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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

<p>DUARTE NURSERY, INC., et al., Plaintiffs, v. UNITED STATES ARMY CORPS OF ENGINEERS, et al., Defendants.</p>	<p>Civ. No. 2:13-cv-02095-KJM-DB FINAL PRETRIAL ORDER: REMEDIES PHASE</p>
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On June 16, 2017, the court conducted a final pretrial conference. Peter Prows, Anthony Francois, David Ivester and Max Rollens appeared for Duarte Nursery, Inc. (“Duarte” or “Plaintiffs”); Andrew Doyle, Gregory Broderick, Samara Spence and John Do appeared for the United States Army Corps of Engineers (“United States,” “Army Corps” or “Defendant”).

After hearing, and good cause appearing, the court makes the following findings and orders:

JURISDICTION/VENUE

Jurisdiction is predicated on 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1331 and 1345. Venue is predicated on 33 U.S.C. § 1319(b) and 28 U.S.C. § 1391(b)-(c). Jurisdiction and venue are not contested.

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NO JURY

The remedies phase of this case will be resolved by a bench trial.

UNDISPUTED FACTS AND PRIOR CONCLUSIONS OF LAW

Beyond the small handful of facts articulated below, the parties have not agreed to a core set of undisputed facts. Accordingly, this court relies on its Order granting the United States' motion for summary judgment to identify the balance of facts that are undisputed. *See* Order, ECF No. 195. The lists below include mixed questions of law and fact, as well as foundational facts already decided by the court, which will not be revisited during the remedies phase.

* * *

The Parties' Undisputed Facts¹

1. In April 2012, Duarte Nursery, Inc. purchased 1,950 acres of real estate in Tehama County (the "Property").
2. Duarte Nursery, Inc. is a family-run and privately held "S Corporation" headquartered in Hughson, California.
3. On or about October 29, 2012, Duarte Nursery, Inc. completed the sale of 1,500 acres of property north of Coyote Creek. The remaining portion of the Property, which is at issue in this case, is about 450 acres.
4. At the time of the purchase of the Property in April 2012, and of the challenged activities on the Duarte property in November and December 2012, John Duarte was President of Duarte Nursery, Inc.
5. On November 28, 2012, Matthew Kelley from the Army Corps' Redding office drove past the Property, and observed activities and equipment on the Property. He believed there were potential CWA violations and took photographs.
6. On December 3, 2012, Kelley communicated with state regulators regarding the potential violation as part of his investigation.

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¹ Or at least facts the parties cannot reasonably dispute.

- 1 7. Kelley returned to the Property on December 6, 2012 and observed what he believed to be
2 ripping on the Property.
- 3 8. Kelley advised John Duarte during a December 11, 2012 conversation that the Army
4 Corps would be sending a formal C&D letter notifying the Nursery of its violations of the
5 CWA, and it should cease and desist any unauthorized activity in the waters of the United
6 States.
- 7 9. On December 17, 2012, Kelley returned to the Property and took photos of the equipment
8 and the land.
- 9 10. On February 19, 2013, Kelley completed an initial investigation memo regarding the
10 Nursery's activities on the Property.
- 11 11. The Army Corps sent a cease-and-desist order to Duarte Nursery and John Duarte on or
12 about February 25, 2013.
- 13 12. Duarte has not been accused by the U.S. Corps of Engineers or the U.S. Environmental
14 Protection Agency, or by California or any of its agencies, of violating the Clean Water
15 Act (CWA) in another matter.

16 * * *

17 Additional Undisputed Material Facts and Conclusions of Law

- 18 13. Individual and Corporate Liability.
 - 19 a. The Nursery was responsible for activities giving rise to the United States' CWA
20 counterclaim. Order at 24.
 - 21 b. At the time Jim Duarte was the chairman of the Nursery's board; John Duarte was
22 the president of the Nursery, and had been the president since sometime between
23 2008 and 2010. Order at 6.
 - 24 c. As president, John Duarte was responsible for the general management of the
25 Nursery, including decisions with respect to land purchase and land usage. Order
26 at 6.
 - 27 d. In 2012 John Duarte had significant input into the activities conducted on and
28 precautions taken with respect to the real estate. Order at 6, 26.

- 1 e. In about November 2012, John Duarte and the Nursery asked Munson to arrange
2 for farming activities on the Property. Order at 9.
- 3 f. Munson contacted a mill, which was a wheat buyer in Artois, California, who
4 recommended Caleb Unruh to do the farming. Order at 9.
- 5 g. Munson instructed Unruh to plant, care for, and harvest wheat on the Property,
6 except in the area south of the fence line. Order at 9.
- 7 h. Munson instructed Unruh to till the Property 12 inches or less to loosen the soil for
8 rip penetration. Order at 9.
- 9 i. Rip penetration is the process of turning the garden so the soil is loosened and
10 water, roots, and air can penetrate. Order at 9.
- 11 j. Munson paid Unruh for the tillage with funds from the Nursery. Order at 9.
- 12 k. It was John Duarte's decision whether to follow up with the Army Corps after
13 Army Corps' employee Matthew Kelley's call in December 2012 and again after
14 the Nursery received the subsequent cease and desist (C&D) Letter. Order at 12,
15 26.
- 16 l. Ultimately, John Duarte authorized and controlled the Nursery's activity on the
17 Property,² including the tillage by Caleb Unruh. Order at 26.
- 18 m. In December 2012, John Duarte told Kelley "they knew where the wetlands were
19 and were staying away from them," but Kelley contended the wetlands had not
20 been avoided. Order at 11.
- 21 n. John Duarte later conceded he learned in the summer of 2014 that the tillage did
22 not avoid all of the wetlands delineated by NorthStar. Order at 11.
- 23 14. Discharge of Pollutant.
- 24 a. The Equipment Unruh used to till and loosen the Property caused the material,
25 in this case soil, to move horizontally, creating furrows and ridges. Order at
26 29.

27
28 ² The court's order also assumed further additional facts as undisputed although it did not
rely on them in reaching its decision.

- 1 b. This movement of the soil resulted in its being redeposited into waters of the
2 United States, at a minimum in areas of the Property delineated as wetlands by
3 NorthStar. Order at 29, 35.

4 15. Navigable Waters.

- 5 a. Prior to purchasing the 1,950 acres, plaintiffs were aware of a February 2012
6 draft delineation provided by NorthStar for the entire acreage. Order at 6.
- 7 b. The February 2012 draft delineation noted there were a total of 40.78 acres of
8 pre-jurisdictional waters of the United States on the real estate as a whole.
9 Order at 6.
- 10 c. In July 2012, NorthStar produced a “Draft Delineation of Waters of the United
11 States” for the Property, the 450 acres not covered by a contract with Goose
12 Pond. Order at 6.
- 13 d. The 2012 NorthStar report stated:
- 14 i. Areas of intact vernal and seasonal swales occur within the Property
15 along with a number of intermittent and ephemeral drainages. Little
16 evidence of past agricultural activities was observed on the Property.
17 The Property has, however, been used in the past as open grazing land.
- 18 ii. A total of 16.17 of pre-jurisdictional waters of the U.S. were delineated
19 within the Property. The types of waters of the U.S. identified on-site
20 are distinguished as vernal pools, vernal swales, seasonal wetlands,
21 seasonal swales and other waters including intermittent and ephemeral
22 drainages. Waters of the U.S. acreages presented in this report should
23 be considered preliminary, subject to review and modification by the
24 [Army Corps] during the wetland delineation verification process.
- 25 e. The NorthStar 2012 Draft provided a brief summary of the jurisdictional
26 features of U.S. waters:
- 27 i. Other Waters of the United States: Other waters of the U.S. are
28 seasonal or perennial water bodies, including lakes, stream channels,

1 drainages, ponds, and other surface water features that exhibit an
2 ordinary high-water mark but lack positive indicators for one or more
3 of the three wetlands parameters . . . A total of 7.40 acres . . . of other
4 waters of the U.S. were delineated on-site. Order at 8.

5 ii. Significant Nexus: Wetlands within the [Property] hold floodwaters
6 and intercept sheet flow from uplands, releasing water in a more
7 consistent manner. These wetlands collect and hold water during
8 significant rain events acting as a biological filter collecting the first
9 flush prior to filtering into [downstream waters]. Order at 30.

10 iii. Hydrology: Hydrology within the Property is characterized by localized
11 surface sheet flow and sub-surface flows from precipitation events. The
12 wetland features on the site all sheet flow or have subsurface flows that
13 drain into one of the multiple other water drainages on the site. These
14 drainages all flow directly into the [Relatively Permanent Waters
15 (RPW)], Coyote Creek Order at 8.

16 f. The Army Corps' expert investigation report dated June 5, 2015 noted:

17 i. The wetlands and water on-site are hydrologically connected . . . and
18 help to moderate flood flows due to storm events, provide filtration to
19 sediments and pollutants prior to entering Coyote Creek and are
20 designated critical habitat and are known to support the Federally-listed
21 vernal pool fairy shrimp and . . . tadpole shrimp. Order at 30.

22 ii. The wetlands within the Property have physical connections to Coyote
23 Creek, a tributary of the traditional navigable waters of the Sacramento
24 River. Order at 30.

25 g. The United States' expert report provides, and plaintiffs did not rebut, that the
26 dissolved and particulate organic carbon and dissolved nutrients on the
27 Property are related to the Coyote Creek/Oak Creek system, which flows to the
28 Sacramento River. Order at 30.

- 1 h. The wetlands on the Property have a “significant nexus” with the Sacramento
2 River, which is a traditionally navigable waterway. Order at 30–31, 35
- 3 i. In Tehama County, California, the Sacramento River is navigable-in-fact until
4 it reaches San Francisco Bay and the Pacific Ocean. Order at 4.
- 5 j. Two tributaries of the Sacramento River in Tehama County are Coyote Creek
6 and Oat Creek. Order at 4.
- 7 k. In Tehama County, Coyote Creek generally flows easterly and southeasterly to
8 its junction with Oat Creek. Order at 4.
- 9 l. The watersheds of Coyote Creek and Oat Creek contain associated streams and
10 wetlands. Order at 4.
- 11 m. Coyote Creek flows along the northern border of the real estate, which was
12 bounded on the west by Paskenta Road; the Property has an unusual shape in
13 the southwest corner, separated by a fence that is not shown on any of the
14 maps. Order at 6.

15 16. Point Source.

- 16 a. Unruh used the Equipment, a 360-horsepower International Harvester Case
17 Quadtrac 9370 with Wilcox ripper, NSC 36-24-7, as an attachment for tilling.
18 Order at 31.
- 19 b. The Equipment has seven shanks with 24-inch spacing in between the shanks,
20 and each shank is 36 inches long. Order at 31.
- 21 c. The use of the Equipment had the effect of moving material horizontally, and
22 the shanks created furrows and ridges to the left and right of each furrow.
23 Order at 31.
- 24 d. The Equipment was a means of transport by which a pollutant was carried by a
25 “discernible, confided, and discrete conveyance” into the waters of the United
26 States. Order at 31, 35.
- 27 e. The Equipment loosened and moved the soil horizontally, pulling the dirt out
28 of the wetlands and redepositing it there as well. Order at 31, 35.

1 f. The Equipment is a “point source” under the CWA. Order at 31.

2 17. No Farming Exemption to CWA Violation.

- 3 a. There is no evidence the Property supported farming activity between 1988
4 and the summer of 2012. Order at 9, 34.
- 5 b. Unruh, who performed the tillage service for the Nursery and John Duarte in
6 2012, stated the ground on the Property was hard and difficult to penetrate
7 from prior grazing activities. Order at 34.
- 8 c. There is no evidence to show grazing is analogous to the farming activity
9 plaintiffs conducted beginning in 2012. Order at 34.
- 10 d. After nearly twenty-four years of no activity that meets the applicable
11 definition of farming, the tillage and planting of wheat by plaintiffs is not a
12 continuation of established and ongoing farming activities. Order at 34, 35.
- 13 e. The Nursery and John Duarte, through Brad Munson, hired Unruh to till the
14 Property, with the exception of the southwest corner, which was cordoned off
15 by a fence. Order at 35.

16 DISPUTED FACTUAL ISSUES

17 The following facts and mixed questions of law and fact are disputed:

- 18 1. Whether Duarte has at all times believed that mere plowing does not violate the CWA and
19 does not require a permit.
- 20 2. Whether the United States knew ahead of time that the Property would be plowed, but did
21 not warn Duarte that such plowing might violate the Act.
- 22 3. Whether Duarte’s intent and instructions were that all waters of the United States should
23 be avoided.
- 24 4. Whether the plowing did not cause environmental harm, or change any area of the waters
25 of the United States to dry land.
- 26 5. Whether the waters and wetlands on the property are resilient, and continue to support a
27 rich array of wetland vegetation.
- 28 6. Whether Duarte has complied with the cease-and-desist order.

- 1 7. Whether conducting what the United States requires as “restoration” to the Property’s
- 2 previous state will require work in areas that are waters of the United States and therefore
- 3 violate the cease-and-desist order.
- 4 8. Whether drought and rainfall conditions affect the appropriate remedy.
- 5 9. Whether the furrows caused by the plowing have been significantly reduced or eliminated
- 6 in many parts of the Property by virtue of Duarte’s grazing in the last year.
- 7 10. Whether Duarte has the ability to pay a civil penalty.

8 SPECIAL FACTUAL INFORMATION

9 None applicable.

10 DISPUTED EVIDENTIARY ISSUES & MOTIONS IN LIMINE

11 The parties have filed two sets of *motions in limine* (MIL). The first set (MILs 1

12 to 3) was produced in August 2016. *See* ECF Nos. 228–231, 235. Duarte filed a second set of

13 motions (MILs 4–7) in May 2017. *See* ECF No. 277.

14 * * *

15 The plaintiffs’ seven *motions in limine* seek to preclude the defendants from

16 presenting evidence or argument referencing the following matters:

- 17 1. Duarte’s intent or future plans. ECF No. 229-1.
- 18 2. Increase in value of uplands. ECF No. 229-2.
- 19 3. The Northstar letter warning against “grading activities” the government concedes Duarte
- 20 did not conduct. ECF No. 229-3.
- 21 4. The *Rapanos* “relatively permanent waters” test. *See Rapanos v. United States*, 547 U.S.
- 22 715 (2006). ECF No. 277-1.
- 23 5. Reliance on “illegal” 2008 *Rapanos* guidance. ECF No. 277-2.
- 24 6. To prohibit reliance on an illegal manual redefining ordinary-high-water mark. ECF
- 25 No. 277-3.
- 26 7. To exclude evidence or argument that non-tillage is a violation. ECF No. 277-4.

27 At the final pretrial conference, the court DENIED IN FULL the first three of

28 plaintiffs’ motions: Duarte MIL No. 1, ECF No. 229-1; Duarte MIL No. 2, ECF No. 229-2; and

1 Duarte MIL No. 3, ECF No. 229-3. *See* ECF No. 286. Each ruling was made without prejudice
2 and is subject to proper renewal during trial.

3 * * *

4 The defendants filed three *motions in limine* to preclude the plaintiffs from
5 presenting evidence or argument referencing the following matters:

- 6 1. Duarte’s untimely “supplemental” reports. ECF No. 228-1.
- 7 2. Duarte’s liability, Duarte’s affirmative defenses or issues irrelevant or tangential to the
8 remaining remedial issues. ECF No. 235-1.
- 9 3. Documents and witnesses not produced in discovery. ECF No. 230-1.

10 Defendants have also filed one *motion in limine* to admit business records from
11 1994 and 2012 consultants without live testimony. ECF No. 231-1.

12 At the final pretrial conference, the court resolved portions of defendants’ *motions*
13 *in limine* as follows: GRANTED IN PART United States MIL No. 4 (ECF No. 230) to the extent
14 the United States seeks to exclude Chavez-Arredondo and Hernandez as witnesses; GRANTED
15 IN PART United States MIL No. 3 (ECF No. 235) to the extent (a) the United States seeks to
16 preclude relitigation of liability, and in particular any issue decided in the court’s prior order filed
17 June 10, 2016 (ECF No. 195), and (b) the United States seeks to exclude the testimony of and
18 exhibits related to Chavez-Arredondo and Hernandez as untimely and irrelevant; and GRANTED
19 IN PART the United States’ second supplemental MIL No. 4 (ECF No. 281) to the extent it seeks
20 to exclude the testimony of the EPA Administrator and evidence related thereto. *See* ECF No.
21 286.

22 The balance of the parties’ motions will be resolved by formal order, by the first
23 day of trial.

24 If a party wishes to contest a pretrial ruling, it must do so through a proper motion
25 or objection, or otherwise forfeit appeal on such grounds. *See* Fed. R. Evid. 103(a); *Tennison v.*
26 *Circus Circus Enters., Inc.*, 244 F.3d 684, 689 (9th Cir. 2001) (“Where a district court makes a
27 tentative *in limine* ruling excluding evidence, the exclusion of that evidence may only be

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1 challenged on appeal if the aggrieved party attempts to offer such evidence at trial.”) (alteration,
2 citation and quotation omitted).

3 STIPULATIONS/AGREED STATEMENTS

- 4 1. The parties stipulate that all exhibits listed on all exhibit lists are authentic.
5 2. The parties stipulate that in the event a party seeks to use a deposition transcript at trial,
6 the opposing party will not object to the use of that deposition transcript merely on the
7 basis that the transcript is not the original or certified version. In other words, a true and
8 correct copy of a deposition transcript, together with any relevant, proper, and timely
9 corrections made by the deponent, is sufficient.

10 RELIEF SOUGHT

11 The United States seeks injunctive relief (including restoration, mitigation, and a
12 prohibitory injunction) and a civil penalty.

13 WITNESSES

14 Duarte’s witnesses are listed in Attachment A. The United States’ witnesses are
15 listed in Attachment B. Each party may call any witnesses designated by the other.

16 A. The court will not permit any other witness to testify unless:

17 (1) The party offering the witness demonstrates that the witness is for the purpose
18 of rebutting evidence that could not be reasonably anticipated at the pretrial
19 conference, or

20 (2) The witness was discovered after the pretrial conference and the proffering
21 party makes the showing required in “B,” below.

22 B. Upon the post pretrial discovery of any witness a party wishes to present at trial,
23 the party shall promptly inform the court and opposing parties of the existence of the unlisted
24 witnesses so the court may consider whether the witnesses shall be permitted to testify at trial.
25 The witnesses will not be permitted unless:

26 (1) The witness could not reasonably have been discovered prior to the
27 discovery cutoff;
28

- 1 (2) The court and opposing parties were promptly notified upon discovery
2 of the witness;
- 3 (3) If time permitted, the party proffered the witness for deposition; and
4 (4) If time did not permit, a reasonable summary of the witness's testimony
5 was provided to opposing parties.

6 EXHIBITS, SCHEDULES AND SUMMARIES

7 Duarte's exhibits are identified in Attachment C. At trial, plaintiffs' exhibits shall
8 be listed numerically.

9 The United States' exhibits are identified in Attachment D. At trial, the United
10 States' exhibits shall be listed alphabetically, first A, B, C, etc., then AB, BB, CB, etc., and so on.
11 The court approves the substance of the exhibit lists submitted with the joint statement.

12 The court encourages the parties to generate a joint exhibit list to the extent
13 possible. Joint Exhibits shall be identified as JX and listed numerically, e.g., JX-1, JX-2.

14 All exhibits must be premarked.

15 The parties must prepare exhibit binders for use by the court at trial, with a side tab
16 identifying each exhibit in accordance with the specifications above. Each binder shall have an
17 identification label on the front and spine.

18 The parties must exchange exhibits no later than seven days before trial. Any
19 written objections to exhibits are due no later than the morning of trial.

20 A. The court will not admit exhibits other than those identified on the exhibit lists
21 referenced above unless:

- 22 1. The party proffering the exhibit demonstrates that the exhibit is for the purpose
23 of rebutting evidence that could not have been reasonably anticipated, or
24 2. The exhibit was discovered after the issuance of this order and the proffering
25 party makes the showing required in Paragraph "B," below.

26 B. Upon the discovery of exhibits after the discovery cutoff, a party shall promptly
27 inform the court and opposing parties of the existence of such exhibits so that the court may

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1 consider their admissibility at trial. The exhibits will not be received unless the proffering party
2 demonstrates:

- 3 1. The exhibits could not reasonably have been discovered earlier;
- 4 2. The court and the opposing parties were promptly informed of their existence;
- 5 3. The proffering party forwarded a copy of the exhibits (if physically possible) to
6 the opposing party. If the exhibits may not be copied the proffering party must
7 show that it has made the exhibits reasonably available for inspection by the
8 opposing parties.

9 DEPOSITION TRANSCRIPTS

10 Counsel must lodge the sealed original copy of any deposition transcript to be used
11 at trial with the Clerk of the Court on the first day of trial

12 FURTHER DISCOVERY OR MOTIONS

13 Discovery is closed.

14 AMENDMENTS/DISMISSALS

15 None at this time.

16 SETTLEMENT

17 The parties have not had any meaningful settlement negotiations and, given the
18 nature of this case, the court varies from its default practice and does not require the parties to
19 attend a court-convened settlement conference.

20 SEPARATE TRIAL OF ISSUES

21 There will be no separate trial of any of the remedies issues in this action.

22 IMPARTIAL EXPERTS/LIMITATION OF EXPERTS

23 The court will not appoint an impartial expert witness at this time.

24 ATTORNEYS' FEES

25 Each side currently agrees to bear its own attorneys' fees. Duarte notes however
26 that if it ultimately prevails, it intends to seek recovery of its attorneys' fees.

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ESTIMATED TIME OF TRIAL/TRIAL DATES

Trial is confirmed for August 15–17, 22–24, and 28–31. ECF No. 296. The first day of trial will start at 9:00 a.m. in Courtroom Three before the Honorable Kimberly J. Mueller. Trial is anticipated to last approximately 12 days, at most.

OBJECTIONS TO PRETRIAL ORDER

Each party is granted seven days from the date of this order to file objections to the same. If no objections are filed, the order will become final without further order of this court.

DATED: August 3, 2017.


UNITED STATES DISTRICT JUDGE

Attachment A: Plaintiffs' Exhibit List

- 1
2 1. **Ren Fairbanks:** Ren Fairbanks is an expert in farm management and agricultural
3 practices. He is expected to testify as to the opinions and bases expressed in his expert
4 reports. (Dkt. 130-1 and 130-2.)
- 5 2. **Joel Butterworth:** Joel Butterworth is an expert in soil science and wetlands. He is
6 expected to testify as to the opinions and bases expressed in his expert reports. (Dkt. 150-
7 2 and 150-3.)
- 8 3. **Diane Moore:** Diane Moore is a biologist and expert in wetlands. She is expected to
9 testify as to the opinions and bases expressed in her expert reports. (Dkt. 132-1, 132-2,
10 244-3, and Second Supplemental Report.)
- 11 4. **David Kelley:** David Kelley is an expert plant and soil scientist and arborist. He is
12 expected to testify as to the opinions and bases expressed in his expert reports. (Dkt. 150-
13 8, 150-9, and 244-7.)
- 14 5. **Thomas Skordal:** Thomas Skordal is a wetland scientist. He is expected to testify as to
15 the opinions and bases expressed in his expert reports. (Dkt. 150-5, 150-6, 244-8, and
16 Second Supplemental Report.)
- 17 6. **John Duarte:** John Duarte is the President of Duarte Nursery, Inc. He will testify about
18 the operations of the Nursery, the plowing and planting conducted in 2012, visits to the
19 Property since then, future plans for the Property and the relationship between those plans
20 and the 2012 tillage, his personal assets and liabilities and those of the Nursery, whether
21 the property was deep ripped, communications with Government agencies about the
22 plowing and planting conducted in 2012, his understanding of the legality of plowing, and
23 the role of the Georgetown real estate. He has both percipient and expert knowledge.
- 24 7. **Jim Duarte:** Jim Duarte founded Duarte Nursery, Inc. He will testify about the
25 operations of the Nursery, the plowing and planting conducted in 2012, his visits to the
26 Property, future plans for the Property and the relationship between those plans and the
27 2012 tillage, his understanding of the legality of plowing, the assets and liabilities of the
28 Nursery, whether the property was deep ripped, and communications with Government
agencies about the plowing and planting conducted in 2012. He has both percipient and
expert knowledge.
8. **Hugo Chavez-Arredondo:** Mr. Chavez-Arredondo is a former employee of Duarte
Nursery, Inc. He is expected to testify about his observations, from a distance, of the
Government's 2015 site inspections in this case.
9. **Fernando Hernandez:** Mr. Hernandez is a current employee of Duarte Nursery, Inc. He
is expected to testify about his observations, from a distance, of the Government's 2015
site inspections in this case.
10. **Greg Stohl:** Greg Stohl is the internal accountant of Duarte Nursery, Inc. He is expected
to testify about the company's assets and liabilities, ability to pay a penalty, budgeting and
financial planning for the Property, and the ordinary and necessary aspects of the
company's business. He has both percipient and expert knowledge.
11. **Jeffery Coleman:** Mr. Coleman is the external accountant of Duarte Nursery, Inc. and
John Duarte. He is expected to offer expert testimony about the company's and
individual's assets and liabilities, and ability to pay a penalty. He has both percipient and
expert knowledge.

- 1 12. **Stanley Xavier, Jr.:** Mr. Xavier is expected to offer expert testimony related to recent
2 appraisals his firm conducted of the Property at issue in this case.
- 3 13. **R. Joseph Hackett:** Mr. Hackett is expected to offer expert testimony related to recent
4 appraisals his firm conducted of the Property at issue in this case.
- 5 14. **Caleb Unruh:** Mr. Unruh is expected to offer both percipient and expert testimony about
6 the plowing conducted on and near the Property at issue in this case.
- 7 15. **Jack LaPant:** Mr. LaPant is expected to testify about his percipient observations of the
8 Property before Duarte purchased it.
- 9 16. **Wade Nutter:** Mr. Nutter is expected to testify about his observations and actions related
10 to the Property before Duarte's tillage of it.
- 11 17. **Matthew Kelley:** Mr. Kelley works for the Corps. He is expected to testify about his
12 observations of the Property, and the actions he took, and did not take, in response to
13 those observations.
- 14 18. **James Robb:** Mr. Robb works for the Corps. He is expected to offer limited testimony
15 by deposition, or by live testimony, related to the processing of this enforcement action,
16 his experience with the interpretation and application of the Clean Water Act and its
17 regulations, and the credibility of Thomas Skordal.
- 18 19. **Michael Jewell:** Mr. Jewell works for the Corps. He is expected to offer testimony by
19 deposition, or by live testimony, related to the processing of this enforcement action, his
20 experience with the interpretation and application of the Clean Water Act and its
21 regulations, and whether Duarte's intent was relevant to that processing.
- 22 20. **Len Lindstrand:** Mr. Lindstrand apparently took part in preparing an early delineation of
23 waters and wetlands on the Property. He will be called only if that report is admitted into
24 evidence, and he is not called by the Government.
- 25 21. **James Stevens:** Mr. Stevens apparently oversaw the preparation of a more recent draft
26 delineation of waters and wetlands on the Property, as well as other documents related to
27 Duarte. He is expected to be called only if those documents are admitted into evidence,
28 and he is not called by the Government.
22. **Scott Pruitt:** Mr. Pruitt is the Administrator of the Environmental Protection Agency.
 He is expected to testify that the Environmental Protection Agency does not consider
 Duarte's tillage to be a serious violation.

Attachment B: Defendants' Witness List

- 1
2 1. **Matthew P. Kelley**, the Chief of the Redding, California, Regulatory Office of the
3 Sacramento District of the United States Army Corps of Engineers ("Corps"), is a fact and
4 percipient expert witness. The nature of his testimony concerns his permitting,
5 enforcement, and jurisdictional determination responsibilities with the Corps; waters of
6 the United States on the Duarte property and within the watershed; his observations of
7 activities in waters of the United States on the Duarte property in November and
8 December 2012; his communication with John Duarte and NorthStar Environmental about
9 these activities; and other matters as discussed in his deposition or the United States'
10 disclosures.
11
- 12 2. **Lyndon C. Lee**, Ph.D., Professional Wetland Scientist, is a retained expert witness whose
13 areas of expertise include ecosystem ecology and wetlands and river science. The nature
14 of his testimony concerns the extent and functioning of waters of the United States on the
15 Duarte property (and in the watershed); the extent of impacts to these waters and
16 functioning resulting from activities conducted in November and December 2012; and
17 offsetting the impacts to these waters and functioning.
18
- 19 3. **Scott R. Stewart**, Ph.D., Certified Professional Soil Scientist, is a retained expert witness
20 whose areas of expertise include soil science, geomorphology, biogeochemistry, and
21 wetlands science. The nature of his testimony concerns the extent and functioning of
22 waters of the United States on the Duarte property (and in the watershed) and the extent of
23 impacts to these waters and functioning resulting from activities conducted in November
24 and December 2012, with a focus on hydric soil profiles and slowly permeable (or
25 restrictive) layers at or below the surface.
26
- 27 4. **Wade L. Nutter**, Ph.D., Professional Hydrologist, is a retained expert witness whose
28 areas of expertise include hydrology. The nature of his testimony concerns the extent and

1 functioning of waters of the United States on the Duarte property (and in the watershed)
2 and the extent of impacts to these waters and functioning resulting from activities
3 conducted in November and December 2012, with a focus on hydrology and the flow,
4 circulation, and reach of these waters.

5
6 5. **Mark C. Rains**, Ph.D., Professional Wetland Scientist, is a retained expert witness whose
7 areas of expertise include California vernal pool complexes, hydrologic science, and
8 ecohydrology. The nature of his testimony concerns the extent and functioning of waters
9 of the United States on the Duarte property (and in the watershed) and the extent of
10 impacts to these waters and functioning resulting from activities conducted in November
11 and December 2012, with a focus on the functioning of vernal pools and the intersection
12 of hydrology and ecology.

13
14 6. **Richard Lis**, Ph.D., of the California Department of Fish and Wildlife, is an expert
15 witness whose areas of expertise include plant ecology and systematics. The nature of his
16 testimony concerns the extent and functioning of waters of the United States on the Duarte
17 property (and in the watershed) and the extent of impacts to these water and functioning
18 resulting from activities conducted in November and December 2012, with a focus on
19 hydrophydic plants and faunal habitats.

20
21 7. **Gregory A. House**, Accredited Farm Manager, Accredited Rural Appraiser, Certified Crop
22 Adviser, Certified Professional Agronomist, and Certified General Appraiser, is a retained
23 expert witness whose areas of expertise include farming, agricultural management, and
24 agricultural land use and appraising. The nature of his testimony concerns economic,
25 agronomic, and horticultural issues related to agricultural management and use of the
26 Duarte property, including the immediate and ultimate aim of the activities conducted in
27 November and December 2012, as well as valuations of the Duarte property.
28

1 8. **Joan K. Meyer, Ph.D.**, is a retained expert witness whose areas of expertise include
2 economic, agricultural business, and financial matters. The nature of her testimony
3 concerns the economic benefit resulting from the Clean Water Act violations, the financial
4 condition of Duarte Nursery, Inc. and John Duarte, and their ability to pay a substantial civil
5 penalty.

6
7 9. **Brad Munson**, a fact witness, is expected to testify about his relationship with Duarte
8 Nursery, Inc.; communication with Duarte Nursery, Inc., John Duarte, or persons acting
9 on their behalf; communication with Caleb Unruh; communication with NorthStar
10 Environmental; and activities on the Duarte property.

11
12 10. **Caleb Unruh**, a fact witness, is expected to testify about his communication with Brad
13 Munson; lack of communication with Duarte Nursery, Inc. or John Duarte; observations
14 of the Duarte property; and activities on the Duarte property.

15
16 11. **James Stevens of NorthStar Environmental**, a fact and percipient expert witness, is
17 expected to lay the foundation that certain documents about the Duarte property (and
18 1,500 additional acres to the north that used to be owned by Duarte) meet Fed. R. Evid.
19 803(6), which is generally referred to as the business records exception to the rule against
20 hearsay. These documents are NorthStar Environmental's February 2012 draft
21 delineation, April 10, 2012 letter to NRCS withdrawing wetlands certification request on
22 behalf of Duarte, May 2012 scope of work (and additional scope of work) with Duarte,
23 May 23, 2012 letter to Duarte, July 2012 draft delineation (and cover letter of July 18,
24 2012), and December 20, 2012 letter to the Corps. In lieu of live testimony from Mr.
25 Stevens, the United States intends to offer these documents into evidence based on Mr.
26 Stevens' declaration (ECF No. 131), pursuant to Federal Rule of Evidence 902(11). If
27 live testimony is required, Mr. Stevens may also testify about the condition and extent of
28 waters of the United States on the Duarte property; communication with Duarte Nursery,

1 Inc., John Duarte, or persons action on their behalf; and advice provided regarding
2 activities proposed to be conducted on the Duarte property; and communication with the
3 Corps.

4 **12. Len Lindstrand of North State Resources, Inc.**, a fact and percipient expert witness, is
5 expected to lay the foundation that the 1994 Corps-verified delineation for what would
6 later become the Duarte property (as well as 1,500 additional acres to the north) and
7 certain vernal pool fairy and tadpole shrimp reports (NSE 0006018-620) meet Fed. R.
8 Evid. 803(6), which is generally referred to as the business records exception to the rule
9 against hearsay, and also, in the case of the 1994 delineation, Fed. R. Evid. 803(16),
10 which is another hearsay exception. In lieu of live testimony from Mr. Lindstrand, the
11 United States intends to offer these documents into evidence based upon Mr. Lindstrand's
12 declaration (ECF No. 126), pursuant to Federal Rule of Evidence 902(11). If live
13 testimony is required, Mr. Stevens may also testify about the condition and extent of
14 waters of the United States on the Duarte property and occurrences of vernal pool fairy
15 shrimp and vernal pool tadpole shrimp at or near the Duarte property.

16
17 **13. Any and all witnesses listed on the witness list submitted by Duarte Nursery, Inc. or**
18 **John Duarte ("Duarte"), including John Duarte and Jim Duarte.** John Duarte and/or
19 Jim Duarte may be called to testify as to the purchase of the original (larger) Duarte
20 property in Tehama County; sale of the majority of the original (large) Duarte property;
21 retention of the 450-acre Duarte property; communication with NorthStar Environmental;
22 communication with Brad Munson; lack of communication with Caleb Unruh;
23 communication with the Corps of Engineers; lack of effort to investigate the Corps of
24 Engineers' allegations concerning activities on the Duarte property in late 2012; the
25 organization and activities of Duarte Nursery, Inc.; and matters relating to Duarte's
26 financial condition.

27
28 **14. All witnesses needed to lay foundation for relevant documents.**

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15. **All witnesses needed for rebuttal or impeachment, including witnesses listed above and Peter M. Stokely of the United States Environmental Protection Agency, an expert witness whose area of expertise includes aerial photographic interpretation.** Mr. Stokely may testify as to activities that occurred on the Duarte property prior to 1988 and after the summer of 2012.

Exhibit C—Plaintiffs’ Exhibit List

Exhibit ID	Description	Bates No.
A	Expert Report of Ren Fairbanks	
B	Rebuttal Report of Ren Fairbanks	
C	Expert Report of Diane S Moore	
D	Rebuttal Report of Diane S Moore	
E	Supplemental Report of Diane S Moore	
F	Revised Expert Report of Joel Butterworth	
G	Rebuttal Report of Joel Butterworth	
H	Expert Report of Thomas Skordal	
I	Rebuttal Report of Thomas Skordal	
J	Supplemental Report of Thomas Skordal	
K	Expert Report of David B Kelley	
L	Review and Comments on Experts’ Report by David B Kelley	
M	Supplemental Report of David B Kelley	
N	Joint Expert Report Appendix A	
O	Joint Expert Report Appendix C	
P	Government Counterclaim	
Q	1935/07 The Spanish Land Grant System as an Influence in the Agricultural Development of California	USA063218- USA063234
R	1947/07/1 Duarte Farms Map	USACE0003826
S	1952/07/06 Historical Aerial View Duarte Farms Map	DUARTE 000828
T	1970/08/03 The Varying Source Area of Streamflow From Upland Basina	USA038417- USA038426
U	1972 Historical Aerial View Duarte Farms Map	DUARTE 000829

1	V	1974 Aims and Methods of Vegetation Ecology	DUARTE 010640- DUARTE 010642
2			
3	W	1975 Corps Issues Interim Rules For Discharges Of Dredged And Fill Materials, 5 Env't L.Rep. 10143 (1975)	DUARTE 012642- DUARTE 012643
4			
5	X	1975 Development of New Regulations by the Corps of Engineers, Implementing Section 404 of the Federal Water Pollution Control Act Concerning Permits for Disposal of Dredge or Fill Material: Hearing Before the Subcomm. on Water Res. of the Comm. on Pub. Works and Transp., 94th Cong. 74 (1975)	DUARTE 012644- DUARTE 012647
6			
7			
8			
9			
10	Y	1975/5/16 Letter from EPA Adm'r Russel Train to Lt. Gen. William Gribble, Jr., Chief of Engineers (May 16, 1975), reprinted at Section 404 of the Federal Water Pollution Control Act Amendments of 1972: Hearing Before the S. Comm. On Pub. Works, 94th Cong. 355 (1976)	DUARTE 012688- DUARTE 012691
11			
12			
13			
14	Z	1979 Duarte Property Map	USA040203
15			
16	AA	1979/07/28 1979 Historical Aerial View Duarte Farms Map	DUARTE 000830
17			
18	AB	1983 Jeffrey Stine, Regulating Wetlands In The 1970s, 27 J. Forest Hist. 60 (1983)	DUARTE 012892- DUARTE 012908
19			
20	AC	1984/02/16 EPA Policy on Civil Penalties	DUARTE 012648- DUARTE 012687
21			
22	AD	1984/02/16 EPA Policy on Civil Penalties	USA063712- USA063751
23			
24	AE	1985 The Red Bluff Pediment—A Datum Plane for Locating Quaternary Structures in the Sacramento Valley, California	DUARTE 009051- DUARTE 009074
25			
26	AF	1986/2/11 U.S. Army Corps of Engineers, Regulatory Guidance Letter 86-01, Exemptions to CWA—Plowing (February 11, 1986)	DUARTE 012909- DUARTE 012909
27			
28	AG	1987 U.S. Army Corps of Engineers, Wetlands Delineation Manual (1987)	DUARTE 011984- DUARTE 012126

1	AH	1987/01 Corps of Engineers Wetlands Delineation Manual	USA008594- USA008736
2			
3	AI	1987/5 USDA, Soil Survey: Tehama County, California	DUARTE 009207- DUARTE 009336
4			
5	AJ	1989/01/19 Field Level Agreement Between The U.S. Army Corps Of Engineers, South Pacific Division and the U.S. Environmental Protection Agency—Kelley 2	
6			
7			
8	AK	1990/08/14 Regulatory Guidance Letter 90-06, Expiration Dates for Wetlands Jurisdictional Delineations—Kelley 33	
9			
10	AL	1993 California's Changing Landscapes: Diversity and Conservation of California Vegetation	DUARTE 010617- DUARTE 010623
11			
12	AM	1993 The Jepson Manual: Higher Plants of California	DUARTE 010636- DUARTE 010639
13			
14	AN	1995/04/12 Letter from A. Champ to A. Tsakopoulos	USA077333
15			
16	AO	1995/08/10 Letter from McElhiney to Veldhuis	USA002668
17			
18	AP	1996 Soil Forming Processes in Vernal Pools of Northern California, Chico Area	USA009484- USA009497
19			
20	AQ	1996 Great Valley Vernal Pool Distribution, Photorevised	USA010925- USA010929
21			
22	AR	1996 Hydrology of Vernal Pools on Non-Volcanic Soils in the Sacramento Valley	USA011033- USA011044
23			
24	AS	1996 Vernal Pool-Soil-Landform Relationships in the Central Valley, California	USA011918- USA011926
25			
26	AT	1996/12/12 Regulatory Guidance Letter 96-02, Applicability of Exemptions under Section 404(f) to "Deep-Ripping" Activities in Wetlands—Kelley 9	USA001169-USA001173
27			
28	AU	1997/09/15 A Guidebook for Assessment of the Functions of Waters of the United States, Including	USA002966- USA003515

1		Wetlands, on the Borden Ranch, Sacramento and San Joaquin Counties, California	
2			
3	AV	1998/5 Coyote Creek Conservation Area, Site Photo Description and Vernal Pool Photo Monitoring Report	USA061122- USA061147
4			
5	AW	1999/03/04 Accurate copy of a transcript of deposition testimony given by Peter Stokely in Borden Ranch	USA004528-USA004588
6			
7	AX	1999/03/10 Accurate copy of a transcript of deposition testimony given by Lyndon Lee in Borden Ranch	USA004333-USA004396
8			
9	AY	1999/03/11 Accurate copy of a transcript of deposition testimony given by Lyndon Lee in Borden Ranch	USA004397-USA004463
10			
11	AZ	1999/4/5 Coyote Creek Conservation Area, Management & Monitoring Plan	USA060450- USA060487
12			
13	BA	1999/04/28 Documentation of Impacts Borden Ranch Property an Joaquin County, California	USA003995- USA004092
14			
15	BB	1999/08/24 Accurate copy of a transcript of trial testimony given by Lyndon Lee in Borden Ranch	USA003949- USA003994
16			
17	BC	1999/08/25 Accurate copy of a transcript of trial testimony given by Lyndon Lee in Borden Ranch	USA003729-USA003948
18			
19	BD	1999/08/26 Accurate copy of a transcription of trial testimony given by Lyndon Lee in Borden Ranch	USA005584-USA005741
20			
21	BE	1999/08/31 Accurate copy of a transcript of trial testimony given by Peter Stokely in Borden Ranch	USA003654-USA003728
22			
23	BF	1999/09/15 Accurate copy of a transcription of trial testimony given by Lyndon Lee in Borden Ranch	USA005117-USA005213
24			
25	BG	1999/12/14 Inundation effects on small- scale plant distributions in San Diego, California vernal pools	USA011308- USA011326
26			
27	BH	2000 Domagalski, J.L., Knifong, D.L., Dileanis, P.D., Brown, L.R., May, J.T.,	DUARTE 012991- DUARTE 013035
28			

1		Connor, V., Alpers, C.N., 2000, Water Quality in the Sacramento River Basin, California, 1994-98: U.S. Geological Survey Circular 1215	
2			
3			
4	BI	2000 Domagalski, J.L., and Dileanis, P.D., 2000, Water-Quality Assessment of the Sacramento River Basin, California: Water Quality of Fixed Sites, 1996-1998: U.S. Geological Survey Water-Resources Investigations Report 2000-4247	DUARTE012921- DUARTE012991
5			
6			
7			
8	BJ	2000/12/11 Photograph of tractor	USA002750
9			
10	BK	2001 Wetland Soils of Basins and Depressions: Case Studies of Vernal Pools	USA012022-USA012036
11			
12	BL	2003/09 Isolated Wetlands And Their Functions: An Ecological Perspective	USA011818- USA011832
13			
14	BM	2004/08/26 Soil compaction in cropping systems A review of the nature, causes and possible solutions	USA063353- USA063377
15			
16	BN	2004/09/07 Coyote Creek Conservation Area Vernal Pool Monitoring Final Report	USA061312- USA061352
17			
18	BO	2004/09/27 Deposition of W. Nutter in <i>USA v. Adam Bros. Farming</i>	DUARTE 012712- DUARTE 012844
19			
20	BP	2004/10/11 Effects of Cattle Grazing on Diversity in Ephemeral Wetlands	USA063378- USA063384
21			
22	BQ	2004/11/16 Cattle Grazing Mediates Climate Change Impacts on Ephemeral Wetlands	USA063385- USA063391
23			
24	BR	2005 Coyote Creek Conservation Area 2005 Vernal Pool Monitoring Final Report	USA061353- USA061405
25			
26	BS	2005/10/18 Report, "The role of perched aquifers in hydrological connectivity and biogeochemical processes in vernal pool landscapes, Central Valley, California."	USA001921- USA001939
27			
28	BT	2005/10/18 The role of perched aquifers in hydrological connectivity and hiogeochemical processes in vernal pool landscapes, Central Valley,	USA011045- USA011063

1		California	
2	BU	2006 Seedbed Preparation, Sowing, and Residue Management	USA 024331- USA024354
3			
4	BV	2006/05/01 Coyote Creek Conservation Area 2006 Vernal Pool Monitoring Final Report	USA061235- USA061272
5			
6	BW	2007 Terrestrial Vegetation of California (Third Edition)	DUARTE 010624- DUARTE 010629
7			
8	BX	2007/08/16 Letter with Coyote Creek Conservation Area 2005 Vernal Pool Monitoring Final Report and the Coyote Creek Conservation Area Vernal Pool Monitoring Pocket Guide	USA061196- USA061234
9			
10	BY	2007/08/24 Adoption of conservation tillage in California: current status and future perspectives	USA008895- USA008900
11			
12	BZ	2008 Coyote Creek Conservation Area 2008 Vernal Pool Monitoring Final Report	USA061273- USA061310
13			
14	CA	2008/03 USDA, Seedbed Preparation and Seeding Technical Note	USA022291
15			
16	CB	2008/06/01 Report, "Geological Control of Physical and Chemical Hydrology in California Vernal Pools"	USA001940- USA001955
17			
18	CC	2008/06 Geological Control Of Physical And Chemical Hydrology In California Vernal Pools	USA011064- USA011079
19			
20	CD	2008/08/01 Corps of Engineers, "A Field Guide to the Identification of Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States"	USA006925- USA007008
21			
22			
23	CE	2008/08 Tehama West Watershed Management Plan	USA022310- USA022345
24			
25	CF	2008/09 Regional Supplement to the Corps of Engineers Wetland Delineation Manual; Arid West Region (Version 2.0)	USA008737- USA008871
26			
27	CG	2009/09/24 BLM Manual of Surveying Instructions (2009)	DUARTE 012127- DUARTE 012641
28			

1	CH	2010/10 NRCS, Tillage Equipment Pocket Identification Guide	USA011123- USA011200
2	CI	2011 Tehama County Crop Report	USA024193- USA024210
3	CJ	2011/03/24 Declaration of P. Stokeley in <i>USA v. Lipar</i>	DUARTE 012692- DUARTE 012706
4	CK	2011/03/24 Supplemental Declaration of P. Stokeley in <i>USA v. Lipar</i>	DUARTE 012707- DUARTE 012711
5	CL	2012 Red Bluff Monthly Precipitation Chart (2012-2014)	USA006234
6	CM	2012 Coyote Creek Conservation Area, 2012 Vernal Pool Monitoring Final Report	USA060488- USA060526
7	CN	2012/03/19 Corps of Engineers Nationwide Permit Summary	USA000966
8	CO	2012/04/11 NRCS Letter from J. Komar to C. Dawson—Jim Duarte 217	USACE0000304- USACE0000306
9	CP	2012/07/12 Duarte Farms Map, Draft Delineation of the Waters of the U.S.	DUARTE 000548
10	CQ	2012/09/12 Letter from A. Doyle to D.L. Kelly	USA001956
11	CR	2012/09/20 Ecological status assessment in mediterranean rivers: complexities and challenges in developing tools for assessing ecological status and defining reference conditions	USA012148- USA012172
12	CS	1982/10/01-2012/09/30 Gerber Station (Stn ID 8) Daily Statistics	USA005959
13	CT	2012/10/05 Spatial and temporal distribution of native fish larvae in seasonal and perennial tributaries of the Sacramento River, CA, USA	USA009315- USA009334
14	CU	2012/10/12 Letter from K. Sanchez to A. Doyle	USA001014-USA001018
15	CV	2012/10/15 Letter from R. McInnis to A. Doyle	USA001009- USA001013
16	CW	2012/10/15 Photo of Tractor	USA006349
17	CX	2012/11/09 Disturbance and the role of	USA012398- USA012412

1		refuges in mediterranean climate streams	
2			
3	CY	2012/11/12 Resistance, resilience, and community dynamics in mediterranean-climate streams	USA012300- USA012316
4			
5	CZ	2012/11/21 Long-term population and community patterns of benthic macroinvertebrates and fishes in Northern California Mediterranean-climate streams	USA012372- USA012397
6			
7			
8	DA	2012/12/03 Email from M. Kelley to B. Letton—Kelley 8	USACE0010389- USACE0010390
9	DB	2012/12/06 Email from M. Kelley to B. Letton—Kelley 10	USACE0010385- USACE0010386
10			
11	DC	2012/12/10 Email from M. Kelley to B. Letton—Kelley 11	USACE0010367- USACE0010368
12	DD	2012/12/11 Telephone Conversation Record—Kelley 17	USA000074
13			
14	DE	2013/02/07 Map of Duarte Property—Kelley 6	USACE003848
15	DF	2013/02/13 Facebook article post, “Staten Island’s Midland Beach neighborhood has a blight that sickens, some say”—Robb 108	
16			
17			
18	DG	2013/02/15 Fire as a disturbance in mediterranean climate streams	USA012504- USA012533
19	DH	2013/02/19 Initial Enforcement Investigation Report, SPK-2013-00015—Kelley 30	USA000040-USA000056
20			
21	DI	2013/02/22 Letter from J. LaPlant to M. Jewell—Kelley 15	USACE0000653- USACE0000656
22			
23	DJ	2013/02/25 Letter from M. Jewell to J. Duarte—Kelley 34	USACE0000650 – USACE0000652
24	DK	2013/03/21 Corps Letter to Ronda Lucas—Munson 34	USACE0000664- USACE0000666
25			
26	DL	2013/03/21 Letter from R. Azevedo Lucas to M. Kelley—Kelley 36	USACE0000664 – USACE0000666
27	DM	2013/03/25 Email from J. Robb to M. Kelley—Kelley 37	USACE0009457
28			

1	DN	2013/04/18 Letter from P. Maniccia to R. Azevedo Lucas—Kelley 38	USACE0000667 – USACE 0000668
2			
3	DO	2013/05 California Rapid Assessment Model (CRAM), Vernal Pool Systems and Individual Vernal Pools, Appendix 1: Vernal Pool Endemic Plant List	DUARTE 010630- DUARTE 010634
4			
5	DP	2013/06/25 Letter from C. Dawson to J. Robb	USA000002- USA000011
6			
7	DQ	2013/07/03 Chronology for Ohm Road Violations—Kelley 40	USACE0001230 – USACE0001235
8			
9	DR	2013/10/10 Email from P. Maniccia to J. Robb—Robb 119	USACE0001310- USACE0001315
10	DS	2013/10/10 Chronology for Ohrn Road Violations—Robb 123	USACE0001576- USACE0001581
11			
12	DT	2013/10/10 Email from M. Kelley to J. Robb	USACE006587- USACE006588
13			
14	DU	2013/10/11 Letter from M. Nepstad (Corps of Engineers) to D. Wampler—Robb 118	USACE0001720- USACE0001721; Enclosures (USACE0001711- USACE0001714)
15			
16	DV	2013/10/11 Email from J. Robb to M. Kelley—Robb 122	USACE0006600- USACE0006601
17			
18	DW	2013/10/21 Corps of Engineers, 12501-SPD Regulatory Program Standard Operating Procedure For Determination Of Mitigation Ratios	USA022282- USA022289
19			
20	DX	2013/11/13 Email from M. Nicoletti to J. Komar—Kelley 13	USACE0002152- USACE0002154
21			
22	DY	2014/04/14 NRCS, Custom Soil Resource Report for Tehama County, California	USA023523- USA024112
23			
24	DZ	2014/04/24 Email from M. Jewell to M. Farrell—Maniaccia 133	USACE0005300- USACE0005302
25	EA	2014/05/05 Conversation Record—Robb 125	USACE0001582- USACE0001583
26			
27	EB	2014/08/18 Declaration of J. Meyer in <i>Pebble Ltd. v. EPA</i>	DUARTE 012845- DUARTE 012889
28	EC	2014/09/26 Email from W. Nutter to S.	USA007624

1		Stewart	
2	ED	2014/10/15 Email from W. Nutter to L. Lee	USA006065
3	EE	2014/10/15 Variable: Channel Morphology	USA006066- USA006067
4	EF	2014/11/18 Email from M. Jewell to P. Maniccia and M. Finan—Jensen 136	USACE0003998- USACE0003999
5	EG	2014/12/11 Email from W. Nutter to A. Doyle re: Photo	USA006348
6	EH	2014/12/11 Email from L. Lee to A. Doyle	USA022529
7	EI	Duarte Farms Map	USA-STAER-00030
8	EJ	2015/01/27 Email from W. Nutter to M. Rains	USA007520
9	EK	2015/03/09 Email from L. Lee to W. Nutter	USA006783
10	EL	2015/03/14 Email from L. Lee to M. Rains	USA007212- USA007214
11	EM	2015/03/21 Email from L. Lee to A. Doyle	USA007490
12	EN	2015/03/22 Email from L. Lee to M. Rains	USA007485
13	EO	2015/03/23 (Draft) Letter from A. Doyle to K. Sanchez	USA007487
14	EP	2015/03/23 (Draft with markup) Letter from A. Doyle to K. Sanchez	USA007491
15	EQ	2015/ 03/23 (Draft with markup) Letter from A. Doyle to K. Sanchez	USA007495
16	ER	2015/03/23 Letter from A. Doyle to K. Sanchez	USA001022
17	ES	2015/3/30 Duarte Nursery, Inc., Historical and Projected Balance Sheet	DUARTE 010926
18	ET	2015/3/30 Photograph of soil	NSE0000263
19	EU	2015/03/31 Email from K. Sanchez to A. Doyle	USA007425
20			
21			
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1	EV	2015/4/2 Video of machine picking up soil	DUARTE 002190
2			
3	EW	2015/4/2 Photograph of machine picking up soil	DUARTE 002200
4			
5	EX	2015/4/2 Photograph of machine picking up soil	DUARTE 002212
6	EY	2015/4/2 Video of machine picking up soil	DUARTE 002229
7	EZ	2015/4/2 Video of machine pushing soil	DUARTE 002230
8			
9	FA	2015/4/2 Photograph of machine tracks in soil	DUARTE 002233
10	FB	2015/4/2 Photograph of hole with water puddle at bottom	DUARTE 002249
11			
12	FC	2015/4/2 Photograph of trench with water puddle at bottom	DUARTE 002256
13	FD	2015/4/2 Photograph of machine track with water puddle at bottom	DUARTE 002259
14			
15	FE	2015/4/2 Photograph of machine track with water puddle at bottom	DUARTE 002260
16	FF	2015/4/2 Video of construction worker giving machine driver instructions	DUARTE 002263
17			
18	FG	2015/4/2 Photograph of trench	DUARTE 002264
19	FH	2015/4/2 Photograph of hole with water puddle at bottom	DUARTE 002265
20	FI	2015/4/2 Video of machine picking up soil	DUARTE 002266
21			
22	FJ	2015/4/2 Video of machine pushing soil	DUARTE 002269
23	FK	2015/4/2 Video of construction workers mapping out digging zones	DUARTE 002271
24	FL	2015/4/3 Video of machine picking up soil	DUARTE 002272
25			
26	FM	2015/4/3 Photograph of dug up soil replaced	DUARTE 002277
27			
28	FN	2015/4/3 Video of machine picking up soil	DUARTE 002278

1	FO	2015/4/3 Photograph of dug up soil replaced	DUARTE 002280
2			
3	FP	2015/4/3 Video of machine digging up soil	DUARTE 002283
4			
5	FQ	2015/4/3 Video of machine digging up soil	DUARTE 002284
6			
7	FR	2015/4/3 Video of machine digging up soil	DUARTE 002285
8			
9	FS	2015/4/3 Video of construction workers checking dig site	DUARTE 002286
10			
11	FT	2015/4/3 Video of machine flattening and moving soil	DUARTE 002287
12			
13	FU	2015/4/3 Video of machine flattening soil	DUARTE 002288
14			
15	FV	2015/4/3 Photograph of dug up soil flattened	DUARTE 002290
16			
17	FW	2015/4/3 Video of machine digging up soil	DUARTE 002292
18			
19	FX	2015/4/3 Video of machine digging trench	DUARTE 002293
20			
21	FY	2015/4/3 Photograph of dug up soil replaced	DUARTE 002294
22			
23	FZ	2015/4/3 Video of machine digging up soil	DUARTE 002296
24			
25	GA	2015/4/3 Video of construction workers measuring out digging location	DUARTE 002300
26			
27	GB	2015/4/3 Video of construction workers measuring out digging location	DUARTE 002302
28			
	GC	2015/4/3 Video of machine digging up soil	DUARTE 002305
	GD	2015/4/3 Video of operator repositioning digging machine	DUARTE 002308
	GE	2015/4/4 Video of machine digging up soil	DUARTE 002314
	GF	2015/4/4 Video of machine digging trench	DUARTE 002315

1	GG	2015/4/4 Video of machine digging up soil	DUARTE 002316
2			
3	GH	2015/4/4 Photograph of dug trench	DUARTE 002318
4	GI	2015/4/4 Photograph of dug up soil flattened	DUARTE 002320
5			
6	GJ	2015/4/4 Video of machine digging trench	DUARTE 002322
7	GK	2015/4/4 Video of machine digging up soil	DUARTE 002324
8			
9	GL	2015/4/4 Photograph of dug up soil flattened	DUARTE 002325
10	GM	2015/4/4 Video of construction worker giving machine driver instructions	DUARTE 002326
11			
12	GN	2015/4/4 Photograph of dug up soil flattened	DUARTE 002327
13	GO	2015/4/4 Video of machine digging up soil	DUARTE 002329
14			
15	GP	2015/4/4 Video of machine digging up soil	DUARTE 002330
16	GQ	2015/4/4 Video of machine digging up soil	DUARTE 002335
17			
18	GR	2015/4/4 Photograph of dug up soil flattened	DUARTE 002338
19	GS	2015/4/4 Video of construction worker giving machine driver instructions	DUARTE 002341
20			
21	GT	2015/4/4 Video of construction workers mapping out digging location	DUARTE 002345
22	GU	2015/4/6 Photograph of dug up soil flattened with tractor tracks	DUARTE 002349
23			
24	GV	2015/4/6 Video of driver backing up digging machine	DUARTE 002351
25	GW	2015/4/6 Photograph of dug up soil flattened with tractor tracks	DUARTE 002354
26			
27	GX	2015/4/6 Video of construction workers discussing digging location	DUARTE 002356
28	GY	2015/4/6 Video of machine digging up	DUARTE 002361

1		soil	
2	GZ	2015/4/6 Photograph of dug up soil flattened with tractor tracks	DUARTE 002364
3			
4	HA	2015/4/6 Video of machine digging up soil	DUARTE 002366
5	HB	2015/4/6 Video of machine digging up soil	DUARTE 002372
6			
7	HC	2015/04/06 Gina McCarthy, Your Input is Shaping the Clean Water Rule	DUARTE 012910- DUARTE 012920
8			
9	HD	2015/4/7 Video of construction worker giving machine driver digging instructions	DUARTE 002375
10			
11	HE	2015/4/7 Photograph of dug up soil flattened with tractor tracks	DUARTE 002378
12			
13	HF	2015/4/7 Video of construction worker giving machine driver digging instructions	DUARTE 002379
14			
15	HG	2015/4/7 Video of machine operator slowly dumping out soil	DUARTE 002381
16			
17	HH	2015/4/7 Video of construction worker giving machine driver digging instructions	DUARTE 002383
18			
19	HI	2015/4/7 Photograph of hole refilled with soil	DUARTE 002384
20			
21	HJ	2015/4/7 Video of construction worker inspecting digging site	DUARTE 002386
22			
23	HK	2015/4/7 Video of construction worker inspecting digging site	DUARTE 002387
24			
25	HL	2015/4/7 Photograph of hole refilled with soil	DUARTE 002388
26			
27	HM	2015/4/8 Photograph of digging areas refilled with soil	DUARTE 002398
28			
	HN	2015/4/8 Photograph of hole refilled with soil	DUARTE 002400
	HO	2015/4/8 Photograph of hole refilled with soil and tractor machine tracks	DUARTE 002402
	HP	2015/4/8 Video of construction worker	DUARTE 002405

1		inspecting digging site	
2	HQ	2015/4/8 Photograph of flattened soil with tractor marks	DUARTE 002406
3			
4	HR	2015/4/8 Video of construction worker inspecting digging site	DUARTE 002410
5	HS	2015/4/8 Video recording machine and automobile tracks	DUARTE 002422
6			
7	HT	2015/4/8 Video of construction worker inspecting digging site	DUARTE 002423
8	HU	2015/04/08 Photograph of Bulldozer (from DOJ Joint Rep. Appendix I)	
9			
10	HV	2015/4/11 Red Bluff NCDC WY51	USA010949
11	HW	2014/10/1-2015/04/11 Gerber and Gerber South Station (Stn IDs 8 and 222) Statistics	USA005960
12			
13	HX	2015/04/13 Email from L. Lee to M. Rains	USA007125- USA007126
14	HY	2015/04/13 Email from W. Nutter to M. Statham	USA039727
15			
16	HZ	2015/04/25 Duarte Nursery Pasture, An Appraisal for Bank of the West (CONFIDENTIAL)—Jim Duarte 230	DUARTE 010810- DUARTE 010877
17			
18	IA	2015/04/27 Duarte Nursery Pasture, An Appraisal for Bank of the West (CONFIDENTIAL)	DUARTE 010810- DUARTE 010881
19			
20	IB	2015/05/01 Letter from P. Prows to A. Doyle	DUARTE 012890- DUARTE 012891
21	IC	2015/5/5 Duarte Farms Map	USA-STAER-00057
22	ID	2015/5/5 Photograph of fence and standing pool	USACE0001342
23			
24	IE	2015/5/5 United States' Responses to Duarte's First Set of Request for Admission	
25			
26	IF	2015/5/11 United States' Responses to Duarte's Second Set of Request for Admission	
27			
28	IG	2015/5/15 Email from G. Broderick to	UNRUH000016

	A. Doyle	
IH	2015/5/19 Corps of Engineers Letter—Kelley 35	USACE0010396 – USACE0010399
II	2015/5/21 Labeled Tractor Photo—Kelley 27; Unruh 75	
IJ	2015/5/21 CDO Letter to Duarte—Munson 36; Kelley 34	USACE0000650- USACE0000652
IK	2015/5/21 Photograph of truck—Kelley 18	USACE0009540
IL	2015/5/21 Photograph of plow—Kelley 19	USACE0009566
IM	2015/5/21 Photograph of bulldozers—Kelley 20	USACE0010391
IN	2015/5/21 Photograph of bulldozer tracks—Kelley 21	USACE0010392
IO	2015/5/21 Photograph of tractor—Kelley 22	USACE0001734
IP	2015/5/21 Photograph of tractor tracks filled with water—Kelley 23	USACE0010393
IQ	2015/5/21 Photograph of land from road—Kelley 24	USA000035
IR	2015/5/21 Photograph of plowed soil—Kelley 25	USA000036
IS	2015/5/21 Photograph of land from road—Kelley 26	USA000037
IT	2015/5/21 Photograph of tractor—Kelley 27	USA000038
IU	2015/5/21 Photograph of plowed soil with puddles—Kelley 28	USA000039
IV	2015/5/22 Duarte Nursery, Inc. Balance Sheets (CONFIDENTIAL)—Stoll 236	DUARTE 001847- DUARTE 001849
IW	2015/5/22 Duarte Nursery Balance Sheets and Statements (CONFIDENTIAL)	DUARTE 001847- DUARTE 001849
IX	2015/06/01 Custom Soil Resource Report for Tehama County, California	DUARTE 007903- DUARTE 007924

1	IY	2015/06/02 Photograph of pool of water	UNRUH000017
2	IZ	2015/06/02 Photograph of East Side water sample	UNRUH000018
3	JA	2015/06/02 Photograph of pool of water	UNRUH000019
4	JB	2015/06/02 Photograph of soil and powerlines	UNRUH000020
5	JC	2015/06/02 Photograph of hole in soil	UNRUH000021
6	JD	2015/06/02 Photograph of East Side water sample	UNRUH000022
7	JE	2015/06/02 Photograph of water sample	UNRUH000023
8	JF	2015/06/02 Photograph of West Side Paskenta water sample	UNRUH000024
9	JG	2015/06/05 Rule 26(a)(2) Disclosure—Unruh 73	
10	JH	2015/06/09 Duarte Farms Map	DUARTE 004176- DUARTE 004176
11	JI	2015/6/23 Photo of Bulldozer	USA022530
12	JJ	2015/6/23 Photo of Bulldozer	USA022531
13	JK	2015/6/23 Photo of Bulldozer	USA022532
14	JL	2015/06/24 Email from J.T. Do to C. Unruh—Unruh 72	
15	JM	2015/7/7 Photograph of tractor—Unruh 75	
16	JN	2015/7/21 Duarte Nursery, Inc. Financial Statements (CONFIDENTIAL)—Stoll 237	DUARTE 010901- DUARTE 010923
17	JO	2015/7/21 Duarte Nursery, Inc. Financial Statements (CONFIDENTIAL)	DUARTE 010901- DUARTE 010923
18	JP	2015/8/25 Capital Projects Plan (CONFIDENTIAL)	DUARTE 010925
19	JQ	2015/8/26 Capital Projects Plan (CONFIDENTIAL)	DUARTE 010924
20	JR	2015/8/28 Duarte Nursery, Inc. Projected Financial Statements	DUARTE 010882- DUARTE 010900

1		(CONFIDENTIAL)	
2	JS	2015/9/24 Photo of meadow with fence	CORXAV000421
3	JT	2015/9/24 Photo of meadow with fence and powerlines	CORXAV000422
4	JU	2015/9/24 Photo of meadow with powerlines	CORXAV000423
5	JV	2015/9/24 Photo of meadow with powerlines	CORXAV000424
6	JW	2015/9/24 Photo of pool with powerlines	CORXAV000425
7	JX	2015/10/1 Duarte Nursery, Inc. Balance Sheet (CONFIDENTIAL)—Stoll 235	
8	JY	2015/10/1 Duarte Nursery, Inc. Historical and Projected Balance Sheets (CONFIDENTIAL)—Stoll 239	
9	JZ	2015/10/1 Duarte Nursery, Inc. Projected Financial Statements (CONFIDENTIAL)—Stoll 240	DUARTE 010882- DUARTE 010900
10	KA	2015/10/1 United States' Responses to Duarte's Third Set of Request for Admission	
11	KB	2016/01/12 Letter from W. de Bruyn (Bank of the West) to John Duarte re: Obligations Owed by Duarte Nursery, Inc. (CONFIDENTIAL)	DUARTE 011084- DUARTE 011085
12	KC	2016/2/11 Video of EPA Administrator Gina McCarthy testifying at a hearing before the House Agricultural Committee	DUARTE 011983
13	KD	2016/2/16 Distribution of Sales (CONFIDENTIAL)	DUARTE 011974
14	KE	2016/03 Duarte Nursery, Inc. Balance Sheets (CONFIDENTIAL)	DUARTE 011091
15	KF	2016/03 Duarte Nursery, Inc. Balance Sheets Profit and Loss Statement (CONFIDENTIAL)	DUARTE 011092
16	KG	2016/03/03 Duarte Nursery Pasture, An Appraisal for Bank of the West (CONFIDENTIAL)	DUARTE 011133- DUARTE 011210
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1	KH	2016/3/4 Duarte Nursery Inc., Property Information (CONFIDENTIAL)	DUARTE 011982
2			
3	KI	2016/03/04 Letter from W. de Bruyn (Bank of the West) to John Duarte re: Obligations Owed by Duarte Nursery, Inc. (CONFIDENTIAL)	DUARTE 011086- DUARTE 011088
4			
5	KJ	2016/03/07 Letter from T. Reimers to John Duarte (CONFIDENTIAL)	DUARTE 011132
6			
7	KK	2016/5/2 Booked Sales vs Actual Comparison (CONFIDENTIAL)	DUARTE 011981
8			
9	KL	2016/06/13 Letter from W. de Bruyn (Bank of the West) to John Duarte re: Obligations Owed by Duarte Nursery, Inc. (CONFIDENTIAL)	DUARTE 011089- DUARTE 011090
10			
11	KM	2016/7/19 Historical and Projected Statement of Income (CONFIDENTIAL)	DUARTE 011980
12			
13	KN	2016/7/19 Profit and Loss Statement (CONFIDENTIAL)	DUARTE 011976
14			
15	KO	2016/07/22 Balance Sheets (CONFIDENTIAL)	DUARTE 011979
16			
17	KP	2016/7/22 Profit and Loss Statement (CONFIDENTIAL)	DUARTE 011977
18			
19	KQ	2016/7/25 Balance Sheets (CONFIDENTIAL)	DUARTE 011978
20			
21	KR	2016/7/25 Report of Inventory Subject to Security Interest (CONFIDENTIAL)	DUARTE 011975
22			
23	KS	2016/8/1 Video of Interview re: Soil Composition and Drainage	USA084281
24			
25	KT	John and Alexandra Duarte - Personal Financial Statements (CONFIDENTIAL)	DUARTE 013062- DUARTE 013064
26			
27	KU	2013/06/07 Jurisdictional Determinations and Delineating Waters of the United States, including Wetlands	DUARTE 013065- DUARTE 013178
28			
	KV	Second Supplemental Report of Diane S. Moore	
	KW	Second Supplemental Report of Thomas Skordal	

1			
2	KX	2017/1/18 EPA Administrator Pruitt's testimony to Senate Environment and Public Works	DUARTE 013676
3			
4	KY	2016/12 Duarte Nursery, Inc. Balance sheet for period ending December 2016 (CONFIDENTIAL)	DUARTE 013296
5			
6	KZ	2017/3 Duarte Nursery Profit & Loss Statement for period ending March 2017 (CONFIDENTIAL)	DUARTE 013299
7			
8	LA	2017/3 Duarte Nursery Profit & Loss Statement for period ending March 2017 (CONFIDENTIAL)	DUARTE 013297
9			
10	LB	2017/3 Duarte Nursery, Inc. Balance sheet for period ending March 2017 (CONFIDENTIAL)	DUARTE 013298
11			
12	LC	2016/11/01 Third Amendment to Forbearance Agreement (CONFIDENTIAL)	DUARTE 013300- DUARTE 013311
13			
14	LD	2017/02/21 Collateral Release And Reaffirmation Agreement (CONFIDENTIAL)	DUARTE 013312- DUARTE 013321
15			
16	LE	2017/02/22 Chicago Title Company, Seller Final Closing Statement Duarte 50% (CONFIDENTIAL)	DUARTE 013322- DUARTE 013323
17			
18	LF	2017/02/22 Chicago Title Company, Seller Final Closing Statement Master Statement (CONFIDENTIAL)	DUARTE 013324- DUARTE 013325
19			
20	LM	2017/03/17 Fourth Amendment to Forbearance Agreement (CONFIDENTIAL)	DUARTE 013326- DUARTE 013338
21			
22	LN	2016/09/07 Duarte Nursery, Inc. Financial Statements December 31, 2015 and 2014 (CONFIDENTIAL)	DUARTE 013339- DUARTE 013362
23			
24	LO	2016/09/12 Duarte Nursey, Inc. 2015 S Corporation tax return (CONFIDENTIAL)	DUARTE 013363- DUARTE 013673
25			
26	LP	2015/12/31 John S. and Alexandra Duarte Statement of Financial Condition (CONFIDENTIAL)	DUARTE 013674- DUARTE 013675
27			
28	LQ	2017/5/11 Photo of Assessment Location 9	DUARTE 013230

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LR	2017/5/11 Photo of Assessment Location 11	DUARTE 013248
LS	2017/5/11 Photo of Assessment Location 19	DUARTE 013260
LT	2017/5/25 Letter from House Agricultural and Judiciary Committees to AG Sessions and EPA Administrator Pruitt	DUARTE 013677- DUARTE 013678

Exhibit D—Defendants' Exhibit List

Exhibit ID	DESCRIPTION	DATE	BATES NO.
1	Complaint by Duarte (ECF No. 1)	10-Oct-	
2	Answer and Counterclaim by United States (ECF No. 28)	7-May-	
3	Answer to Counterclaim by Duarte (ECF No. 33)	23-Jun-	
4	First Supplemental Complaint by Duarte (ECF No. 41)	20-Aug-	
5	Second Amended Complaint by Duarte (ECF No. 90)	3-Sep-	
6	33 C.F.R. 332		
7	Declaration of Len Lindstrand of North State Resources (ECF No. 126)	17-Jul-	
8	Corps Verified Delineation For The 1,900 Acre Property in Tehama County, California	1-Oct-94	USA-NSR 0001-146
9	Corps Verified Delineation For The 1,900 Acre Property in Tehama County, California (excerpt) (ECF No. 126-1) (Dep. Ex. 32a)	1-Oct-94	USA-NSR 01,03,05,07,09,11, 13, 15,17,19, 21;122; 124; 129-31
10	Declaration of James Stevens of NorthStar (ECF No. 131)	16-Jul-15	
11	NorthStar Letter to Corps about Property	20-Dec-	NSE 5666-67
12	Letter to Jm. Duarte from J. Stevens, of NorthStar Environmental (Dep. Ex. 55 and	23-May-	NSE 1803-04 NSE 5677-78
13	NorthStar Environmental Scope of Work, Signed by Jm. Duarte (Dep. Ex. 215)	1-May-	NSE 5685-91
14	NorthStar Additional Scope of Work, Signed by Jm. Duarte, (Dep. Ex. 215)	14-May-	NSE 2155-56
15	Letter Withdrawing Certification Request from NRCS (Dep. Ex. 216)	10-Apr-	NSE 6588/ USACE 2036
16	Letter to B. Munson from NorthStar, RE: Draft Delineation of Waters of the U.S. For the Rawson Road North and South Properties (Dep. Ex. 52)	18-Jul-12	NSE 4731
17	Draft Delineation of Waters of the United States, Rawson Road 1950 (without attachments) (ECF No. 131-1) (Dep. Ex. 51a)	Feb-12	Duarte 17-34/ NSE 1344-61
18	Draft Delineation of Waters of the United States, Rawson Road 1950 (Dep. Ex. 51)	Feb-12	Duarte 017-463/ NSE 1344-1791, 6589
19	Draft Delineation of Waters of the United States, Rawson Road South (ECF No. 131-4)	Jul-12	Duarte 549-602/ NSE 4769, 4978- 5031
20	Draft Delineation of Waters of the United States, Rawson Road South (with data sheets)	Jul-12	Duarte 549-822/ NSE 4769, 4978- 5031, 5346-5565

1	21	T. Cheney Emails (Dep. Ex. 43)		Cheney 149
2				
3	22	T. Cheney Emails (Dep. Ex. 44)		Cheney 151-52
4				
5	23	T. Cheney Email (Dep. Ex. 45)		Cheney 20
6				
7	24	T. Cheney Emails (Dep. Ex. 54)		Cheney 128-36
8				
9	25	Email from Jack LaPant to John Duarte (Dep. Ex. 212)	11-Feb-12	Cheney 42-56
10				
11	26	Ripping Invoice to B. Munson from C.Unruh (ECF No. 117-4) (Dep. Ex. 47)	12-Dec-12	Duarte 546
12	27	Email from John Duarte to Jim Duarte (Dep. Ex. 223)	22-Aug-12	Duarte 2023-24
13				
14	28	USACE Conversation Record Between M. Kelley and Jn. Duarte (Dep. Ex. 17)	11-Dec-12	USA 74
15				
16	29	USACE Investigative Report by M. Kelley (Dep. Ex. 30)	19-Feb-13	USA 40-56
17				
18	30	Letter from Duarte counsel R. Lucas, to USACE M. Kelley (Dep. Ex. 36)	21-Mar-13	USACE 664-66
19	31	Sullivan Drilling Receipt	16-Mar-12	Duarte 1455
20				
21				
22	32	Photos of Duarte Property by M. Kelley	6-Dec-12	USACE 9528-33,35-38, 40, 43, 44
23	33	Photos of Duarte Property by M. Kelley	17-Dec-12	USACE 9568-74
24				
25	34	Photos of Duarte Property by M. Kelley	28-Nov-12, 7-Nov-13	USACE 1746-63, USACE 9566-67
26				
27	35	Links from Duarte's Response to Request for Production No. 17		
28				

1	36	"Shoot First, Ask Questions Later" Video, Pacific Legal Foundation	10-Oct-13	USA 84588
2				
3	37	Duarte Interview with Fox News	19-Apr-14	USA 84589
4				
5	38	Duarte Interview with Farm Bureau	18-Mar-16	USA 84576-77
6				
7	39	"A land-use case that's enough to furrow a farmer's brow," Los Angeles Times,		
8				
9	40	"Regulatory showdown in Calif. wheat field," http://www.eenews.net/stories/1060031808	4-Feb-16	USA 84578-83
10				
11	41	"Plowing Is Pollution," http://wineindustryinsight.com/?p=71789	13-Jun-16	USA 84593-600
12				
13	42	"Calif. farmer girds for Supreme Court fight," http://www.eenews.net/greenwire/stories/1060040294/print (ECF No. 213-1)	14-Jul-16	USA 84588
14	43	US Expert Team Report	5-Jun-15	
15				
16	44	US Expert Team Report, Appendix A: Wetland Determination Data Forms, Part 1. Reference Area	5-Jun-15	
17				
18	45	US Expert Team Report, Appendix A: Wetland Determination Data Forms, Part 2. Duarte Site	5-Jun-15	
19				
20	46	US Expert Team Report, Appendix B: Reference Area Plot by Plot Descriptions	5-Jun-15	
21				
22	47	US Expert Team Report, Appendix C: Duarte Site Plot by Plot Descriptions	5-Jun-15	
23				
24	48	US Expert Team Report, Appendix D: HGM Guidebook and Variable Scoring Sheets, Part 1. Guidebook	5-Jun-15	
25				
26	49	US Expert Team Report, Appendix E: Vernal Pool Fairy & Tadpole Shrimp Reports	5-Jun-15	
27				
28	50	Vernal Pool Fairy & Tadpole Shrimp Reports Referenced in Declaration of Len Lindstrand		NSE 6018-20

1	51	US Expert Team Report, Appendix F: Selected Photos, Part 1.	5-Jun-15	
2				
3	52	US Expert Team Report, Appendix F: Selected Photos, Part 2.	5-Jun-15	
4				
5	53	US Expert Team Report, Appendix G: DOJ Expert Team Qualifications, Wade Nutter	5-Jun-15	
6				
7	54	US Expert Team Report, Appendix G: DOJ Expert Team Qualifications, Lyndon Lee	5-Jun-15	
8				
9	55	US Expert Team Report, Appendix G: DOJ Expert Team Qualifications, Mark Rains	5-Jun-15	
10				
11	56	US Expert Team Report, Appendix G: DOJ Expert Team Qualifications, Richard Lis	5-Jun-15	
12				
13	57	US Expert Team Report, Appendix G: DOJ Expert Team Qualifications, Scott Stewart	5-Jun-15	
14				
15	58	US Expert Team Report, Appendix H: Plant Species List Observed at the Duarte Site	5-Jun-15	
16				
17	59	US Expert Team Report, Appendix K: DOJ Expert Team Delineation of the Duarte Site (Pocket with large format map) Figure V-33a	5-Jun-15	
18				
19	60	US Expert Team Report, Appendix K: DOJ Expert Team Delineation of the Duarte Site (Pocket with large format map) Figure V-33b	5-Jun-15	
20				
21	61	US Expert Team Report, Appendix L: DOJ Expert Team Assessment of Impacts to the Duarte Site, Figure V-47	5-Jun-15	
22				
23	62	Standard Operating Procedure For Determination of Mitigation Ratios, U.S. Army Corps of Engineers	20-Feb-12	USA 43833-75
24				
25	63	Standard Operating Procedure For Determination of Mitigation Ratios, U.S. Army Corps of Engineers	21-Oct-13	USA 22282-89
26				
27	64	Hautier, Y. et al., 2015. Science 349: 336-340	17-Apr-15	USA 46349 -54
28				
	65	Hawkes, C.V., J. Belnap, C. D'Antonio, and M.K. Firestone. 2005. Arbuscular mycorrhizal assemblages in native plant roots change in the presence of invasive exotic		

1		Hewlett, J.D. and W.L. Nutter. 1970. The varying source area of streamflow from upland basins.Proceedings of the Symposium on Interdisciplinary Aspects of		
2	66			
3		Isbell, F., P.B. Reich, D. Tilman, S.E. Hobbie, S. Polasky, and		
4	67	S. Binder. 2013. Nutrient enrichment, biodiversity loss,		
5		Rains, M.C., R.A. Dahlgren, R.J. Williamson, G.E. Fogg, and		
6	68	T. Harter. 2008. Geological control of physical and		
7		Schoenfelder, A.C., J.G. Bishop, H.M. Martinson, and		
8	69	W.F. Fagan. 2010. Resource use efficiency and community effects of invasive <i>Hypochaeris radicata</i> (Asteraceae)		
9		Lorig, Rebecca C. , Marchetti, Michael P. & Kopp, Gabriel (2012): Spatial and temporal distribution of native fish larvae in seasonal and perennial tributaries of the		
10	70			
11		Nutter, W.L., The Role of Soil Water in the Hydrologic Behavior of Upland Basins (1973)		USA 84601-7
12	71			
13		U.S. Fish & Wildlife Service, Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon (2005) https://www.fws.gov/sacramento/ES/Recovery-		
14	72			
15		Vannote, R.L., G.W., Minshall, K.W. Cummins, J.R. Sedell, and C.E. Cushing. 1980. The River Continues Concept. Can. J. Fish. Aquat. Sci. 37: 130-37		USA 11002-9
16	73			
17		House, Gregory A., Agricultural Study of the Duarte Property	5-Jun-15	
18	74			
19		House, Gregory A. Expert Report, Valuation of Duarte Property (with revision on 20-Jul-15)	20-Jul-15	
20	75			
21		U.S. Expert Team Rebuttal Report	23-Jul-15	
22	76			
23		Environmental Laboratory. (1987). "Corps of Engineers Wetlands Delineation Manual," Technical Report Y-87-1, U.S. Army Engineer Waterways Experiment		
24	77			
25		United States Department of Agriculture, Natural Resources Conservation Service. 2010. Field Indicators of Hydric Soils in the United States, Version 7.0. L.M.		
26	78			
27		Lichvar, Robert W. and McColley, Shawn M. August 2008. A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of		
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		Helley EJ, Harwood DS (1985) Geologic Map of Late Cenozoic Deposits of the Sacramento Valley and Northern Sierra Foothills, California. U.S. Geological Survey,		
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1	81	Jennings CW, with modifications by Gutierrez C, Bryant W, Saucedo G, Wills C (2010)Geologic map of California: California Geological Survey, Geologic Data Map No.		
2				
3	82	Skordal TM, Clairain Jr EJ, Haley NA, Roukey KJ (2006) A Guidebook for Applying a Modified Hydrogeomorphic Approach to Assessing Wetlands Functions for the UC		
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5	83	Schoenberger, P.J., D.A. Wysocki, E.C. Benhamy and Soil Survey Staff. 2012. Field Book for Describing and Sampling Soils, Version 3.0. NRCS, National Soil Survey		
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7	84	Tehama County Resource Conservation District (2008) Tehama West Watershed Management Plan. Tehama County Resource Conservation District, Red Bluff,		
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9	85	House, Gregory A. Rebuttal Report	23-Jul-15	
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11	86	Meyer, Joan K. Rebuttal Report, References, Adler, Steve, "Couple stakes their claim on grapes instead of gold," California Bountiful, Jan/Feb 2011.	Jan/Feb. 2011	USA 84570-72
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13	87	Meyer, Joan K. Rebuttal Report, References, Finney, Suzanne, "Where Water Runs Uphill," Range Magazine, Winter 2013	Winter 2013	USA 63807-18
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15		Meyer, Joan K. Rebuttal Report, References, U.S. Business Executive, Case Studies, "Duarte Nursery, Inc.: Quality, Friendship and Service," Accessed February 23, 2015 at	February 23,	
16	89	Any document referenced by or attached to any expert report disclosed pursuant to Fed. R. Civ. P. 26.		
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18	90	United States' Discovery Documents listed in Section XII of the Joint Pre-Trial Statement		
19				
20	91	Duarte Nursery, Inc., Balance Sheets, Period Ending: December 2014 (Stoll Dep. Ex. 236)		Duarte 1847-49
21				
22	92	Duarte Nursery, Inc., Historical Balance Sheets, 2009-2011 Historical and 2012-2016 Projected (Dep Ex. 239)		Duarte 10926
23				
24	93	Duarte Nursery, Inc., Financial Statements, December 31, 2014 and 2013 (Stoll Dep. Ex. 237)		Duarte 10901-23
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26	94	Duarte Projected Financial Statements For the Two Quarters and Year Ending December 31, 2012 and For the Four Quarters and Year Ending December 31, 2013Stoll,		
27				
28	95	John and Alexandra Duarte 2013 U.S. Individual Tax Return	2013	Duarte 1815-46

1	96	Duarte Nursery, Inc. Shareholder Meeting Minutes	12-Dec-13	Duarte 11920-26
2				
3	97	Duarte Nursery, Inc., Profit & Loss Statement, Period Ending: December 2016	2016	Duarte 11976
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5	98	Duarte Nursery, Inc., Profit & Loss Statement, Period Ending: June 2016	Jun-16	Duarte 11977
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7	99	Duarte Nursery, Inc., Balance Sheets, Period Ending: December 2015	2016	Duarte 11978
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9	100	Duarte Nursery, Inc., Balance Sheets, Period Ending: June 2016	Jun-16	Duarte 11979
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11	101	Duarte Nursery, Inc., Historical and Projected Statement of Income	2016	Duarte 11980
12	102	Meyer, Joan K. Expert Report	17-Jul-15	
13				
14	103	EXHIBIT 2: Land Valuation Estimates From House Report	17-Jul-15	
15				
16	104	EXHIBIT 3: Land Conversion Costs	17-Jul-15	
17				
18	105	EXHIBIT 4: Estimated Economic Benefit Realized By Duarte	17-Jul-15	
19				
20	106	EXHIBIT 8: John and Alexandra Duarte Georgetown Real Estate	17-Jul-15	
21				
22	107	EXHIBIT 9: John and Alexandra Duarte 2013 Federal Income Tax Return	17-Jul-15	
23				
24	108	Meyer, Joan K. Expert Report Appendix A: Curriculum Vitae	17-Jul-15	
25				
26	109	Meyer, Joan K. Expert Report, Appendix C: Economic Benefit Model	17-Jul-15	
27				
28	110	Meyer, Joan K. Expert Report, Appendix E: Duarte Nursery & Related Parties - Public Search of Properties & Taxable Assets	17-Jul-15	

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111	Meyer, Joan K. Rebuttal Report	25-Sep-15	
112	EXHIBIT 1. Timeline of Key Events	25-Sep-15	
113	EXHIBIT 5: Duarte Nursery, Inc., Balance Sheets	25-Sep-15	
114	EXHIBIT 6: Duarte Nursery, Inc., Statements of Income	25-Sep-15	
115	EXHIBIT 10: Duarte Nursery, Inc., Statements of Cash Flows	25-Sep-15	
116	Meyer, Joan K. Rebuttal Report, Updated Appendix B: Documents Relied Upon	25-Sep-15	
117	Meyer, Joan K. Rebuttal Report, Updated Appendix D: Summary of Information Requests By The United States Related To Ability To Pay And Responses Provided By		