



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

CESPA-RD

September 22, 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> National Defense Area-1 - Border Wall Segment Project (SPA-2025-00347).

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>2</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>3</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>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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<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> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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.

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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).

| <u>Water Feature</u> | <u>Jurisdictional Status</u> | <u>Stream Designation</u> |
|----------------------|------------------------------|---------------------------|
|----------------------|------------------------------|---------------------------|

|        |                    |           |
|--------|--------------------|-----------|
| SPA-1  | Non-jurisdictional | Ephemeral |
| SPA-2  | Non-jurisdictional | Ephemeral |
| SPA-3  | Non-jurisdictional | Ephemeral |
| SPA-4  | Non-jurisdictional | Ephemeral |
| SPA-5  | Non-jurisdictional | Ephemeral |
| SPA-6  | Non-jurisdictional | Ephemeral |
| SPA-7  | Non-jurisdictional | Ephemeral |
| SPA-8  | Non-jurisdictional | Ephemeral |
| SPA-9  | Non-jurisdictional | Ephemeral |
| SPA-10 | Non-jurisdictional | Ephemeral |

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. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area encompasses a narrow corridor approximately 7.84 miles long and 50 feet wide, totaling approximately 48.5 acres, identified as NDA1, located in southern New Mexico. The western boundary of the review area corridor is at the approximate latitude 31.3327°, longitude -108.715570°, and the eastern boundary is at the approximate latitude 31.33339°, longitude -108.583311°. This corridor is situated adjacent to the U.S.–Mexico border, near Antelope Wells, in Hidalgo County, New Mexico.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. There are no aquatic resources that are connected to an A1 water.

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. There are no aquatic resources that are connected to an A1 water.
6. SECTION 10 JURISDICTIONAL WATERS<sup>5</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.<sup>6</sup> 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

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<sup>5</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>6</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.

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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).<sup>7</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).

The review area (NDA1) contains ten aquatic features (SPA-1 through SPA-10) located in a remote, arid portion of southern New Mexico near Antelope Wells, along an approximately 7.84-mile linear area adjacent to the U.S.–Mexico border. These features are characterized as ephemeral drainages that flow only in direct response to precipitation events, with no evidence of continuous or seasonal flow. According to 33 CFR §328.3(a)(5), ephemeral features are not considered tributaries and fall outside the Corps’ jurisdictional scope. The project area lacks relatively permanent waters as defined under the Clean Water Act and associated regulations (33 CFR §328.3(c)). Hydrologic analysis utilizing data from the nearest weather stations and the Antecedent Precipitation Tool (APT) demonstrated that precipitation levels were not high enough to sustain prolonged flow for the past three recorded years (2023, 2024, and 2025), confirming insufficient hydrologic conditions to support continuous surface flow. A desktop survey of the review area did not find evidence of any springs, seeps, or snowmelt inputs contributing to these drainage features, making precipitation the sole source of water. Additionally, the aerial photography reveals a dominance of arid vegetation. The vegetation cover appears patchy and uneven, with large areas of exposed soil typical of dry environments. The plant communities show

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<sup>7</sup> 88 FR 3004 (January 18, 2023)

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low canopy density and minimal understory growth, consistent with drought-tolerant species. Soil tones range from light brown to reddish, and there is evidence of erosion patterns caused by limited plant cover. The National Wetlands Inventory (NWI) does not identify any wetlands in the vicinity, supporting the conclusion that these features lack wetland characteristics such as hydrophytic vegetation, hydric soils, and wetland hydrology as outlined in 33 CFR §328.3(b). Therefore, these drainage features do not meet the definitions of Waters of the United States under the 2023 Revised Rule and are determined to be non-jurisdictional for purposes of the Clean Water Act.

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. Google Earth. (2005–2023). *Imagery of Hidalgo County* [NAIP imagery]. Google Earth Pro, version 7.3. Retrieved September 16, 2025, from <https://earth.google.com/web/>

b. The USACE, National Regulatory Viewer, South Pacific Division, New Mexico NHD data set and NWI data set, accessed on 09/16/2025, Hidalgo County, USGS, METI/NASA, EPA, USDA, USGS TNM – National Hydrography Dataset, USGS Topo Maps, NWI, Lidar 3DEP Digital Elevation Model. (Data Refreshed September 2025).

c. USACE, Antecedent Precipitation Tool, September 12, 2025, batch results

d. United States Department of Agriculture, Natural Resources Conservation Service. 2025. *Web Soil Survey* Hidalgo County. Retrieved September 17, 2025, from <https://websoilsurvey.sc.egov.usda.gov/>

e. Data from the Animas (ANMN5) and Antelope Wells (ANWN5) meteorological stations in Hidalgo County, New Mexico, were obtained from the United States Cooperative Observer Program (COOP) and National Weather Service (NWS) databases. Station metadata, including geographic coordinates and elevation, were sourced from official NOAA records (NOAA, 2025).

f. USACE, Desktop Delineation, NDA1 proposed Action Area, September 17, 2025

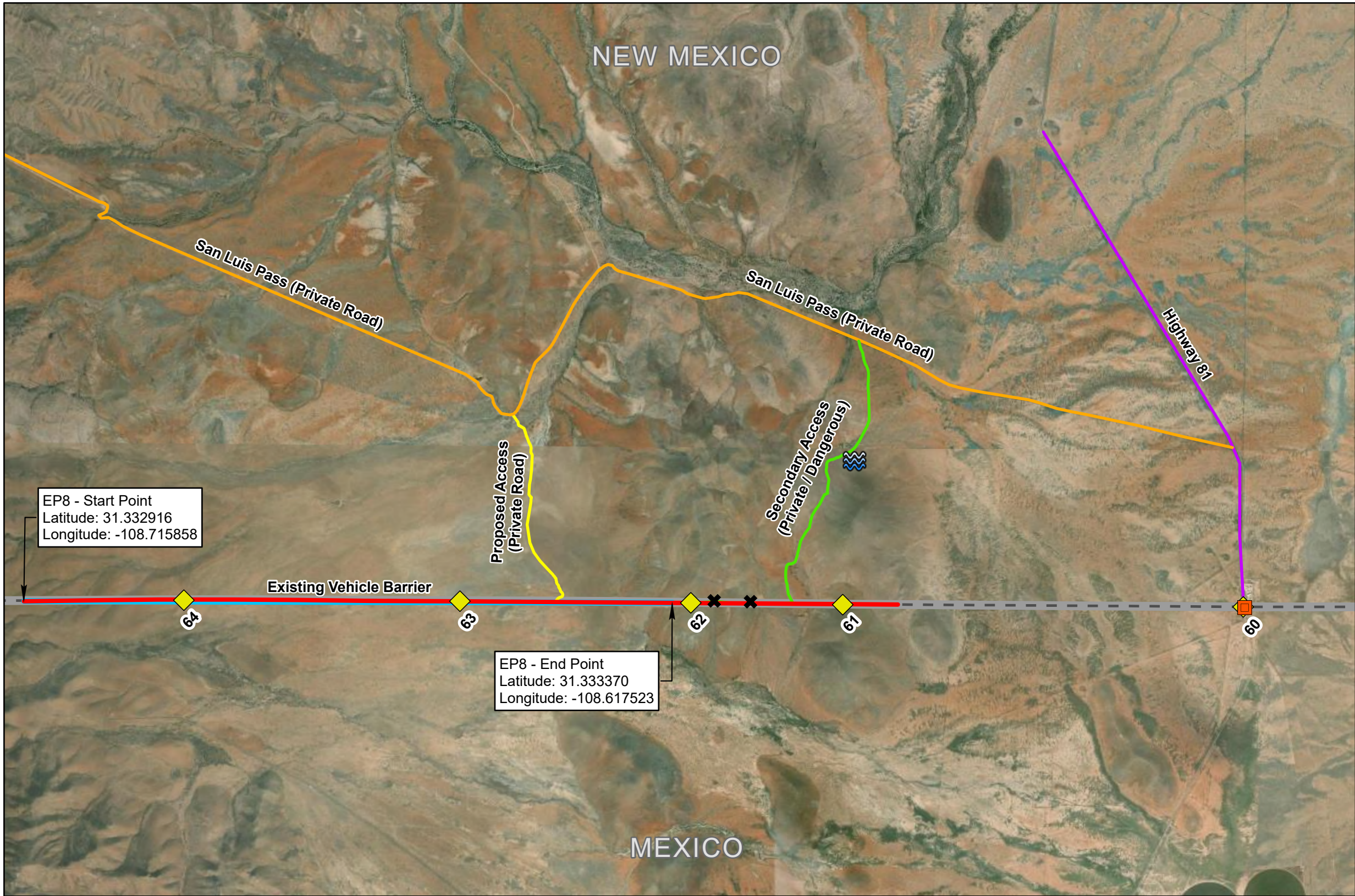
10. OTHER SUPPORTING INFORMATION. N/A

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

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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
- Border Monuments - IBWC
  - Antelope Wells Port of Entry
  - Fallen Rock/Steep Hills
  - Washed Out Area
  - NDA-1 Proposed Action Area
  - Existing Vehicle Barrier (~6 mi)
  - Highway 81
  - Real Estate Proposed Access
  - San Luis Pass (Private Road)
  - Secondary Access Private (Dangerous)
  - Mexico and U.S. Border

Map Date: 9/9/2025

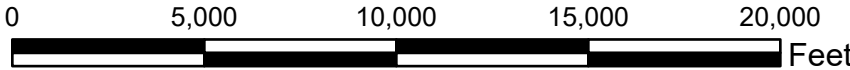
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**NDA-1 SEGMENT  
RFP DEVELOPMENT  
PROPOSED ACTION AREA**

Map 1 of 1



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1:60,000



Map Projection:  
Transverse Mercator  
NAD 1983 (2011)  
State Plane New Mexico West



Legend

-  Border Monument - IBWC
-  NDA-1 Segment
-  Identified Water Features
-  Mexico and U.S. Border

Map Date: 9/17/2025

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**NDA-1 SEGMENT  
IDENTIFIED WATER FEATURES**

Map 1 of 2



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1:9,600



Map Projection:  
Transverse Mercator  
NAD 1983 (2011)  
State Plane New Mexico West



Legend

-  Border Monument - IBWC
-  NDA-1 Segment
-  Identified Water Features
-  Mexico and U.S. Border

Map Date: 9/17/2025

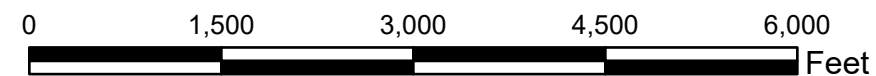
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**NDA-1 SEGMENT  
IDENTIFIED WATER FEATURES**

Map 2 of 2



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1:18,000



Map Projection:  
Transverse Mercator  
NAD 1983 (2011)  
State Plane New Mexico West