



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS ALBUQUERQUE DISTRICT REGULATORY DIVISION
4101 JEFFERSON PLAZA NE
ALBUQUERQUE, NEW MEXICO 87109-3435

December 6, 2024

CESPA-RD

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-2024-00420 (MFR 1 of 1)²

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.³ 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.⁴

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),⁵ the 2023 Rule as amended,

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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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.

CESPA-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SPA-2024-00420

as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

- 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. ***Study Reach 1: Corrales Acequia (a.k.a. Corrales Lateral Canal)* – is 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. *Sackett v. EPA*, 598 U.S. __, 143 S. Ct. 1322 (2023)
- c. “Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 (September 8, 2023))

3. REVIEW AREAS: The review area (Study Reach 1) consists of a 95-linear-foot reach of the Corrales Acequia, an irrigation canal and is part of a channelized tributary that flows to the Rio Grande. The canal is approximately 10 feet in width within Study Reach 1. The upstream extent of Study Reach 1 is located at latitude 35.249963°, longitude -106.603027° and extends downstream to latitude 35.249817°, longitude -106.603296°. Study Reach 1 is situated to the West of the Rio Grande, at Trosello Lane, within the village limits of Corrales, in Sandoval County, New Mexico. Study Reach 1 is located within a proposed project site, which is slated for the proposed construction of a single residential road to realign Trosello Lane to a location immediately south of its current alignment.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Corrales Acequia, which includes ***Study Reach 1***, is part of a channelized tributary that flows to the Rio Grande, which is an interstate water. The Rio Grande intersects with the Colorado/New Mexico state line at latitude 36.995852°, longitude -105.718571° approximately 150+ miles upstream of Study Reach 1 and intersects with the New Mexico/Texas (NM/TX) state line at latitude 31.990078°, longitude -106.629861° approximately 200+

miles downstream from Study Reach 1. Additionally, downstream from the initial NM/TX state line crossing, the Rio Grande enters into Mexico through the Americas Dam located at latitude 31.784247°, longitude -106.528033°. The Rio Grande is classified as a TNW from that point to its downstream nexus with the Gulf of Mexico at latitude 25.957031°, longitude -97.147222°.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. **The Corrales Acequia is a tributary to the Rio Grande, which is an interstate water and TNW. From the downstream extent of Study Reach 1, the Corrales Acequia flows for approximately 8.80 river miles until it empties into the Rio Grande near Coors Bosque Trails (a hiking and recreation area) at latitude 35.158752°, longitude -106.670265°.**
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): **None**

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.

- b. The Territorial Seas (a)(1)(ii): **None**
- c. Interstate Waters (a)(1)(iii): **None**
- d. Impoundments (a)(2): **None**
- e. Tributaries (a)(3): **Study Reach 1 is part of the Corrales Acequia (also known as the Corrales Lateral Canal) which is an irrigation canal that is a tributary of the Rio Grande. Flow conditions within the Study Reach 1 are representative of flow conditions throughout the Acequia, as the entire canal falls within the same Strahler Stream Order until its confluence with the Rio Grande. Therefore, conditions within Study Reach 1 have been used to support this determination rather than assessing flow permanence indicators downstream. The canal and Study Reach 1 are relatively permanent waters (RPW) because they experience flowing or standing water continuously during certain times of the year (reference 88 FR 3004, 3080 (January 18, 2023)). Relatively permanent flow or standing water occurs during each annual irrigation season, which lasts approximately 6 to 7 months, typically from March to October.**

An evaluation of a 20+ year span of Google Earth aerial imagery and Google Earth Street View photographs provided consistent evidence of standing/flowing water within the Corrales Acequia and Study Reach 1 during annual irrigation seasons. The review area is part of a larger relative reach which exhibits flowing or standing water during certain times of year and returns flows directly to the Rio Grande.

Flow data measurements from the Middle Rio Grande Conservancy District (MRGCD) Gage Map website were obtained from gage station 52, which is located in the Corrales Acequia approximately 0.47 mile upstream of Study Reach 1 (see Enclosure 1). Between February 1, 2024, and November 12, 2024, a consistent flow pattern was documented, with a minimum flow of 0.02 cubic feet per second (cfs) and a maximum of 24.05 cfs. The flow occurred intermittently, fluctuating between peak and low flow periods. These fluctuations were compared with precipitation data using the U.S. Army Corps of Engineers' Antecedent Precipitation Tool (APT) on dates when the flow from the gage data began trending upward or when cfs levels increased.

The APT data indicated on multiple occasions that a 'daily total' of precipitation in inches occurs either on or within 5-10 days prior to the

increases in flow rates indicated by MRGCD's gage data. Although, the APT daily totals did not measure more than one inch of precipitation and the precipitation events did not last more than a single day. Peak flow rates within the Corrales Acequia lasted an average of 12 consecutive days followed by a downward shift in flow rates to low flow levels of 0.02 cfs. Based on the indicators just discussed, the flows observed on the MRGCD gage data are indicative of water being pulled from the Rio Grande into the Corrales Acequia and released for irrigation during the irrigation season. Any water left over (water that is not pulled from the acequia for irrigation) is returned directly to the Rio Grande approximately 8.6 river miles downstream from Study Reach 1, at a location near the MRGCD's Lower Corrales Riverside Drain gage (304) (see Enclosure 1).

Based on the historic aerial imagery and Street View photographs, as well as the stream flow gage data provided above, the flow regime of the stream reach within the review area meets the relatively permanent standard, per the 2023 Rule as amended. The flows within Study Reach 1 and the Corrales Acequia are continuous during the annual irrigation season and are not of short duration in direct response to precipitation.

Therefore, Study Reach 1 is part of the Corrales Acequia, which is a relatively permanent water with a direct connection to the Rio Grande, a water identified in paragraph (a)(1) of the 2023 Rule, as amended, as an Interstate and TNW. As such Study Reach 1 is subject to CWA jurisdiction.

f. Adjacent Wetlands (a)(4): **None**

g. Additional Waters (a)(5): **None**

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- 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 **None**
- 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

⁸ 88 FR 3004 (January 18, 2023)

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). **None.**

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. **Middle Rio Grande Conservation District (MRGCD), Water Data, MRGCD Gage map, Corrales Acequia (52), Flow-7040-E, https://mrgcd.onerain.com/sensor/?site_id=39&site=796e99f6-78b9-41e5-8997-aa97467c3575&device_id=2&device=ad2601c8-350d-459e-a54b-ea84836138d6.**
- b. **Middle Rio Grande Conservation District (MRGCD), Water Data, MRGCD Gage map, Lower Corrales Riverside Drain (304), Flow-7040-E, https://mrgcd.onerain.com/sensor/?time_zone=US%2FMountain&site_id=183&site=f5082469-3f41-4a01-8ea0-cfe1b95cc153&device_id=5&device=1b0d9f67-9a1d-4c64-a61e-c59cd70e5edb&bin=86400&range=Custom%20Range&markers=false&legend=true&thresholds=true&refresh=off&show_raw=true&show_quality=true&data_start=2024-02-01%2000%3A00%3A00&data_end=2024-11-12%2023%3A59%3A59**
- c. **Office evaluation of Google Earth© Pro images available between June 2005 and May 2023.**
- d. **Office evaluation of Google Earth©, Street View photos with available images of the Corrales Acequia in September 2014, April 2022, January 2023, May 2023, and September 2023.**
- e. **The USACE, National Regulatory Viewer, South Pacific Division, New Mexico viewer, NHD data set and NWI data set, accessed on 11/07/2024 (City of Rio Rancho, Bernalillo County, NM, City of Albuquerque, Bureau of Land Management, Texas Parks & Wildlife, Esri, HERE, Garmin, INCREMENT P, Intermap, USGS, METI/NASA, EPA, USDA, USGS TNM – National Hydrography Dataset. Data Refreshed September, 2024).**
- f. **USACE, Antecedent Precipitation Tool, November 12, 2024, batch results**

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.

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SPA-2024-00420

SPA-2024-00420 Extent Map
Corrales Acequia (aka., Corrales Lateral Canal)
 Latitude 35.249884, Longitude -106.603173

2024

Coordinate System: GCS WGS 1984