



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

CESPA-RD-NM

15 July 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) ,<sup>1</sup> [SPA-2025-228] [MFR 1 of 1]]<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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),<sup>5</sup> the 2023 Rule as amended,

---

<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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.

[SPA-RD-NM]

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPA-2025-228]

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. Wetland 1 (0.52 acre), jurisdictional (Section 404)
  - ii. Wetland 2 (0.24 acre), jurisdictional (Section 404)
  - iii. Acequia Madre de la Loma (Approximately 294' linear feet) jurisdictional (Section 404)
  - iv. Acequia de los Molinos (Approximately 245' linear feet) jurisdictional (Section 404)

## 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. 16.09 acres, Latitude 36.4073574°, longitude -105.5998778°, Village of Taos, Taos County, and New Mexico.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Rio del Pueblo Taos a RPW is approximately 0.25 miles downstream<sup>6</sup>

---

<sup>6</sup> 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.

[SPA-RD-NM]

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPA-2025-228]

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The subject area drains in a southwesterly direction to the Rio del Pueblo de Taos, a relatively permanent water (RPW), located approximately 0.25 mile downstream. The Rio del Pueblo de Taos is a tributary to the Rio Grande, which it joins approximately 9.6 miles downstream. The Rio Grande is classified as a traditional navigable water (TNW) and an interstate water within the State of New Mexico. Within the State of Texas, the Rio Grande is designated as a TNW by congressional decree.
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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 10.8 [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]

---

<sup>7</sup> 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.

<sup>8</sup> 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.

[SPA-RD-NM]

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPA-2025-228]

- d. Impoundments (a)(2): [N/A]
- e. Tributaries (a)(3): Acequia Madre de la Loma and Acequia de los Molinos are determined to be jurisdictional waters under paragraph (a)(3) of the definition of “waters of the United States” as tributaries with relatively permanent flow. Both acequias exhibit flowing surface water during part of the year, supported by a combination of perennial baseflow contributions and seasonal releases from upstream reservoirs or diversions.

Satellite imagery confirms that Acequia Madre de la Loma and Acequia de los Molinos have well-defined beds and banks and ordinary high-water marks (OHWM) consistent with channels that support sustained flow. Each acequia directly conveys water to the Rio del Pueblo de Taos, a relatively permanent water (RPW), which in turn flows into the Rio Grande, a traditional navigable water (TNW).

Because Acequia Madre de la Loma and Acequia de los Molinos demonstrate relatively permanent flow and function as direct tributaries to an RPW and ultimately a TNW, they meet the criteria of tributaries under 33 CFR §328.3(a)(3) and are considered jurisdictional waters of the United States.

- f. Adjacent Wetlands (a)(4): Wetland 1 & 2 are determined to be jurisdictional waters of the United States under the Clean Water Act. Both wetlands exhibit the three mandatory wetland criteria as defined by the U.S. Army Corps of Engineers: (1) hydrophytic vegetation, (2) hydric soils, and (3) wetland hydrology. These characteristics were confirmed through field delineation conducted in accordance with the Corps of Engineers Wetlands Delineation Manual (1987) and the applicable regional supplement (Western Mountains, Valley, and Coast).

Furthermore, Wetlands 1 and 2 maintain a continuous surface water connection to the Rio del Pueblo de Taos, a relatively permanent water (RPW) that flows into the Rio Grande, a traditional navigable water (TNW). This uninterrupted hydrologic connection supports jurisdiction under the Clean Water Act, as the wetlands are directly connected by surface water to a TNW via an RPW.

Therefore, based on the presence of all three wetland characteristics and a continuous surface water connection to a TNW, Wetlands 1 and 2 are considered jurisdictional.

- g. Additional Waters (a)(5): [N/A]

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

[SPA-RD-NM]

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPA-2025-228]

- 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).<sup>9</sup> 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).  
N/A
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. Office evaluation was conducted June 20, 2025, and July 15, 2025.
  - b. Wetlands Delineation Quintana Property Ranchito, New Mexico, Prepared by DBS&A September 2023.
  - c. Regulatory Viewer: Aerial photographs, Lidar, Topo maps, NHD, NWI, viewed June 30, 2025
  - d. NRCS Soils Report, June 30, 2025
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.

---

<sup>9</sup> 88 FR 3004 (January 18, 2023)

S:\PROJECTS\DB23.1259 TAOS WETLAND DELINEATION\GIS\ARC\GIS PROJ\TAOS WETLAND DELINEATION\TAOS WETLAND DELINEATION.APRX

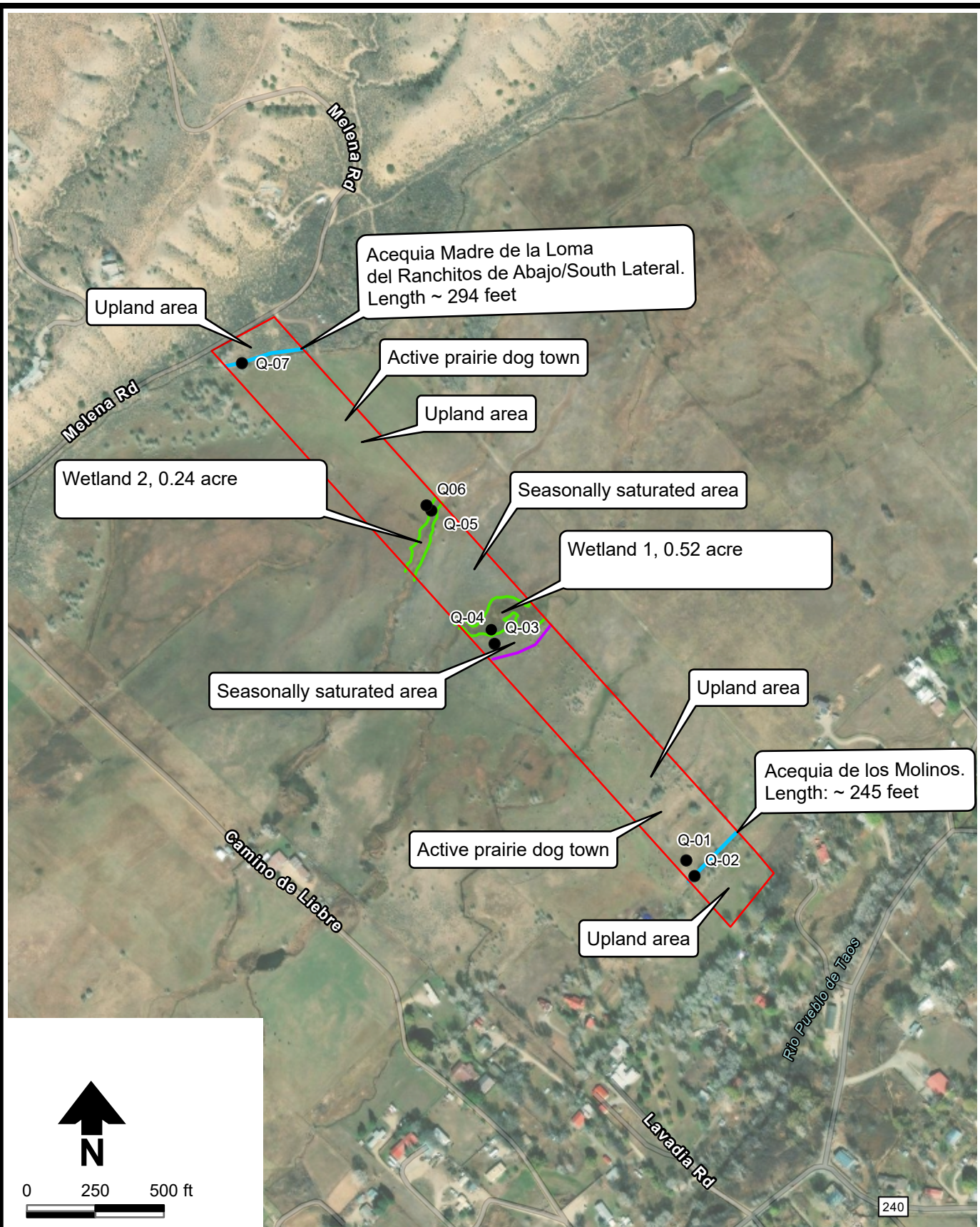
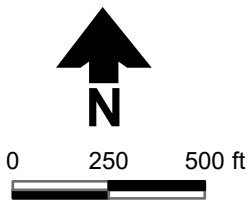


Image source: ESRI et al.



#### Explanation

- Property boundary
- Wetland
- Test pit
- Seasonally saturated
- Acequia



9/27/2023

a Geo-Logic Company  
DB23.1259

## QUINTANA PARCEL 4 WETLAND DELINEATION Findings

Figure 2