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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DUARTE NURSERY, INC., a California Corporation; and JOHN DUARTE, an individual,

Plaintiffs,

v.

UNITED STATES ARMY CORPS OF ENGINEERS,

Defendant.

UNITED STATES OF AMERICA,

Counterclaim- Plaintiff,

v.

DUARTE NURSERY, INC., a California Corporation; and JOHN DUARTE, an individual,

Counterclaim- Defendants.

No. 2:13−CV−02095−KJM−DAD

UNITED STATES' EXPERT DISCLOSURES AND DESIGNATIONS

Pursuant to Federal Rule of Civil Procedure 26(a)(2) and the Court's Amended Status (Pretrial Scheduling) Order of May 14, 2015 (ECF No. 73), Defendant United States Army Corps of Engineers and Counterclaim-Plaintiff United States of America (collectively, "United States") hereby provide the following disclosures and designations of witnesses the United States may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705:

I. RETAINED EXPERTS

A. Gregory A. House, AFM, ARA, CPAg, House Agricultural Consultants, 1105 Kennedy Place, Suite 1, Davis, CA 95616

1. Area(s) of expertise: agricultural management and practices

2. Report: Agricultural Study of the Duarte Property (June 5, 2015)

B. W. Clark Hurst, Nutter & Associates, Inc., 360 Hawthorne Lane, Athens, GA 30606

1. Area(s) of expertise: geographic information system specialist

2. Report: U.S. Department of Justice Expert Team Report (June 5, 2015)

C. Lyndon C. Lee, Ph.D., PWS, Principal Ecologist & President, L.C. Lee & Associates, Inc., 2442 NW Market Street, #392, Seattle, WA 98107

1. Area(s) of expertise: ecosystem ecology and wetland and river science

2. Report: U.S. Department of Justice Expert Team Report (June 5, 2015)

D. Richard A. Lis, Ph.D., State of California, Department of Fish and Wildlife, 2440 Athens Avenue, Redding, CA 96001

1. Area(s) of expertise: plant ecology and systematics

2. Report: U.S. Department of Justice Expert Team Report (June 5, 2015)

E. Wade L. Nutter, Ph.D., PH, Nutter & Associates, Inc., 360 Hawthorne Lane, Athens, GA 30606

1. Area(s) of expertise: hydrology

2. Report: U.S. Department of Justice Expert Team Report (June 5, 2015)

F. Mark C. Rains, Ph.D., PWS, Coshow Environmental, Inc., 408 Montrose Ave., Temple Terrace, FL 33617

1. Area(s) of expertise: hydrologic science and ecohydrology

2. Report: U.S. Department of Justice Expert Team Report (June 5, 2015)

G. Scott R. Stewart, Ph.D., CPSS, L.C. Lee & Associates, Inc., 2442 NW Market Street, #392, Seattle, WA 98107

1. Area(s) of expertise: soil science and geomorphology

2. Report: U.S. Department of Justice Expert Team Report (June 5, 2015)

H. Peter Stokely, EPA Office of Civil Enforcement, 1200 Pennsylvania Ave., NW, Washington, DC 20460

1. Area(s) of expertise: aerial photographic interpretation

2. Report(s): Analysis of Aerial Photography and other Geospatial Data, Duarte Nursery Site and Vicinity, Tehama County, California (June 5, 2015)

II. PERCIPIENT EXPERTS[1]

U.S. Army Corps of Engineers

A. Matthew P. Kelley, Chief, Redding Regulatory Office, Sacramento District, U.S. Army Corps of Engineers, 310 Hemsted Dr., Suite 310, Redding, CA 96002

1. Subject matter(s) that may be within the scope of Federal Rule of Evidence 702, 703, or 705: Coyote Creek and connected streams and wetlands at the Site; aspects of connectivity with upstream and downstream waters and traditional navigable waters;

[1] *See also* United States' Initial Disclosures §§ I.A.9, I.A.11 & I.G.10 through I.G.15 (Jan. 30, 2015).

aspects of ecological relationship with the Sacramento River; tillage operations at the Site in late 2012; discharges of dredged or fill material; lack of applicable exemption; impacts and harm from unpermitted conduct; communication with Duarte; and flagrant nature of the unpermitted conduct.

2. Summary of the facts and opinions to which the witness is expected to testify: Facts and opinions to which Mr. Kelley is expected to testify are summarized in the Memorandum for Record he drafted in February 2013 (bates-stamped USA000040 through USA000056), which has already been produced. In addition, facts and opinions regarding "waters of the United States" to which Mr. Kelley is expected to testify are summarized *infra* pp. 8-15.

B. James T. Robb, Enforcement Unit, Regulatory Division, Sacramento District, U.S. Army Corps of Engineers, 1325 J Street, Room 1350, Sacramento, CA 95814

1. Subject matter(s) that may be within the scope of Federal Rule of Evidence 702, 703, or 705: conditions and characteristics of the Site over time as gleaned from aerial photography and prior delineations; conditions and characteristics of the Site on or about March 19, 2013 as observed from Paskenta Road; conditions and characteristics of the Site and Coyote Creek Conservation Area on or about April 8 or 9, 2015; Coyote Creek and connected streams and wetlands at the Site; aspects of connectivity with upstream and downstream waters; aspects of ecological relationship with the Sacramento River; and communication with Duarte.

2. Summary of the facts and opinions to which the witness is expected to testify: The facts and opinions to which Mr. Robb is expected to testify are summarized in the Memorandum for Record he drafted in July 2013 (bates-stamped USACE0003020 through USACE0003025), which has already been produced. In addition, facts and opinions to which Mr. Robb is expected to testify regarding: (a) "waters of the United States" are summarized *infra* pp. 8-15; (b) the geographic extent of the late 2012 tillage operations are illustrated at USACE0007533, which is being produced herewith; and (c) conditions and characteristics of the Site over time as gleaned from aerial photography and prior delineations are illustrated at USACE0005762 through USACE0005786, which has already been produced, and

USACE0005970 through USACE0006007, which are being produced herewith.

North State Resources, Inc.

C. Len Lindstrand, North State Resources, Inc., 5000 Bechelli Lane, Suite 203, Redding, CA 96002

1. Subject matter(s) that may be within the scope of Federal Rule of Evidence 702, 703, or 705: identification, delineation, and mapping, in 1994, of streams, wetlands, or other aquatic features on property bounded on the north by Ohm Road (or Rawson Avenue), on the south by Dusty Way (or Ottman Avenue), on the west by Paskenta Road, and on the east by Rawson Road; occurrence no. 133, in 2001, of vernal pool fairy shrimp (*Branchinecta lynchi*), a threatened species, in vernal pools southeast of the corner of Paskenta Road and Ohm Road; occurrence no. 175, in 2005, of vernal pool tadpole shrimp (*Lepridurus packardi*), an endangered species, in wetlands in the vicinity of Ohm Road and Dusty Way; and occurrence no. 135, in 1996, of California linderiella (*Linderiella occidentalis*), an imperiled species, in vernal pools in the vicinity of Ohm Road and Dusty Way.

2. Summary of the facts and opinions to which the witness is expected to testify: The facts and opinions to which Mr. Lindstrand is expected to testify are summarized in documents he and North State Resources, Inc. prepared and submitted to the U.S. Army Corps of Engineers in 1994 (bates-stamped USA-NRS-00001 through USA-NRS-00146), and in California Natural Diversity Database reports for occurrence nos. 133, 175, and 135 (bates-stamped NSE0006018 through NSE0006020) or similar occurrences. These documents have already been produced.

North Star Environmental (or associated with it at the relevant time)

D. Christy Dawson, until recently Senior Regulatory Biologist, NorthStar Environmental, 111 Mission Ranch Blvd., Suite 100, Chico, CA 95926

1. Subject matter(s) that may be within the scope of Federal Rule of Evidence 702, 703, or 705: identification, delineation, and mapping, in 2012, of streams, wetlands, or other aquatic features on property bounded on the north by Ohm Road (or Rawson Avenue), on the south by Dusty Way (or Ottman Avenue), on the west by Paskenta Road, and on

the east by Rawson Road; communication with Roger Jack LaPant or representatives about such property; communication with U.S. Department of Agriculture personnel about such property; communication with Duarte or representatives about such property; communication with U.S. Army Corps of Engineers personnel about such property and unpermitted conduct.

2. Summary of the facts and opinions to which the witness is expected to testify: A summary of expected testimony about aquatic features on the property referenced above can be found in the February 2012 and July 2012 reports that North Star Environmental prepared and delivered to landowners, Roger Jack LaPant and Duarte (bates-stamped, respectively, NSE0006205 through NSE0006237 and Duarte 549 through 822), which have already been produced. Ms. Dawson is also expected to testify about: (a) communication with the property owners or representatives regarding their intended use of the property and their knowledge of the Clean Water Act section 404 permit program; (b) communication with U.S. Department of Agriculture personnel regarding Mr. LaPant's initial request for federal agency review of the February 2012 report or findings and Duarte's subsequent request to withdraw that request; and (c) communication with U.S. Army Corps of Engineers personnel after occurrence of unpermitted conduct.

E. Elena Gregg, now with Gallaway Enterprises, 117 Meyers Street, Suite 120, Chico, CA 95928.

1. Subject matter(s) that may be within the scope of Federal Rule of Evidence 702, 703, or 705: identification, delineation, and mapping, in early 2012, of streams, wetlands, or other aquatic features on property bounded on the north by Ohm Road (or Rawson Avenue), on the south by Dusty Way (or Ottman Avenue), on the west by Paskenta Road, and on the east by Rawson Road.

2. Summary of the facts and opinions to which the witness is expected to testify: A summary of expected testimony about aquatic features on the property referenced above can be found in the February 2012 and July 2012 reports that North Star Environmental prepared and delivered to landowners, Roger Jack LaPant and Duarte (bates-stamped, respectively, NSE0006205 through NSE0006237 and Duarte 549 through 822), which have

already been produced. Ms. Gregg may also testify about: (a) communication with the property owners or representatives regarding their intended use of the property and their knowledge of the Clean Water Act section 404 permit program requirement; (b) communication with U.S. Department of Agriculture personnel regarding Mr. LaPant's initial request for federal agency review of the February 2012 report or findings and Duarte's subsequent request to withdraw that request; and (c) communication with U.S. Army Corps of Engineers personnel after occurrence of unpermitted conduct.

F. Trish Ladd, Wildlife Biologist, NorthStar Environmental, 111 Mission Ranch Blvd., Suite 100, Chico, CA 95926.

1. Subject matter(s) that may be within the scope of Federal Rule of Evidence 702, 703, or 705: identification, delineation, and mapping, in early 2012, of streams, wetlands, or other aquatic features on property bounded on the north by Ohm Road (or Rawson Avenue), on the south by Dusty Way (or Ottman Avenue), on the west by Paskenta Road, and on the east by Rawson Road.

2. Summary of the facts and opinions to which the witness is expected to testify: A summary of expected testimony about aquatic features on the property referenced above can be found in the February 2012 and July 2012 reports that North Star Environmental prepared and delivered to landowners, Roger Jack LaPant and Duarte (bates-stamped, respectively, NSE0006205 through NSE0006237 and Duarte 000549 through 822), which have already been produced. Ms. Ladd may also testify about: (a) communication with the property owners or representatives regarding their intended use of the property and their knowledge of the Clean Water Act section 404 permit program requirement; (b) communication with U.S. Department of Agriculture personnel regarding Mr. LaPant's initial request for federal agency review of the February 2012 report or findings and Duarte's subsequent request to withdraw that request; and (c) communication with U.S. Army Corps of Engineers personnel after occurrence of unpermitted conduct.

G. James Stevens, Principal, NorthStar Environmental, 111 Mission Ranch Blvd., Suite 100, Chico, CA 95926.

1. Subject matter(s) that may be within the scope of Federal Rule of Evidence 702, 703, or 705: letter advising Duarte to contact the U.S. Army Corps of Engineers before certain conduct at the Site.

2. Summary of the facts and opinions to which the witness is expected to testify: NorthStar Environmental's May 23, 2012 letter to James T. Duarte of Duarte Nursery, Inc. (USA-NOSTR-00578), which has already been produced and states, in part:

> "Our staff has been informed by Mr. Brad Munson that you will be proceeding with farming activities on the Rawson Road 1950 property. Due to the fact that the regulatory agencies are currently taking special interest in farming activities specifically in Tehama and Glenn Counties as well as in critical habitat for listed species (which the property is in), I would like to reiterate that we strongly recommend that you have the draft Delineations of Waters of the U.S. (Delineation) prepared by NorthStar Environmental verified by the U.S. Army Corps of Engineers (USACE) prior to starting any grading activities. All Delineations are DRAFT until verified by the USACE. NorthStar will not be responsible for penalties that may occur from project proponents proceeding without a verified delineation. These are significant penalties."

Mr. Stevens may also testify about: (a) the February 2012 and July 2012 reports that North Star Environmental prepared and delivered to landowners prepared and delivered to landowners, Roger Jack LaPant and Duarte (bates-stamped, respectively, NSE0006205 through NSE0006237 and Duarte 000549 through 822); (b) communication with property owners or representatives regarding their intended use of the property and their knowledge of the Clean Water Act section 404 permit program requirement; (c) communication with U.S. Department of Agriculture personnel regarding Mr. LaPant's initial request for review of the February 2012 report or findings and Duarte's subsequent request to withdraw that request; and (d) communication with U.S. Army Corps of Engineers personnel after occurrence of unpermitted conduct.

Tehama Environmental Solutions, Inc.

H. Jeff Souza, President/Senior Biologist, Tehama Environmental Solutions, Inc., 910 Main Street, Suite D, Red Bluff, CA 96080.

1. Subject matter(s) that may be within the scope of Federal Rule of Evidence 702, 703, or 705: professional advice to potential or actual purchasers of property bounded on the north by Ohm Road (or Rawson Avenue), on the south by Dusty Way (or Ottman Avenue), on the west by Paskenta Road, and on the east by Rawson Road.

2. Summary of the facts and opinions to which the witness is expected to testify: Mr. Souza is expected to testify that, beginning in approximately 2008, he advised at least one potential purchaser of the property about its potential viability as a mitigation bank. Mr. Souza's preparation for providing advice included requesting from the U.S. Army Corps of Engineers, through the Freedom of Information Act, prior delineations of the property, which resulted in Mr. Souza's obtaining a copy of North State Resources, Inc.'s 1994 delineation. In addition, in 2011, Mr. Souza did work for Roger Jack LaPant, the owner of the property just before Duarte, and advised him about the property's history and aquatic conditions. After receiving such advice, Mr. LaPant ceased communication with Mr. Souza.

* * *

As noted *supra* p. 3, below is a summary of facts and opinions regarding "waters of the United States" to which Mr. Kelley or Mr. Robb is expected to testify[2]:

1. The Site is located south of Red Bluff, Tehama County, California, center of site coordinates Lat. 40.08274°, Long. -122.268048°. The nearest waterbody is Coyote Creek which runs through the northern portion of the site and receives runoff from other on-site tributaries and adjacent wetlands. Coyote Creek conveys the water due east where it joins Oat Creek just prior to discharging into the Sacramento River at River Mile 233. The project is located in the

[2] Messrs. Kelley and Robb prepared this summary collaboratively with the late Mike Finan, who passed away earlier this year.

approximately 44,600-acre Oat Creek sub-unit watershed within the larger Hydrologic Unit Code: Sacramento Lower Thomes, California, 18020103. This area receives an average of 24.6 inches annual rainfall as measured by National Weather Service's Red Bluff Airport weather station located approximately 4.5 miles north of the site.

2. The project site was delineated for the presence of wetlands and other waters in 1994 by North States Resources, Inc. at the request of the owner at that time, Mr. Lee Hancock. This original delineation was submitted to and field verified on September 21, 1994, by the Corps of Engineers, Sacramento District, staff. In an October 26, 1994, letter the Corps verified the revised 1994 maps of waters, including vernal pools and other wetlands as jurisdictional under Section 404 of the CWA. The Corps verified delineation mapped approximately 186.17 acres of wetlands and other waters within an approximately 2000-acre parcel. The study area for the 1994 delineation included areas north of Coyote Creek to Ohm Road. The property being evaluated here is limited to the approximately 450-acre southern portion now owned by Mr. John Duarte which was split from the original parcel. The Corps verified delineation mapped approximately 30.1 acres of wetlands and other waters of the U.S. within the 450-acre Duarte parcel. When Mr. Duarte split the larger property prior to selling the northern portion in 2012, the property line was drawn generally down the centerline of Coyote Creek. The 1994 delineation included acreage calculations for Coyote Creek north and south of the creek centerline. For the purposes of this evaluation, the 1994 total acreage of Coyote Creek between the Duarte owned parcel and the parcel to the north was 8.79 acres. This was divided in half for calculating the approximate acreage of the Duarte owned portion of the creek south of its centerline. This acreage is included in the approximately 30.1- acre total area of waters, including wetlands on the site.

3. A review of the 1994 delineation, all available sequential aerial imagery, direct observation of aquatic features on portions of the site visible and accessible from public land, and direct observations of mapped aquatic features that cross onto or off of the Duarte parcel and remain intact, indicate that the 1994 delineation mapping was accurate and the best available representation of wetlands and other waters on the site immediately prior to the onset of

agricultural conversion activities in November-December of 2012. A review of all available information supports a conclusion that during the period between the 1994 delineation and November 2012, when agricultural conversion of the site started, no prior ground-disturbing activities had taken place that would have resulted in the loss of wetlands or other waters. A review of the most recent available aerial imagery and direct observation and sampling from publically accessible roadways of unaffected portions of wetlands and other aquatic features extending off of the site, indicates the 1994 delineation remained accurate.

4. The Duarte site was also delineated in January 2012, by NorthStar Engineering. This delineation was never submitted to the Corps for verification. The 2012 delineation, suggested some wetlands that were mapped in 1994 were not present prior to agricultural conversions. A review of aerial imagery and direct observation from publically accessible areas was conducted by Corps staff. This evaluation found that a number of the wetlands mapped in 1994 but not in 2012 still currently exist in the areas not impacted by discharges of dredged or fill material associated with the agricultural conversion operation. Based on all available information the 1994 mapping represents the most accurate representation of the extent and type of waters on the site prior to the commencement of the conversion of the site in November of 2012. Although the unverified 2012 NorthStar delineation differed from the 1994 delineation in the extent of wetlands and waters mapped on the site, NorthStar concluded that the wetlands and other aquatic features they delineated on the subject site (most of which were on the verified 1994 map) were waters of the United States subject to verification by the Corps.

5. Besides Coyote Creek, vernal pools and other wetlands on the site there are several other relatively permanent, seasonal streams that are tributary to Coyote Creek and downstream navigable waters. These streams originate west of the property and cross the property flowing generally from west to east. The unnamed tributaries flow into Coyote Creek just west of the site. Coyote Creek continues east before flowing into Oat Creek and then the Sacramento River, a Section 10 navigable water, approximately 6.4 miles east of the site. As part of an evaluation of Coyote Creek for another action, the presence of water in Coyote Creek has been documented at several points during the wet season over several years. This information

combined with rainfall data supports that Coyote Creek with seasonally high flows during the normal wet season would be appropriately defined as a relatively permanent water.

6. The smaller seasonal tributaries that flows across and through the site would also be considered a relatively permanent waters (or wetlands) due to a number of indicators. The features have well-developed wetland habitat within their ordinary high water marks ("OHWM"). In order for the wetland characteristics to develop the feature must have sufficient hydrology to create hydric soil conditions. This is evidenced through the review of aerial imagery taken on March 26, 2010, and offsite observation where these feature flows onto and/or off of the site. This imagery shows water within the drainages as well as portions on the wetland swales feeding the drainage. A review of the historic meteorological data collected at the Red Bluff Airport located approximately 4.5 miles North of this location recorded less than 24% of average monthly rainfall prior to the date of the aerial photo. Further in the 22 days prior to the photo only 0.22 inches of rainfall was recorded. If streams maintained hydrology following 24% of monthly average rainfall just prior to the photo and 90% of total average rainfall for the preceding five months it is logical to conclude the streams would maintain flow throughout an average annual wet season.

7. The seasonal wetlands on-site consist of swales and depressional wetlands including venal pool/vernal swale complexes. These wetland's primary hydrology is direct precipitation, surface and near-surface runoff and ground saturation during the winter and spring months. Due to the very slow vertical permeability of the soils and the dense clay subsoil, most of the water drains laterally (Tehama County Soil Survey 1967). On this site, water ponds in the lower depressional features and intermittently flows via swales and streams into other pools, connecting swales, other tributaries, Coyote Creek, Oat Creek and the Sacramento River. Vernal pools, complexes and other wetlands on the site are also highly influenced by a relatively shallow subsurface perched water table that sustains the wetlands between storm events and helps to regulate water levels. Seeping and flowing water in and from these wetlands, after precipitation events was directly observed and documented. Additionally, both the 1994 verified delineation and the unverified 2012 NorthStar delineations describe the wetland hydrology as

being driven by both surface and shallow subsurface flows. Based on an analysis of available aerial imagery, topography, data in the 1994 verified delineation, the 2012 unverified delineation, delineation reports and direct observation of the wetlands, these vernal pools are interconnected by both wetland and non-wetland swales that consolidate and convey the water to tributaries of and Coyote Creek. Most of the swales meander down slope in a northerly direction and connect with the unnamed intermittent stream prior to the stream leaving the site. Some of the wetland and swale features in the southwestern corner of the site flow in a northerly direction similar to the other swales into channelized streams around and through rice fields into Coyote Creek. Based on aerial photography and information contained in NorthStar Engineering's 2012 delineation, some of the water is captured and conveyed in ditches and shunted around and through the rice fields east of part of the site to Coyote Creek. Aerial imagery appears to depict flow from these swales moving in both a northerly and easterly direction within these ditches with the majority of the flow moving north. The flow in the northerly ditch joins the flow from the intermittent stream and proceeds north to Coyote Creek, while the flow in the easterly ditch continues east until it joins with another ditch that flows to the North and joins Coyote Creek just east of Rawson Road. Water from all of the aquatic features shown on the 1994 and 2012 delineations of this site flows directly or indirectly into the Coyote Creek and the Sacramento River, a traditional navigable water and Clean Water Act section 303(d) impaired waterbody.

8. Biological, chemical and physical functions and nexus:

a. Biological: The vernal pool wetlands and other waters on this site provide habitat, food, breeding and life support for a diverse number of native plant and animal species, including invertebrates, birds, mammals, downstream fish, some of which are federally listed special-status species and/or commercially-important. These wetlands provide support functions to both species that are endemic to this habitat as well as highly mobile migratory species. These wetlands have the capacity to transfer nutrients and organic carbon that feed downstream food webs. They also provide habitat and lifecycle support functions for fish and wildlife species that are present in the Sacramento River and its tributaries downstream of the subject site. For example, a significant downstream portion (approx. 3.0 miles) of Coyote Creek/Oat Creek

flowing into the Sacramento River is designated as critical non-natal rearing habitat for spring-run Chinook salmon, a Federally-listed (threatened) species. The lower reaches of Coyote Creek and Sacramento River near the confluence are also within the critical habitat range for all life stages of the Federally-listed (threatened) Green Sturgeon.

b. Chemical: These wetlands along with other similarly-situated wetlands adjacent to and/or abutting Coyote Creek or its tributary branches are interspersed within and drain a relatively large watershed area. They collect, retain, filter and more slowly release runoff from surrounding roads, housing, rangeland, pastures, farms and other surrounding land uses. Collection of runoff into these wetlands and small streams on the site reduces chemicals and other pollutants normally found in runoff water (gas, oil, herbicides, pesticides, nutrients and human, animal and other waste material). Retention of these chemicals and other pollutants keeps them out of Coyote Creek and ultimately the Sacramento River, helping to maintain downstream water quality. The Sacramento River and its tributaries are also major sources of irrigation and or drinking/municipal water. These waters have already been impaired in part due to the large scale filling wetlands of this type in this area and throughout the Sacramento Valley. Cumulative impacts from vernal pool losses are primarily due to similar conversions from grazing and other passive uses to more intensive management, including row crops and orchards.

c. Physical: Wetlands tributary to Coyote Creek and its tributary streams store and attenuate floodwaters prior to those waters reaching the Coyote Creek floodplain. Wetlands on the Duarte site and those similarly situated in the floodplains and lands surrounding Coyote Creek store floodwaters and reduce the sediment, particulates, trash and other debris from flowing into waters in more developed areas downstream which include irrigated farmland, orchards, commercial development, residential development, and the Sacramento River floodplain. These and similarly situated wetlands trap, filter and retain substantial quantities of excess sediment that would otherwise make its way down the watershed and further impair the Sacramento River and its tributaries. These wetlands also reduce erosion of surrounding lands in their undisturbed vegetated state. Conversely some of the larger streams, including those on this site seasonally provide and transport needed and beneficial sediment and nutrients into lower

reaches where they can be used by plants, invertebrates, and other animals in the food web, supporting productivity in downstream tributaries and the Sacramento River.

9. Based on the review of the available data, including available aerial imagery, the 1994 verified delineation, the unverified 2012 NorthStar delineation, the West of Gerber, CA 7.5 min USGS Quadrangle, the Tehama County Soils Survey, the Tehama County September 2011, FEMA Flood Insurance Rate Map, and direct observation of wetlands and drainages remaining on the site, the wetlands and other waters on the Duarte Paskenta Road parcel are not isolated. All of the streams depicted on the 1994 delineation are tributary to the Sacramento River. All of the wetlands (including the vernal pool/vernal swales) depicted on the 1994 delineation are adjacent to Coyote Creek or its tributary branches or exist within its tributary branches.

10. The wetlands and other waters on site including Coyote Creek, its tributary branches, abutting and adjacent wetlands combined with similarly situated features in the region provide flood storage within the watershed and attenuate these flood waters. Coyote Creek and its two other main tributaries within the project site are mapped by the Federal Emergency Management Agency as areas of special flood hazard within the 100-year flood zone. The storage and attenuation of floodwaters prior to flowing into the Sacramento River are especially important in the vicinity of the Coyote Creek/Oat Creek confluence. This is evidenced by active erosion along the river banks at the Coyote Creek/Oat Creek confluence with the Sacramento River (RM 233) as a result of a series of flood events since the 1990s leading to more than 500 feet of Sacramento River bank movement. Absent the wetlands, including vernal pool complexes, on this site and similarly-situated lands, the adverse effects of localized flooding would be considerably greater.

11. The integrity of the nursery habitat for the listed and other fish species in Coyote Creek and the Sacramento River is directly related to the health and integrity of the watersheds that feed it. Adverse effects to the Coyote Creek watershed including the discharge of dredged or fill material into the streams and wetlands will lead to further impairment and degradation of the designated critical and other fish and wildlife habitat due to alteration of the hydrologic regime and reduced water quality. These effects are neither speculative nor insubstantial. The

Tehama County Resource Conservation District has identified the threat to the vernal pool landscapes from development and changes in land use as one of the largest threats to the Tehama West Watershed which includes the Coyote Creek sub-watershed.

12. Coyote Creek and other large tributaries flowing across the site are relatively permanent tributaries of Oat Creek and the Sacramento River. The Sacramento River, a significant source of drinking and irrigation water, and other services for the state of California, is a navigable water regulated under both the Rivers and Harbors Act and the Clean Water Act. Coyote Creek is a substantial part of the Oat Creek watershed that, among other functions and services, provides nursery habitat for federally-listed and commercially important salmonids, green sturgeon, and steelhead that live in the Sacramento River. The salmon fishery in California is severely impaired, with numerous seasonal runs of salmon listed as threatened or endangered. Salmon fishing is an important resource for a number of tribal and other environmental justice communities in California, who may rely on salmon fishing as an important element of their diet. Additionally this reach of Coyote Creek, its tributaries and adjacent and similarly situated wetlands provide the following functions and services and have a clear nexus to the Sacramento River (a section 303(d) listed impaired water): flood attenuation, nutrients, pollutant removal, wildlife habitat, primary production, sediment retention and removal.

13. Based on this analysis, Coyote Creek and its feeder or branch tributaries and wetlands on the Site, along with similarly situated features in the region, have a significant nexus including important physical, chemical, and biological effects on aquatic resources of the Sacramento River, a designated navigable water. As such the streams and wetlands on the Site -- throughout which unpermitted agricultural conversion activities occurred in late 2012 -- are waters of the United States subject to regulation under the Clean Water Act.

* * *

In accordance with the Court's Amended Status (Pretrial Scheduling) Order of May 14, 2015 (ECF No. 73), the United States may provide additional disclosures and designations of retained or percipient experts by, as applicable, July 17, July 23, or September 2, 2015.

Respectfully submitted,

Dated: June 5, 2015

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/s Andrew J. Doyle
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CERTIFICATE OF SERVICE

I hereby certified that on this 5th day of June, 2015, I served, via email, the foregoing document on all counsel of record. In addition, on the same date, I emailed the foregoing document to all counsel of record. And I hereby certify that on this date, in accordance with the Court's Amended Status (Pretrial Scheduling) Order of May 14, 2015 (ECF No. 73), I caused the following reports and documents to be dispatched to a courier and marked for next business-day delivery:

Agricultural Study of the Duarte Property (June 5, 2015)

Analysis of Aerial Photography and other Geospatial Data, Duarte Nursery Site and Vicinity, Tehama County, California (June 5, 2015)

U.S. Department of Justice Expert Team Report (June 5, 2015)

USACE0007533; USACE0005970 through USACE0006007

/s Andrew J. Doyle