



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS ALBUQUERQUE DISTRICT
4101 JEFFERSON PLAZA NE
ALBUQUERQUE, NM 87109-3435

CESPA-RDN

01, May 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023) ,¹ SPA-2024-00381.

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.² AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.³

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

¹ While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

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

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- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
 - i. Unnamed channel, a feature lacking relatively permanent flow, is not a water of the United States.

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area is an approximately 0.2-acre polygon (labelled as "Area of Interest" on the attached map) centered at latitude 35.6775, longitude - 106.7351, approximately one mile northeast of Cañon, Sandoval County, New Mexico.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Surface flows from the review area eventually flow into the Rio Grande, which is an interstate water flowing from New Mexico into Texas.⁵
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Surface flows from the review area flow southwest for approximately 0.3 miles and below a culvert under NM State Road 4 before reaching the Jemez River. The Jemez River is a Strahler stream order of 6 at this location and flows 0.7 stream miles southwest to the confluence with Rio Guadalupe, forming a 7th order stream. The Jemez River then flows approximately 30 river miles south and then southeast into the Rio Grande. The Rio Grande is a 9th order stream at this location, continuing over 280 miles south before crossing from New Mexico into Texas as a 9th order stream.

⁵ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (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.

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6. SECTION 10 JURISDICTIONAL WATERS⁶: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁷ N/A.
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
 - a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A.
 - b. The Territorial Seas (a)(1)(ii): N/A.
 - c. Interstate Waters (a)(1)(iii): N/A.
 - d. Impoundments (a)(2): N/A.
 - e. Tributaries (a)(3): N/A.
 - f. Adjacent Wetlands (a)(4): N/A.
 - g. Additional Waters (a)(5): N/A.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

⁶ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁷ This MFR is not to be used 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 procedures 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 RHA.

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- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁸
N/A.

- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Unnamed channel spans approximately 100 feet within the review area. The relevant reach is a first order stream that begins near the northern edge of the review area and ends approximately 0.3 stream miles downstream of the review area. Data from USGS StreamStats for a point 500 feet downgradient of the review area shows that the drainage area is 0.01 square miles, and that the mean annual precipitation is 11 inches. The NRCS Web Soil Survey shows that the review area consists of Atarque-Menefee-Ribera complex soils, which are listed as well-drained and have a hydric soil rating of “no”. Additionally, the applicant submitted a contour map produced of the site and six photos. The contours show that the channel does not have steep banks in the upstream portion of the review area. Photos show that the channel has been excavated along a road and presents a shallow ordinary high water mark in the deepest part of the channel. Photos show the arid conditions of the project site, and upland vegetation is growing in some parts of the channel. Due to the small drainage area, low annual rainfall, and well-drained soils the area likely only receives flow only in response to rainfall and therefore lacks relatively permanent flows. The unnamed channel does not meet the criteria to be considered a water of the United States.

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Contour map with one-foot intervals and six photos prepared by Jarod Hasbrouck, dated September 19, 2024.
 - b. USGS StreamStats report, generated September 26, 2024.

⁸ 88 FR 3004 (January 18, 2023)

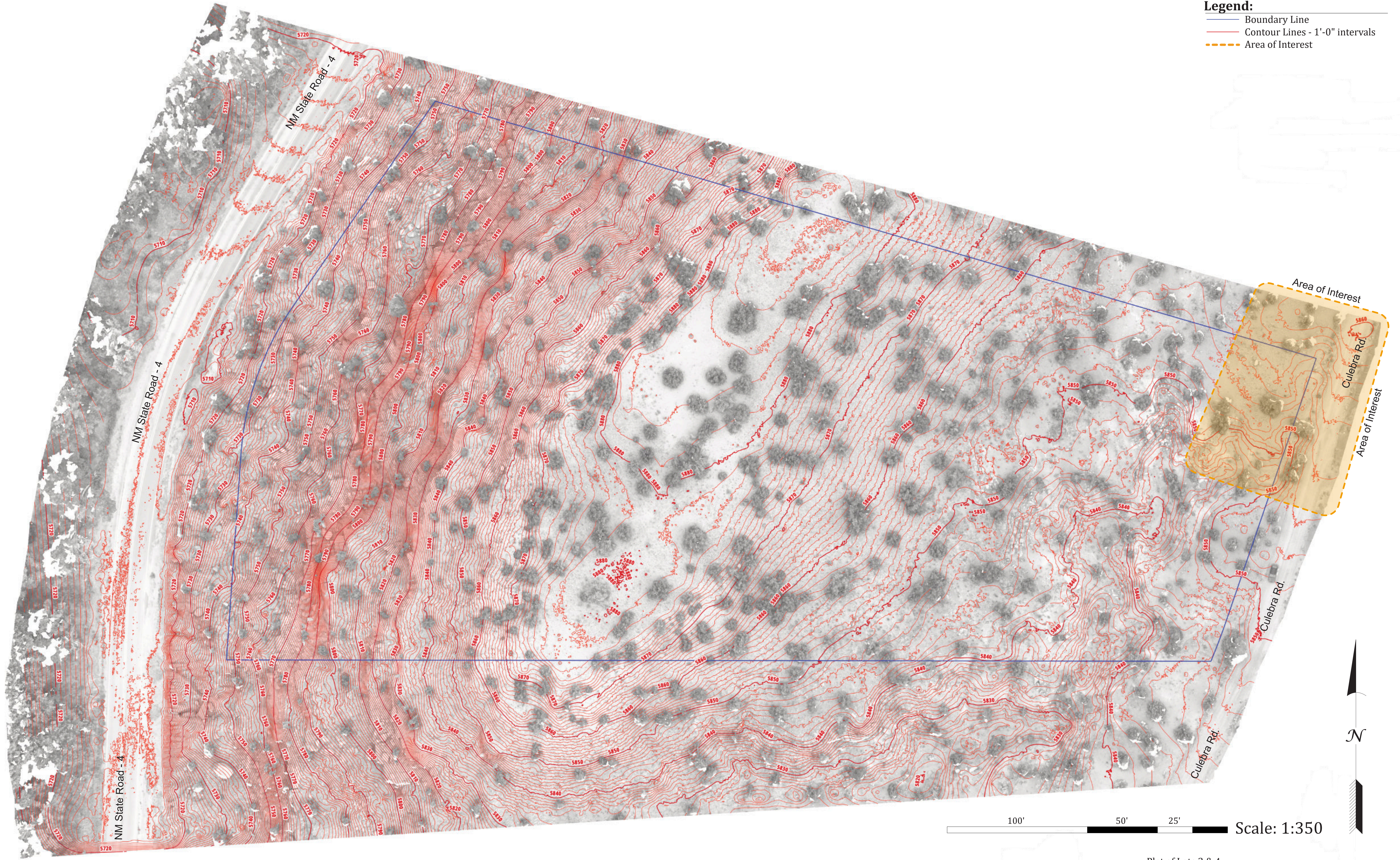
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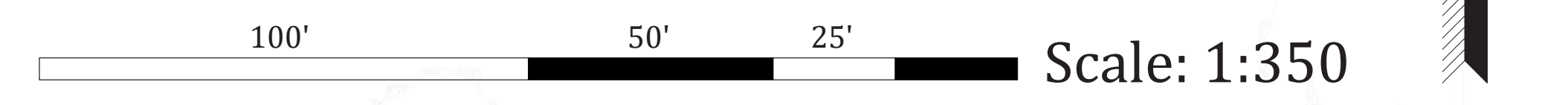
- c. NRCS Web Soil Survey map, entitled *Soil Map—Santa Fe National Forest Area, New Mexico, Parts of Los Alamos, Mora, Rio Arriba, Sandoval, San Miguel and Santa Fe Counties* (SPA-2024-00381), generated September 26, 2024.

10. OTHER SUPPORTING INFORMATION. N/A.

- 11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



- Legend:**
- Boundary Line
 - Contour Lines - 1'-0" intervals
 - Area of Interest



Property Owner:
- Jarod Hasbrouck

Drawings prepared by:
- Jarod Hasbrouck

Plat of Lots 3 & 4
Lands of Anderson / Erickson Cañon de San Diego Grant
Projected sections 11 & 12, T18N, R2E, N.M.P.M.
Sandoval County, New Mexico

Information herein is approximate.
Planning and approval Use only.