DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ALBUQUERQUE DISTRICT
4101 JEFFERSON PLAZA NE
ALBUQUERQUE, NM 87109-3435

December 5, 2024

CESPA-RD

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023) ,[1] SPA-2024-00272[2].

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.[3] AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.[4]

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),[5] the 2023 Rule as amended,

[1] While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.
[2] When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).
[3] 33 CFR 331.2.
[4] Regulatory Guidance Letter 05-02.
[5] USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

   a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

   Table 1. Summary of Waterbodies within the Review Area

Feature ID	Relatively Permanent Water	Jurisdiction	Location (degree's latitude, degrees longitude)
shua002e	No	not a water of the United States	30.938674, -105.472376
shua003e	No	not a water of the United States	30.937864, -105.471561
shua004e	No	not a water of the United States	30.93595, -105.472848
shua005e	No	not a water of the United States	30.936649, -105.469157
shub001e	No	not a water of the United States	30.943359, -105.481807
shub001e_2	No	not a water of the United States	30.944623, -105.482937
shub002e	No	not a water of the United States	30.948389, -105.485498
shub003e	No	not a water of the United States	30.955174, -105.490453
shuc001e	No	not a water of the United States	30.957333, -105.481984
shuc002e	No	not a water of the United States	30.958670, -105.491297
shuc003e	No	not a water of the United States	30.958977, -105.491983
shuc004e	No	not a water of the United States	30.960289, -105493385
shuc005e	No	not a water of the United States	30.965012, -105.497348
shuc006e	No	not a water of the United States	30.965748, -105.497662

Feature ID	Relatively Permanent Water	Jurisdiction	Location (degree's latitude, degrees longitude)
shuc007e	No	not a water of the United States	30.972163, -105.497906
shuc008e	No	not a water of the United States	30.973206, -105.499265
shuc009e	No	not a water of the United States	30.973905, -105.501282
shuc011e	No	not a water of the United States	30.975107, -105.408005
shuc012e	No	not a water of the United States	30.974959, -105.508935
shuc013e	No	not a water of the United States	30.974837, -105.509364
shuc014e	No	not a water of the United States	30.977726, -105.513787
shuc015e	No	not a water of the United States	30.977763, -105.513801
shuc016e	No	not a water of the United States	30.978113, -105.514223
shuc017e	No	not a water of the United States	30.985316, -105.519709
shuc018e	No	not a water of the United States	30.987452, -105.527778
shuc019e	No	not a water of the United States	30.988052, -105.528451
shuc020e	No	not a water of the United States	30.995794, -105.537159

Table 2. Summary of Wetlands within the Review Area

Feature ID	Wetland Classification[1]	Jurisdiction	Location (degrees latitude, degrees longitude)
whua001	PEM/PSS	Not a water of the United States	30.938194, -105.472750
whua002	PEM/PSS	Not a water of the United States	30.934433, -105.471119

2. REFERENCES.

1. USACE. 2009. List of Navigable Waters of the United States in the Albuquerque District. June 17, 2009.

2. ERM. 2024 Wetland Delineation Report. August 2024

3. USDA, NRCS. 2016. Web Soil Survey. Available online at http://websoilsurvey.nrcs.usda.gov/.

4.Dick-Peddie, W.A. and W.H. Moir. 1999. New Mexico Vegetation: Past, Present, and Future. University of New Mexico Press.

5. Sackett v. EPA, 598 U.S. _, 143.S. Ct. 1322 (2023)

6. 2003 SWANCC guidance

7. 2008 Rapanos Guidance

8. Memorandum on NAP-2023-01223

9. Memorandum on NWK-2022-00809

10. Memorandum on SWG-2023-00284

3. REVIEW AREA. The review area consists of the Saguaro Connector Pipeline Project, Border Facilities, total of a 128-acre parcel of land, approximate center point of latitude 30.93°N, longitude -105.47°W, Hudspeth County, Texas. The applicant has requested the review for aquatic resources located within the review area.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The closest A1 water to the review area is the Rio Grande, a Traditionally Navigable Water (TNW). The center point of the review area is approximately 0.5 mile from the Rio Grande.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. There were 16 flow paths identified between the aquatic resource within the review area and the Rio Grande

River which is approximately 0.5 miles from the review area. However, based on the available information, including a Stream Duration Assessment Method for the Arid West, those flow paths do not experience relatively permanent flows and lack continuously flowing water or standing water. These flow paths or dry washes only flow temporarily in direct response to precipitation events.

6. SECTION 10 JURISDICTIONAL WATERS[6]: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.[7] shua001p (Rio Grande) is a known TNW consisting of 2,660 LF within the review area with an average OHWM of 25 ft. The Rio Grande is a non-tidal waterbody that is also on the district's Section 10 waters list.

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

    a. Traditional Navigable Waters (TNWs) (a)(1)(i): shua001p (Rio Grande), a known TNW and interstate waterbody that is shared by Colorado, New Mexico, and Texas, as well as two countries (the U.S. and Mexico) consisting of 2,660 LF within the review area with an average OHWM of 25 ft. This feature is depicted in the ERM 2024, Wetland Delineation Report Appendix A, Figures 1- 6.

[6] 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce or is presently incapable of such use because of changed conditions or the presence of obstructions.

[7] This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

b. The Territorial Seas (a)(1)(ii): N/A

c. Interstate Waters (a)(1)(iii): See above description for shua001p (Rio Grande).

d. Impoundments (a)(2): N/A

e. Tributaries (a)(3): N/A

f. Adjacent Wetlands (a)(4): N/A

g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. Describe aquatic resources and other features within the review area identified as "generally non-jurisdictional" in the preamble to the 1986 regulations (referred to as "preamble waters").[8] Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A

b. Describe aquatic resources and features within the review area identified as "generally not jurisdictional" in the Rapanos guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A

c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A

d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A

e. Describe aquatic resources (i.e., lakes and ponds) within the review area, which do not have nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in "SWANCC," would have been jurisdictional

[8] 51 FR 41217, November 13, 1986.

based solely on the "Migratory Bird Rule." Include the size of the aquatic resource or feature, and how it was determined to be an isolated water in accordance with SWANCC. N/A

f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court's decision in Sackett (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Table 3. Summary of Non-jurisdictional Waterbodies within the Review Area

Feature ID	Relatively Permanent Water	Juris-diction	Location (degree's latitude, degrees longitude)	OHWM (average feet)	Total length in Review Area (LF[1])	WOTUS Status
shua002e	No	not a water of the United States	30.938674, -105.472376	60	403	non-relatively permanent water
	Unnamed ephemeral dry wash, outside 100-year floodplain. This feature is not mapped on topographic, NWI, or NHD maps. Based on field observations, shua002e intersects wetland whua001 (identified by NWI as a pond [PUBF]), outside of 100-year floodplain and east of Indian Hot Springs Road, a maintained county road. This dry wash is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shua003e	No	not a water of the United States	30.937864, -105.471561	60	550	non-relatively permanent water
	Unnamed ephemeral dry wash within the 100-year floodplain. Based on topographic maps, this feature originates from two washes that begin in the mountains approximately 0.73-mile northeast and combine approximately 0.04 mile north of the surveyed feature where it continues southwest towards the Rio Grande. The NWI/NHD maps match the topographic map. Based on field observations, shua003e intersects wetland whua001(NWI PUBf, outside the 100-year floodplain) at Indian Hot Springs Road that is impounded by a manmade berm. This dry wash is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shua004e	No	not a water of the United States	30.93595, -105.472848	5	1,560	non-relatively permanent water
	Unnamed ephemeral dry wash partially within the 100-year floodplain. Based on field observations, this feature drains south, from wetland whua001 (which is contained by a manmade berm), only during high precipitation events before crossing Indian Hot Springs					

Feature ID	Relatively Permanent Water	Juris-diction	Location (degree's latitude, degrees longitude)	OHWM (average feet)	Total length in Review Area (LF[1])	WOTUS Status
	Road and south to the Rio Grande. This feature is not mapped on topographic and NHD maps at the road, but further south the feature follows a topography/NWI/NHD mapped feature. This change between the desktop maps and field mapped feature is likely due to agriculture disturbance. Aerial imagery shows that active agriculture stopped around the January 2020 imagery. Aerial images also show shua004e crossing at least three to four unpaved roads, compacting/disturbing the feature before reaching the Rio Grande. While the feature is connected downstream to the Rio Grande, it is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shua005e	No	not a water of the United States	30.936649, -105.469157	20	2,576	non-relatively permanent water
	Unnamed ephemeral wash partially within the 100-year floodplain. Based on field observations, this feature drains southwest and ends in a manmade wetland feature (whua002, NWI PUBf) near a manmade berm and elevated dirt road that separates this feature from the Rio Grande. Based on historical aerial imagery, it appears this historically connected to the Rio Grande prior to these man-made alterations. According to topographic and NWI/NHD maps, the feature continues to the southwest for approximately 1 mile before terminating approximately 120 feet from the Rio Grande. Aerial imagery supports the field delineation that the feature terminates before reaching the Rio Grande. This dry wash is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shub001e	No	not a water of the United States	30.943359, -105.481807	50	127	non-relatively permanent water
	Unnamed ephemeral wash partially within the 100-year floodplain. Based on field observations, this feature drains southwest and ends in a manmade wetland feature (whua002, NWI PUBf) near a manmade berm and elevated dirt road that separates this feature from the Rio Grande. Based on historical aerial imagery, it appears this historically connected to the Rio Grande prior to these man-made alterations. According to topographic and NWI/NHD maps, the feature continues to the southwest for approximately 1 mile before terminating near the Rio Grande. Aerial imagery supports the field delineation that the feature terminates before reaching the Rio Grande. This dry wash is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shub001e_2	No	not a water of the United States	30.944623, -105.482937	20	21	non-relatively permanent water
	Unnamed ephemeral wash within the 100-year floodplain across Indian Hot Springs Road. This feature is not on topographic, NWI, or NHD maps. Based on field observations and					

Feature ID	Relatively Permanent Water	Juris-diction	Location (degree's latitude, degrees longitude)	OHWM (average feet)	Total length in Review Area (LF[1])	WOTUS Status
	aerial imagery, this ephemeral wash is likely due to overflow from shub001e during extreme high precipitation events to the east of the road outside of the review area. Based on aerial imagery, the defined channel with bed and banks disappears shortly after crossing the road to the west. This dry wash is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shub002e	No	not a water of the United States	30.948389, -105.485498	200	310	non-relatively permanent water
	Unnamed ephemeral wash outside of the 100-year floodplain the crosses Indian Hot Springs Road. Based on aerial and topographic maps, the wash begins approximately 0.87 mile north of the road in the mountains and continues south through the road. Approximately 0.02 mile south of the road the stream enters the 100-year floodplain outside of the road and continues 0.18 mile south where it meets the Porcher Canal. The Porcher Canal at this location runs northwest and southeast - southeast the canal terminates in 0.24 mile and to the northwest it drains approximately 0.55 mile to a confluence with the Rio Grande. The NWI/NHD maps are the same, except the Porcher Canal confluence is approximately 1 mile northwest and not at the 0.55-mile location the topographic map illustrates. This dry wash is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shub003e	No	not a water of the United States	30.955174, -105.490453	180	148	non-relatively permanent water
	Hackberry Arroyo with an ephemeral flow regime, outside of the 100-year floodplain that crosses Indian Hot Springs Road. Based on topographic maps, this feature is the Hackberry Arroyo that originates in the mountains approximately 3.5 miles northeast of the review area and continues west across the review area 0.24 mile where it meets the Rio Grande. NHD/NWI maps match the topographic map. This dry wash is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shuc001e	No	not a water of the United States	30.957333, -105.481984	10	18	non-relatively permanent water
	Unnamed ephemeral stream outside of the 100-year floodplain that crosses Indian Hot Springs Road. Based on aerial and topographic maps, the feature originates to the northeast approximately 0.47 mile and continues southwest across the review area approximately 0.25 mile where it meets the Rio Grande. NWI/NHD maps match the topographic map. This dry wash is a non-relatively permanent water feature and is therefore non-jurisdictional.					

Feature ID	Relatively Permanent Water	Juris-diction	Location (degree's latitude, degrees longitude)	OHWM (average feet)	Total length in Review Area (LF[1])	WOTUS Status
shuc002e	No	not a water of the United States	30.958670, -105.491297	5	8	non-relatively permanent water
	Unnamed ephemeral wash outside of the 100-year floodplain that is erosional across Indian Hot Springs Road. This feature is not on topographic, NHD, or NWI maps. Based on aerial imagery and field observations, the channel appears to be overflow from shuc001e during extreme precipitation events to the east of the road creating the erosional drainage feature across the road to the west. Based on aerial imagery, the feature loses its channel bed and bank to the east of the road shortly after crossing and appears to terminate before connecting to the Rio Grande. Therefore, this ephemeral wash is not a continuously flowing body of water with a continuous surface connection to a TNW or RPW and this dry wash is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shuc003e	No	not a water of the United States	30.958977, -105.491983	120	151	non-relatively permanent water
	Unnamed ephemeral stream outside of the 100-year floodplain where it crosses Indian Hot Springs Road. Based on topographic maps, this feature originates approximately 0.45 mile to the northeast and drains southwest across the road and into the Rio Grande approximately 0.2 mile from the review area. The NHD/NWI maps match the topographic map. This dry wash is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shuc004e	No	not a water of the United States	30.960289, -105493385	250	250	non-relatively permanent water
	Unnamed ephemeral wash outside of the 100-year floodplain that crosses Indian Hot Springs Road. Based on aerial imagery and field observations, the northeast side of the road has built up material so the drainage from the east gets somewhat impounded by the road and drains across the road in an active floodplain with multiple low flow channels separated by a low terrace, and also through a culvert on the northeast side. The feature is not mapped on NWI/NHD or topographic maps and is not within the 100-year floodplain. It appears on aerial imagery the channel does not persist and terminates prior to reaching the Rio Grande. However, the feature is not on NWI/NHD or topographic maps, is ephemeral, and outside of the 100-year floodplain. This dry wash is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shuc005e	No	not a water of the	30.965012, -105.497348	3	3	non-relatively permanent water

Feature ID	Relatively Permanent Water	Juris-diction	Location (degree's latitude, degrees longitude)	OHWM (average feet)	Total length in Review Area (LF[1])	WOTUS Status
		United States				
	Ephemeral stream within the 100-year floodplain that crosses Indian Hot Springs Road. Based on topographic maps, this feature is Asebuches Arroyo and originates in the mountains approximately 4.7 miles to the northeast and continues across the road and into the Rio Grande approximately 0.13 mile from the review area. NWI/NHD maps and aerial imagery match the topographic maps. This dry wash is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shuc006e	No	not a water of the United States	30.965748, -105.497662	12	39	non-relatively permanent water
	Unnamed ephemeral wash within the 100-year floodplain that crosses Indian Hot Springs Road. This feature is not on topographic, NHD, or NWI maps. Based on aerial imagery, the feature originates outside of the review area to the east as overflow from Asebuches Arroyo (shuc005e) that is connected to the Davis Arroyo Tank, the overflow channel drains south approximately 0.25 mile where it crosses the road and continues south 0.07 mile where it joins back into shuc005e and drains to the Rio Grande. This dry wash is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shuc007e	No	not a water of the United States	30.972163, -105.497906	80	653	non-relatively permanent water
	Unnamed ephemeral braided stream within the 100-year flood plain that crosses Indian Hot Springs Road. Based on field observations, in two low flow channels, in the active floodplain, road material has been pushed up in the channel as a result of prior road maintenance. Based on topographic maps, this feature originates as the Davis Arroyo approximately 3.5 miles northeast in the mountains and continues south across the review area approximately 0.4 mile into the Rio Grande. NHD/NWI maps and aerial imagery match the topographic map. This dry wash is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shuc008e	No	not a water of the United States	30.973206, -105.499265	7	8	non-relatively permanent water
	Unnamed ephemeral wash outside of the 100-year floodplain that based on field observations is an erosional channel formed by road runoff from Indian Hot Springs Road. From Indian Hot Springs Road, shuc008e drains south approximately 0.15 mile where shuc008e meets shuc007e and continues south into the Rio Grande. This feature is not mapped on topographic, NHD, or NWI maps. This dry wash is a non-relatively permanent					

Feature ID	Relatively Permanent Water	Juris-diction	Location (degree's latitude, degrees longitude)	OHWM (average feet)	Total length in Review Area (LF[1])	WOTUS Status
	water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shuc009e	No	not a water of the United States	30.973905, -105.501282	300	176	non-relatively permanent water
	Unnamed ephemeral stream outside of the 100-year floodplain that crosses Indian Hot Springs Road. Based on field observations, material has been pushed to the roadside within the channel limiting water flow. Based on topographic maps the feature originates in the mountains approximately 3.4 miles to the northeast and drains south across the road and into the Rio Grande approximately 0.5 mile from the review area. The NHD/NWI maps match the topographic maps. This dry wash is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shuc011e	No	not a water of the United States	30.975107, -105.408005	8	9	non-relatively permanent water
	Unnamed ephemeral stream outside of the 100-year floodplain that crosses Indian Hot Springs Road. Based on field observations, flow continues to the Rio Grande through a degrading culvert (culvert is being crushed with material falling through). Based on topographic maps this feature originates 0.3-mile northeast and drains from the review area approximately 0.75 mile south towards the Rio Grande. This dry wash is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shuc012e	No	not a water of the United States	30.974959, -105.508935	6	5	non-relatively permanent water
	Unnamed ephemeral wash outside of the 100-year floodplain that crosses Indian Hot Springs Road. Based on field observations, flow continues to the Rio Grande through a culvert. This feature is not on topographic, NWI, or NHD maps. Based on aerial imagery, the feature drains south approximately 0.03 mile from review area into shuc011e, another ephemeral wash that is connected to the Rio Grande. This dry wash is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shuc013e	No	not a water of the United States	30.974837, -105.509364	1	1	non-relatively permanent water
	Unnamed ephemeral wash outside of the 100-year floodplain across Indian Hot Springs Road. Based on field observations, this feature's channel is manipulated by the active county road and the feature terminates at the road where it loses the OHWM and loses a defined bed and bank. Therefore, the feature lacks a downstream connection and is a dry					

Feature ID	Relatively Permanent Water	Juris-diction	Location (degree's latitude, degrees longitude)	OHWM (average feet)	Total length in Review Area (LF[1])	WOTUS Status
	wash that is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shuc014e	No	not a water of the United States	30.977726, -105.513787	20	36	non-relatively permanent water
	Unnamed ephemeral stream outside of the 100-year floodplain that crosses Indian Hot Springs Road. Based on aerial maps, this feature originates 0.3 mile to the northeast where it drains south across the review area and continues approximately 0.55 mile when the bed and bank is lost near a dirt road. NHD and NWI maps match the topographic map. This dry wash lacks a continuous surface connection to a TNW or RPW and is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shuc015e	No	not a water of the United States	30.977763, -105.513801	2	2	non-relatively permanent water
	Unnamed ephemeral wash outside of the 100-year floodplain. This feature is not on topographic, NWI, or NHD maps. Based on aerial imagery and field observations, it has a confluence into shuc014e within the review area on the northeast edge at Indian Hot Springs Road. This dry wash is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shuc016e	No	not a water of the United States	30.978113, -105.514223	4	10	non-relatively permanent water
	Unnamed ephemeral wash outside of the 100-year floodplain. This feature is not on topographic, NWI, or NHD maps. This feature has a confluence into shuc014e approximately 0.05 mile south of Indian Hot Springs Road. This dry wash lacks a continuous surface connection to a TNW or RPW and is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shuc017e	No	not a water of the United States	30.985316, -105.519709	10	11	non-relatively permanent water
	Unnamed ephemeral wash outside of the 100-year floodplain at the crossing with Indian Hot Springs Road. Based on topographic maps this feature originates 0.2 mile east of the review area and continues west and turns south approximately 0.95 mile into an impoundment. The impoundment shows a channel towards the Rio Grande approximately 0.2 mile southeast. The NHD/NWI maps are similar with the wash draining west and turns south into an NWI mapped Lake that is diked/impounded (Lh) and lined by a man-made					

Feature ID	Relatively Permanent Water	Juris-diction	Location (degree's latitude, degrees longitude)	OHWM (average feet)	Total length in Review Area (LF[1])	WOTUS Status
	canal. The maps do show a channel leading from the south end of the impoundment to the Rio Grande. However, aerial imagery shows a canal parallel to, but separate from, the Rio Grande. This canal prevents direct surface connection to the Rio Grande. It is likely that in extreme precipitation the lake impoundment and canal would flow into the Rio Grande, as seen in Google Earth historical images from January 2020, but would otherwise be disconnected from the Rio Grande. This dry wash lacks a continuous surface connection to a TNW or RPW and is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shuc018e	No	not a water of the United States	30.987452, -105.527778	50	62	non-relatively permanent water
	Unnamed ephemeral wash within the 100-year floodplain. Based on topographic maps this feature originates in the mountains as big tank canyon approximately 5.43 miles northeast of the review area and continues southwest 0.4 mile towards the Rio Grande. The NHD/NWI maps match the topographic map. Aerial imagery also matches, except south of the road, it appears the channel splits in two with one clearly visible channel leading to the same impoundment as shua017e and the other leading to the man-made canal that runs parallel to but separate from the Rio Grande. Therefore, this feature does not have a direct surface connection from the Rio Grande except during extreme circumstances (Google Earth historical imagery January 2020). This dry wash lacks a continuous surface connection to a TNW or RPW and is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shuc019e	No	not a water of the United States	30.988052, -105.528451	6	10	non-relatively permanent water
	Unnamed ephemeral wash outside of the 100-year floodplain. This feature is not on topographic, NHD, or NWI maps. Based on aerial imagery the feature crosses Indian Hot Springs Roads and terminates, losing the OHWM and a defined bed and banks. This dry wash lacks a continuous surface connection to a TNW or RPW and is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					
shuc020e	No	not a water of the United States	30.995794, -105.537159	300	329	non-relatively permanent water
	Unnamed ephemeral stream within the 100-year floodplain that crosses Indian Hot Springs Road. Based on topographic maps, this feature originates in the mountains to the northeast in the Quitman Canyon approximately 7.8 miles from the review area and continues south approximately 0.4 mile where it terminates in a wetland area that is separate from (not connected to) the Rio Grande. The NWI/NHD maps show this feature continuing to the Rio					

Feature ID	Relatively Permanent Water	Juris-diction	Location (degree's latitude, degrees longitude)	OHWM (average feet)	Total length in Review Area (LF[1])	WOTUS Status
	Grande south of the review area. Based on aerial imagery, the feature drains south into the man-made canal that parallels the Rio Grande and surrounds the NWI mapped lake impoundment (Lh) that shuc017e and shuc018e are also connected to. It is likely that in extreme precipitation the lake impoundment and canal would flow into the Rio Grande, as seen in Google Earth images from January 2020. shuc020e drains south approximately 0.7 mile to the canal and potential overflow point into the Rio Grande. Therefore, this feature does not have a direct surface connection from the Rio Grande except during extreme circumstances. This dry wash lacks a continuous surface connection to a TNW or RPW and is a non-relatively permanent water feature and is therefore non-jurisdictional. This feature was observed in the field and was assessed using SDAM to confirm this is a non-relatively permanent feature.					

Table 4. Summary of Non-jurisdictional Wetland Features within the Review Area

Feature ID	Wetland Classification[1]	Jurisdiction	Location (degrees latitude, degrees longitude)	Area (acres)	Located in 100-year floodplain	WOTUS Exclusion
whua001	PEM/PSS	Not a water of the United States	30.938194, -105.472750	0.59	No	Lacks a continuous surface connection
	This wetland is likely manmade, due to a small manmade berm at Indian Hot Springs Road that impounds some water from shua002e and shua003e. Based on field observations, only during high precipitation events this wetland may overflow into shua004e crossing Indian Hot Springs Road and south towards the Rio Grande. While the wetland is mostly impounded, it is connected to a non-relatively permeant feature (shua004e) This feature is not mapped on topographic and NHD maps at the road, but further south the feature follows a topography/NWI/NHD mapped feature. This change between the desktop maps and field mapped feature is likely due to agriculture disturbance. Aerial imagery shows that active agriculture stopped around the January 2020 imagery. Aerial images also show shua004e crossing at least three to four unpaved roads, compacting/disturbing the feature before reaching the Rio Grande. Wetland whua001 is considered to not be adjacent and not a water of the U.S.					
whua002	PEM/PSS	Not a water of the United States	30.934433, -105.471119	0.59	Yes	Lacks a continuous surface connection
	This wetland is likely manmade, due to a berm along a road that stops and collects the water from shua005e that does not have a direct downstream connection to a RPW or TNW. The wetland does not have a direct surface connection to TNW or RPW and does not have a continuous surface connection with a TNW or RPW that makes it difficult to determine where the water ends and wetlands begin. The wetland identified as WHUA001 exhibits a weak downstream connection to an A1 waterbody. This connection is further compromised by					

Feature ID	Wetland Classification[1]	Jurisdiction	Location (degrees latitude, degrees longitude)	Area (acres)	Located in 100-year floodplain	WOTUS Exclusion
	multiple disturbances and several road crossings, including Indian Hot Springs Road. Due to these factors, WHUA001's linkage to the A1 water is minimal. Consequently, this wetland is classified as non-adjacent and non-jurisdictional.					

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

   a. USFWS (2022) National Wetlands Inventory Mapper. Available at: www.fws.gov/program/national-wetlands-inventory/wetlands-mapper.
   b. USGS (2022) USA Topographic Maps, 1:24000. Available at: ngmdb.usgs.gov/topoview/.
   c. USGS (2024) National Hydrography Dataset National Map Viewer: National Hydrography Dataset and Watershed Boundary Dataset. Available at: apps.nationalmap.gov/viewer/.

10. OTHER SUPPORTING INFORMATION.

CURRENT AND HISTORICAL AERIAL IMAGERY

The review area is bounded by the Quitman mountains to the east and the Rio Grande to the west. Currently and historically land use within the 128-acre review area includes active pasture and agriculture. From 1996 to 2005 the review area was tilled and maintained. From 2008 to 2022, the review area has been fallow with dense vegetation growing near the Rio Grande. Within the 107-acre review area and north of the Indian Hot Spring Road there are multiple dark signatures, indicative of wetland and waterbodies with vegetation growing along the edges. The 1.0-acre ATWS consists of a sparsely vegetated undeveloped land along Indian Hot Springs Road. The 6.9-mile access road is a maintained dirt county road with occasional piles of material skirting off the road. The access road crosses potential flowpaths, that is also connected to other smaller dirt roads.

PHYSIOGRAPHY

As represented in the U.S. Geological Survey (USGS) Schroder Arroyo Quadrangle, Texas – Hudspeth County 7.5-Topographic Series, the elevation at the review area ranges between 3,400 and 3,500 feet above mean sea level (USGS, 2022b). According to the topographic maps the review area is mostly undeveloped. The Indian Hot Springs

Road appears on the topographic maps as far back as 1940. Indian Hot Springs Road is also identified by the USGS as a light duty road with hard or improved surfaces.

CLIMATE

The Texas climate is characterized by hot summers, mild to cool winters, with widely variable precipitation across the state. Geologic features of Texas largely influence the climate causing large east-west variations in precipitation, and the state is subject to frequent and variable extreme events, such as droughts and heat waves (National Oceanic and Atmospheric Administration [NOAA], 2022). The majority of Texas, by percent land area, experienced drought conditions throughout 2022 and most of 2023 (NOAA, 2023).

Based on the APT calculations, all site visits were under normal conditions. All APT calculations displayed monthly values of mild drought on the Palmer Drought Severity Index and dry season based on the water-balance metrics.

MAPPED SOILS

The mountain ranges of the Chihuahuan Deserts are a geologic mix, but most soils are derived from limestone beds. The mountains contain limestone slopes and basins contain alluvium and erosional materials from the surrounding mountains (Griffith et al., 2007). According to the USDA's NRCS, the 107-acre review area consists of four soil units, the 1.0-acre ATWS consists of one soil unit, and the 6.9-mile-long access road consists of eight soil units (NRCS, 2022a). These soils, respectively, are:

- Baviza loamy fine sand, 1 to 8 percent slopes (BAC);
- Castolon, Gadsden, and Lomapelona soils, 0 to 1 percent slopes, occasionally flooded (CBA);
- Chillon extremely gravelly sandy loam, 1 to 3 percent slopes (CIB);
- Changas-Corazones complex, 1 to 30 percent slopes (CCE);
- Ojinaga-Corazones complex, 1 to 5 percent slopes (OCB);
- Pantera-Riverwash complex, 0 to 2 percent slopes, frequently flooded (PRA);
- Redlight and Terlingua soils and Rock outcrop, 5 to 30 percent slopes (RDF);
- Redlight and Terlingua soils and Rock outcrop, 35 to 65 percent slopes (RDG);
- Terlingua-Corazones complex, 10 to 30 percent slopes (TCE); and
- Tornillo very fine sandy loam, 0 to 1 percent slopes, rarely flooded (TOA).

Of the soils mapped by the NRCS within the review area, only the Castolon, Gadsden and Lomapelona soil is considered hydric in Hudspeth County, Texas according to the National Hydric Soils list (NRCS, 2022b). The hydric soil accounts for 64.3% of the 107-acre review area and is located primarily along the Rio Grande. The 1.0-acre ATWS and 6.9-mile-long access road do not contain hydric soils according to the National Hydric Soils list (NRCS, 2022b).

WETLANDS
At the time of the field survey, two wetlands were identified within the 128-acre review area. No wetlands were identified in the 1.0-acre ATWS or the 6.9-mile-long access road.

Wetland whua001 is a 0.6-acre wetland likely manmade due to a small berm at Indian Hot Springs Road that impounds water from shua002e, a non-relatively permanent stream. Based on field observations, this impounded wetland may overflow across Indian Hot Springs Road into shua004, a non-relatively permanent dry wash that continues south approximately 0.5 mile. Based on aerial imagery, shua004e is located in an area with pasture/agriculture disturbance and is crossed by multiple unpaved roads, in addition to Indian Hot Springs Road, before reaching the Rio Grande. Based on field observations and the SDAM, shua004e does not experience relatively permanent flows. Additionally, shua004e has weak indicators of flow frequency with a narrow OHWM (less than 5 feet) and depth less than 0.5 feet, that would not be able to support recreational or commercial activities. The wetland identified as WHUA001 does not have a connection to an A1 waterbody. Multiple disturbances and several road crossings, including Indian Hot Springs Road have disrupted the connection. Consequently, this wetland is classified as non-adjacent and non-jurisdictional.

Wetland whua002 is a 0.6-acre wetland that serves as the terminus point for shua005e, a non-relatively permanent stream in the southeastern portion of the review area. Wetland whua002 is likely manmade due to a berm along a road that blocks shua005e from reaching the Rio Grande and impounds water. There is no downstream connection to the Rio Grande. Based on field observations and the SDAM, shua005e does not experience relatively permanent flows, standing water, and lacks a continuous surface connection to the Rio Grande. Therefore, whua002 is considered non-jurisdictional.

The wetland vegetation observed within both ephemeral stream bed portion of each wetland is classified as palustrine emergent (PEM), however the bank vegetation falls under the palustrine scrub shrub (PSS) classification. The wetland boundary for each individual wetland encompasses both vegetation communities due to the proximity and immediate hydrologic connectivity of the two vegetation areas. Therefore, each individual wetland was assigned a split Cowardin Classification code of PEM/PSS.

WATERBODIES
At the time of the field survey, five flowpaths were identified within the 107-acre review area, no flowpaths within the 1.0-acre ATWS, and 23 flowpaths that cross the 6.9-mile access road.

Within the 128-acre review area.

Four ephemeral flowpaths with a total of 5,089 LF were also identified within the 107-acre review area. At the time of the survey, surface water was not present in any of the dry wash channels. Observations of recent surface water flow, such as saturated soil, was present only in dry wash shua002e likely due to the impoundment creating wetland whua001. These flow paths only flow in response to heavy precipitation events. The characteristics used to determine the OHWM of dry wash flowpaths included bed and banks, clear natural scour line impressed on the bank, recent bank erosion, change in vegetation cover, and change in sediment texture and/or size. Based on field observations and the SDAM, the four ephemeral flowpaths do not experience relatively permanent flows.

The remaining 23 flowpaths with a total of 2,387 LF were identified within the 6.9-mile access road. At the time of the survey, surface water was not present in any of the flowpaths. These flow paths only flow in response to heavy precipitation events. The characteristics used to determine the OHWM of these flowpaths included bed and banks, change in vegetation cover, and change in sediment texture and/or size. All flowpaths that intersect the 6.9-mile-long access road occur within an existing and maintained county road (Indian Hot Springs Road) that is frequently traversed by border patrol and local residents. Where the flowpaths intersect Indian Hot Springs Road OHWM indicators currently exist, however these streams are getting progressively degraded. Based on field observations and the SDAM, the 23 ephemeral flowpaths do not experience relatively permanent flows.

STREAMFLOW DURATION ASSESSMENT METHOD FOR THE ARID WEST
The SDAM report results, and Google Earth historical imagery review are provided in Appendix C of the delineation report and are paired with the waterbody data sheets. All streamflow duration assessments resulted in an ephemeral classification and supported the flow regimes identified in the field. All waterbodies lacked the five biological indicators used to evaluate flow regimes with the SDAM for the Arid West. Therefore, these waterbodies do not experience relatively permanent flows or standing water.

CONCLUSION
Based on the APT calculations, all site visits were under normal conditions.

All 27 ephemeral flowpaths are non-relatively permanent waters that flow only in direct response to precipitation events based on the desktop review, local climatic conditions, field observations, and the SDAM analysis. During heavy storm events and given the proximity to the international border between the United State and Mexico, these flowpaths may temporarily reach the Rio Grande, however it is highly unlikely for them to flow across the Rio Grande and into Mexico. However, 27 ephemeral flow paths lack relatively permanent flows, therefore not considered water of the United States.

One impounded wetland, whua002, also does not have a direct connection to a water of the U.S. and is considered isolated. The other impounded wetland, whua001, has the potential to overflow during extreme precipitation events across an existing county road into shua004e, a non-relative permanent water flowpath that flows only in direct response to precipitation events and has a somewhat impaired connection to an A1 water. This connection is compromised by multiple disturbances and several road crossings, including Indian Hot Springs Road. Due to these factors, WHUA001's linkage to the A1 water is minimal. Consequently, this wetland is classified as non-adjacent and non-jurisdictional.

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR’s structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.