



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): February 19, 2021

ORM Number: SPA-2021-00040

Associated JDs: N/A

Review Area Location¹:

State/Territory: NM City: Kirtland County/Parish/Borough: San Juan County

Center Coordinates of Review Area: Latitude 36.833641 Longitude -108.366671

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
A	0.4342 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
AA	0.0014 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
B	0.3254 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
BB	0.0014 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
C	0.2343 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
CC	0.0014 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
DD	0.0014 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
E	0.055 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
EE	0.0014 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
F	0.7492 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
GG	0.0014 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Swale
HH	0.0009 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
I	0.145 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
II	0.0005 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
JJ	0.0545 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
K	0.15 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully,	Ephemeral feature

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		rill, or pool	
KK	0.1736 acres	(b)(4) Diffuse stormwater run-off over upland or directional sheet flow over upland	Sheet flow
LL	0.3435 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Swale
Lower Shumway Arroyo	0.3673 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
M	0.1259 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
MM	0.0014 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Swale
N	0.6698 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
Narrows Wash	1.59 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
NN	0.2755 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
O	0.0021 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
P	0.0021 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
Q	0.0021 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
R	0.2851 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
S	0.2211 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
Shumway Arroyo	0.9252 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
Stevens Arroyo	0.0021 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
T	0.8112 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
U	0.2665 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature

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Upper Shumway Arroyo	2.5254 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
V	0.1452 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
W	0.0889 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Swale
X	0.0055 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature
Y	0.0014 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Swale
Z	0.0014 acres	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral feature

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

Information submitted by, or on behalf of, the applicant/consultant: 2021-040. Aquatic Resources Delineation (February 2021).

This information is sufficient for purposes of this AJD.

Rationale: N/A

Data sheets prepared by the Corps:

Photographs: *Google Earth 2019; Digital Globe 2017, 2018, 2020; on-site photographs provided by the applicant 2020.*

Corps Site visit(s) conducted on: 2/5/21.

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

Antecedent Precipitation Tool:

USDA NRCS Soil Survey:

USFWS NWI map: 2021

USGS topographic maps:

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	National Hydrography Dataset (2021), WaterWatch (2021)
USDA Sources	N/A.
NOAA Sources	U.S. Drought Monitor (2021), Western Regional Climate Center (2021)
USACE Sources	National Wetland Plant List (2021), A Field Guide to the Identification of the Ordinary High-Water Mark (OHWM) in the Arid West Region of the Western United States (2008)
DOI Sources	U.S. Fish and Wildlife National Wetland Inventory (2021)
State/Local/Tribal Sources	New Mexico Environment Department Hydrology Protocol (2020)

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EPA Sources	The Ecological and Hydrological Significance of Ephemeral and Intermittent Streams in the Arid and Semi-arid American Southwest (2008).
Other Sources	A. Park Williams, Edward R. Cook, Jason E. Smerdon, Benjamin I. Cook, John T. Abatzoglou, Kasey Bolles, Seung H. Baek, Andrew M. Badger, Ben Livneh. 2018. Large Contribution from Anthropogenic Warming to an Emerging North American Megadrought. <i>Science</i> . Vol. 368 Issue 6488. Pp. 314-318.
	USGCRP, 2018: Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018.

B. Typical year assessment(s): According to the 2018 National Climate Assessment parts of the Southwest recorded high temperatures in 2012, 2014, 2015, 2016, and 2017 that have not been observed since 1895. Increasing temperatures associated with drought and amplified by climate change have led to hydrological droughts in California, the Colorado River Basin, and the Rio Grande. In the Colorado Basin these conditions have contributed to lower runoff and to 17%-50% of the record-setting streamflow reductions between 2000 and 2014 (USGCRP, 2018). Stream gages maintained by the U.S. Geological Society (USGS) are currently reporting *below normal* flows across northwestern New Mexico (USGS, 2021).

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

The National Oceanic and Atmospheric Administration (NOAA) categorizes drought conditions by intensity, and data over the last 20 years indicates that the Albuquerque District has experienced consistent drought conditions throughout this period. Over this same timeframe, San Juan County has experienced drought conditions in all years with the exception of 2001. Current conditions reflect *exceptional drought* across an estimated 78% of the County and conditions are expected to persist (NOAA, 2021).

The project location receives approximately 7.5 inches of precipitation annually primarily during the months of July, August, September, and October. An annual historic Standardized Precipitation Index (SPI) report was generated for this review area to obtain a precipitation baseline prior to and during the field investigation. The data from the report, spanning from December 2019 to November 2020, reflects a score of -2 to -1, indicating extreme dry drought conditions within the limits of the review area over the prior year.

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

C. Additional comments to support AJD:

LOCATION

The review area is located approximately 3 miles north of Waterflow, in San Juan County, New Mexico, and can be found on the Waterflow and Youngs Lake, New Mexico, U.S. Geological Survey (USGS) 7.5-minute quadrangle maps. The review area's northern limits are located immediately south of the Ute Mountain Indian Reservation boundary and approximately 10 miles south of the Colorado/New Mexico state line.

SETTING

The review area is characterized by broad open alluvium flats and low undulating hills. The eastern portion of the study area is located on more rugged terrain punctuated by badland hills and low, terraced mesas. The central region traverses variable terrain with mild to steep slopes estimated at 0 to 40 degrees. The remainder of the review area, specifically the western limits, would traverse generally level to mildly sloping terrain and a portion of the above ground San Juan Mine where natural terrain has been modified. Elevations in the review area range from 5,240 to 5,720 feet above mean sea level, and the watershed averages less than 10 inches of snow annually (WRCC, 2021). The review area is located within the Middle San Juan (HUC 14080105) watershed and contains tributaries that generally flow to the southwest where they meet the San Juan River.

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

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Table 1.

Common Name	Scientific Name	Indicator
Four-wing saltbush	<i>Atriplex canescens</i>	UPL
	<i>A. confertifolia</i>	UPL
Utah Juniper	<i>Juniperus osteosperma</i>	UPL
Winterfat	<i>Krascheninnikovia lanata</i>	UPL
Utah serviceberry	<i>Amelanchier utahensis</i>	FACU
Antelope bitterbrush	<i>Purshia tridentata</i>	UPL
Yellow rabbitbrush	<i>Chrysothamnus viscidiflorus</i>	UPL
Rubber rabbitbrush	<i>Ericameria nauseosa</i>	UPL
Big sagebrush	<i>Artemisia tridentata</i>	UPL
Greene's rabbitbrush	<i>Chrysothamnus greenei</i>	UPL
Broom snakeweed	<i>Gutierrezia sarothrae</i>	UPL
Purple three-awn	<i>Eriogonum cernum</i>	UPL
Slender buckwheat	<i>Eriogonum leptophyllum</i>	UPL
Indian ricegrass	<i>Achnatherum hymenoides</i>	UPL
James' galleta	<i>Hilaria jamesii</i>	UPL
Blue grama	<i>Bouteloua gracilis</i>	UPL
Six weeks fescue	<i>Festuca octoflora</i>	UPL
Sand dropseed	<i>Sporobolus cryptandrus</i>	FACU
Cheatgrass	<i>Bromus tectorum</i>	UPL
Russian thistle	<i>Salsola tragus</i>	FACU
Kochia	<i>Kochia scoparia</i>	FAC
Greasewood	<i>Sarcobatus vermiculatus</i>	FACU
Halogeton	<i>Halogeton glomeratus</i>	UPL
Salt cedar	<i>Tamarix spp.</i>	FAC

AQUATIC RESOURCES

The predominant surface water resources in the review area include Westwater Arroyo, Shumway Arroyo, and Stevens Arroyo. These channels carry stormwater through the lower elevation topography of the project area to the San Juan River; approximately 4 miles to the southwest. The Westwater Arroyo flows north to south through the western review area before joining the Shumway Arroyo,

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which flows through the central project area. Stevens Arroyo is located at the southern boundary limits of the project area and flows east to west. The upper elevations of the watershed support the headwaters of the small drainages that connect to the named arroyos in the low-lying topography of the project area. Five stock ponds with the purpose of providing water for livestock operations are present within the review area on active grazing allotments managed by the Bureau of Land Management, but the project has been designed to avoid impacting these features.

98 investigation points within the project area were derived from locations where project components intercepted National Wetland Inventory (NWI) or National Hydrography Dataset (NHD) mapped aquatic resources or where features were noted on satellite imagery. At each data point, the presence/absence of ordinary high-water mark (OHWM) indicators were evaluated in accordance with *A Field Guide to the Identification of the Ordinary High-Water Mark in the Arid West Region of the Western United States*. To assist in the determination of stream type in the project area, the New Mexico Environment Department's *Hydrology Protocol* was utilized to classify and score drainages at each investigation point. None of the aquatic features assessed within the project area scored above a 9 to meet the criteria for the determination of an intermittent channel.

Based on aerial imagery of the project area from 2017 to 2020, the assessed features did not exhibit any evidence of seasonal flow. There are no riparian corridors that suggest that water flows more frequently than in response to storm events or that the water table is near the surface for portions of the year. Additionally, there is no evidence of connecting springs that contribute flow to these features.

JURISDICTIONAL DETERMINATION

Based on the review of aerial imagery, climate data, the information provided in the Aquatic Resources Delineation, and site observations, these features only flow in response to highly variable precipitation events driven primarily by convection during the summer months. As a result, the aquatic resources evaluated as part of this AJD are determined to be sheet flow, swales, or ephemeral stream channels. As such, and in accordance with 33 CFR 328.3 and the June 22, 2020 implementation of the NWPR, these waterways do not meet the definition of "Waters of the United States" and, therefore, are not currently subject to regulation under Section 404 of the Clean Water Act.

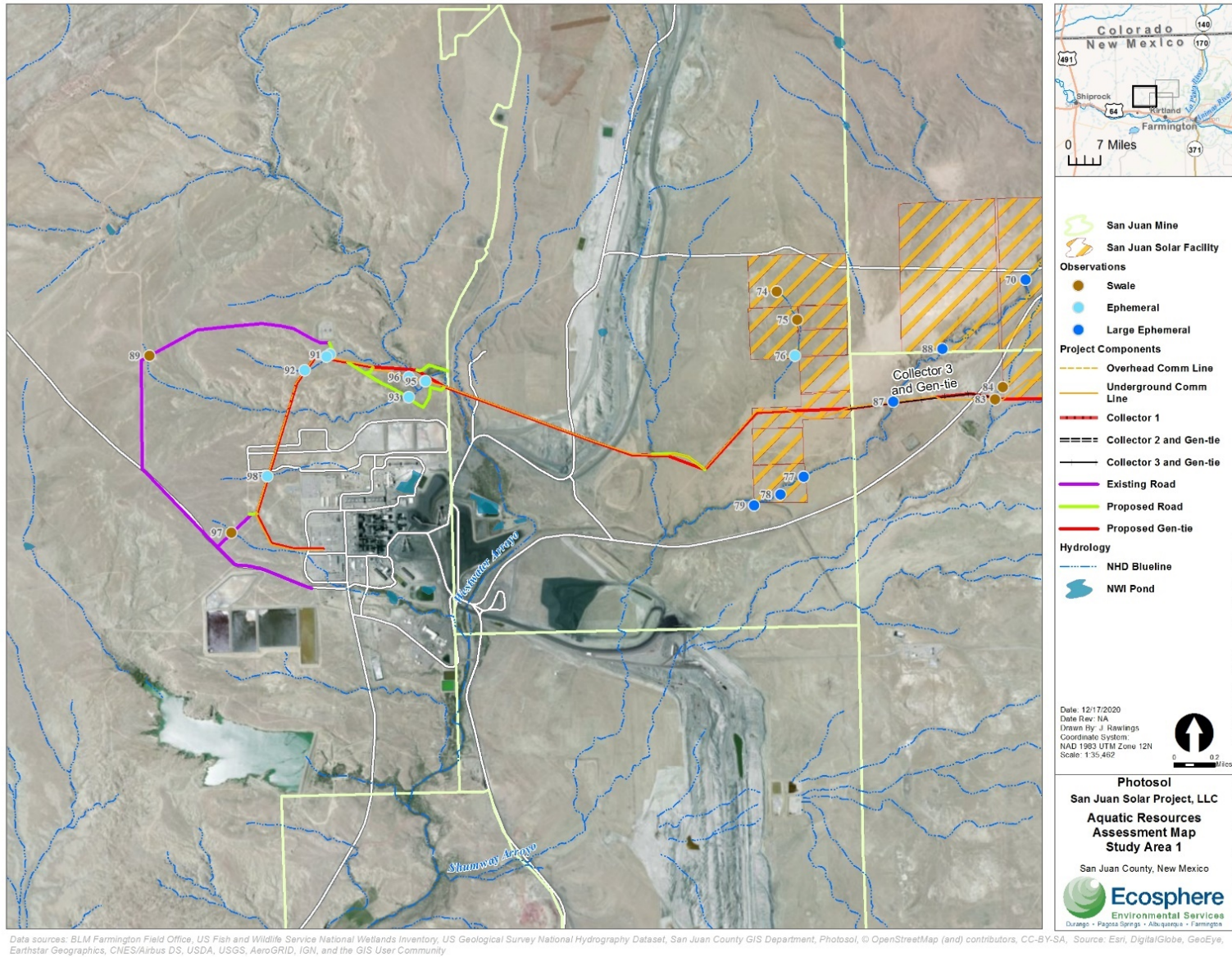
¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

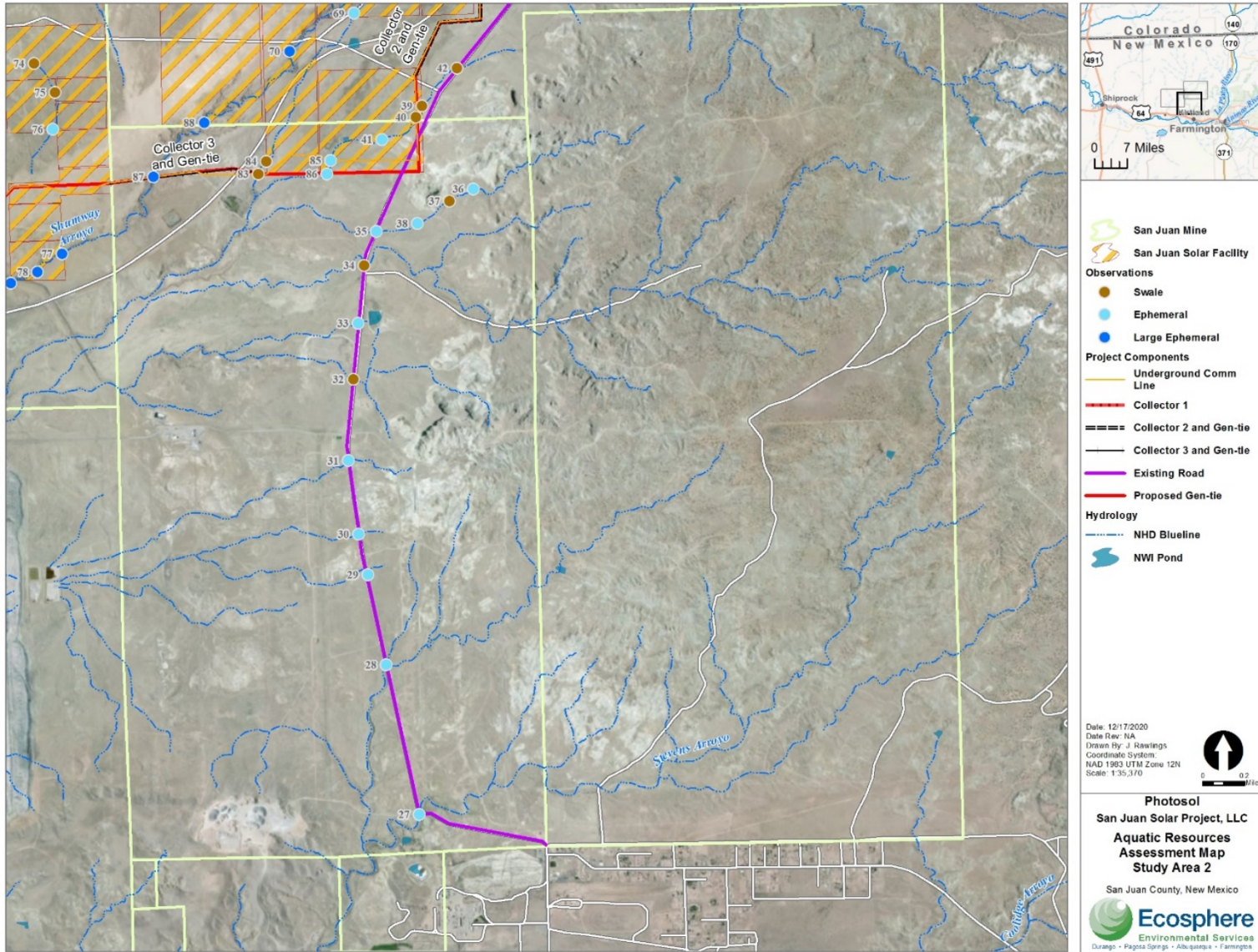
³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.

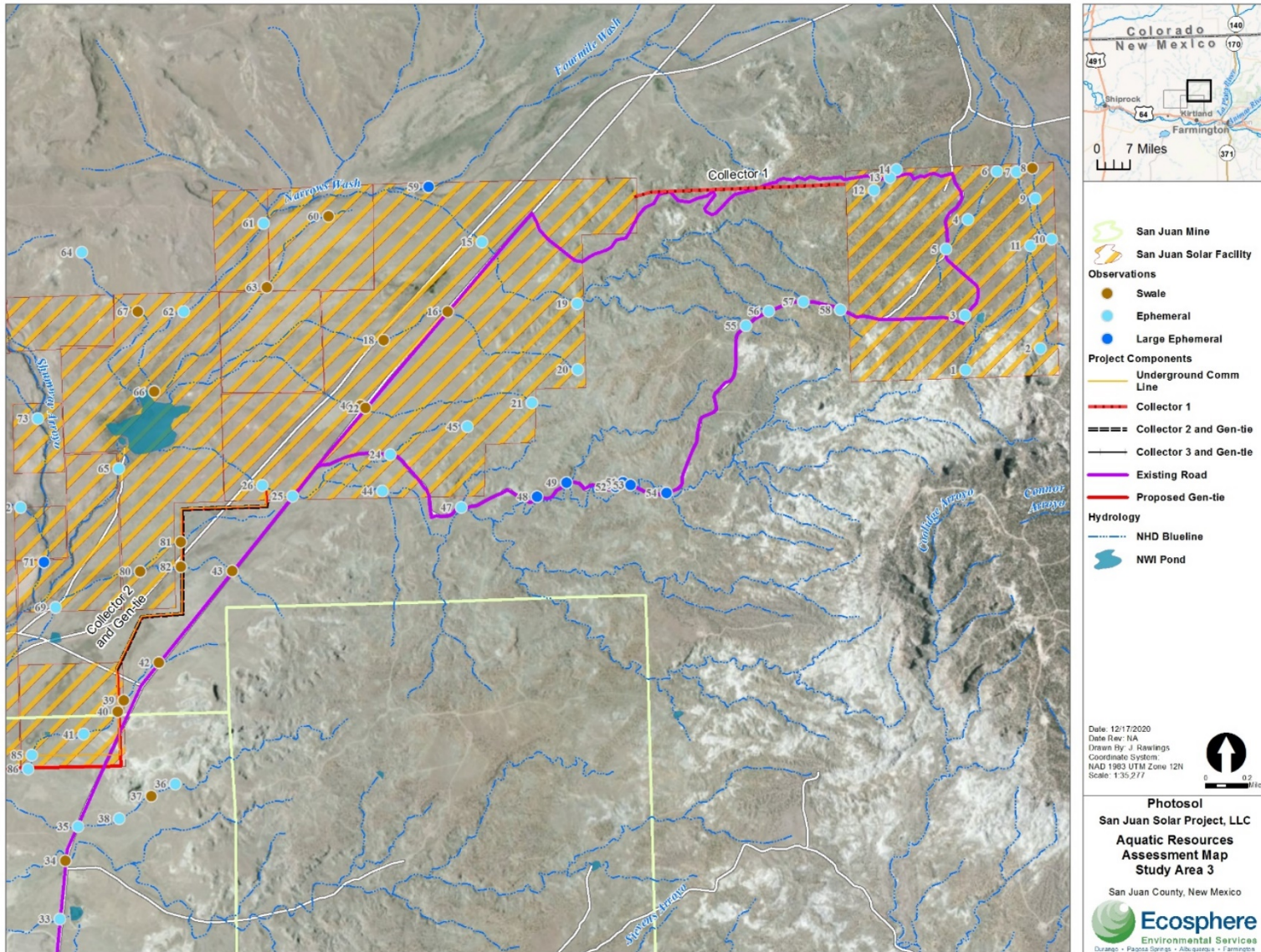


Map A-3. Study Area 1



Data sources: BLM Farmington Field Office, US Fish and Wildlife Service National Wetlands Inventory, US Geological Survey National Hydrography Dataset, San Juan County GIS Department, Photosol, © OpenStreetMap (and) contributors, CC-BY-SA, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Map A-4. Study Area 2



Data sources: BLM Farmington Field Office, US Fish and Wildlife Service National Wetlands Inventory, US Geological Survey National Hydrography Dataset, San Juan County GIS Department, Photosol, © OpenStreetMap (and) contributors, CC-BY-SA, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Map A-5. Study Area 3