



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

[CESPA-RD-S]

May 20, 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-2024-00486]

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).

Feature ID	Lenth (lf)	Degrees Latitude	Degrees Longitude	Water of the U.S.
S4	1,365	37.33253100	108.46655700	No
S5	1,849	37.33995000	108.47405200	No
S9	3,812	37.33187000	108.46707400	No
S10	67	37.33599800	108.47389100	No
S12	37	37.33711100	108.47894500	No
S13	254	37.33730300	108.47994800	No
S14	718	37.33503300	108.47805100	No
S19	1,295	37.33315200	108.47167400	No
S25	1,027	37.33383900	108.47668900	No
S26	832	37.33351000	108.47835300	No
S27	2,818	37.33136000	108.47996100	No
S28	116	37.32757800	108.47400900	No
S29	86	37.32879300	108.47570300	No
S30	238	37.33140200	108.47823900	No
S31	1,698	37.32883700	108.47863500	No
S31(b)	119	37.32879300	108.47857600	Yes
S39	2,198	37.33803700	108.50202300	No
S40	23	37.33901500	108.50285200	No
S49	1,045	37.32792300	108.50680400	No

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")

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- 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)
- d. USACE. 2009. List of Navigable Waters of the United States in the Albuquerque District. June 17, 2009

3. REVIEW AREA.

- 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The closest A1 water to the review area is the San Juan River which crosses from Colorado into New Mexico, and ultimately from New Mexico into Utah, making it an interstate water.⁵
- 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The stream described as S31(b) flows from East to West and leaves the review area connecting with another unnamed stream traveling north to connect with McElmo Creek. McElmo Creek then flows West into Utah, and meanders for 42 miles in Utah before connecting with the San Juan River, which then flows Southeast into Lake Powell, a Section 10 Water.
- 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

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.

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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7. SECTION 404 JURISDICTIONAL WATERS:

- 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): Water feature S31(b) meets the relatively permanent standard in which they flow at least intermittently based on the Arid West Stream Duration Assessment. S31(b) exhibits a relatively permanent flow regime with a continuous surface connection to McElmo Creek, which maintains a continuous surface connection to the San Juan River, and (a)(1) water.

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 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).
17 ephemeral streams, totaling 19,596 linear feet of ephemeral stream channel, did not meet the relatively permanent flow regime standard, and therefore did not have a relatively permanent continuous surface connection to McElmo Creek.

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. National Wetlands Inventory Mapper (accessed on 3/12/2025)

⁸ 88 FR 3004 (January 18, 2023)

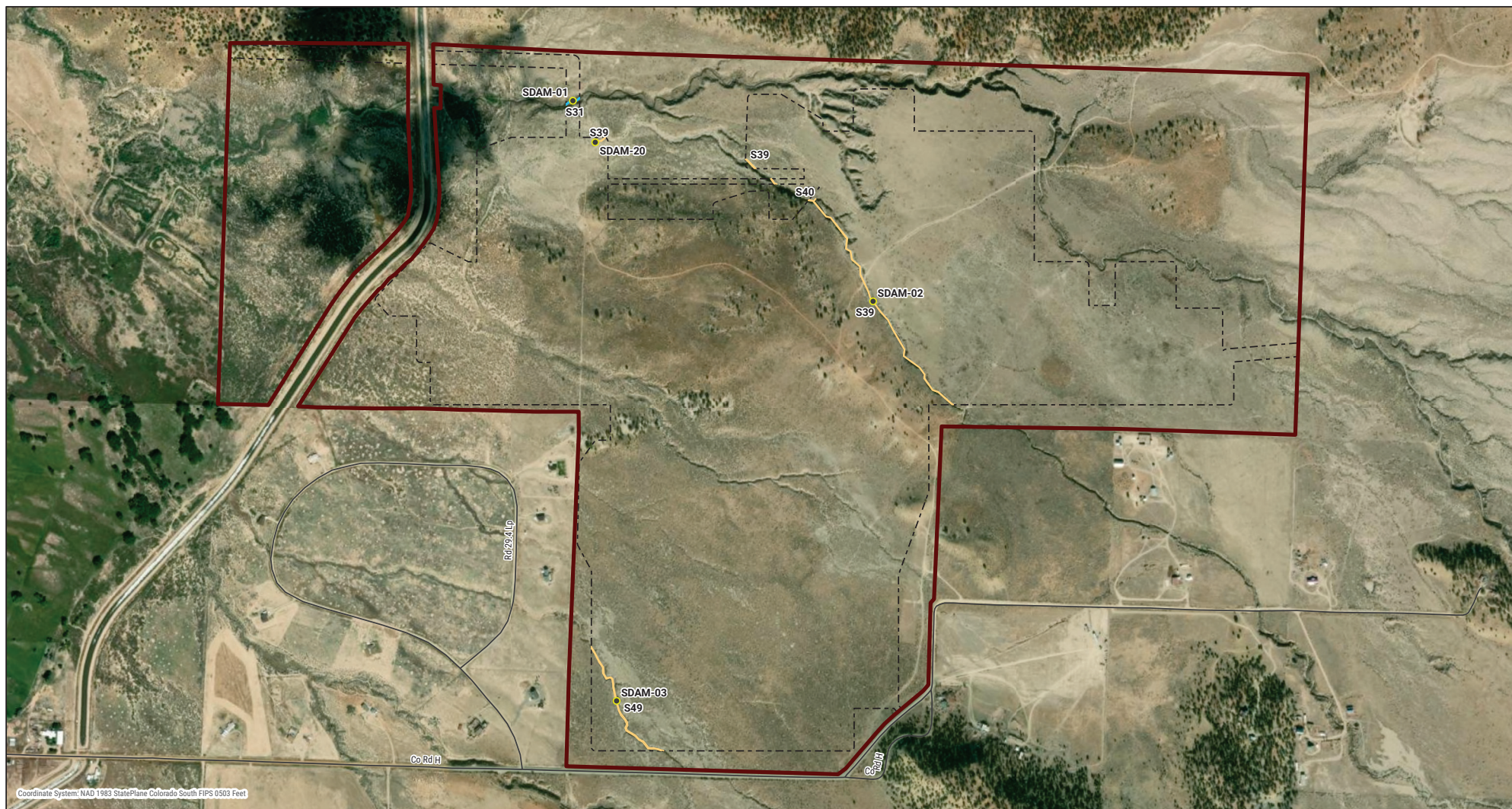
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- b. Google Earth Imager aerial photographs (2023, 2017, 2011)
- c. USDA, NRCS 2019. Web Soil Survey. Available online at <http://websoilsurvey.nrcs.usda.gov>
- d. ERP, 2025 Wetland Delineation and Stream Flow Assessment. February 2025.
- e. Energy Renewal Partners, 2024 Jurisdictional Determination Request. December 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.



Coordinate System: NAD 1983 StatePlane Colorado South FIPS 0503 Feet

4330 Gaines Ranch Loop, Suite 110
Austin, Texas 78735 | 512-222-1125
www.energyrenewalpartners.com



LEGEND

West Project Area (~631 acres, total)

West Study Area (~369 acres, total)

● SDAM Point

~ Ephemeral Stream

~ Intermittent Stream

Valley Range Energy Park LLC Valley Range Energy Park

Delineation Verification
West

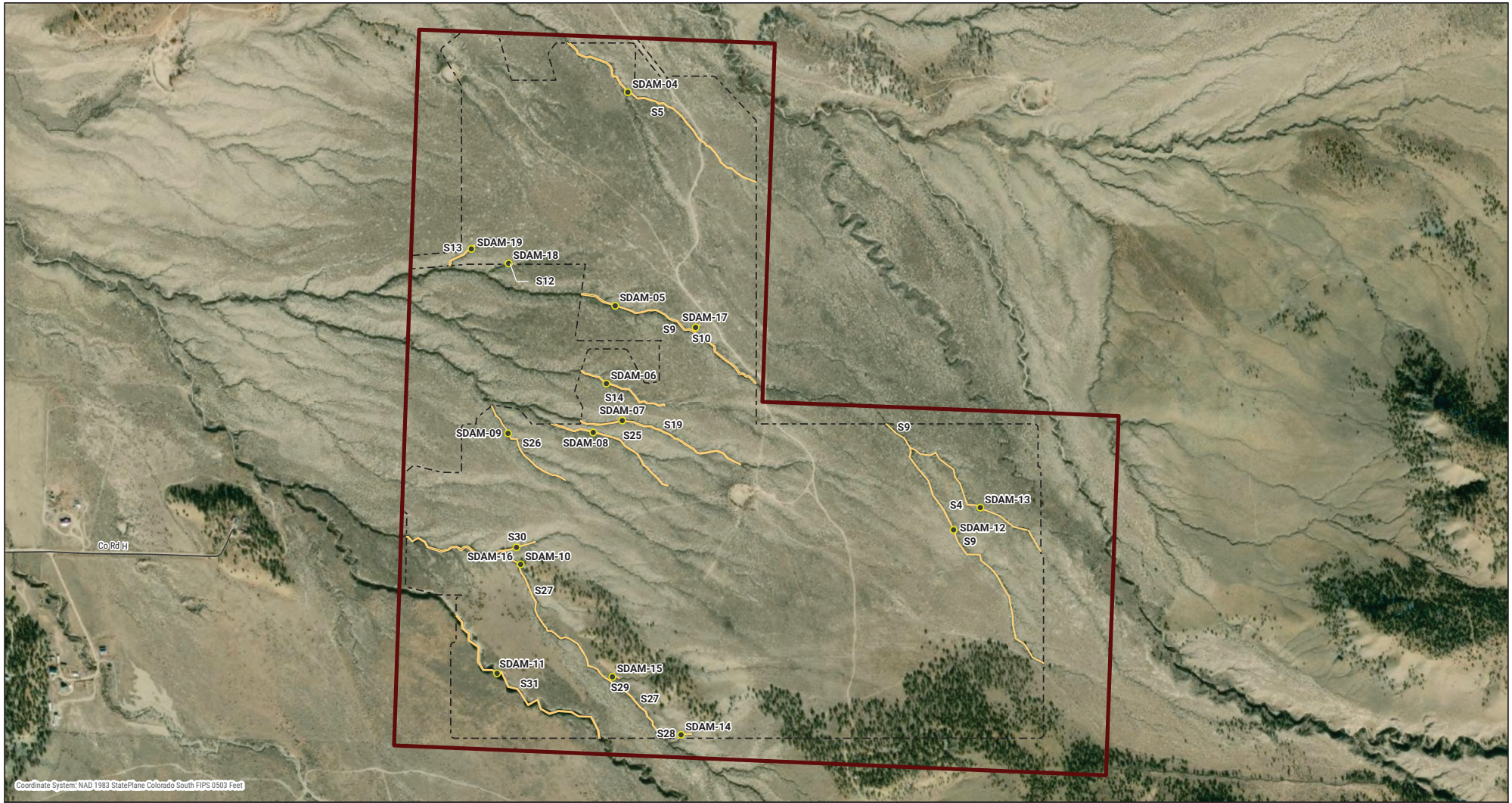
Project Location: Montezuma County, Colorado



FIGURE 2A

Prepared by: J. Hobbs

Date: 2025-02-03



4330 Gaines Ranch Loop, Suite 110
Austin, Texas 78735 | 512-222-1125
www.energyrenewalpartners.com



LEGEND

- East Project Area (~488 acres)
- East Study Area (~354 acres)
- SDAM Point
- ~ Ephemeral Stream

Valley Range Energy Park LLC Valley Range Energy Park

Delineation Verification
East

Project Location: Montezuma County, Colorado



FIGURE 2B

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