



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): 22-JUL-2021

ORM Number: SPA-2021-00190

Associated JDs: N/A

Review Area Location¹:

State/Territory: TX City: El Paso County/Parish/Borough: El Paso County

Center Coordinates of Review Area: Latitude 31.91143 Longitude -106.44381

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

D. Excluded Waters or Features

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.

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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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Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
SPA-2021-00190	3375 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	See Section III. C below for information supporting the exclusion determination.

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: *AECOM*.
This information *is* sufficient for purposes of this AJD.
Rationale: *N/A*
- Data sheets prepared by the Corps: *National Wetland Plants List (2018)*.
- Photographs: *Aerial*: designated project area and stream imagery; on 2020-02-27
Site Photographs: images of ephemeral stream as seen at ground level, on 2021-03-12.
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: *USDA/NRCS Web Soil Survey*.
- USFWS NWI maps: *Albuquerque District Regulatory Viewer*.
- USGS topographic maps: *Albuquerque District Regulatory Viewer*.

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	Water Watch (2020); Condition of Drought with 7-day average stream flow compared to historical stream flow in the state of Texas.
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); USDA/NRSC, Plants Database (2020), https://plants.usda.gov/java/ ; USDA/NRSC, Web Soil Survey (2019), https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm
NOAA Sources	National Drought Mitigation Center© (2021), U.S. Drought Monitor, Texas (4/2021), https://droughtmonitor.unl.edu/CurrentMap.aspx
USACE Sources	National Wetland Plant List (2018); Albuquerque District Regulatory Viewer (ESRI)
Other	Google © 2021, INEGI © 2021, Google Earth satellite Imagery (12/20/2020).
Other	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.
Other	Griffith, G.E., Bryce, S.A., Omernik, J.M., Comstock, J.A., Rogers, A.C., Harrison, B., Hatch, S.L., and Benzanson, D. (2004), Ecoregions of Texas: U.S. Environmental Protection Agency, Corvallis, OR. https://gaftp.epa.gov/EPADDataCommons/ORD/Ecoregions/tx/tx_eco_pg.pdf
Other	Griffith, G., Bryce, S., Omernik, J., & Rogers, A. (2007, December), Dynamac Corporation, U.S. Geological Survey, Texas Commission on Environmental Quality. Ecoregions of Texas. https://gaftp.epa.gov/EPADDataCommons/ORD/Ecoregions/tx/TXeco_Jan08_v8_Cmprsd.pdf

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- B. Typical year assessment(s):** According to the Antecedent Precipitation Tool (APT), July through September 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 mid-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). Additionally, the National Drought Mitigation Center[©] (2021) identified that El Paso County, TX on April 20, 2021 experienced “D3-Extreme Drought” with the apparent drought condition percent area growing exponentially from historic data.

- C. Additional comments to support AJD:** The review area for this AJD measures approximately 3,375 linear feet of an unnamed stream system labeled “Flow Path #14” and encompasses the location of one planned project by AECOM on behalf of El Paso Water Utilities.

The single waterway identified within the review area for the proposed scope of work encompasses approximately 3,375 linear feet. The average width of the channel measures approximately 10-50 feet and has an approximate depth between 1-3 feet. Flow path #14 flows from west to east and has a meandering alignment to Gateway South Boulevard. The subject stream channel does not have any connection to springs or other subsurface water.

The review area is located northeast of El Paso, Texas. The unnamed single waterway identified in the review area is located within the arid Chihuahua desert. More specifically, the review area falls within MLRA 42-D; Southern Desertic Basins, Plains, and Mountains region (USDA Handbook 296, issued 2006). This region consists of a dry climate with a limited rainy season from midspring to mid-autumn. Weather patterns primarily consist of high intensity convective storm events. The average annual precipitation for this area is between 8 to 14 inches, with little winter precipitation, and snowfall is minimal to non-existent. Ground water resides more than 80 inches below the surface. Temperatures in this area range from 35 to 40° Celsius (C) (95 to 104° Fahrenheit [F]); and the average annual temperature is 24° C (75° F) (USDA Handbook 296, issued 2006).

Ground water resides more than 80 inches below the soil surface. The predominate soil type in the review area is indicative of the map unit: Chipotle extremely gravelly sandy clay loam, 0-3 percent (%) slopes (symbol: 107), The units discussed above are identified based on the area’s taxonomic classification of dominant soils, which are described below (USDA/NRCS, Web Soil Survey, 2019).

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- 107 soils include an estimated 85% Chipotle and similar soil compositions and 15% minor components. Chipotle soils can be found in landforms identified as inset fans and fan aprons. The Chipotle soil profile includes an upper horizon between 0-4 inches consisting of extremely gravelly sandy clay loam, an upper mid-horizon between 4-17 inches consisting of extremely gravelly sandy loam, a mid-horizon between 17-52 inches consisting of extremely gravelly sand, a lower mid-horizon between 52-64 inches consisting of very cobbly sandy clay loam, and lower horizon between 64-80 inches consisting of extremely gravelly sandy loam. It is characterized as having high infiltration rates and does not have the potential to pond or flood (USDA/NRCS, Web Soil Survey, 2019).

Vegetation in the study area consist of upland species and includes a mixture of sand scrub and desert shrub lands. These areas typically see creosote bush (*Larrea tridentate*), honey mesquite (*Prosopis Mutica*), Tarbush (*Holocarpha vairgata*), Mariola (*Parthenium incanum*), Broomweed (*Amphiachyris*), Prickly-pear (family: *Cactaceae*), and Ratany (*Krameria L.*). Herbaceous plants identified were Coyote Gourd (*Cucurbita palmata*), Yellow Rain Lily (N/A), Locoweed (family: *Fabaceae/Leguminosae*), Bahia (*Bahia Lag.*), Long Flower *Ipomopsis* (N/A), Senna (family: *Fabaceae/Leguminosae*), *Datura* (family: *Solanaceae*), and Three Awn (*Aristida L.*). Grass species consisted of Needle Grama (*Bouteloua aristidoides*). The waterway does not exhibit a riparian corridor.

Satellite imagery collected by the Corps show no surface water or flow in the stream channel. The APT was run for the date of February 27, 2020 in conjunction with the review of resent aerial imagery taken in the area (see document 2021-190 APT Data_2020-02-27 and 2021-03-12). The aerial images taken on the aforementioned date show no observable indicators of flow or ponding even with the APT results showing an estimated 0.3-inch precipitation event occurring less than two weeks prior to February 27, 2020. Additionally, site photography provided by the consultant show no surface water flow in the stream channel. The APT was also run for the date of March 12, 2021 in conjunction with the review of submitted site photography of the subject stream (see document 2021-190 APT Data_2020-02-27 and 2021-03-12) The photos taken on the aforementioned date show no observable indicators of flow or ponding even with the APT results showing an estimated 0.5-inch precipitation event occurring approximately three weeks prior to March 12, 2021.

Based on the data provided by the consultant and obtained by Corps Regulatory Division personnel, we have determined that the stream channel within the study area only experiences short duration flows in response to storm events and, is therefore by definition, ephemeral. As such, and in accordance with 33 CFR 328.3 and the *June 22, 2020* implementation of the Navigable Waters Protection Rule, it does not meet the definition of "Waters of the United States" and, therefore, is not subject to regulation under Section 404 of the Clean Water Act.

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