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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10
11 UNITED STATES OF AMERICA ,

12 Plaintiff,

13 v.

14 ROGER J. LAPANT, JR.; J&J FARMS;
GOOSE POND AG, INC.; and
15 FARMLAND MANAGEMENT
SERVICES ,

16 Defendants.
17

Case No. 2:16-CV-01498-KJM-DB

**DEFENDANTS ROGER J. LAPANT AND J&J
FARMS'S ANSWER TO PLAINTIFF'S
COMPLAINT**

ANSWER

Defendants ROGER J. LAPANT, JR. and J&J FARMS (collectively, “LAPANT” or “Defendants”) assert defenses to the Complaint filed by the UNITED STATES on June 30, 2016, and answer each numbered paragraph as follows:

NATURE OF THE ACTION

1. In response to paragraph 1, LAPANT admits that the Complaint is a civil enforcement action commenced under the statutes alleged to obtain relief as alleged. LAPANT denies every other allegation of this paragraph and specifically denies any violation of the Clean Water Act (“CWA”) or any other law.

2. LAPANT has insufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 2, and therefore denies them. LAPANT denies that the UNITED STATES is entitled to injunctive relief, the imposition of civil penalties, or any other relief that may be sought.

3. LAPANT has insufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 3, and therefore denies them.

JURISDICTION AND VENUE

4. Paragraph 4 presents the legal conclusions of the United States to which no response is required. To the extent a response is required, LAPANT denies each and every allegation in Paragraph 4 that characterizes 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1331 and 1345 on the grounds that the statutes speak for themselves.

5. Paragraph 5 presents the legal conclusions of the United States to which no response is required. To the extent that a response is required, LAPANT has insufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph and therefore denies them.

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PARTIES

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2 6. In response to paragraph 6, LAPANT admits that the plaintiff in this action is the
3 United States of America. LAPANT denies each and every allegation in Paragraph 6 that
4 characterizes a statute on the grounds that the statutes speak for themselves. The remainder of the
5 paragraph presents the legal conclusions of the United States to which no response is required.
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7 7. In response to paragraph 7, LAPANT admits that the defendants in this action are
8 Roger J. LaPant, Jr.; J&J Farms; Goose Pond Ag, Inc.; and Farmland Management Services.

9 8. In response to paragraph 8, LAPANT admits that Roger J. LaPant, Jr. is an
10 individual residing at 9032 Goodspeed St., Durham, CA 95938. LAPANT denies every other
11 allegation of this paragraph.

12 9. LAPANT denies the allegations in paragraph 9.

13 10. LAPANT denies the allegations in paragraph 10.

14 11. LAPANT has insufficient knowledge or information to form a belief as to the truth
15 of the allegations in paragraph 11, and therefore denies them.
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17 12. LAPANT has insufficient knowledge or information to form a belief as to the truth
18 of the allegations in paragraph 12, and therefore denies them.

19 13. Paragraph 13 constitutes a recitation of what the UNITED STATES may do in the
20 future, and therefore no response is required as to this action. LAPANT denies every other
21 allegation of this paragraph.
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23 **STATUTORY AND REGULATORY BACKGROUND**

24 14-29. Paragraphs 14 through 29 present the UNITED STATES' characterizations of the
25 Clean Water Act and associated regulations, which speak for themselves as to their content and
26 meaning. Paragraphs 14 through 29 also present the UNITED STATES' legal conclusions to
27 which no response is required. To the extent that a response is required, LAPANT has insufficient
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1 knowledge or information to form a belief as to the truth of the allegations in this paragraph, and
2 therefore denies them.

3 **GENERALLY APPLICABLE ALLEGATIONS**

4 30. In response to paragraph 30, LAPANT denies that any Clean Water Act (“CWA”)
5 violations occurred. The UNITED STATES refers to this real property as the “Site” in its
6 complaint, so LAPANT does so as well in this answer. LAPANT denies every other allegation of
7 this paragraph.
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9 31. LAPANT has insufficient knowledge or information to form a belief as to the truth
10 of the allegations in paragraph 31, and therefore denies them.

11 32. LAPANT has insufficient knowledge or information to form a belief as to the truth
12 of the allegations in paragraph 32, and therefore denies them.

13 33. LAPANT has insufficient knowledge or information to form a belief as to the truth
14 of the allegations in paragraph 33, and therefore denies them.

15 34. Paragraph 34 establishes that the UNITED STATES refers to the LAPANT real
16 property as the “Site” in its complaint and does not require a response. To the extent that
17 LAPANT denies the allegations in paragraph 33, LAPANT denies the allegations in paragraph
18 34.
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20 35. LAPANT admits the allegations in paragraph 35.

21 36. LAPANT admits the allegations in paragraph 36.

22 37. LAPANT admits the allegations in paragraph 37.

23 38-61. LAPANT has insufficient knowledge or information to form a belief as to the truth
24 of the allegations in paragraphs 38 through 61, and therefore denies them.
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26 62. LAPANT has insufficient knowledge or information to form a belief as to the truth
27 of the allegations in the first sentence of paragraph 62, and therefore denies them. The remainder
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1 of the paragraph presents the UNITED STATES' characterizations of the Endangered Species
2 Act and associated regulations, which speak for themselves, and also presents the UNITED
3 STATES' legal conclusions to which no response is required.

4 63-69. LAPANT has insufficient knowledge or information to form a belief as to the truth
5 of the allegations in paragraphs 63 through 69, and therefore denies them.

6 70-78. LAPANT has insufficient knowledge or information to form a belief as to the truth
7 of the allegations in paragraphs 70 through 78, and therefore denies them. LAPANT denies every
8 other allegation of this paragraph and specifically denies that any CWA violation occurred.

9 79. Paragraph 79 presents the legal conclusions of the UNITED STATES to which no
10 response is required. To the extent that a response is required, LAPANT has insufficient
11 knowledge or information to form a belief as to the truth of the allegations in this paragraph, and
12 therefore denies them.

13 80-84. LAPANT has insufficient knowledge or information to form a belief as to the truth
14 of the allegations in paragraphs 80-84, and therefore denies them. LAPANT denies every other
15 allegation of this paragraph and specifically denies that any CWA violation occurred.

16 85-93. Paragraphs 84 through 93 present the legal conclusions of the UNITED STATES
17 to which no response is required. To the extent that a response is required, LAPANT has
18 insufficient knowledge or information to form a belief as to the truth of the allegations in these
19 paragraphs, and therefore denies them.

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23 **COUNT ONE: CWA VIOLATIONS BY DEFENDANTS LAPANT AND J&J FARMS**

24 94. In response to paragraph 94, LAPANT incorporates by reference its responses to
25 paragraphs 1 through 93 of the complaint.

26 95. LAPANT admits the allegations in paragraph 95.

27 96. LAPANT denies the allegations in paragraph 96, except that LAPANT admits that
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1 he operated a tractor with certain tillage implements.

2 97-103. LAPANT denies the allegations in paragraphs 97-103.

3 104. LAPANT denies that a CWA section 404 permit was required. LAPANT also
4 denies that any pollutants were discharged from the Site. LAPANT denies every other allegation
5 in paragraph 104 and specifically denies that any CWA violation occurred.

6 105. LAPANT denies the allegations in paragraph 105.

7 106. LAPANT admits that LAPANT transferred ownership of the Site to Duarte
8 Nursery, Inc. on or about March 23, 2012. LAPANT denies every other allegation in paragraph
9 106 and specifically denies that any CWA violation occurred.

10 107-108. LAPANT denies the allegations in paragraphs 107-108 and specifically
11 denies that any CWA violation occurred.

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13 **COUNT TWO: CWA VIOLATIONS BY DEFENDANTS GOOSE POND AG, INC. AND**
14 **FARMLAND MANAGEMENT SERVICES**

15 109. In response to paragraph 109, LAPANT incorporates by reference its responses to
16 paragraphs 1 through 108 of the complaint.

17 110-123. LAPANT has insufficient knowledge or information to form a belief as to the
18 truth of the allegations in paragraphs 110 through 123, and therefore denies them. To the extent to
19 which they present the legal conclusions of the UNITED STATES, no response is required.

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21 **REQUEST FOR RELIEF**

22 The remaining paragraphs of the UNITED STATES' complaint state its request for relief,
23 to which no response is required. To the extent a response is required, LAPANT denies that the
24 UNITED STATES is entitled to the relief it requests or to any relief whatsoever.

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26 **ALL CLAIMS**

27 LAPANT denies any allegation in the UNITED STATES' complaint, whether express or
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1 implied that is not specifically admitted, denied, or qualified above. To the extent that any
2 allegation in the complaint remains unanswered, LAPANT denies any such allegation.

3 **AFFIRMATIVE DEFENSES**

4 By asserting the following defenses, Defendants do not concede or admit that they have
5 the burden of proof or persuasion on any such defense. Unless otherwise stated, each affirmative
6 defense is asserted as to all claims for relief against Defendants. Without limiting or waiving any
7 defenses available to it, at this time Defendants assert the following defenses, including but not
8 limited to affirmative defenses, against the claims asserted by the UNITED STATES:
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10 **FIRST AFFIRMATIVE DEFENSE**

11 (Estoppel)

12 Plaintiff's Complaint and each cause of action therein is barred in whole or in part by the
13 equitable doctrine of estoppel.
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15 **SECOND AFFIRMATIVE DEFENSE**

16 (Res Judicata)

17 Plaintiff's Complaint and each cause of action therein is barred in whole or in part by res
18 judicata.
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20 **THIRD AFFIRMATIVE DEFENSE**

21 (Ripeness)

22 Plaintiff's Complaint and each cause of action therein is barred in whole or in part because
23 the claims are not ripe.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 (Statute of Limitations)

26 Plaintiff's Complaint and each cause of action therein is barred in whole or in part by the
27 applicable statute of limitations.
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FIFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiff’s Complaint and each cause of action therein is barred in whole or in part by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiff’s Complaint and each cause of action therein is barred in whole or in part by the doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE

(Laches)

Plaintiff’s Complaint and each cause of action therein is barred in whole or in part by the doctrines of laches.

EIGHTH AFFIRMATIVE DEFENSE

(Vagueness/Uncertainty)

Plaintiff’s Complaint and each cause of action therein is barred in whole or in part because the sought relief is based on the UNITED STATES’ own interpretation of statutes, regulations, ordinances and/or policies that are unconstitutionally vague so as to prevent the injunctive relief, civil penalties and attorneys’ fees that Plaintiff seeks.

NINTH AFFIRMATIVE DEFENSE

(No Subject Matter Jurisdiction)

Plaintiff’s Complaint and each cause of action therein is barred in whole or in part because this Court lacks subject matter jurisdiction over this dispute. The “Site” described at Paragraph 34 of the Complaint, which makes up the subject of this action, did not contain any Federal jurisdictional waters at the time of the alleged violations that may be regulated pursuant to the

1 CWA. Any watercourse or wetland on the Site is not located adjacent to, and has no direct
2 hydrological connection with, a traditional navigable water. Further, there is no significant nexus
3 between any watercourse or wetland on the Site and any traditional navigable water. Any
4 wetland that may be located on the Site is isolated, intrastate, and non-navigable, and is not part
5 of the “waters of the United States” within the meaning of the CWA. By reason of the foregoing,
6 the United States Environmental Protection Agency (the “EPA”) and the United States Army
7 Corps of Engineers (the “Corps”) have no regulatory authority over the Site pursuant to the CWA
8 or otherwise, and Defendants are not required to seek any permits or other permission from the
9 EPA or the Corps to undertake any of the work alleged in the Complaint.
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12 **TENTH AFFIRMATIVE DEFENSE**

13 (Farming Exemption)

14 Plaintiff’s Complaint and each cause of action therein is barred in whole or in part
15 because, to the extent that LAPANT’s activities on the Site resulted in any discharges of
16 pollutants into waters of the United States, those discharges are exempt from regulation under
17 section 404(f) of the Clean Water Act (33 U.S.C. § 1344(f)).
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19 **ELEVENTH AFFIRMATIVE DEFENSE**

20 (Failure to State a Claim)

21 Plaintiff’s Complaint and each cause of action therein is barred in whole or in part
22 because each purported “cause of action” fails to state a claim upon which relief can be granted.
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24 **TWELFTH AFFIRMATIVE DEFENSE**

25 (Actions Authorized by Law)

26 Plaintiff’s Complaint and each cause of action therein is barred in whole or in part
27 because the acts and/or omissions alleged in the Complaint were authorized by state or federal
28 statute, regulation, ordinance, permit or other law.

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THIRTEENTH AFFIRMATIVE DEFENSE

(Compliance with Laws)

Plaintiff’s Complaint and each cause of action therein is barred in whole or in part because Defendants acted reasonably and with due care and complied with all applicable statutes, regulations, ordinances and/or other laws.

FOURTEENTH AFFIRMATIVE DEFENSE

(Lack of Control)

Plaintiff’s Complaint and each cause of action therein is barred in whole or in part because the discharges alleged in the Complaint, if any, were caused by acts and/or omissions of entities or persons other than Defendants and over whom Defendants have and/or had no control.

FIFTEENTH AFFIRMATIVE DEFENSE

(Reliance)

Plaintiff’s Complaint and each cause of action therein is barred in whole or in part because Defendants, at all relevant times relative to the matters that form the subject of the Complaint, acted in reliance upon the directions given to them by the pertinent government regulators.

SIXTEENTH AFFIRMATIVE DEFENSE

(Standing)

Plaintiff’s Complaint and each cause of action therein is barred in whole or in part because the UNITED STATES lacks standing to pursue the causes of action set forth in the Complaint.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

Defendants have insufficient knowledge or information upon which to form a belief as to

1 whether they may have additional, as yet unstated, separate defenses available. Accordingly,
2 Defendants reserve their right to assert additional separate defenses in the event discovery
3 indicates such defenses would be appropriate.

4 **RELIEF REQUESTED**

5 Defendants respectfully request:

- 6
- 7 1. That the Court deny all relief sought by the Plaintiff and that the Plaintiff take
8 nothing and that each of its demands and requests, including declaratory relief, injunctive relief,
9 restoration, civil penalties and attorneys' fees, be denied. The Complaint and each purported
10 "cause of action" contained therein should be dismissed with prejudice and that judgment be
11 entered for Defendants;
- 12 2. That Defendants be granted the right to a trial by jury;
- 13 3. That Defendants be awarded their costs of suit, including all reasonable attorneys'
14 fees incurred in this action;
- 15 4. That Defendants be awarded such other and further relief as the Court deems just
16 and proper.

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19 Dated: January 23, 2017

CANNATA, O'TOOLE, FICKES & ALMAZAN LLP

20 /s/ Therese Y. Cannata
21 THERESE Y. CANNATA
22 Attorneys for Defendants
23 ROGER J. LAPANT, JR. and J&J FARMS
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