



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): March 19, 2021

ORM Number: SPA-2020-00286-ABQ

Associated JDs: N/A

Review Area Location¹:

State/Territory: NM City: Zuni County/Parish/Borough: McKinley County

Center Coordinates of Review Area: Latitude 35.091545 Longitude -108.760584

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 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.

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.



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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
Drainage-1	589 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The aquatic resource is an ephemeral stream. See Section II. C. for specific details.
Drainage-2	332 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The aquatic resource is an ephemeral stream. See Section II. C. for specific details.
Drainage-3	858 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The aquatic resource is an ephemeral stream. See Section II. C. for specific details.
Drainage-4	737 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The aquatic resource is an ephemeral stream. See Section II. C. for specific details.
Drainage-5	587 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The aquatic resource is an ephemeral stream. See Section II. C. for specific details.
Drainage-6	795 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The aquatic resource is an ephemeral stream. See Section II. C. for specific details.
Drainage-7	304 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The aquatic resource is an ephemeral stream. See Section II. C. for specific details.

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: *“Biological Evaluation of the NM53 Highway Drainage Improvement Project”*. June 2020.

This information is sufficient for purposes of this AJD.

Rationale: *N/A*

___ Data sheets prepared by the Corps: *Title(s) and/or date(s)*.

Photographs: *Applicant photos from above report. Google Earth aerial photos. Digital Globe aerial photos.*

___ Corps Site visit(s) conducted on: *Date(s)*.

___ Previous Jurisdictional Determinations (AJDs or PJDs): *N/A*

Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*

USDA NRCS Soil Survey: *“Custom Soil Resource Report for McKinley County Area, New Mexico, McKinley County and Parts of Cibola and San Juan Counties”*. Accessed March 20, 2020.

___ USFWS NWI maps: *Title(s) and/or date(s)*.

USGS topographic maps: *“USGS 7.5-minute (1:24,000) Quadrangle map depicting the*

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project area: Zuni (35108-A7)".

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	United States Department of Agriculture, Natural Resources Conservation Service. 2006. Land Resource Regions and Major Land Resource Areas of the United States, the Caribbean, and the Pacific Basin. U.S. Department of Agriculture Handbook 296. United States Department of Agriculture, Natural Resources Conservation Service. Ecological site R035XC307AZ Clay Loam Upland 10-14" p.z. Accessed March 15, 2021. United States Department of Agriculture, Natural Resources Conservation Service. Ecological site R035XC312AZ Clay Loam Upland 10-14" p.z. Accessed March 15, 2021.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	Levick, L., J. Fonseca, D. Goodrich, M. Hernandez, D. Semmens, J. Stromberg, R. Leidy, M. Scianni, D. P. Guertin, M. Tluczek, and W. Kepner. 2008. The Ecological and Hydrological Significance of Ephemeral and Intermittent Streams in the Arid and Semi-arid American Southwest. U.S. Environmental Protection Agency and USDA/ARS Southwest Watershed Research Center, EPA/600/R-08/134, ARS/233046, 116 pp.

- B. Typical year assessment(s):** The Antecedent Precipitation Tool (APT) was used to determine if the applicant’s field work outlined in the JD report was conducted during a climatological “typical year” for the review area. Data was gathered from four (4) weather stations located approximately 4.7-miles (Zuni), 15.2-miles (Ramah 0.4 NW), 29.3-miles (Gallup Muni AP), and 22.7-miles (Ramah 9 SE) from the review area. Results from the APT note that on the day of the applicant’s field work the review area was in the dry season and experiencing moderate drought. The APT results indicate that the field visit was conducted during normal conditions for the rolling 30-year period.
- C. Additional comments to support AJD:** The review area encompasses approximately 19.7-acres and contains seven (7) identified aquatic resources (i.e. Drainages 1-7) that flow under NM Highway 53 and potentially to Black Rock Reservoir. The site is located within the 12-digit Hydrologic Unit Code (HUC) boundary of the Black Rock Reservoir-Zuni River (No. 150200040313) east of Zuni, NM. This area falls within the Natural Resources Conservation Service’s (NRCS) designated Land Resource Region (LRR) D-Western Range and Irrigated Region, specifically, within Major Land Resource Area (MLRA) 35-Colorado Plateau. This MLRA is located on the intermontane plateaus. Zuni is located within the southeast section of the MLRA where landforms range from gently sloping to strongly sloping plains. Elevations within the MLRA generally range from 4,250 to 4,950 feet. Average annual precipitation for the region ranges from 6 to 18 inches. The majority of precipitation events occur between July and September. Soils within the review area consist of Aquima-Hawaikuh complex, 1 to

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5 percent slopes, and Rizno-Tekapo-Rock outcrop complex, 2-45 percent slopes. These soils are categorized as well drained and not hydric.

The applicant submitted a report titled “Biological Evaluation of the NM 53 Highway Drainage Improvement Project”, dated June 2020, which outlines the findings of a preliminary desktop review and of an onsite examination of the review area conducted on April 6, 2020. The report indicates the six (6) aquatic resources within the review area are ephemeral, which is supported by the U.S. Geological Service’s (USGS) National Hydrography Dataset (NHD). Furthermore, the vegetation identified within the project area is dominated by upland plant species such as, Pinon (*Pinus edulis*), Rocky Mountain juniper (*Juniperus scopulorum*), One seed juniper (*Juniperus monosperma*), Big sagebrush (*Artemisia tridentata*), Blur gramma (*Bouteloua gracilis*), Rubber rabbitbrush (*Ericameria nauseosa*), Broom snakeweed (*Gutierrezia sarothrae*) and other various upland plant species. The report indicates that the dominance of upland plant species in and near the identified aquatic resources are indicative of an ephemeral flow regime.

As part of the JD assessment, Google Earth aerial images of the review area dated June 1991, October 1997, July 2005, August 2009, August 2011, May 2012, October 2012, March 2013, January 2014, June 2014, November 2015, and March 2016 were examined. Flow was not observed within any of the aerial photographs examined. Digital Globe images of the review area dated December 18, 2020, May 19, 2018, February 5, 2018, and February 9, 2017 yielded the same results.

Drainages exhibiting a predominance of drought tolerant vegetation with lower canopy cover and an abundance of riparian shrubland community is an indication of an ephemeral hydrologic regime (Levick et. al. 2008). The applicant’s report indicates percent vegetative cover within Drainages 1, 2, 3, 5, and 6 appears to be dominated by shrub and herbaceous cover, with Drainage 4 percentage vegetative cover being evenly split between tree coverage (20%) and combined shrub (10%) and herbaceous (10%) coverage. Drainage 7 was not analyzed in the applicant’s report, but aerial photography appears to indicate relatively the same vegetation composition. Furthermore, the combined narrow width and close proximity of these stream reaches to their headwaters is characteristic of an ephemeral and intermittent channel (Levick et. al. 2008); in this case an ephemeral channel considering the evidence stated above.

After review of the applicant’s submitted report and aerial photographs of the review area, the Corps has determined that Drainages 1-7 are ephemeral features. As such, these aquatic features are excluded from regulation under the Navigable Waters Protection Rule.

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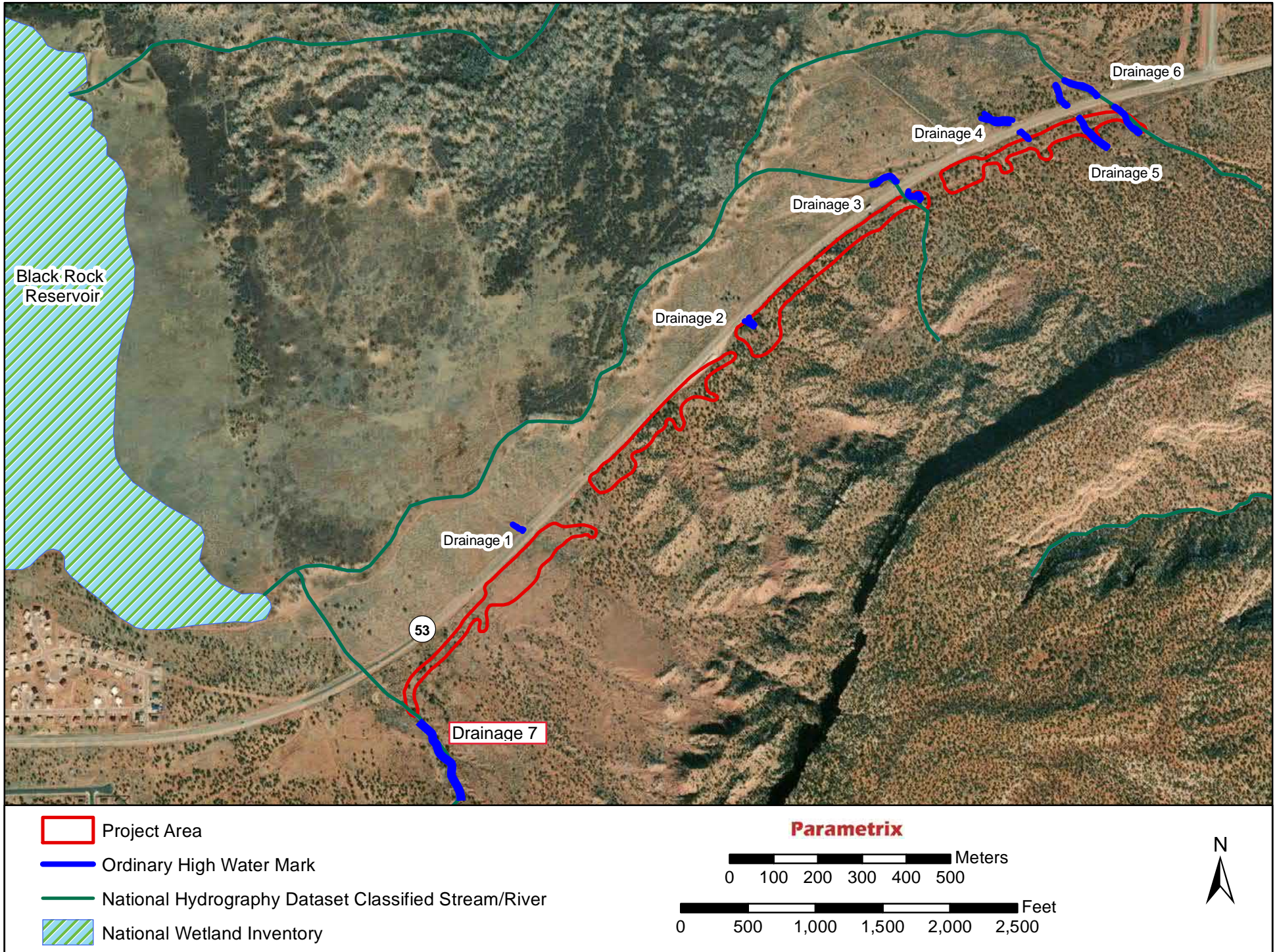


Figure D1: Water resources within the project area