



US ARMY CORPS OF ENGINEERS (USACE)
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
2023 RULE

OMB Control Number: 0710-0024
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AGENCY DISCLOSURE NOTICE

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I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): [4/18/2023](#)

ORM Project Name: [Gavilan Canyon unauthorized culvert crossing](#)

ORM Identification Number: [SPA-2023-00437](#)

- Other sites (e.g., offsite mitigation sites, disposal sites or other review areas, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form(s).

Associated JD Names and Numbers: [N/A](#)

Review Area Location: State/Territory: [New Mexico](#) City: [Ruidoso](#)

County/Parish/Borough: [Lincoln County](#)

Center Coordinates of Review Area: Latitude: [33.333849°N](#), Longitude: [-105.63895°W](#)

Limits of review area: [Review area measures approximately 0.02 acres and includes 40 linear feet of Gavilan Canyon Creek.](#)

II. SUMMARY²

Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding tables in Section III., summarize data sources in Section IV., and attach completed Appendices A and/or B when specified.

- The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area). Rationale: [Provide Rationale for Dry Land Determination](#)
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete the table in Section III.A.).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section III.B. and complete and attach appendices as appropriate).
- Potentially jurisdictional waters and/or features were assessed within the review area and determined to be non-jurisdictional (complete appropriate tables in Section III.C. and complete and attach appendices as appropriate).

¹ The final rule “Revised Definition of ‘Waters of the United States’” (2023 Rule) was published in the *Federal Register* on 18 January 2023 and the effective date is 20 March 2023. See <https://www.federalregister.gov/documents/2023/01/18/2022-28595/revised-definition-of-waters-of-the-united-states>.

² Map(s)/figure(s) or descriptions of the review area and any jurisdictional waters are attached to the AJD provided to the requestor.



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III. FINDINGS IN THE REVIEW AREA

A. Jurisdictional under the Rivers and Harbors Act of 1899³ (Section 10)⁴

Section 10 Waters			
Section 10 water name	Section 10 size in review area		Type of Section 10 water
N/A	N/A	N/A	N/A.
Rationale for determination: N/A			

B. Jurisdictional under the Clean Water Act

Paragraph (a)(1) waters: ⁵ Waters which are: (i) Currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide (Traditional Navigable Waters); (ii) The territorial seas; or (iii) Interstate waters, including interstate wetlands			
(a)(1) water name	(a)(1) size in review area		Type of paragraph (a)(1) water
N/A	N/A	N/A	N/A.
Rationale for determination: N/A			

Paragraph (a)(2) waters: Impoundments of waters otherwise defined as waters of the United States under this definition, other than impoundments of waters identified under paragraph (a)(5)			
(a)(2) water name	(a)(2) size in review area		Type of paragraph (a)(2) water
N/A	N/A	N/A	N/A.
Rationale for determination: N/A			

³ If the navigable water of the United States is not subject to the ebb and flow of the tide and not included on the district's list of Rivers and Harbors Act (RHA) Section 10 navigable waters of the United States list do NOT use this form 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 procedure 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 Rivers and Harbors Act.

⁴ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this AJD form, jurisdiction under RHA will be referred to as Section 10.

⁵ A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of RHA 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 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.



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Paragraph (a)(3) waters: Tributaries of waters identified in paragraph (a)(1) or (2): (i) That are relatively permanent, standing or continuously flowing bodies of water; or (ii) That either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1)

(a)(3) water name	(a)(3) size in review area		Type of paragraph (a)(3) water
Gavilan Canyon Creek	0.02	Acre(s)	(a)(3)(i) tributary that meets the relatively permanent standard

Rationale for determination: Gavilan Canyon Creek is a Relatively Permanent Water (RPW) that has a surface water connection to an (a)(1) interstate water (Pecos River). From the review area, Gavilan Canyon Creek flows for approximately 0.67 river miles until its confluence with the Rio Ruidoso a RPW that flows for approximately 27.5 river miles until the convergence with the Rio Bonito and becomes the Rio Hondo a RPW that flows from the Rio Ruidoso and the Rio Bonito convergence for approximately 79 river miles where it empties into the Pecos River a RPW classified as an interstate water (see part IV(A) below).

Paragraph (a)(4) waters: Wetlands adjacent to the following waters: (i) Waters identified in paragraph (a)(1); or (ii) Relatively permanent, standing or continuously flowing bodies of water identified in paragraph (a)(2) or (a)(3)(i) and with a continuous surface connection to those waters; or (iii) Waters identified in paragraph (a)(2) or (3) when the wetlands either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1)

(a)(4) water name	(a)(4) size in review area		Adjacency criteria
N/A	N/A	N/A	N/A
Type of paragraph (a)(4) water	N/A		

Rationale for determination: N/A

Paragraph (a)(5) waters: Intrastate lakes and ponds, streams, or wetlands not identified in paragraphs (a)(1) through (4): (i) That are relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to the waters identified in paragraph (a)(1) or (a)(3)(i); or (ii) That either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1).⁶

(a)(5) water name	(a)(5) size in review area		Type of paragraph (a)(5) water
N/A	N/A.	N/A	N/A

Rationale for determination: N/A

⁶ In implementing the significant nexus standard, the agencies generally intend to analyze waters under paragraph (a)(5) individually to determine if they significantly affect the chemical, physical, or biological integrity of a paragraph (a)(1) water.



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C. Waters or features that are not jurisdictional under the Clean Water Act

Waters analyzed under paragraph (a)(3)(ii), (a)(4)(iii), or (a)(5)(ii) and determined non-jurisdictional: Tributaries of waters identified in paragraph (a)(1) or (2); and/or wetlands adjacent to waters identified in paragraph (a)(2) or (3); and/or intrastate lakes and ponds, streams, or wetlands not identified as (a)(1) through (4) waters; that either alone or in combination with similarly situated waters in the region, do not significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1).			
Water name	Water size in review area		Type of water for which significant nexus was not met:
N/A	N/A	N/A	N/A
Rationale for determination: N/A			

(b)(1) – (b)(8) Excluded Features⁷			
Excluded feature name	Excluded feature size in review area		Exclusion ⁸
N/A	N/A	N/A	N/A
Rationale for determination: N/A			

IV. SUPPORTING INFORMATION

A. Paragraph (a)(1) water that is outside the review area:

- a. Provide the name of the paragraph (a)(1) water: [Pecos River](#)
- b. Type of paragraph (a)(1) water: [\(a\)\(1\)\(iii\) Interstate waters, including interstate wetlands](#)
- c. Provide the rationale for jurisdiction of the paragraph (a)(1) water: [The Pecos River crosses the state line of New Mexico and Texas as a stream order 8 and is a stream order 8 from the state line moving upstream to where Salt Creek spills into the Pecos River located North of the confluence with the Rio Hondo. Therefore, the Pecos River is considered an \(a\)\(1\)\(iii\) water from the confluence of Salt Creek where it becomes an Order 8 water, flowing past the Rio Hondo until it reaches the Texas state line as an order 8 stream until its confluence with the Rio Grande.](#)

B. Significant nexus analyses

- Appendix A is attached and includes the significant nexus analysis for any waters in the review area that were evaluated under paragraph (a)(3)(ii) and/or paragraph (a)(4)(iii).
- Appendix B is attached and includes the significant nexus analyses for any waters in the review area that were evaluated under paragraph (a)(5)(ii).

⁷ Transient features on the landscape that are difficult to document due to their non-permanent nature, such as rills and gullies, may not be specifically identified on the AJD form unless a requestor specifically asks a USACE district to do so. USACE districts may, in case-by-case instances, elect to document any such feature on a case-by-case basis, such as when the feature is relevant to analysis of the jurisdictional status of another water.

⁸ Note the full text of the exclusions for (b)(1)-(6) and (b)(8) are included in the dropdown list, while the text for the (b)(7) exclusion is truncated due to space limitations. The full text of the (b)(7) exclusion is as follows: (b)(7) Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States



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- There are no waters in the review area that require evaluation under the significant nexus standard. Therefore, neither Appendix A nor Appendix B are included with this form

C. Data, models, and other relevant methods Select/enter all resources that were used to support this determination and include data/maps and/or references/citations in the administrative record, as appropriate.

- Aquatic resources delineation submitted by, or on behalf of, the requestor: **N/A**
The aquatic resources delineation submitted by or on behalf of the requestor is sufficient for purposes of this AJD **N/A**
Rationale: **N/A**
- Aquatic resources delineation prepared by the USACE: **Title(s) and Date(s)**
- Wetland field data sheets prepared by the USACE: **Title(s) and Date(s)**
- OHWM data sheets prepared by the USACE: **Title(s) and Date(s)**
- USACE site visit: Date(s) of site visit(s): **(site visit 1) 10/21/2022, Initial investigation titled "2022-437 ENF-Initial Investigate form"; (site visit 2) 3/10/2023, on site cooperating agency meeting titled "2022-437 Site visit 3-10-2023_MFR"; (site visit 3) 4/5/2023, post initial corrective action suspense date titled "2022-437 Site visit 4-5-2023_MFR", .**
- Previous Jurisdictional Determinations (AJDs or PJDs) addressing the same (or portions of the same) review area: **N/A**
- Photographs: **Photos taken by Corps during site visits, Images taken form Google© street view.**
- Aerial Imagery: **Satelite imagery from Google© Earth Pro.**
- LiDAR: **N/A**
- USDA NRCS Soil Survey: **4-12-2023, titled "2022-437 WSS_Soil_report"**
- USFWS NWI maps: **2022-437 NWI map, 4/12/2023**
- USGS topographic maps: **found in 2022-437 NHD flow line and 2022-437 NWI map documents, 4/12/2023**
- USGS NHD data/maps: **2022-437 NHD map, 4/12/2023**
- USGS Dynamic Surface Water Extent: **Title(s) and Date(s)**
- Section 10 navigability resource used: **Title(s) and Date(s)**

Other data sources or models used to aid in this determination:

Data source or model (Select)	Name, date, and other relevant information
USGS Sources	<ul style="list-style-type: none"> • USACE Regulatory viewer; The USGS National Hydrography Dataset (NHD) service from The National Map found at https://hydro.nationalmap.gov/arcgis/rest/services/nhd/MapServer • USDA/NRSC, Web Soil Survey (2019), https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm
USEPA Sources	N/A
USDA Sources ⁹	<ul style="list-style-type: none"> • USDA/NRSC, Web Soil Survey (2019), https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm;
NOAA Sources	N/A
USACE Sources	N/A
State/Local/Tribal Sources	N/A
Other Sources	<ul style="list-style-type: none"> • USACE Regulatory viewer; U.S. Fish and Wildlife Service, National Standards and Support Team, National Wetland Inventory mapper,

⁹ Including Certified Wetland Determination from the NRCS.



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	<p>wetlands_team@fws.gov found at https://fwsprimary.wim.usgs.gov/server/rest/services/Wetlands/MapServer/0</p>
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D. Additional comments to support AJD: The review area for this AJD consists of approximately 0.02 acres and encompasses the location of one unauthorized linear transportation project impacting approximately 40 linear feet of Gavilan Canyon Creek. Based on the data obtained by Regulatory Division personnel discussed above, we have determined that the subject stream channel within the review area experiences regular flows throughout the year and is determined to be an (a)(3) water with a surface water connection to an (a)(1) interstate water. As such, and in accordance with 33 CFR 328.3 and the *March 20, 2023* implementation of the Revised Definition of “Waters of the U.S.” within the State of New Mexico, the subject aquatic resource does meet the definition of “Waters of the United States” and, therefore, is subject to regulation under Section 404 of the Clean Water Act.