

Senate Committee on Environment and Public Works Subcommittee on Fisheries, Water, and Wildlife oversight hearing entitled, “Erosion of Exemptions and Expansion of Federal Control –Implementation of the Definition of Waters of the United States.” May 24, 2016

Request for Additional Information: Case Study 1 and Supporting Documents

Case Study 1

1. Project Summary:

SPK#2004-00896

The total project area is approximately 221 acres in size.

2. Issue:

- a. Corps determined that puddles in the middle of a dirt road, filled after rain events and created from vehicular disturbance (tire ruts), are WOTUS.
- b. Corps required placement of puddles on a delineation map that are not wetlands and required data sheets to support false assertion of federal jurisdiction by the Corps, or risk not obtaining a jurisdictional determination.

3. Supporting Information:

Exhibit A – 2007 Wetland Delineation (verifiedⁱ)

Exhibit B – Corps Field Inspection Record obtained from FOIA request

Exhibit C – 2014 Wetland Delineation (unverified)

4. Details:

- a. In 2007, a delineation of WOTUS (Exhibit A) was performed for the project area. Of the total 0.214 acres of *Seasonal Wetlands*, 25% of “wetland” features were human created tire ruts in the dirt roads. The consultants argued that the puddles in the dirt roads were not jurisdictional because they did not meet the Corps’ wetland criteria. Specifically, there was an absence of hydric soils and hydrophytic vegetation. Nonetheless, the Corps asserted jurisdiction and required a permit to fill the puddles. Refer to Exhibit B “Field Inspection Form” for the Corps regulator’s reasoning and justification for determining jurisdiction, which includes statements of “little to no veg” and “appears to be formed due to off-road activity.”
- b. In 2014, following the reissuance of the 2012 Nationwide Permits and construction of Phase I of the project, another wetland delineation was completed for Phase II. Based on the direction of the Corps regional representative’s insistence on asserting jurisdiction over puddles in roads, additional puddles were delineated (Exhibit C). The additional puddles were a product of vehicular use in the area.

- c. Corps Regulator conducted a site visit after an intense rain event and used photos of ponded water to assert jurisdiction. This is not an acceptable method under the 1987 or 2008 Regional Supplement to the Corps of Engineers Wetland Delineation Manual.

5. Status: Pending.

ⁱ Verified means that the US Corps of Engineers has conducted a field review and performed a verification or jurisdictional determination, concurring with the extent, location, and type of WOTUS within the project area.

Exhibit A

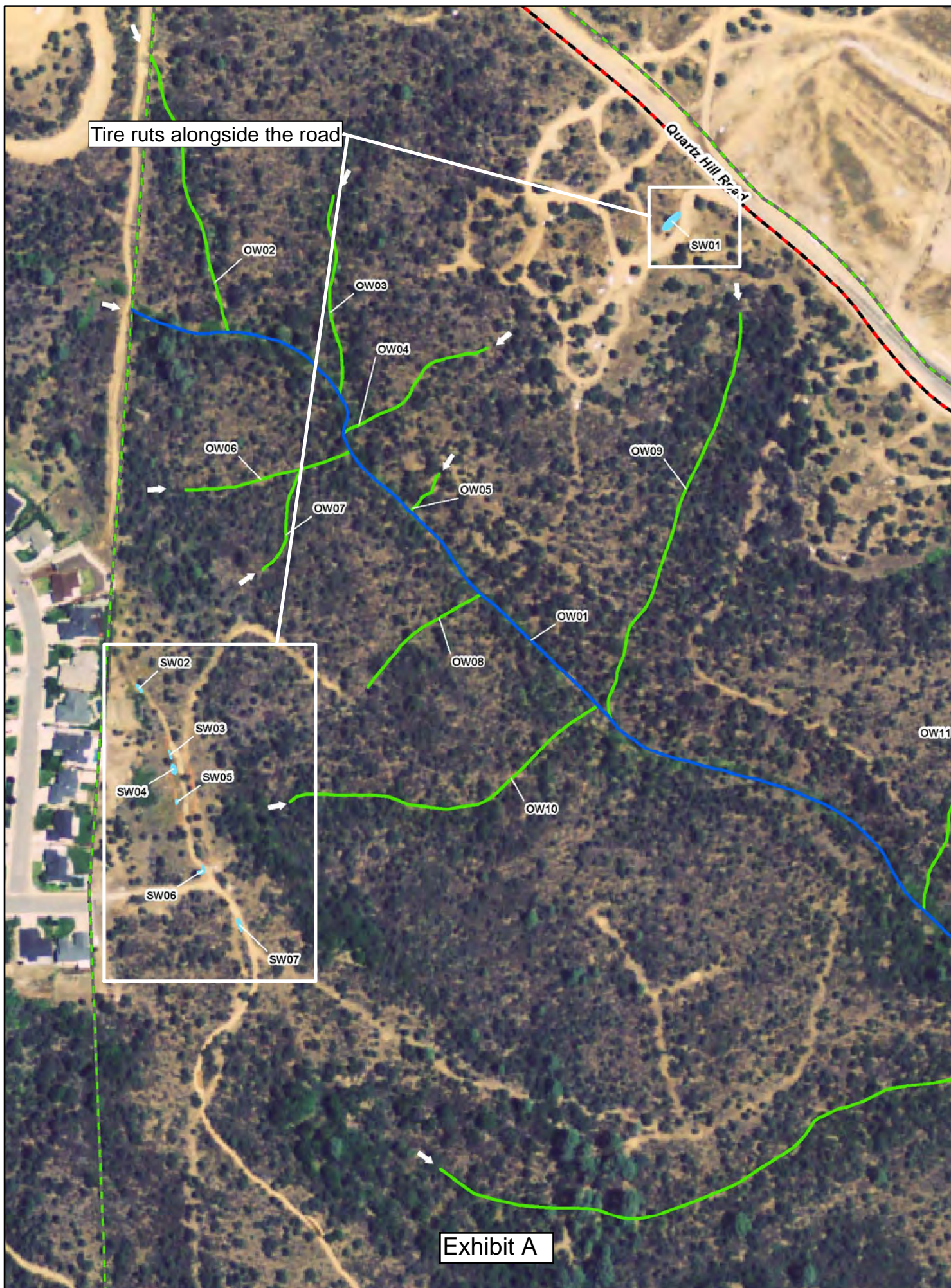


Exhibit B

FIELD INSPECTION RECORD

1. Name (Inspector) <u>Kelly</u>		2. DATE <u>3-1-05</u>	
3. PERMIT NUMBER <u>200400896</u>		5. SUSPENSE NUMBER	
3. E-NUMBER			
INSTRUCTIONS: Place an "X" in the appropriate box or annotate the required information			
- SECTION 10 - SECTION 404 - SECTION 13 - OTHER (Specify) _____		- PRE-CONSTRUCTION INSPECTION - COMPLIANCE INSPECTION - VIOLATION INSPECTION - PROPOSED - EXISTING FLIGHT NUMBER _____	
		7. BANK RIGHT LEFT	
		8. RIVER MILE	
9. NAME OF WATERWAY		10. COUNTY	
12. TRIBUTARY		13. SUBDIVISION <u>1324 Hwy</u>	
15. WIDTH OF WATERWAY		16. LOCATION (nearest town or city)	
17. NAME (property owner)		18. TELEPHONE NUMBER	
19. ADDRESS			
20. NAME (lessee)		21. TELEPHONE NUMBER	
22. NAME (person contacted)		23. TELEPHONE NUMBER	
24. NAME (agent)		25. TELEPHONE NUMBER	
26. FIELD SKETCH			

- Observed pools along west side Fire Rd. little to no veg. appear to be formed due to off-road activity. Definitely receiving H₂O from pools previously considered potential habitat. ✓ w/ FWS it should be added.
- Walked down OW 16 (Gullaway map) Gullaway listed as open. Definite ground water input. on OW 16. OW 18, 19, & 20 - Tribs to OW 16 Definite ground water input. water observed seeping out of hill and rodent holes into streams. Needs to be mapped as intermittent as USF map indicated.

"little to no veg."

"appear to be formed due to off-road activity"

Exhibit C



Wetland Feature 01

Other Waters of the U.S. Impacts				
Feature Type	Label	Width (ft)	Length (ft)	Acres
Other Waters	OW01	12	5.1	0.0014
Other Waters	OW09	2	15.8	0.0007
Other Waters	OW10	10	6.6	0.0020
Other Waters	OW11	2	539.8	0.0248
Other Waters	OW12	4	164.5	0.0151
Other Waters	OW15	1	106.1	0.0024
Other Waters	OW17	3	676.3	0.0466
Other Waters	OW18	1	227.3	0.0052
Other Waters	OW19	1	167.3	0.0038
Other Waters	OW20	2	258.3	0.0119
Other Waters	OW21	2	199.4	0.0092
Other Waters	OW22	1	65.0	0.0015
Other Waters	OW31	1	27.8	0.0006
Other Waters	OW33	1	128.7	0.0030
Other Waters	OW34	1	10.7	0.0002
Other Waters	OW36	2	101.4	0.0047
Other Waters	OW37	2	96.8	0.0044
Total Impacts to Other Waters=			2,796.6	0.14
Wetland Features Impacts				
Feature Type	Label	Width (ft)	Length (ft)	Acres
Seasonal Wetland	WF01	N/A	N/A	0.0102
Seasonal Wetland	WF02	N/A	N/A	0.1621
Seasonal Wetland	WF03	N/A	N/A	0.0149
Total Impacts to Wetland Features=			N/A	0.19
Total Impacts to all Features=			2,796.6	0.32

The features presented in this figure are to be considered preliminary until written verification from the USACE.



Wetland Feature 02

Project Boundary- 221.4 acres
Phase II Boundary- 166.4 acres
Developed Portion of Project- 54.6 acres (Phase I)
Impacted Seasonal Wetlands- 0.19 acres
Other Waters of the U.S.- 1.86 acres
Impacted Other Waters- 0.14 acres
20 Foot Contours
Flow Arrows
Feature Transitions