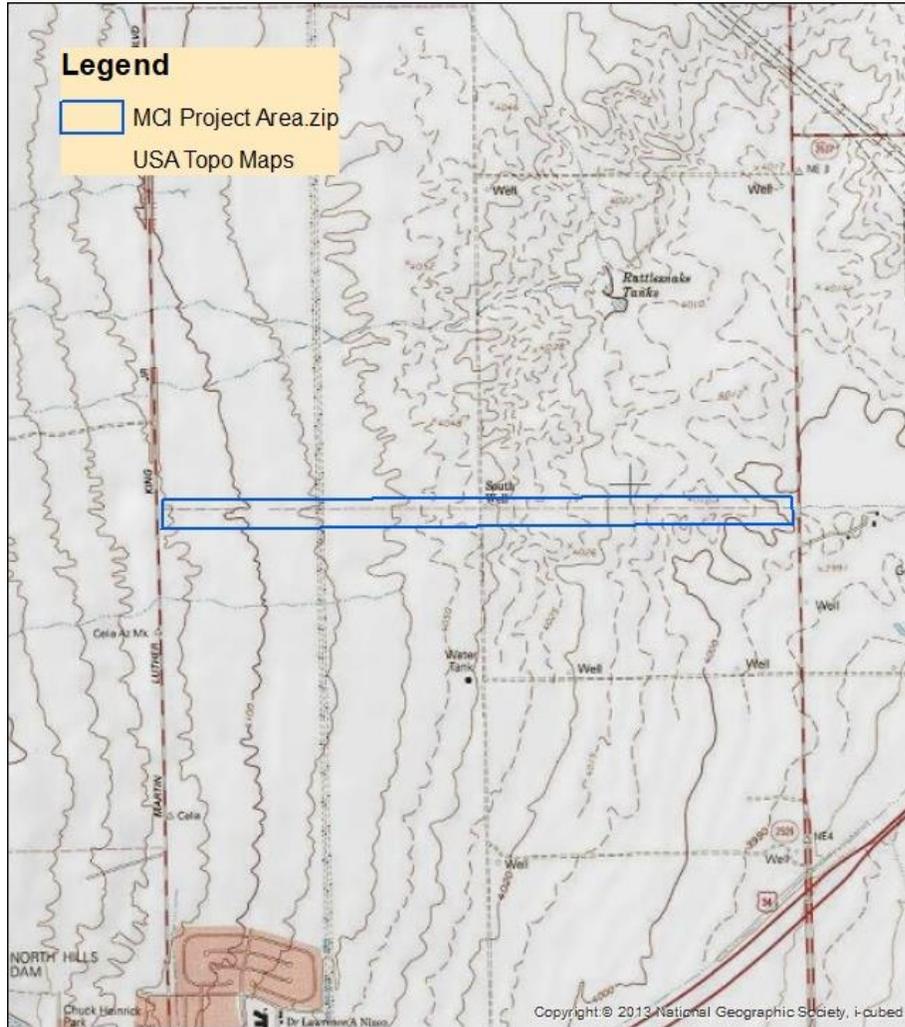
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(Figure 2) MCI 10,400 linear foot project area, GIS-ArcMap; USA Topo Maps 2013.

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Exhibit 3: Drone Photo of Existing Arroyo



Exhibit 4: Ground Photo of Distinct Flow Path