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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA ,
20 Plaintiff,
21 v.
22 ROGER J. LAPANT, JR. ET. AL,
23 Defendants.

CASE NO. 2:16-CV-01498-KJM-DB

**DECLARATION OF ROGER J. LAPANT
IN SUPPORT OF DEFENDANT ROGER J.
LAPANT'S MOTION FOR SUMMARY
JUDGMENT**

[Fed. R. Civ. P. 56]

1 I, ROGER J. LAPANT, JR., declare as follows:

2 1. I am a Defendant in the above-entitled action. I have personal knowledge of the
3 matters set forth in this declaration, and if called upon to testify, I could and would do so based
4 upon my own personal knowledge, and as to those matters stated upon information and belief, I
5 believe them to be true.

6
7 **PERSONAL BACKGROUND AND HISTORY AS A FARMER**

8 2. I am a resident of Butte County who lives in Durham, California. I am also a long-
9 time California farmer and rancher with decades of experience. I did not have a family history of
10 farming. I decided in my early 20s that I wanted to become a farmer. I have been a farmer full-
11 time since about January 1975. I often operate “doing business as” J&J Farms.

12 3. Prior to 1975, I worked for PG&E and lived in various locations, including
13 Antioch (1968), Brentwood (1969) and Benicia (1970-1975). In 1974, I bought a ranch in Big
14 Valley near Bieber, California (in a remote area of Lassen County), subsequently moved my
15 family there, and learned to make a living farming full time. 45 years later I am still farming. I
16 lived in Big Valley from 1975 to 1988. I then moved down to Oroville and lived there from
17 1988 to 2012. In 2012, I moved to my current residence in Durham, in Butte County. Over the
18 years, I have acquired and farmed and ranched various properties in the northern Sacramento
19 Valley.

20 4. My farming operations have involving the planting of various crops, including
21 dryland wheat, alfalfa, grains (rye, oats, barley), sunflowers, corn, almonds, walnuts, olives, and
22 Sudan grass (for grazing or haying purposes). I have also raised and ranched cattle since 1975
23 (up to 250 pairs of mothers and calves), often grazing my herds on pasture land and alternately
24 using parts of that land to grow feed for them. When growing feed as part of my ranching
25 operation, I normally plant wheat and occasionally other dry land crops (*i.e.*, crops that do not
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1 require irrigation), using cultivars that are bred for hay production.

2 5. My farming activities are simply part of a family-run, small business operation,
3 though. I am not a big developer. For example, in addition to dryland crops, by 2010, I had also
4 planted (as a self-taught orchardist) a modest acreage of orchard on some of my properties;
5 however, at the time of purchasing the Property at issue in 2011, the biggest project that I had
6 ever planted in orchard was 10 to 12 acres. I would often only plant part of a property in
7 orchard, even if a piece of land had more acreage available for farming, because that was all that
8 I could afford at that time and in order to keep my capital expenditures within reason and to learn
9 from the experience.

10 6. Related to my farming experience, around 2002-2003, I helped form a mitigation
11 bank known as the Dove Ridge Mitigation Bank with two other partners. We all had different
12 responsibilities on the project. My responsibilities were managing the land (2,400 acres) and
13 physical management of the land regarding livestock on the property. I do not recall meeting
14 with anyone from the USACE at the time, nor was I familiar with USACE permits or the details
15 of the permitting process at that time.

16
17
18 **IDENTIFICATION AND INVESTIGATION OF THE PROPERTY AT ISSUE**

19 7. In September of 2010, I began conducting an evaluation of a property in Tehama
20 County, south of Red Bluff (the "Property"). The Property was about 1,965 acres, and sits on
21 either side of a reach of Coyote Creek. It is bounded on the North by Ohm Road, on the West by
22 Paskenta Road, and the northern 1500 acres of it are bound on the East by Rawson Road. The
23 roughly 450 acres south of Coyote Creek is bounded on the very South end by Dusty Road, and
24 on the East by adjoining properties. Terry Cheney, my real estate broker, first brought the
25 Property to my attention. Prior to 2007, the land was owned by Leeland Hancock. During his
26 tenure, large parts of the property north of Coyote Creek were actively farmed (*i.e.* crops were
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1 grown). The land was tilled and crops grown at the very least in 1966, 1973, 1979, 1981, 1984,
2 and 1985. Mr. Hancock was the owner of the Property until late 2006, at which point it then
3 passed through a brief series of owners before becoming available again on the market in 2010.

4
5 8. In 2010, when I came across the Property, property prices in the area were, in my
6 experience, historically low as a result of the recent collapse and sluggish recovery of the
7 housing market, and this Property presented me with what I anticipated would be the opportunity
8 of a lifetime: a 1,965 acre ranch property at an affordable price. I hoped to buy and keep the
9 Property long term. There were many potential uses that I could have made of the Property, and,
10 as noted, my intention was to buy the Property as a long-term investment originally (though I
11 knew that I would need to secure permanent financing eventually).

12
13 9. At the time, I saw the potential in the Property for various different projects, each
14 with certain pros and cons, and each with varying levels of investment and time needed. For
15 example, one scenario was to simply use the Property as a long-term cattle ranch. Another
16 scenario was to use it as a long-term cattle ranch, but also include a rotation of grain on the
17 Property that would provide hay for the cattle. Another future-looking scenario was to develop
18 the Property for some type of commercial or residential real estate. Another scenario was to
19 finish developing the four wells on the Property and to start farming with pivots (*i.e.*, a crop-
20 circle irrigation technique). Another scenario was to develop and plant the Property for orchards,
21 after going through the proper approval process with the government. Another scenario was to
22 sell parcels to fund projects (land already subdivided into 21 parcels).

23
24 10. At the time that I was considering buying the Property, my original short-term
25 intention for the Property was simply to run my cattle on half of the Property in the fall and
26 winter, and then to plant grain on the other half of the Property (thereby setting up a rotation
27 where the cattle could graze for part of the year, and have hay as feed from the grain hay during
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1 the rest of the year until it could rotate back). This is a common technique for ranchers and
2 farmers to use, and it was something that made economic sense for me at the time, given the
3 recent recession and the lack of available capital for any larger or more complex project.

4
5 11. With over 45 years of farming experience, I have developed a routine for property
6 evaluations and due diligence. I employed this careful due diligence investigation to the Property
7 at issue. One part of this due diligence involved conducting site visits of the Property, digging
8 test pits, and making observations of drainage in the pits. Digging test pits is a common practice
9 that experienced farmers (and others, such as developers) employ to review the soil profile of a
10 piece of property before they plant or decide to buy a piece of land. In total, I dug around 20
11 holes of between four to seven feet below the surface. For all of them, I never found a restrictive
12 hardpan layer that I have seen (and in fact have) on other properties that I have farmed and
13 owned. In total, prior to purchasing the Property, I estimate conducting a minimum of 10 site
14 visits to the Property to both dig test pits, take photographs, and just observe the land and water
15 flow of the Property. Unfortunately, the photographs that I took were on phones that have been
16 since been lost or destroyed during the normal course of using them during my farming activities.

17
18 12. Another part of my due diligence included consultation with two agencies of the
19 United States Department of Agriculture (“USDA”), which is the primary point of contact and
20 interface between farmers and the federal government. These agencies were 1) the Farm Services
21 Agency (“FSA”), which maintains records of farm crop production and administers USDA farm
22 benefit programs, and 2) the Natural Resources Conservation Service (“NRCS”), which provides
23 technical expertise and advice to farmers on soils and wetland resources, and enforces the so-
24 called Swampbuster program that regulates farming in wetlands. In total, I went to the federal
25 agencies of three counties (where the FSA and NRCS offices are located together): Tehama
26 County, Glenn County, and Butte County. I also requested and received documents from Tehama
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1 County FSA, as that is the county where the Property at issue is located. Ultimately, both of these
2 agencies (the FSA and NRCS) indicated and told me that I could grow wheat on the Property,
3 since it had been previously farmed in wheat. The NRCS staff advised me that I could grow
4 wheat on the Property as is, but that if I wanted to plant permanent crops on the Property I should
5 return to NRCS to have the Property studied further. Neither of these agencies told me to consult
6 with the USACE before purchasing the Property or growing wheat on it, and staff at both
7 agencies were unaware at the time of any need to consult with or obtain a permit from the
8 USACE before growing wheat on the property.

9
10 13. Specifically, during my investigation of the Property, the FSA provided me with
11 an “Abbreviated 156 Farm Record” (“Farm Record”) for the Property for the year 2010, which
12 stated that it had a total of 1967.0 acres, of which the FSA designated 1863.6 acres “cropland.” It
13 also listed the Property as “active” and noted that there was a 489.3-acre “wheat” allotment. The
14 document also stated, under “Wetland Status,” that the “[t]ract contains a wetland or farmed
15 wetland” (emphasis added). This was consistent with my understanding of the Property, as I had
16 observed water and/or wetland features on the Property (such as Coyote Creek), and I also knew
17 that the Property had a history of both farming and ranching activity. The term “farmed
18 wetland,” to me at that time, meant land that contained wetlands, but where farming was
19 authorized based on the land’s past historical farming use. This appeared to me entirely
20 consistent with what all federal officials in the FSA and NRCS were telling me at the time, giving
21 me permission to farm dryland wheat (consistent with the Property’s historical use), but stating
22 that further authorization would be required for other more complex projects, such as planting
23 orchards or developing the Property for residential housing.

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26 14. In addition to the 2010 document, I also investigated further and received records
27 from the FSA for the years 1991 to 1996, as those were the only ones provided and available to
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1 me at the time. The records had stapled to them a map of the Property, which I would later find
2 out was an image from the mid-1980s (the image was not labeled or dated at the time), that led
3 me to believe that it corresponded to the FSA documents from the 1990s. This image clearly
4 showed evidence of historical farming activity on the Property, and because it was attached to the
5 1990s FSA documents, I believed that it corresponded to those documents and that the Property
6 was farmed in those years. The FSA Tehama office at that time also showed me records that the
7 prior Property owner was involved with various agricultural programs during the years 1990-
8 1995. Eventually I received records up through 2006, but the process took years and a FOIA
9 request to obtain those additional records. I also found that cattle had been grazed on the ranch
10 for at least the prior couple decades (1989-2011).

11
12 15. As part of further due diligence and investigatory efforts, I spoke with Larry
13 Branham, a senior official at the Tehama County NRCS, to ask him about farming the Property
14 into dryland wheat (as had been done in the past on the Property). Mr. Branham stated, “yes,” but
15 that if I decided do anything other than planting dryland wheat, that I would need to come back to
16 the NRCS and either they would study the farm for me or I could hire a private third party to do
17 the same. I asked the same question to officials from the Butte County and Glenn County NRCS
18 offices, and they all provided the same answer as Mr. Branham. The conclusion of each of these
19 federal officials at my local federal farming agencies – the only real and known interface that
20 farmers had with the federal government at the time – was that I had permission to grow wheat on
21 the Property without further permission or authorization needed. Nobody at any of these federal
22 offices ever suggested that I go to visit and inquire about the Property with the USACE, nor was
23 it their policy to do so at that time, particularly for matters such as the routine farming of dryland
24 wheat on a Property with a history of dryland wheat farming.
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1 16. Therefore, my understanding at that time, based on the available historical farming
2 records from local federal agencies and the word of relevant local federal officials, was that I
3 indeed had authorization to plant dryland wheat on the Property in 2011, which I ultimately did. I
4 understood, though, that if I were to seek to use the Property for other more extensive farming or
5 development activities, including planting orchards, that I would have to return to the FSA and
6 NRCS for further guidance and authorization. Moreover, if I had known about a delineation on
7 the Property at the time, I would have been content with using only certain pre-approved portions
8 of the Property for orchards (because, as mentioned, I had never done more than a dozen acres of
9 orchard at a time, and those pre-approved portions would have been more than enough for my
10 family-run operation).

11 17. In early February 2011, I contacted an environmental consulting company,
12 Tehama Environmental Solutions (“TES”), and its president, Jeff Souza, to inquire about the
13 Property and to gain more information. Shortly thereafter, on February 10, 2011, I entered into
14 an agreement with TES and Mr. Souza. The purpose of the agreement was to obtain information
15 about the feasibility of ultimately developing an agricultural operation and/or mitigation bank on
16 the Property. In the near-term, though, I communicated to Mr. Souza that my intention was to
17 merely run cattle on the Property and to possibly plant dryland wheat.

18 18. The subject of the 1994 delineation of the Property was never raised by Mr. Souza
19 at that time, though he did mention that he had worked with different clients on the Property
20 before and that a potential good use could be a mitigation bank. I was willing to do a mitigation
21 bank if Mr. Souza had told me that there was already a delineation on the Property. Mr. Souza,
22 however, never informed me of the existence of the 1994 delineation, nor did he provide me with
23 documentation identifying itself as (or in any way indicating that it constituted) the 1994
24 delineation. I never entered the Property with Mr. Souza at that time in February 2011 – we
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1 merely talked by my truck for about an hour on February 11, 2011 (right inside the gate to the
2 Property, but not going onto it). Later that month, Mr. Souza sent me certain documents (6 large
3 maps of portions of the Property that when put together constituted the entire Property, as well as
4 a 1993 Tehama County environmental impact study). At the time, though, I had no idea what
5 these map documents were from, let alone that the maps were part of a 1994 delineation of the
6 Property. I also did not contact Mr. Souza further about the Property or about the documents he
7 sent to me because based on my short time interacting with him regarding the Property, I was
8 uncomfortable and uneasy about his professional ethics and did not wish to continue our
9 professional relationship. The only other communication I received from Mr. Souza was an
10 invoice in October 2011 (8 months later).

11
12 19. Overall, based on the assurances of local federal officials and information from the
13 USDA, FSA, and NRCS, in addition to other significant and substantial efforts that I took to
14 conduct due diligence on the Property, I decided that it was appropriate to move forward with the
15 process of purchasing the Property.

16 **THE PURCHASE AND FARMING OF THE PROPERTY**

17
18 20. I purchased the Property and closed escrow in March 2011, purchasing the
19 Property from Ethan Conrad. To do so, I made a down payment to Mr. Conrad and signed a note
20 to him for a substantial balloon payment due in March of 2012. I intended to work with a
21 community bank with which I had done business for decades to arrange permanent financing after
22 making the purchase. Several hundred head of cattle were on the Property when I took title.

23
24 21. Shortly after purchasing the Property, I prepared portions of the Property for wheat
25 hay planting using normal tillage equipment. A graphic depicting the chronology of my
26 equipment use on the Property is attached hereto as **Exhibit A**. True and correct copies of aerial
27 photographs from July 2011, October 2011, and July 2012, are attached hereto as **Exhibits B** to
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1 **D.** I started moving my farming equipment onto the Property in May 2011. Specifically, I used
2 the following equipment at the following locations and time periods:

3 a. **570 Case backhoe**

4 i. Location: This piece of equipment was used in various places on the property to
5 dig approximately 20 test pits. It was also used on Rawson Road to load trash
6 collected from the property into a trash bin.

7 ii. Time Period: This piece of equipment was used in approximately March 2011 to
8 dig test pits and from approximately January 2012 to March 2012 to load trash.

9 iii. Exhibit: A true and correct depiction of where this piece of equipment was used
10 on the Property, superimposed onto a true and correct copy of an aerial image of
11 the Property from July 2011, is attached as **Exhibit E**.

12 b. **John Deere 8440 tractor, model year 1979, 175 horsepower**

13 i. Equipment Attachments: This tractor was sometimes used with a 14-foot John
14 Deere mud chisel with a three-point hitch, an 8-foot shop-made two shank chisel
15 with a three-point hitch, and/or a 12-foot offset disc.

16 ii. Location: This piece of equipment began to have mechanical problems, and
17 therefore it was not used across the entire portion of the property that was planted.
18 I do not recall exactly where on the Property this piece of equipment was used, but
19 estimate that this tractor was not used east of roughly the midline of zones 3, 7,
20 and 11 (“Zone” or “zones” refers to the zones depicted in **Exhibits B to D**).

21 iii. Time Period: This piece of equipment was used from approximately April 2011
22 through July 2011.

23 iv. Exhibit: A true and correct depiction of where this piece of equipment was used
24 on the Property, superimposed onto a true and correct copy of an aerial image of
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the Property from July 2011, is attached as **Exhibit F**.

c. **14-foot John Deere mud chisel with a three-point hitch**

i. Location: This equipment was used in zones 2 (eastern portion), 3 (western portion), and 7 & 11 (along the line bisecting zones 7 and 11 generally from northwest to southeast). This equipment was used to a depth of generally 4 to 6 inches. This equipment was raised when crossing seasonal creeks that were evident. This equipment was not used east of the line extending from Ohm Road to the interior road north of Coyote Creek referenced above, and not used in any area that was not planted. This equipment was also stored on the Site.

ii. Time Period: This piece of equipment was used for two or three days in approximately late May through early June of 2011, and not after June 29, 2011. This equipment was never used for more than one pass in any location.

iii. Exhibit: A true and correct depiction of where this piece of equipment was used on the Property, superimposed onto a true and correct copy of an aerial image of the Property from July 2011, is attached as **Exhibit G**.

d. **12-foot offset disc**

i. Location: This equipment was generally used across the entire portion of the property that was planted, with the exception that this equipment was closed (so that it did not cut into the soil) when crossing seasonal creeks that were evident.

ii. Time Period: This piece of equipment was used from approximately May 2011 to December 2011. In certain areas, it was not used after June 29, 2011, including at least the rectangular area parallel to Ohm Road depicted in zones 2 and 3, the northwest corner of zone 7, and the northeast corner of zone 6, and possibly other areas.

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- 1 iii. Exhibit: A true and correct depiction of where this piece of equipment was used
2 on the Property, superimposed onto a true and correct copy of an aerial image of
3 the Property from July 2011, is attached as **Exhibit H**.
- 4 e. **4960 John Deere tractor, model year 1992, 176 horsepower**
- 5 i. Equipment Attachments: This tractor was sometimes used with a 24-foot spike
6 tooth harrow and/or a 24-foot Aqua fertilizer chisel and/or a 12 foot offset disc.
7 This tractor may also have been used with a 14-foot John Deere mud chisel with a
8 three-point hitch, and/or an 8-foot shop-made two shank chisel with a three-point
9 hitch, but I do not recall with certainty.
- 10 ii. Location: This piece of equipment was used across the entire portion of the
11 property that was planted, and the portion of the property that was disced but not
12 planted in zones 4, 8, and 13.
- 13 iii. Time Period: This piece of equipment was used from approximately July 2011 to
14 December 2011.
- 15 iv. Exhibit: A true and correct depiction of where this piece of equipment was used
16 on the Property, superimposed onto a true and correct copy of an aerial image of
17 the Property from July 2011, is attached as **Exhibit I**.
- 18 f. **8-foot two shank chisel**
- 19 i. Location: This equipment was used in zones 2 (western portion), 6 (western
20 portion exclusive of “tributary 2b,” and north of “tributary 2” and “tributary 2a”),
21 1 (western portion), 5 (western portion), and 9 (western portion). This equipment
22 was used to a depth of generally 4 to 6 inches. This equipment was raised when
23 crossing seasonal creeks that were evident, including but not limited to “tributary
24 2a.” This equipment was not used in zone 10, or east of zones 2, 6, and 10, and
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was not used in any area that was not planted. This equipment was only used on approximately 55 acres of the Property.

ii. Time Period: This piece of equipment was used periodically during the time period of early July to early October 2011.

iii. Exhibit: A true and correct depiction of where this piece of equipment was used on the Property, superimposed onto true and correct copies of aerial images of the Property from July 2011 and October 2011, is attached as **Exhibits J and K**.

g. **5220 John Deere tractor, model year 2003, 75 horsepower**

i. Equipment Attachments: This tractor was sometimes used with a 14-foot International Harvester grain drill and/or a 24-foot spike tooth harrow.

ii. Location: This piece of equipment was used across the entire portion of the property that was planted.

iii. Time Period: This piece of equipment was used from approximately November 2011 to December 2011.

iv. Exhibit: A true and correct depiction of where this piece of equipment was used on the Property, superimposed onto a true and correct copy of an aerial image of the Property from July 2011, is attached as **Exhibit L**.

h. **24-foot Aqua fertilizer chisel**

i. Location: This piece of equipment was used across the entire portion of the property that was planted, with the exception that this equipment was raised when crossing seasonal creeks that were evident. The 24-foot Aqua fertilizer chisel was set to be injected two inches into the ground.

ii. Time Period: This piece of equipment was used from approximately November 2011 to December 2011.

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- iii. Exhibit: A true and correct depiction of where this piece of equipment was used on the Property, superimposed onto a true and correct copy of an aerial image of the Property from July 2011, is attached as **Exhibit M**.
- i. **14-foot International Harvester grain drill**
 - i. Location: This piece of equipment was used across the entire portion of the property that was planted.
 - ii. Time Period: This piece of equipment was used from approximately November 2011 to December 2011.
 - iii. Exhibit: A true and correct depiction of where this piece of equipment was used on the Property, superimposed onto a true and correct copy of an aerial image of the Property from July 2011, is attached as **Exhibit N**.
- j. **24-foot spike tooth harrow**
 - i. Location: This piece of equipment was used across the entire portion of the property that was planted.
 - ii. Time Period: This piece of equipment was used from approximately November 2011 to December 2011.
 - iii. Exhibit: A true and correct depiction of where this piece of equipment was used on the Property, superimposed onto a true and correct copy of an aerial image of the Property from July 2011, is attached as **Exhibit O**.
- k. **Honda Rancher Four Wheeler with six by six trailer**
 - i. Location: This equipment was used to gather trash from various places around the Property and haul it to the trash bin on Rawson Road.
 - ii. Time Period: This piece of equipment was used in approximately December 2011 to March 2012.

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1 iii. Exhibit: A true and correct depiction of where this piece of equipment was used
2 on the Property, superimposed onto a true and correct copy of an aerial image of
3 the Property from July 2011, is attached as **Exhibit P**.

4 22. In sum, I planted a wheat crop on roughly 900 acres of the Property in 2011, doing
5 almost all of the work myself with my own equipment. Graphics depicting the overall planting
6 area (with planting completed by January 2012), superimposed onto true and correct copies of
7 aerial images of the Property from July 2011 and July 2012, are attached hereto as **Exhibits Q**
8 and **R**. I began the multi-step process in May of 2011 and finished in December of that year:
9 preparing the soil, fertilizing the soil, planting the seed, and finally harrowing the field. Each of
10 these steps was done with different farming tools pulled behind my tractor. The tractors I used
11 had about 75-176 horse power. Photographs of my actual tractors are depicted in **Exhibits F, I,**
12 and **L**.

13 a. The primary tool I used in preparing the soil was a disc to till the soil surface to a
14 depth of about 6 inches. This allows rainfall to soak into the soil and hold in this six inch zone
15 near the surface, and gives the soil adequate tith for the wheat to grow and take root and access
16 that water.

17 b. For the disc to work, the soil surface has to be soft enough for it to bite into. If the
18 surface is too hard, the disc will tend to slide over the surface without cutting into it. Where this
19 condition existed, I had to open up the soil using a different tool in advance of the disc.

20 c. Following June 29, 2011, on a limited portion of the property, while the surface
21 was too hard to disc, I used a custom-made plowing tool to open the soil surface. The tool has two
22 shanks about 40 inches apart, and is shown in **Exhibits J** and **K**. Following June 29, 2011, I only
23 used the two-shank tool in the areas shown on **Exhibits J** and **K**, to a depth of four to six inches.
24 This depth was all that was necessary to then use the disc in those locations. I worked north and
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1 south with this tool, in straight lines, and never cut the soil surface with it in any seasonal
2 drainages. I used the hydraulic equipment on my tractor to raise the tool out of the ground when I
3 drove the tractor through any seasonal drainages.

4 d. I first used this tool in the western portion of Zone 6 in early July 2011. Once I had
5 loosened the soil with the two-shank tool in this portion of Zone 6, I went over the same area with
6 the disc. This mixed and turned the soil and smoothed out any north south furrows left by the
7 two-shank tool. The aerial photo from July 2011 shows the results of this work. It also shows that
8 drainages in Zone 6 have not been plowed. **Exhibit J.**

9 e. Following this work in July in Zone 6, I used the two-shank tool at the same depth
10 for roughly two months first in the western portion of Zone 2 and then on the western edge of the
11 property in Zones 1, 5, and 9, to continue loosening the soil surface before using the disc. I only
12 used the two-shank tool north-south (parallel to Paskenta Road), and continued to raise the tool
13 when traversing any seasonal drainages. The October 2011 aerial photo shows the north-south
14 furrows produced by the two-shank tool in Zones 1, 5, and 9 during this time. **Exhibit K.**

15 f. In early October, it rained enough to soften the soil surface so that the two-shank
16 tool was no longer necessary. At this point, I parked it near one of the power towers on the
17 Property, where it stayed until I removed it from the Property in March of 2012.

18 g. To summarize the use of the two-shank tool: following June 29, 2011, I only used
19 it in the indicated areas on **Exhibits J and K**, only used it to a depth of 4 - 6 inches, never made
20 more than one pass with it, did not use it in any seasonal drainages, and only ever used it in a
21 North-South direction. Then, I disced everywhere I had used the two-shank tool.

22 h. After it rained, I finished preparing the soil by discing in the areas generally shown
23 on **Exhibit H**. I had already disced portions of Zones 2, 3, 5, and 6 in July. I generally used the
24 disc North-South, and I also avoided using it in seasonal drainages by “closing” the disc when
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1 passing through them (which results in the disc generally rolling over the ground instead of
2 cutting into it). I finished discing sometime in December. By that time, it not having rained for a
3 period of time, the soil surface got harder again and the disc was less and less effective. At this
4 point, I had disced approximately 1,000 acres. Throughout, I disced to a depth of 4 to 6 inches.

5
6 i. Discing smoothed out any furrows left by the two-shank tool, and the ground
7 surface generally appeared as shown in **Exhibit S** (which I am informed is a photo that Mr.
8 Matthew Kelley took from Ohm Road on the eastern end of the tilled area). I am also informed
9 that **Exhibit S-1** (showing the wheat growing in north-south rows) and **Exhibit S-2** (showing the
10 wheat growing and an aquatic feature holding water during the rainy season) are also photos that
11 Mr. Kelley took around that same time of the Property. Throughout soil preparation, I followed
12 the existing contour of the ground surface throughout the property.

13
14 j. Following soil preparation, beginning in November 2011, I fertilized the soil using
15 an aqueous ammonia rig. This equipment is pulled behind the tractor and injects liquid fertilizer
16 into the soil. In addition to fertilizing, it further smooths the soil after discing. I finished
17 fertilization in December 2011. As with the two-shank tool and the disc, I used the hydraulic
18 equipment on the tractor to raise the ammonia rig when traversing any seasonal drainages. And as
19 with the prior tools, I followed the existing contour of the ground.

20
21 k. After fertilizing, I planted the wheat with a seed drill, which is pulled behind the
22 tractor and pushes individual seeds a few inches into the ground to plant them. I started the
23 planting in November 2011 and completed planting in December 2011. I planted approximately
24 900 acres, indicated on **Exhibit R**. As with discing and fertilizing, planting the seed had the
25 additional effect of further smoothing out and firming up the surface of the soil.

26
27 l. My final step in the planting process was to harrow the planting with a metal grid
28 with short (2 inch) teeth on it. This is dragged behind the tractor over the planted seed to cover it.

1 I started this step in November 2011 and completed it in December 2011.

2 m. The dryland wheat planting was fully completed by December 2011. I then
3 immediately went to the FSA office and reported that I had finished planting the wheat crop, and
4 the FSA generated a report documenting that fact (LAPANT000090). A graphic depicting the
5 overall planting area on the Property as reflected in the FSA report is attached hereto as **Exhibit**
6 **T**.
7

8 23. Throughout my work on the Property, from May through December of 2011, there
9 was no standing, ponded, or flowing water anywhere that I worked. The wheat crop germinated,
10 and emerged by early March 2012. The growing plants, especially their roots spreading out in the
11 top 4 to 6 inches of soil, stabilized the soil during the subsequent rainy season, minimizing any
12 erosion of the tilled soil. The soil preparation (*i.e.*, plowing) also had important effects. First, it
13 established adequate tilth for the wheat seed to germinate and grow, and the roots to spread out.
14 Second, it provided adequate soil condition for rainfall to soak in and remain available for the
15 plant roots. Wheat in particular is highly efficient at using available soil moisture, and its roots
16 spread broadly through the top layer of soil. The wheat roots stabilize the soil and prevent it from
17 eroding. As the wheat plants emerge and grow above the ground they also stabilize the soil.
18

19 24. As explained, my agricultural activities on the Property were essentially identical
20 to those performed on the Property by previous owners in (at least) 1966, 1973, 1979, 1981, 1984,
21 and 1985 – that is, discing, shallow chiseling, and harrowing to prepare surface soils to plant
22 grain seed. My agricultural activity was thus by no means a “first time” agricultural use of the
23 Property and was in fact a use to which the Property was previously subject at various points
24 throughout its history. Moreover, the wheat hay crop planted was not incidental to any other
25 activity. I grew the wheat hay for feed for my cattle, intending to harvest it for hay in the summer
26 of 2012, and then turn cattle out onto the stubble. The advantage of wheat hay as a feed crop is
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1 that it does not need to be irrigated, so it can be produced at minimum cost. This was a common
2 ranching practice for me, as I have frequently grown wheat hay as cattle feed for my own herd, on
3 property that I would alternately graze and plant with wheat hay or other dry land feed crops. I
4 also grew the wheat hay crop to demonstrate to a bank that the Property would produce a crop, to
5 advance my effort to obtain permanent financing for the Property from the bank. Unfortunately,
6 this plan did not materialize.
7

8 **THE SALE OF THE PROPERTY AND SUBSEQUENT EVENTS**

9 25. As mentioned, I originally intended to hold the Property long term. However, in
10 the fall of 2011, I was unable to obtain permanent financing for the Property after a community
11 bank (Butte Community Bank) failed. I had been their customer for approximately 20 years (as
12 an agricultural borrower). I explored other financing options, but nothing else was available. At
13 this point, I realized that I was not going to be able to make the balloon payment to the Property's
14 prior owner and seller (Ethan Conrad) that would come due in March of 2012, and that I was
15 going to have to sell the Property before the payment came due. I was also getting frequent – at
16 times daily – calls and pressure from Mr. Conrad to pay the March 2012 balloon payment on the
17 Property, threatening to ruin me if payment was not made. At the time, I did not have the
18 financial resources or capital to keep the Property, though I surely would have kept it had I been
19 able to obtain permanent financing. Therefore, I determined that my only real viable course of
20 action was to sell the Property. It was only at this point, that I engaged a broker to list the
21 Property for sale. During this process, my broker advised me that most buyers would be interested
22 in the Property for its orchard potential, and that I should have a preliminary delineation of
23 wetlands on the Property to share with potential buyers.
24
25

26 26. In October 2011, after hearing that the Property was potentially for sale, John
27 Duarte (owner of Duarte Nursery, Inc.) became interested in purchasing the Property. I gave Mr.
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1 Duarte permission to enter to the Property for the purposes of conducting an investigation into the
2 soils and other relevant matters prior to a potential sale. My recollection is that Mr. Duarte was
3 satisfied with the inspection and had a positive response to the Property, though I was not
4 personally present for the inspection itself.

5
6 27. By December 2011, the dryland wheat crop was in the soil and the farming process
7 of planting it was completed. Based on the need to sell the Property, though, and based on the
8 fact that dryland wheat farming was not going to be very profitable for potential buyers interested
9 in the Property, I knew that I would likely have to have an environmental company find out
10 whether the Property could be used for anything other than dryland farming before I could sell the
11 Property to a buyer. The potential buyers that were expressing interest in the Property at the time
12 were not interested in running livestock or planting dryland wheat. Therefore, based on what I
13 had heard from the federal agencies that I interfaced with (*i.e.*, the FSA and NRCS) and based on
14 the need to satisfy to the loan on the Property, I knew that I needed to have the land studied as
15 soon as possible.

16
17 28. I first became aware of NorthStar Environmental Services (“NorthStar”) in
18 December 2011, at which time I had a preliminary meeting with them at their office in Chico,
19 California. NorthStar completed its draft delineation in February 2012. I was then told that they
20 would take the draft delineation and present it to the NRCS first, and then subsequently to the
21 USACE for ultimate approval. On March 14, 2012, I received a document from Christy Dawson
22 of NorthStar stating that in order for NorthStar to submit a request for “verification” to the
23 government, I needed to sign with permission for them to do so. I forwarded Ms. Dawson’s
24 email to Mr. Duarte, who then requested that I sign the form and obtain the verification. I then
25 signed the document and authorized NorthStar to submit the draft delineation to the NRCS. It
26 was not until a year later that I found out that Mr. Duarte had requested that the draft delineation
27
28

1 be pulled and no longer submitted for verification by the government.

2 29. In April 2012, I sold the entire property (*i.e.*, all 1,965 acres) to Duarte Nursery,
3 Inc. (owned by John Duarte). I found out subsequently that Mr. Duarte later sold a large portion
4 of the Property (the 1500 acres of land above Coyote Creek) to Goose Pond Ag, Inc. (“Goose
5 Pond”) and Farmland Management Services (“FMS”) in the fall of 2012. I never knew Mr.
6 Duarte or Duarte Nursery, Inc. prior to Mr. Duarte expressing interest in the land, nor had I had
7 any dealings with the entity (*i.e.*, Goose Pond) to which Mr. Duarte sold the portion of the land I
8 had farmed. I also had no knowledge of any of their plans for the Property when I farmed it
9 myself. I began work on my wheat crop while I still expected to be able to arrange long term
10 financing and to keep the Property. My decision to grow the wheat hay crop, and my actions to do
11 so, had no relation at all to subsequent owners’ eventual decisions to purchase the Property or to
12 take any action they eventually took on the Property. Nor did I have any concrete plans to plant
13 orchards on the property. I expected that I would eventually investigate where orchards could be
14 planted on the Property, as the NRCS staff advised me to do. If feasible, I anticipated that I would
15 gradually develop orchards on the parts of the Property where the NRCS indicated it could be
16 done. However, if I had been advised that I could not plant orchards in the portion of the Property
17 where I grew wheat, I would have been content with that.

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21 30. In October, November, and December of 2012, Goose Pond carried out a series of
22 heavy operations on the Property over the top of most of my work. I observed, among other
23 equipment used on the Property, a large tractor pulling a large chisel plow or ripper array. An
24 image of the closest depiction that I could find to the actual ripper used, is attached hereto as
25 **Exhibit U**. Goose Pond and its contractors ripped much of the area that I planted, about a foot
26 deep, and followed with a gang of box scrapers to cut and fill the Property (*i.e.*, to loosen and
27 remove soil from the high points and fill the low points with that soil). Goose Pond and its
28

1 contractors also built a number of roads on the Property and deep ripped several acres of it near
2 Paskenta Road.

3 31. On January 19, 2013, the Government sent me a cease-and-desist letter, though I
4 did not ultimately receive it until a couple weeks later.

5 32. On June 30, 2016, the Government filed a civil enforcement action against me for
6 allegedly discharging pollutants into U.S. waters without authorization, in violation of the Clean
7 Water Act. The lawsuit has been going on for three and a half years now. I've been waiting that
8 long to be able to tell my story.

9 I declare under penalty of perjury under the laws of the State of California and the United
10 States that the foregoing is true and correct, except as to matters stated on information and belief
11 and as to those matters, I believe them to be true.

12 Executed this 20 day of Dec 2019 at Duham, California.

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ROGER LAPANT