



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT
819 TAYLOR STREET
FORT WORTH, TEXAS 76102

CESWF-RDE

December 20, 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023),¹ [SWF-2023-00390](#), MFR 1 of 1²

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 For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court’s decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as

¹ While the Supreme Court’s decision in *Sackett* 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, interstate water, or territorial seas 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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amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Texas due to litigation.

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).

Water Feature	TNW	Size	Status	Rationale
S1	No	2100 LF	Not Jurisdictional	Does not meet (a)(5)
OW1	No	1.2 AC	Not Jurisdictional	Preamble Water
OW2	No	0.8 AC	Not Jurisdictional	Preamble Water
OW3	No	0.5 AC	Not Jurisdictional	Preamble Water
OW4	No	0.06 AC	Not Jurisdictional	Preamble Water
OW5	No	0.01 AC	Not Jurisdictional	Preamble Water

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court’s Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. __, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. [The review area is approximately a 999-acre tract of land located in Webb County, Texas \(27.325727°, -99.411345°\) \(Enclosure 1, 4 pages\). There is no other relevant site-specific information or previous JDs associated with the proposed review area.](#)

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [Rio Grande River approximately 15 miles southwest.](#)⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. [The flow path of the aquatic feature is south to Dolores Creek to the Rio Grande.](#)⁷

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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 [Not applicable.](#)

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 pre-2015 regulatory regime and 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 pre-2015 regulatory regime. 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. TNWs (a)(1): [Not applicable.](#)
 - b. Interstate Waters (a)(2): [Not applicable.](#)
 - c. Other Waters (a)(3): [Not applicable.](#)
 - d. Impoundments (a)(4): [Not applicable.](#)
 - e. Tributaries (a)(5): [Not applicable.](#)
 - f. The territorial seas (a)(6): [Not applicable.](#)
 - g. Adjacent wetlands (a)(7): [Not applicable.](#)

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES
 - a. Describe aquatic resources and other features within the review area identified as "generally non-jurisdictional" in the preamble to the 1986 regulations (referred to as "preamble waters").⁸ Include size of the aquatic resource or feature within

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.

⁸ 51 FR 41217, November 13, 1986.

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the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water.

Ponds OW3, OW4, and OW5 were excavated by humans (i.e., artificially created) within dry land (i.e., upland). Flows received to and conveyed from the ponds are a result of stormwater runoff from within uplands. Review of aerial imagery and desktop tools indicates that the ponds were not constructed by impounding a stream. Review of aerial imagery indicates that streams, lakes, or wetlands are not nearby these ponds.

Ponds OW1 and OW2 were excavated by humans (i.e., artificially created) within dry land (i.e., upland). Desktop tools (i.e., topo maps, NWI, NHD) indicate historic stream system where OW1 and OW2 are located. However, evidence collected and detailed herein indicates that topographic maps, NWI, and NHD do not accurately identify the current landscape at OW1 and OW2 within the review area.

The ponds meet the description of water features that generally are not considered waters of the United States as detailed in the 1986 preamble of the regulations—33 CFR, part 328.3 (c)—artificial lakes or ponds created by excavating and / or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.

- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. [Not applicable.](#)
- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. [Not applicable.](#)
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. [Not applicable.](#)

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- e. Describe aquatic resources (i.e., lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “SWANCC,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with SWANCC. [Not applicable.](#)
- f. 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 pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

[Stream 1 \(S1\) is a first order stream that begins within the review area and ends off site. It has an overall length of 2640 LF. Approximately 46% of the stream reach is within the review area. The National Hydrography Dataset \(NHD\) identifies the stream as having ephemeral flow duration. The drainage area for S1 is approximately 800 acres; however, the topography is flat. As a result of the flat topography much of the hydrology within the drainage area does not reach S1. Also, there are numerous ponds constructed within the drainage area that divert hydrology from S1. Thus, S1 does not provide sufficient flow duration to constitute sustained, seasonal flow and is not a relatively permanent water. S1 flows only in direct response to precipitation events, as evidence detailed herein indicates.](#)

[S1 is not a paragraph \(a\)\(1\) TNW, not a paragraph \(a\)\(2\) interstate water \(i.e., it does not cross or serve as a state boundary\), not a lake or pond and is therefore not paragraph \(a\)\(3\) water \(i.e., lakes or ponds that support a link to interstate or foreign commerce because it is known to be used by interstate or foreign travelers\), not a paragraph \(a\)\(4\) impoundment of a water of the U.S., not a paragraph \(a\)\(5\) tributary due to its non-relatively permanent flows, not a paragraph \(a\)\(6\) territorial sea, and not a paragraph \(a\)\(7\) adjacent wetland.](#)

- 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. [USACE site visit was determined unnecessary and conference calls with the consultant followed by a desk-top review of all available information listed herein was used for this determination, multiple dates of review.](#)

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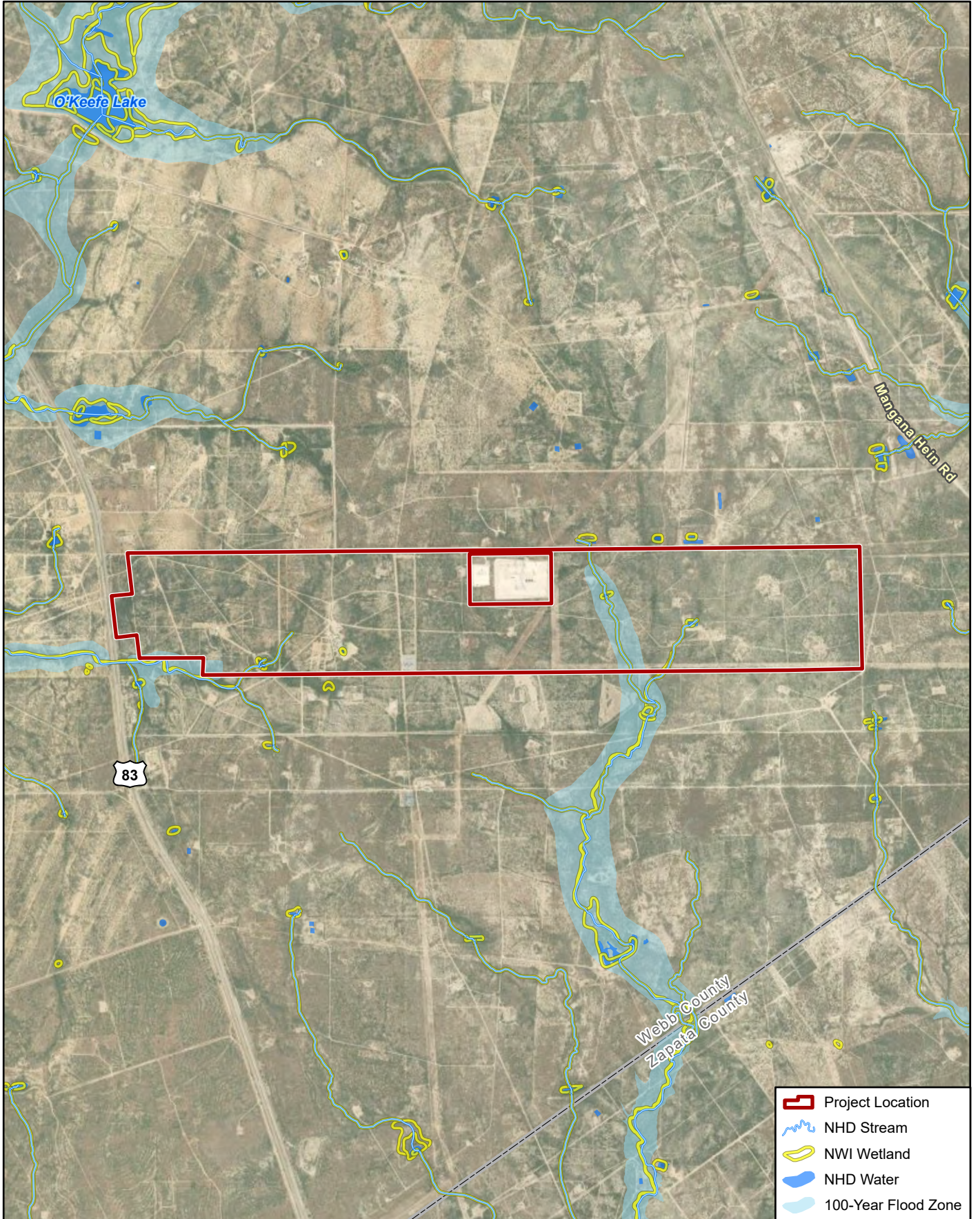
- b. Maps, delineation of aquatic resources, and other information submitted on behalf of the applicant by the consultant, multiple submittal dates.
- c. National Wetlands Inventory, National Hydrography Dataset, 3DEP Hillshade and Slope, USGS Topo Map, Soils Maps, National Regulatory Viewer-SWD-Texas, multiple assessment dates.
- d. 1987 Wetland Delineation Manual and Great Plains Supplement were referenced to identify potential jurisdiction.
- e. Regulatory Guidance Letter 2005-05 was used to identify the boundaries of non-wetland water features.
- f. Aerial imagery provided by online resources, Google Earth Pro and Historicaerials.com, all available years, multiple assessment dates.

10. OTHER SUPPORTING INFORMATION.

The ecoregion of the review area is South Texas Plains. It is semi-arid and receives approximately 20 inches of rain annually.

Additional analysis for S1 include the use of the antecedent precipitation tool (APT) (Enclosure 2, 4 pages) for aerial imagery dates: December 7, 2015, February 17, 2017, December 15, 2020, January 4, 2022. Images were referenced from Google Earth Pro. Stream 1 was not observable on other available imagery dates because of either blurred image or vegetatively obstructed view. The dates referenced herein were selected because vegetation within a right-of-way was cleared within the review area that allowed an approximately 135 lf section (27.322234°, -99.401220°) of stream to be observed for the presence of water. For each date there was not any water observed within the 135 LF section. The APT data does not contribute to the JD because the conditions observed were either normal conditions during the dry season (20151207) or drier than normal conditions during the dry season (20170217, 20201215, 20220104).

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.



- Project Location
- NHD Stream
- NWI Wetland
- NHD Water
- 100-Year Flood Zone

Figure 5.
Water Resources

Quarter Ranch Solar



Data Sources: NHD (2023),
NWI (2023), FEMA NFHL (2023)
Aerial Source: Maxar (2022)

0	3,000 Feet	1 in = 3,000 feet
0	800 Meters	Scale: 1:36,000
		Date: 6/16/2023



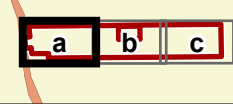
Figure 6a.
Delineated Aquatic Features

- Project Location
- Wetland Determination Point (Upland)
- Wetland Determination Point (Wetland)
- Transect
- 100-Year Flood Zone
- Assumed Water - Vegetated Swale
- Delineated Water - Erosional Feature
- Delineated Water - Open Water
- Delineated Water - Vegetated Swale

Quarter Ranch Solar

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Data Sources:
Stantec (2023, 2024),
FEMA (2023)
Aerial Source:
NAIP (2022)



1 in = 400 feet
Scale: 1:4,800
Date: 3/25/2024



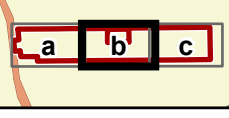
Figure 6b.
Delineated Aquatic Features

- Project Location
- Wetland Determination Point (Upland)
- Wetland Determination Point (Wetland)
- Transect
- 100-Year Flood Zone
- ~ Delineated Water - Open Water
- ~ Delineated Water - Vegetated Swale
- ~ Delineated Water - Erosional Feature

Quarter Ranch Solar

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Data Sources:
Stantec (2023, 2024),
FEMA (2023)
Aerial Source:
NAIP (2022)



0 400 Feet
0 100 Meters

1 in = 400 feet
Scale: 1:4,800
Date: 3/25/2024



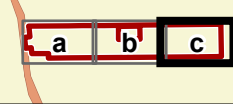
Figure 6c.
Delineated Aquatic Features

- Project Location
- Wetland Determination Point (Upland)
- Transect
- 100-Year Flood Zone
- ~ Delineated Water - Ephemeral Stream
- Delineated Water - Erosional Feature
- Delineated Water - Open Water
- ~ Delineated Water - Vegetated Swale

Quarter Ranch Solar

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Data Sources:
Stantec (2023, 2024),
FEMA (2023)
Aerial Source:
NAIP (2022)

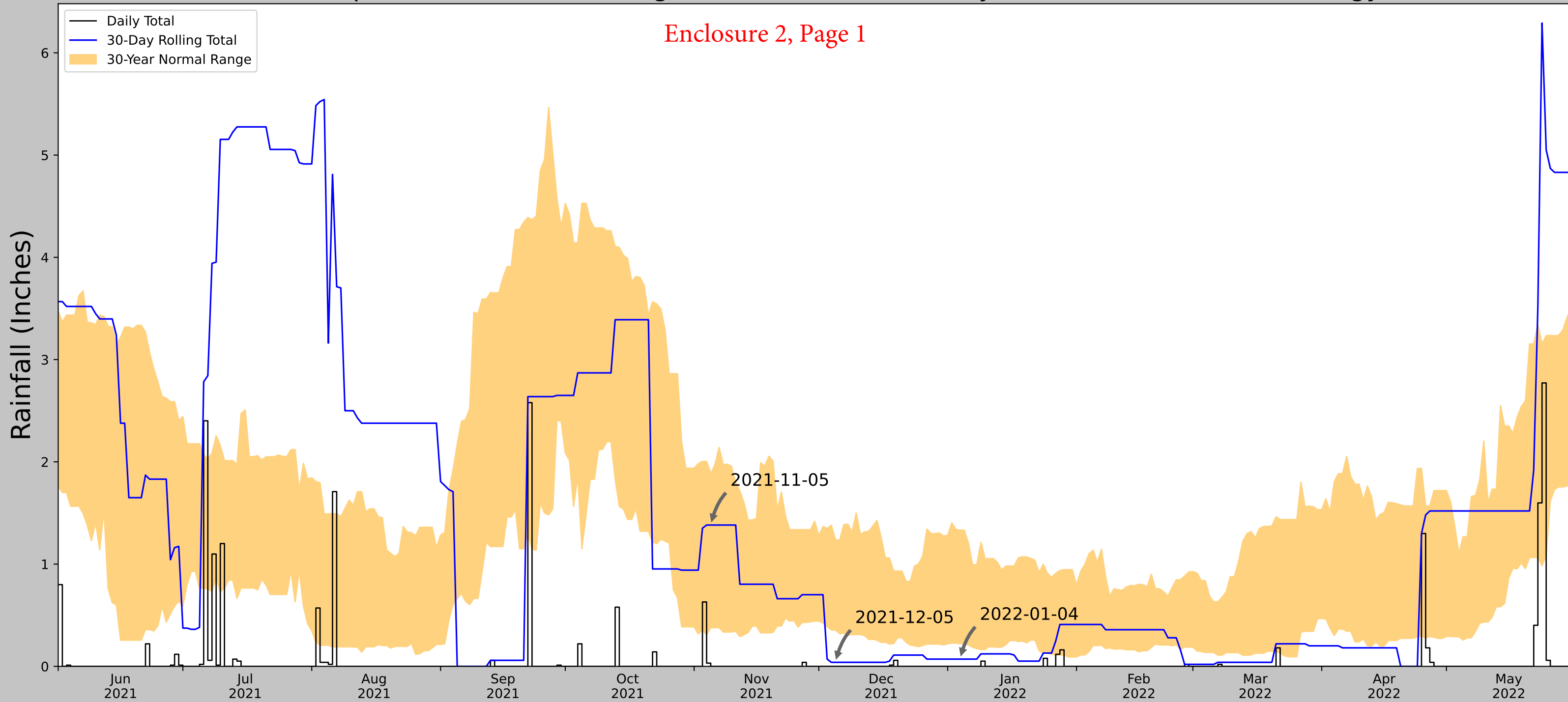


Stantec

0 400 Feet 1 in = 400 feet
0 100 Meters Scale: 1:4,800
Date: 3/25/2024

Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network

Enclosure 2, Page 1



Coordinates	27.321974, -99.401551
Observation Date	2022-01-04
Elevation (ft)	466.499
Drought Index (PDSI)	Mild drought
WebWIMP H ₂ O Balance	Wet Season

30 Days Ending	30 th %ile (in)	70 th %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2022-01-04	0.222047	1.332677	0.070866	Dry	1	3	3
2021-12-05	0.355512	1.240945	0.03937	Dry	1	2	2
2021-11-05	0.377953	1.885827	1.38189	Normal	2	1	2
Result							Drier than Normal - 7

Figures and tables made by the Antecedent Precipitation Tool Version 2.0

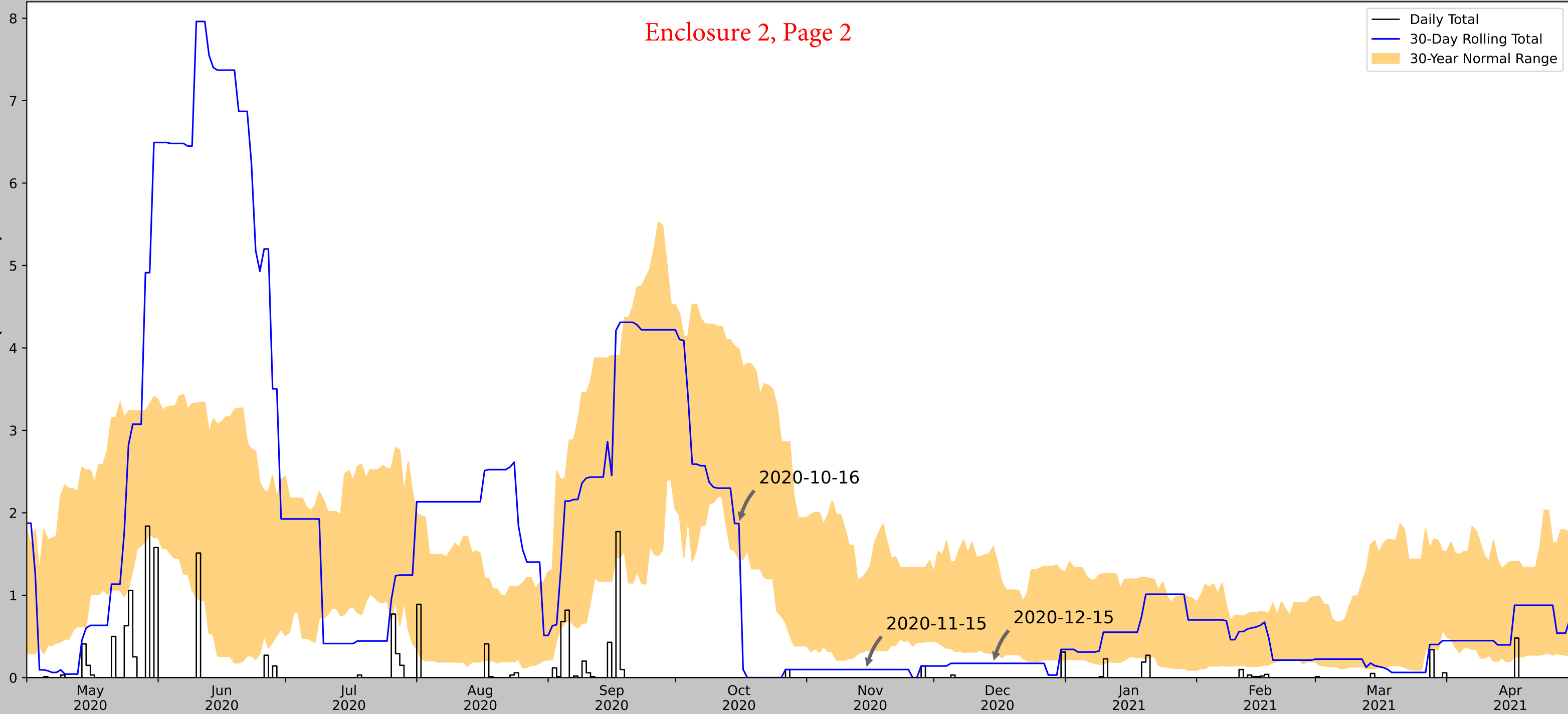
Developed by: U.S. Army Corps of Engineers and U.S. Army Engineer Research and Development Center

Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days Normal	Days Antecedent
LAREDO 2	27.5683, -99.4331	481.955	17.129	15.456	7.973	11352	90
LAREDO INTL AP	27.5333, -99.4667	494.095	3.176	12.14	1.468	1	0

Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network

Enclosure 2, Page 2

Rainfall (Inches)



Coordinates	27.321974, -99.401551
Observation Date	2020-12-15
Elevation (ft)	466.499
Drought Index (PDSI)	Moderate drought
WebWIMP H ₂ O Balance	Dry Season

30 Days Ending	30 th %ile (in)	70 th %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2020-12-15	0.286614	1.588583	0.173228	Dry	1	3	3
2020-11-15	0.327165	1.268898	0.098425	Dry	1	2	2
2020-10-16	1.437402	3.988977	1.870079	Normal	2	1	2
Result							Drier than Normal - 7

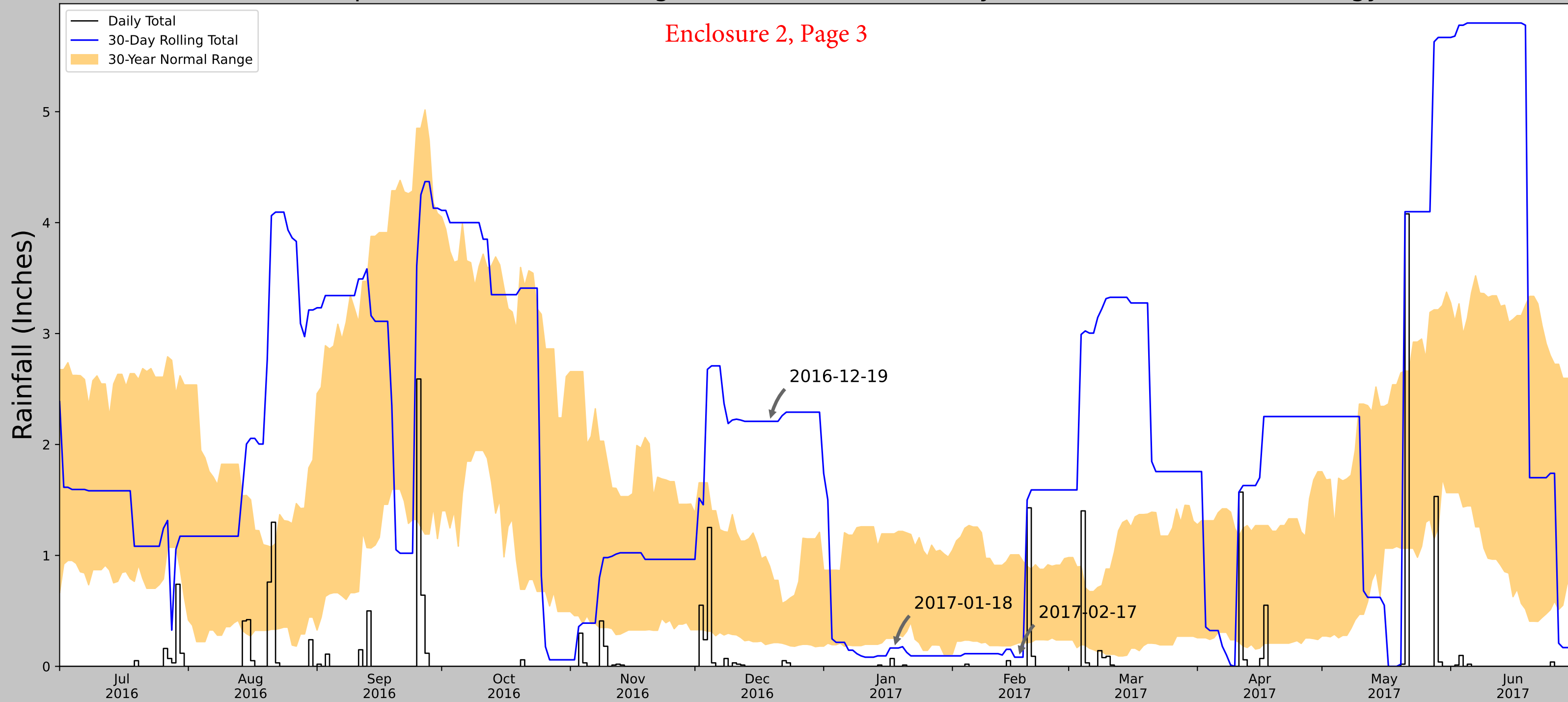
Figures and tables made by the Antecedent Precipitation Tool Version 2.0

Developed by: U.S. Army Corps of Engineers and U.S. Army Engineer Research and Development Center

Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days Normal	Days Antecedent
LAREDO 2	27.5683, -99.4331	481.955	17.129	15.456	7.973	11352	90
LAREDO INTL AP	27.5333, -99.4667	494.095	3.176	12.14	1.468	1	0

Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network

Enclosure 2, Page 3



Coordinates	27.321974, -99.401551
Observation Date	2017-02-17
Elevation (ft)	466.499
Drought Index (PDSI)	Incipient drought
WebWIMP H ₂ O Balance	Dry Season

30 Days Ending	30 th %ile (in)	70 th %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2017-02-17	0.212205	1.005906	0.082677	Dry	1	3	3
2017-01-18	0.253543	1.194882	0.165354	Dry	1	2	2
2016-12-19	0.205906	0.902756	2.208661	Wet	3	1	3
Result							Drier than Normal - 8

Figures and tables made by the Antecedent Precipitation Tool Version 2.0

Developed by: U.S. Army Corps of Engineers and U.S. Army Engineer Research and Development Center

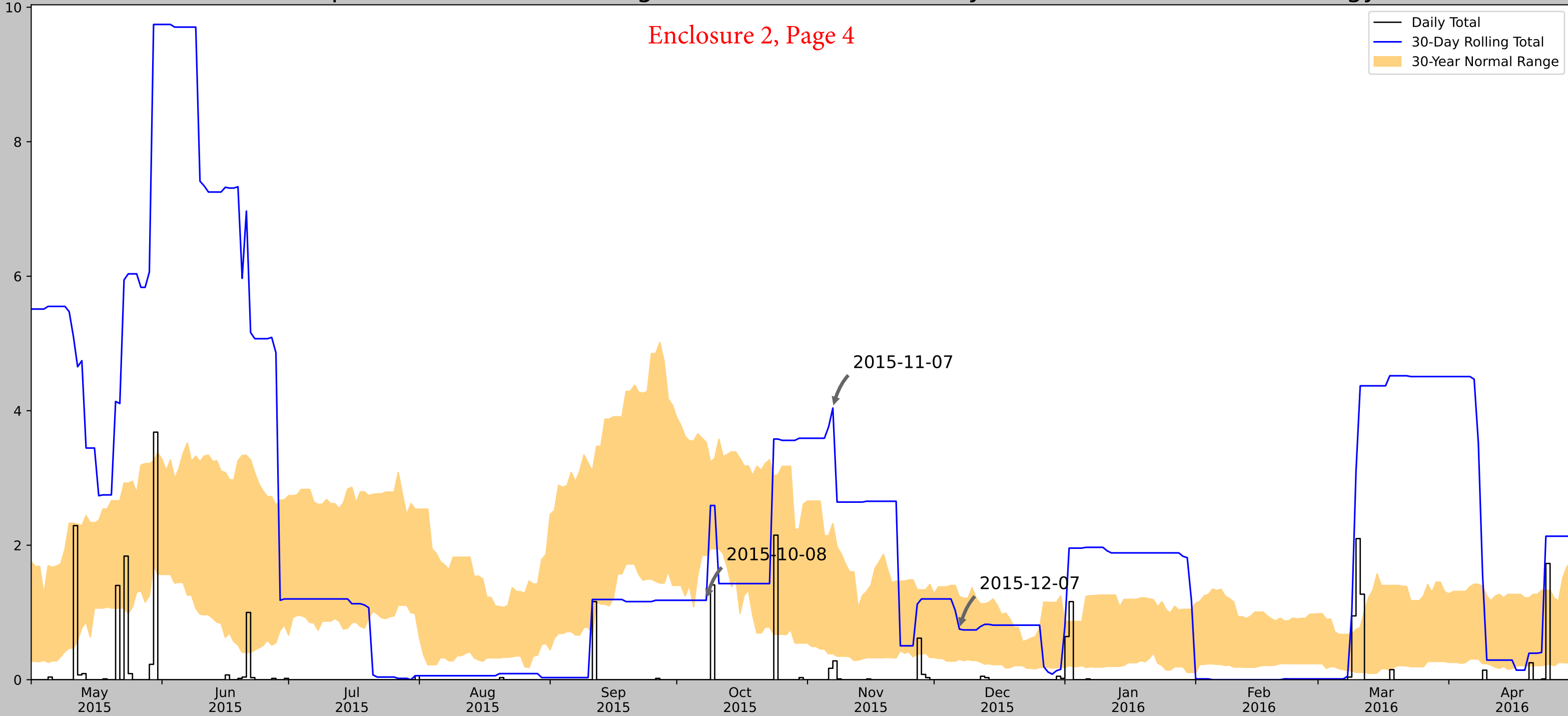
Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days Normal	Days Antecedent
LAREDO 2	27.5683, -99.4331	481.955	17.129	15.456	7.973	11352	90
LAREDO INTL AP	27.5333, -99.4667	494.095	3.176	12.14	1.468	1	0

Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network

Enclosure 2, Page 4

— Daily Total
 — 30-Day Rolling Total
 30-Year Normal Range

Rainfall (Inches)



Coordinates	27.321974, -99.401551
Observation Date	2015-12-07
Elevation (ft)	466.499
Drought Index (PDSI)	Incipient drought
WebWIMP H ₂ O Balance	Dry Season

30 Days Ending	30 th %ile (in)	70 th %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2015-12-07	0.305118	1.232677	0.751969	Normal	2	3	6
2015-11-07	0.38622	2.322835	4.03937	Wet	3	2	6
2015-10-08	1.849213	3.529134	1.181102	Dry	1	1	1
Result							Normal Conditions - 13

Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days Normal	Days Antecedent
LAREDO 2	27.5683, -99.4331	481.955	17.129	15.456	7.973	11350	90
LAREDO INTL AP	27.5333, -99.4667	494.095	3.176	12.14	1.468	1	0
NUEVO LAREDO	27.4833, -99.5	422.9	7.162	59.055	3.646	1	0