



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): April 26, 2021

ORM Number: SPA-2021-00086

Associated JDs: N/A

Review Area Location<sup>1</sup>:

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

Center Coordinates of Review Area: Latitude 35.207322 Longitude -106.732551

**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)<sup>2</sup>**

§ 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)<sup>3</sup>

(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

**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12))<sup>4</sup>:

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Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
SPA-2021-00086	7,700 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: AECOM. Information submitted by the Agent is sufficient for purposes of this AJD.  
Rationale: N/A
- Data sheets prepared by the *National Wetland Plants List (2018)*.
- Photographs: *Aerial: designated project area and stream imagery; on 2021-02-05 (images 1-3; pp.8-10).*  
*Site Photographs: images of ephemeral stream as seen at ground level (Photos 1&2; pp.11-12).*
- Corps Site visit(s) conducted on: *Date(s)*.
- 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: *USDA/NRCS Web Soil Survey.*
- USFWS NWI maps: *GIS-ArcMap; USA Topo Maps 2013.*
- USGS topographic maps: *GIS-ArcMap; USA Topo Maps 2013.*

**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); Condition of Drought with 7-day average stream flow compared to historical stream flow in the state of Texas.
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); USDA/NRSC, Plants Database (2020), <a href="https://plants.usda.gov/java/">https://plants.usda.gov/java/</a> ; USDA/NRSC, Web Soil Survey (2019), <a href="https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm">https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm</a>
NOAA Sources	National Drought Mitigation Center© (2021), U.S. Drought Monitor, Texas (4/2021), <a href="https://droughtmonitor.unl.edu/CurrentMap.aspx">https://droughtmonitor.unl.edu/CurrentMap.aspx</a>
USACE Sources	National Wetland Plant List (2018)
State/Local/Tribal Sources	N/A
Other	Digital Globe, G-EGD/EVWHS aerial imagery (image attachments 1-3, pp. 8-10);
Other	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. 2020, <i>Large Contribution from Anthropogenic Warming to an Emerging North American Megadrought</i> . Science. Vol. 368 Issue 6488. Pp. 314-318.
Other	Griffith, G.E., Bryce, S.A., Omernik, J.M., Comstock, J.A., Rogers, A.C., Harrison, B., Hatch, S.L., and Benzanson, D. (2004), <i>Ecoregions of Texas</i> : U.S. Environmental Protection Agency,Corvallis, OR. <a href="https://gaftp.epa.gov/EPADDataCommons/ORD/Ecoregions/tx/tx_eco_pg.pdf">https://gaftp.epa.gov/EPADDataCommons/ORD/Ecoregions/tx/tx_eco_pg.pdf</a>
Other	Griffith, G., Bryce, S., Omernik, J., & Rogers, A. (2007, December), Dynamac Corporation, U.S. Geological Survey, Texas Commission on Environmental Quality. <i>Ecoregions of Texas</i> . <a href="https://gaftp.epa.gov/EPADDataCommons/ORD/Ecoregions/tx/TXeco_Jan08_v8_Cmprsd.pdf">https://gaftp.epa.gov/EPADDataCommons/ORD/Ecoregions/tx/TXeco_Jan08_v8_Cmprsd.pdf</a>

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- B. Typical year assessment(s):** According to the Antecedent Precipitation Tool (APT), July through September is the time of year with the most precipitation over a 30-year rolling period for the review area; and the monsoon season occurs between mid-June and the end of September. However, it should be noted that upon reviewing the ATP results discussed in the next section, this area experiences a highly variable amount of precipitation each year. Due to this lack of a consistent amount of precipitation from year to year for the review area, it is difficult to determine whether the analysis has been conducted during normal, wetter, or drier conditions. Regardless, the results of this AJD are not heavily reliant on the typical year assessment.

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, 2020). Additionally, the National Drought Mitigation Center© (2021) identified that El Paso County, TX on April 20, 2021 experienced “D3-Extreme Drought” with the apparent drought condition percent area growing exponentially from historic data.

- C. Additional comments to support AJD:** The review area for this AJD consists of approximately 7,700 linear feet of an unnamed stream system labeled Arroyo #1 and encompasses the location of one planned project by AECOM on behalf of El Paso Water Utilities.

Arroyo #1 area of interests (the AOIs) originate along the western facing flanks of the southern portion of the Franklin Mountains. From that point, the study stream extends South into the upper AOI, and then dog legs West until flowing into a canalized drainage system transporting flow through both the middle and lower AOIs and exiting into the Westside Community Open Reserve and the Mulberry Dam immediately after crossing under Resler Drive within the City limits of El Paso, TX (see Figure 3). The average width of the subject channel within the upper AOI measures approximately 26 feet and varies in depth between 1-5 feet; the middle AOI includes a concrete lined trapezoidal open channel measuring approximately 50 feet wide and 7-10 feet deep; the lower AOI also consists of a concrete lined channel and is constructed as an out fall structure measuring approximately 50-160 feet wide and 1-10 feet deep. The residing stream does not have any connection to springs or other subsurface water within all AOIs. It also does not exhibit a riparian corridor.

The AOIs are located within the Chihuahuan Basins and Playas ecological region residing above the Rio Grande Floodplain (24a) (Griffin G.E. 2004). This location also resides in the Western Range and Irrigated Land Resource Region (D), more specifically in Land Resource Area (MLRA) 42D; Southern Desertic Basins, Plains, and Mountains (USDA Handbook 296, issued 2006). The general area has a moderate dry climate with rain primarily limited to the summer in the form of high intensity convective storm events during the months of July to September. The average annual precipitation for this area is between 8 to 14 inches which occurs in flash events with very little winter precipitation; snowfall is minimal and is relatively short lived. The average annual temperatures in this area range from 50 to 71° Fahrenheit (F) (10 to 22°Celsius [C]) (USDA Handbook 296, issued 2006).

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Ground water resides more than 80 inches below the soil surface. Predominate soil types in the review area are indicative of two map units: Delnorte-Canutio association, undulating, 1-8 percent (%) slopes (DCB), Delnorte-Canutio association hilly, 3-30% slopes (DCD). The units are identified based on the area's taxonomic classification of dominant soils, which are described below (USDA/NRCS, Web Soil Survey, 2019).

- DCB includes an estimated 75% Delnorte and similar soil composition and a 25% Canutio and similar soil composition. Delnorte soils can be found in landforms identified as fan piedmonts. The Delnorte soil profile includes an upper horizon between 0-6 inches consisting of a very gravelly loam, an upper mid-horizon between 6-10 inches consisting of a very gravelly loam, a lower mid-horizon between 10-30 inches consisting of cemented material, and a lower horizon consisting of an extremely gravelly fine sand. It is characterized as having high infiltration rates and does not have the potential to pond or flood. Canutio soils can be found in landforms identified as hills. The Canutio soil profile includes an upper horizon between 0-11 inches consisting of a very gravelly sandy loam, and a lower horizon between 11-45 inches consisting of an vary gravelly sandy loam. This soil is also characterized as having high infiltration rates and does not have the potential to pond or flood (USDA/NRCS, Web Soil Survey, 2019).
- DCD includes an estimated 60% Delnorte and similar soil composition, 20% Canutio and similar soil components, and 20% Minor soil components. Delnorte soils can be found in landforms identified as fan piedmonts. The Delnorte soil profile includes an upper horizon between 0-10 inches consisting of a very gravelly loam, a mid-horizon between 10-30 inches consisting of a cemented material, and a lower horizon between 30-80 inches consisting of extremely gravelly fine sand. This soil is characterized as having high infiltration rates and does not have the potential to pond or flood. Canutio soils can be found in landforms identified as hills. The Canutio soil profile includes an upper horizon between 0-11 inches consisting of a very gravelly sandy loam and a lower horizon between 11-45 inches consisting of very cobbly sandy loam. This soil also is characterized as having high infiltration rates and does not have the potential to pond or flood. Minor soil components only consist of approximately 20% of the map unit and has no hydraulic soil rating (USDA/NRCS, Web Soil Survey, 2019).

Vegetation in the AOIs consist of upland species and includes a mixture of sand scrub and desert shrub lands. These areas typically see salt tolerant plant varieties such as fourwing salt bush (*Atriplex canescens*). The area consisting of valleys and alluvial fans support a large variety of desert shrubs such as creasote bush (*Larrea tridentata*), and Honey Mesquite (*Prosopis glandulosa Torr.*) (Griffin G.E. 2007). Based on photos of the site, the above-mentioned plant species reside in the AOIs including marginal varieties of upland bunch grasses (USDA/NRCS, Plants Database, 2020).

Satellite imagery and site photos provided by the applicant's consultant show no surface water or flow in the stream channel. The APT was run for the date of *February 5, 2021* in conjunction with the review of resent aerial imagery taken in the area (see document *2021-086 APT Data\_2021-02-05* and

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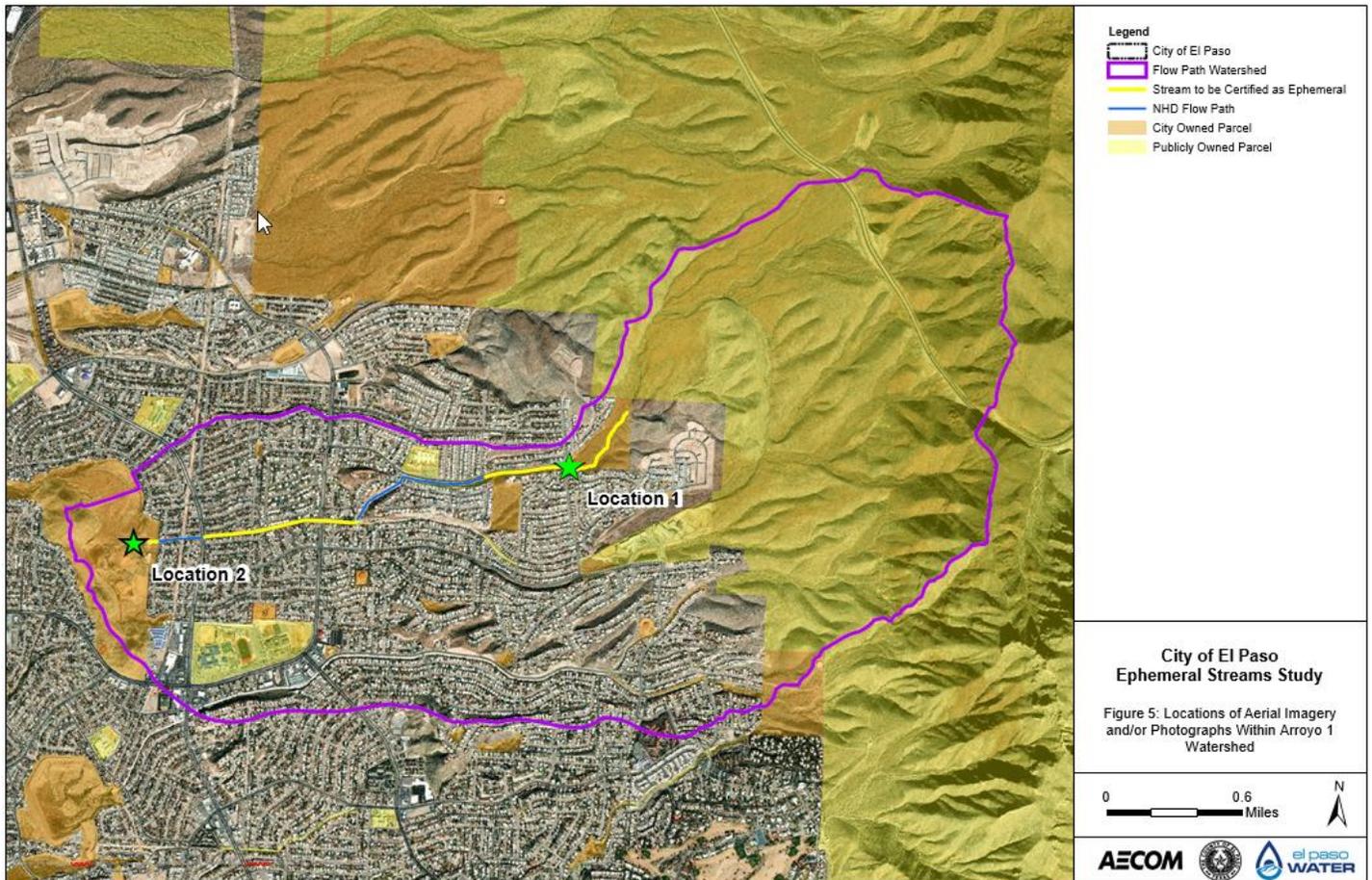
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images 1-3 provided below). The aerial images taken on the aforementioned date show no observable indicators of flow or ponding even with the APT results showing an estimated 0.2-inch precipitation event occurring less than two weeks prior to *February 5, 2021*.

Based on the data provided by the applicant's consultant and obtained by Regulatory Division personnel have determined that the stream channel within the review areas only experience flows in response to storm events and, is therefore, ephemeral. 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, therefore, is not subject to regulation under Section 404 of the Clean Water Act.



(Figure1); Map of proposed project AOIs with photo locations and the surrounding watershed, figure was provided by the applicant.

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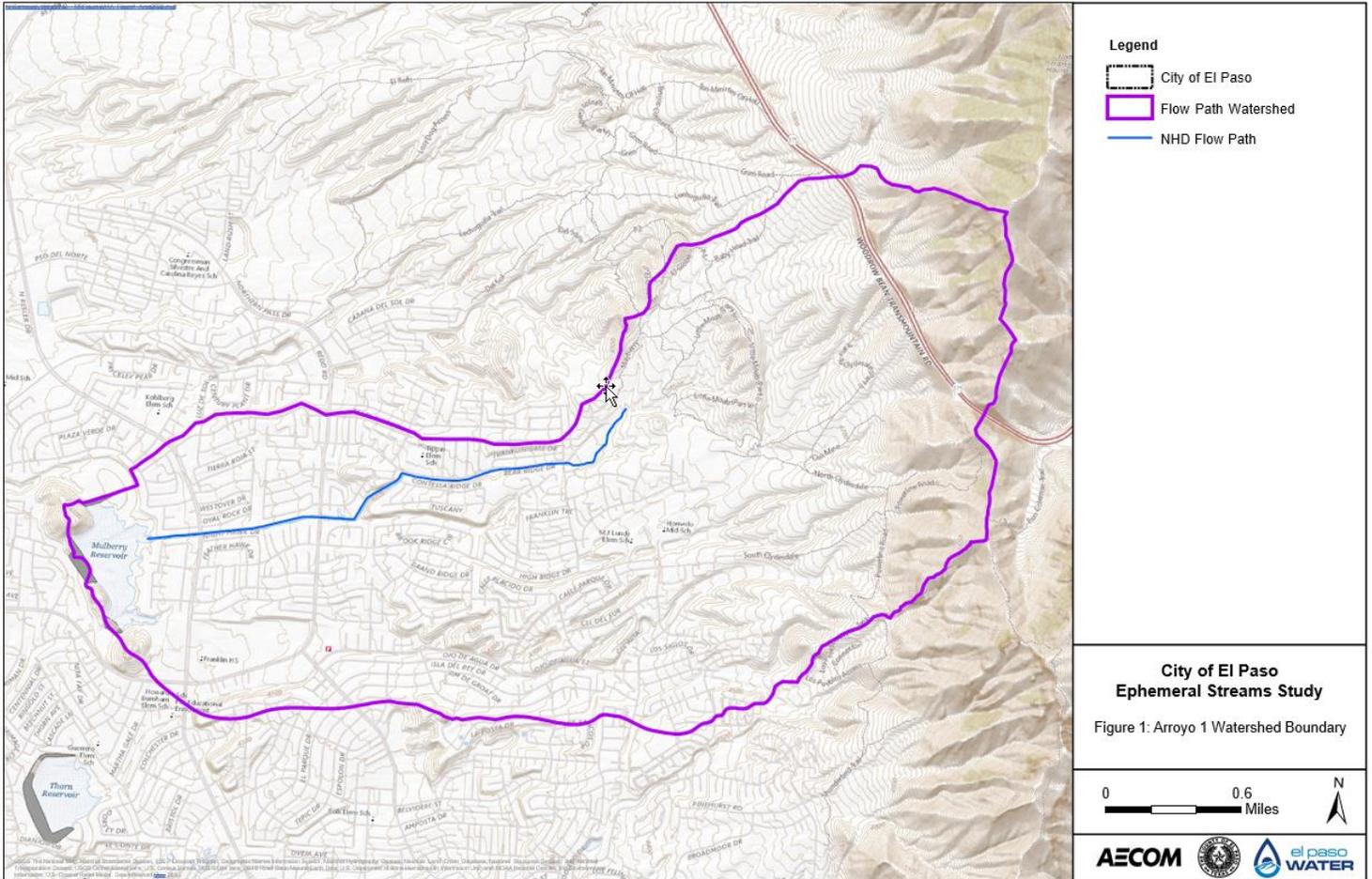
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(Figure 2) Arroyo #1 approximate stream alignment with USGS Topographic basemap, figure provided by applicant.

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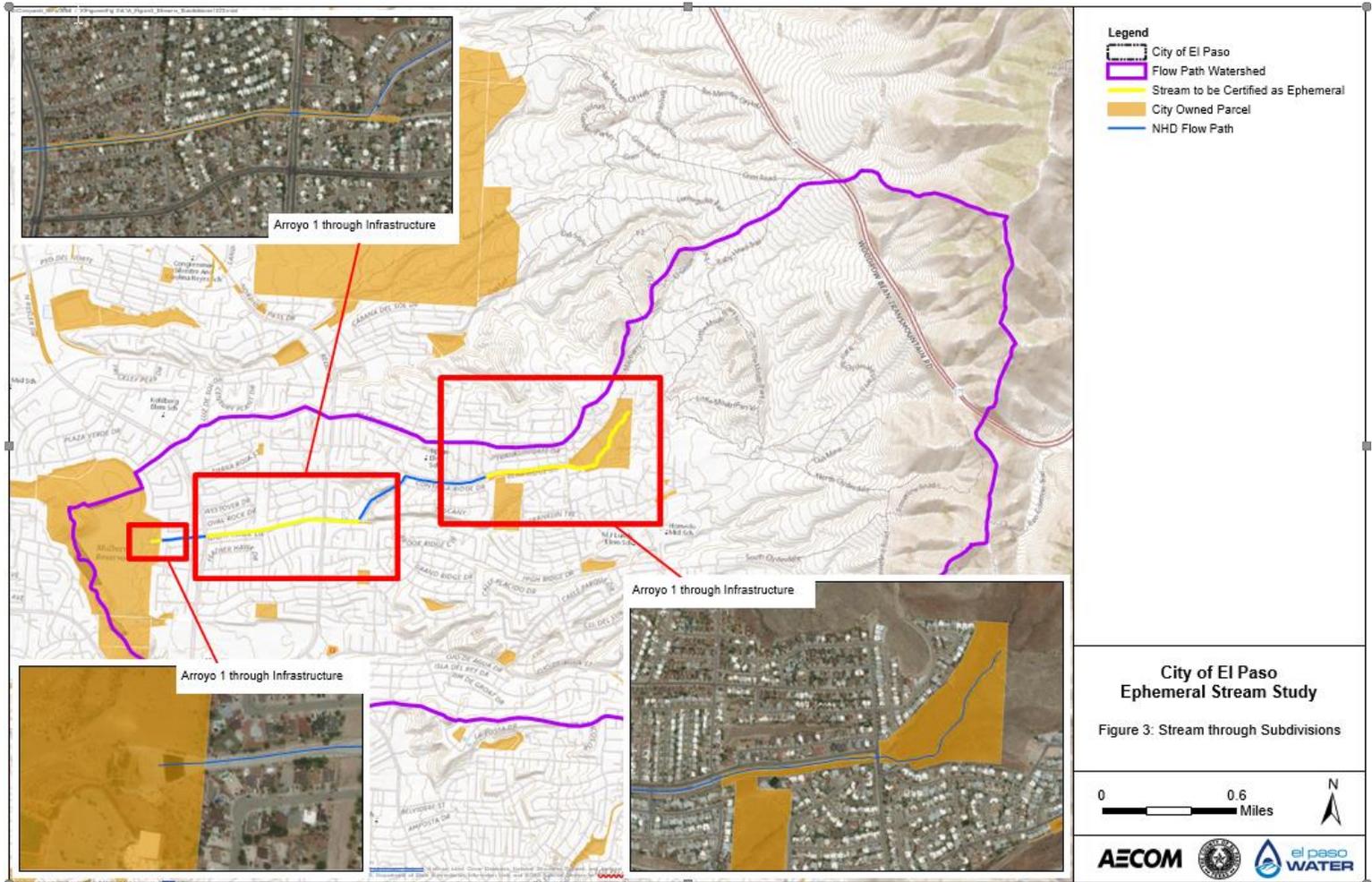
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(Figure 3) El Paso Water Utilities AOI locations along with satellite imagery of reaches under review, figure was provided by the applicant.

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(Image 1) El Paso Water Utilities project along the upper reach of study area with approximate AOI; Digital Globe satellite imagery; February 5, 2021 with no indication of flow throughout the study area.

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(Image 2) El Paso Water Utilities project along the middle reach of study area with the approximate AOI; Digital Globe satellite imagery; February 5, 2021 with no indication of flow throughout the study area.

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(Image 3) El Paso Water Utilities project along the bottom reach of study area; Digital Globe satellite imagery; February 5, 2021 with no indication of flow throughout the study area.

<sup>1</sup> Map(s)/Figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> If the navigable water is not subject to the ebb and flow of the tide and 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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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(Photo 1) El Paso Water Project at site location #1 (See figure 1 for map location). No evidence of flow or ponding.

<sup>1</sup> Map(s)/Figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> 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.

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<sup>4</sup> 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.

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(Photo 2) El Paso Water project at location #2 (See figure 1 for map location). No evidence of flow or ponding.

<sup>1</sup> Map(s)/Figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.