

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 7 and Supporting Documents

Case Study 7

1. Project Summary:
SPK#2015-000526
The total project area is approximately 2,700 acres

2. Issue:
 - a. Request for an Approved Jurisdictional Determination (AJD) was retracted due to delays by the Corps in reviewing the submittal and a Preliminary Jurisdictional Determination (PJD) was subsequently requested in order to pursue expedited processing.
 - b. Multiple regulators were assigned to the review of the draft delineation resulting in a wide variety of interpretations of the Clean Water Act.
 - c. Corps requested data points in actively farmed alfalfa fields in an attempt to take jurisdiction of low areas within the field and areas where irrigation water over ran the field
 - d. Corps threatened to pursue a violation for activities that the Corps perceived to result in discharge to wetlands related to the land use change.
 - e. Landowner hired a consultant to formally delineate all waters of the US so that he could plan agricultural operations of avoid all WOTUS thus eliminating a need for a permit. Original request was in May 2015.

3. Supporting Information:
Exhibit A –Portion of the original delineation map points that the Corps wanted additional evaluation and mapping

4. Landowner originally requested an approved jurisdictional determination but due to delays with the Corps response changed the request to a preliminary jurisdictional determination in August 2015 in hopes of facilitating a Corps decision.

Following submission of the original delineation the Corps started the initial process of issuing a violation for the construction of stock ponds on the ranch. These stock ponds were designed, funded, and construction supervised by the Natural Resource Conservation Service. The regulator was removed from the project and a new regulator was assigned in February 2016. The new regulator initially requested over 350 new data points within areas that exhibited “wetland” signatures on an aerial photo. This new request delayed the delineation review even further. By almost any standard the Corps data request was unreasonable, as the original delineation included over 600 data points that adequately covered the site and all represented wetlands and other waters.

The Corps requested additional data points in actively farmed alfalfa fields (Exhibit A) in an attempt to take jurisdiction of low areas within the field and areas where irrigation water over ran the field. The Corps also instructed the delineator to take additional data points in low areas within fields that are dry land farmed. The landowner decided to remove these fields from the delineation study boundary and move ahead with an agricultural project that involved planting an orchard in the alfalfa and fields historically used for dry land farming without a Corps verified delineation in these fields. This move would have essentially operating at risk. The Corp regulator informed the landowner and our staff that changing from alfalfa to orchards would constitute a land use change and that Corps regulators could pursue a violation for activities that the Corps perceived to result in discharge to wetlands related to the land use change. The Corps regulator informed the landowner that despite an extensive farming history, orchards were never planted on the ranch so they might not be considered a normal farming activity.

5. Status: Preliminary jurisdictional determination is still pending.

Exhibit A

**Sobarea Ranch
Phase I
Draft Wetland Delineation**



The features presented in this figure are to be considered preliminary until written verification from the USACE.
 GE: #15-009, Map Date: 02/24/15
 Data Sources: ESRI, USGS, Tehama County, Gallaway Enterprises

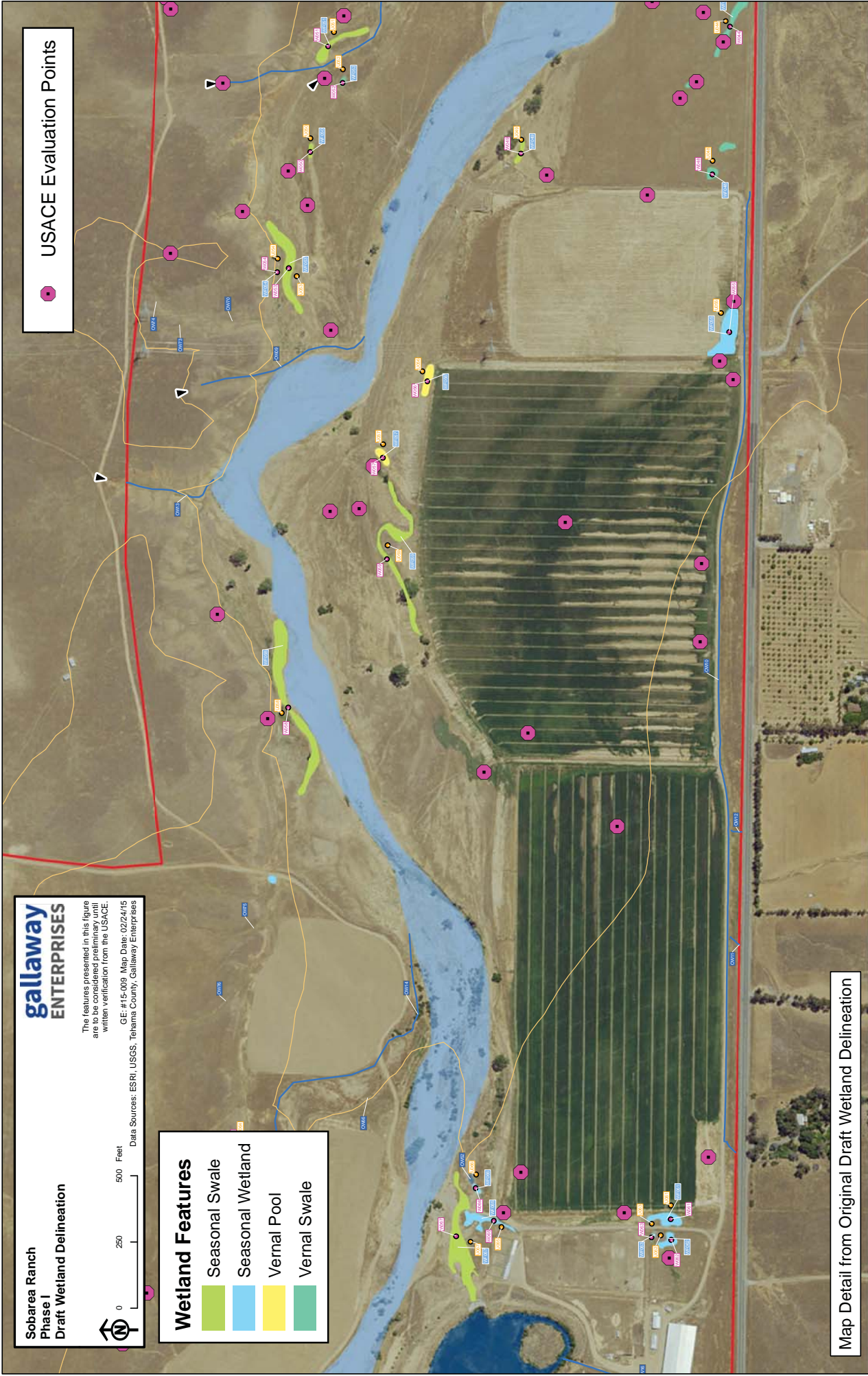


Wetland Features

- Seasonal Swale
- Seasonal Wetland
- Vernal Pool
- Vernal Swale

USACE Evaluation Points

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Map Detail from Original Draft Wetland Delineation