



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

CESPA-RDN

12 November 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-2025-00404] [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.

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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. Unnamed tributary to Puerto Creek, non-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)
- d. Memorandum to The Field Between the U.S. Department of The Army, U.S. Army Corps Of Engineers And The U.S. Environmental Protection Agency Concerning The Proper Implementation Of "Continuous Surface Connection" Under The Definition Of "Waters Of The United States" Under The Clean Water Act (March 12, 2025).

3. REVIEW AREA. The review area spans approximately 220 linear feet, covering 0.13 acres, centered at latitude 34.791795° and longitude -104.643395°. It is located approximately 3 miles southwest of Puerto de Luna, along County Road 3C, Guadalupe County, New Mexico.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Pecos River a relatively permanent water which is also an interstate water that crosses from New Mexico into Texas north of Red Bluff reservoir.⁶

⁶ 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

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The unnamed tributary flows into Puerto Creek, which then flows into the Pecos River.
6. SECTION 10 JURISDICTIONAL WATERS⁷: 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]
 - d. Impoundments (a)(2): [N/A]
 - e. Tributaries (a)(3): [N/A]

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.

⁷ 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.

⁸ 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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f. Adjacent Wetlands (a)(4): [N/A]

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

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).⁹ [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 tributary to Puerto Creek is a tributary that is a non-relatively permanent water and therefore non-jurisdictional. This conclusion was reached after reviewing the data sources listed below in section 9.

The hydrologic characteristics of the reach were assessed using the Streamflow Duration Assessment Method (SDAM) for the Arid West. Field observations obtained as part of the SDAM confirmed that the stream exhibits features consistent with ephemeral flow, meaning it only conveys water in direct response to precipitation events and lacks seasonal or continuous baseflow. No indicators of intermittent or perennial flow were observed during the assessment. The absence of sustained hydrologic indicators demonstrates that the reach does not qualify as a relatively permanent water as defined under the Sackett decision and the 2023 Revised Definition of Waters of the United States (WOTUS), as amended.

Vegetation observed within and adjacent to the channel further supports the ephemeral classification. The reach lacks hydrophytic vegetation, which is typically associated with stream systems that experience regular or sustained flow. The absence of such plant communities suggests that the hydrologic conditions are insufficient to support the establishment or maintenance of

⁹ 88 FR 3004 (January 18, 2023)

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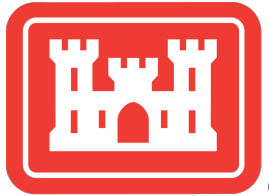
wetland or riparian vegetation, which is consistent with a highly variable, short-duration flow regime.

Additionally, a review of soil characteristics using the National Regulatory Viewer and the USA Soils Map Units, and USA Soils Hydric Class indicates that hydric soils are not present within the assessment area. Hydric soils typically form under conditions of sustained saturation or inundation; their absence is further evidence that the area does not experience the frequency or duration of wet conditions necessary to support jurisdictional waters or wetlands under federal regulation.

As such, the unnamed tributary to Puerto Creek does not meet the definition of tributary since it does not meet the relatively permanent standard. Accordingly, Unnamed tributary to Puerto Creek is not considered a WOTUS under the amended 2023 rule.

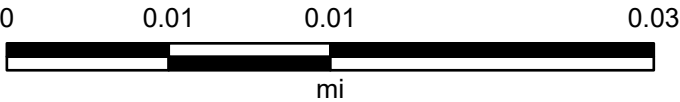
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Office review conducted on November 6, 2025, using the National Regulatory Viewer (NRV), including the following resources: National Hydrography Dataset (NHD) map, National Wetlands Inventory (NWI) map, USA Soils Map Units, and USA Soils Hydric Class.
 - b. Arid West SDAM Field Forms for the Paseo - 01 location, submitted by Noah Jansson, Emergency Manager of Guadalupe County, with a visit date of 10/10/2025.
 - c. Google Earth Accessed November 6,2025

10. OTHER SUPPORTING INFORMATION. [N/A]



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Review Area



Map Center: 104.643316°W 34.791693°N

Map Created by: Forrest Luna

Date: 11/6/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere