



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): 30-JUN-2021

ORM Number: SPA-2021-00157

Associated JDs: N/A

Review Area Location¹:

State/Territory: TX City: County/Parish/Borough: Pecos County

Center Coordinates of Review Area: Latitude 31.042167 Longitude -102.500967

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.

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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 |
|-------------------|----------------|--|--|
| SPA-2021-00157_D1 | 5280 feet | (b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1) | Ditch system is not an (a)(1/2) water and is constructed completely in uplands. |
| SPA-2021-00157_P1 | 0.41 acres | (b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6) | There is no in flow or out flow associated with the upland constructed pond. The pond does not contribute surface water flow to an (a)(1) water. |
| SPA-2021-00157_P2 | 0.32 acres | (b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6) | There is no in flow or out flow associated with the upland constructed pond. The pond does not contribute surface water flow to an (a)(1) water. |
| SPA-2021-00157_P3 | 0.04 acres | (b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6) | There is no in flow or out flow associated with the upland constructed pond. The pond does not contribute surface water flow to an (a)(1) water. |
| SPA-2021-00157_P4 | 0.2 acres | (b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6) | There is no in flow or out flow associated with the upland constructed pond. The pond does not contribute surface water flow to an (a)(1) water. |
| SPA-2021-00157_P5 | 0.14 acres | (b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6) | There is no in flow or out flow associated with the upland constructed pond. The pond does not contribute surface water flow to an (a)(1) water. |
| SPA-2021-00157_P6 | 0.82 acres | (b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6) | There is no in flow or out flow associated with the upland constructed pond. The pond does not contribute surface water flow to an (a)(1) water. |

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.

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- Information submitted by, or on behalf of, the applicant/consultant: *Aquatic Resource Delineation Report for the Tierra Bonita Solar Energy Project (April 2021)*.
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: *Ponds (1-6) 4/14/2020; Canal 4/14/2020*
- Corps Site visit(s) conducted on: *Date(s)*.
- Previous Jurisdictional Determinations (AJDs or PJDs): *ORM Number(s) and date(s)*.
- Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: *Title(s) and/or date(s)*.
- USFWS NWI maps: *NHD/NWI Map April 2021*
- USGS topographic maps: *Title(s) and/or date(s)*.

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 | Land Resource Regions and Major Land Resource Areas of the United States, the Caribbean, and the Pacific Basin (USDA Handbook 296, issued 2006. pp 1-669) found at https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs142p2_050898.pdf |
| NOAA Sources | N/A. |
| USACE Sources | USACE Regulatory Viewer: USGS TNM – National Hydrography Dataset. Data Refreshed April, 2021. US EPA Earthstar Geographics Texas Parks & Wildlife, Esri, HERE, Garmin, SafeGraph, INCREMENT P, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA |
| State/Local/Tribal Sources | N/A. |
| 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. 2020, Large Contribution from Anthropogenic Warming to an Emerging North American Megadrought. Science. Vol. 368 Issue 6488. Pp. 314-318. |

B. Typical year assessment(s):

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

It is also worth noting that a recent study by Columbia University notes that the American Southwest is experiencing a historic “megadrought” not seen in centuries. In fact, for several western states, including New Mexico, the last twenty years ranks as the second-driest period in the past 1,200 years (A. Park. Williams, 2020).

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C. Additional comments to support AJD:

The review area for this AJD consists of approximately 2,837 acres and encompasses the location of one planned solar energy project by Greasewood II, LLC.

The review area is located approximately 7 miles Southwest of Girvin, Pecos County, Texas. The project site is located within the Southern Desertic Basins, Plains, and Mountains Land Resource Region as defined by the U.S. Department of Agriculture (USDA). More specifically, it falls within MLRA #42 Region 54D. The average annual precipitation for the region is between 8 to 14 inches of rainfall per year. Most of this precipitation occurs as high-intensity, short duration events resulting from convective thunderstorms from mid-spring to mid-autumn (USDA/NRCS; Handbook 296, issued 2006).

Based on the review of aerial imagery, climate data, the information provided in the Aquatic Resources Delineation, the six waterbodies evaluated as part of this AJD are determined to be artificial lakes/ponds constructed in uplands. The irrigation canal evaluated as part of the AJD was constructed in uplands and could be used to convey water to agricultural fields within the review area. As such, and in accordance with 33 CFR 328.3 and the June 22, 2020 implementation of the NWPR, these features 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.

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