

1 JEFFREY H. WOOD
Acting Assistant Attorney General
2 JONATHAN D. BRIGHTBILL
Deputy Assistant Attorney General
3 ANDREW J. DOYLE
JOHN THOMAS H. DO
4 ANDREW S. COGHLAN
United States Department of Justice
5 Environmental and Natural Resources Division
6 P.O. Box 7611
Washington, DC 20044
7 Telephone: (202) 514-4427 (Doyle)

8 McGREGOR W. SCOTT
United States Attorney
9 GREGORY T. BRODERICK
Assistant United States Attorney
10 501 I Street, Suite 10-100
Sacramento, CA 95814
11 Telephone: (916) 554-2780

12 *Attorneys for the United States*

13 DOWNEY BRAND LLP
14 ROBERT P. SORAN
ASHLEY M. BOULTON
15 621 Capitol Mall, 18th Floor
Sacramento, CA 95814-4731
16 Telephone: (916) 444-1000

17 *Attorneys for Goose Pond Defendants*

18
19 UNITED STATES DISTRICT COURT
20 EASTERN DISTRICT OF CALIFORNIA

21 UNITED STATES OF AMERICA,
22 Plaintiff,

23 v.

24 ROGER J. LAPANT, JR., J&J FARMS,
GOOSE POND AG, INC. and
25 FARMLAND MANAGEMENT
SERVICES,

26 Defendants.
27

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

**CONSENT DECREE BETWEEN THE
UNITED STATES AND GOOSE POND
DEFENDANTS**

1 WHEREAS Plaintiff United States of America has filed a Complaint in this action
2 alleging that Defendants Roger J. LaPant, Jr., J&J Farms, Goose Pond Ag, Inc., and Farmland
3 Management Services violated and remain in violation of the Clean Water Act (“CWA”) section
4 301(a), 33 U.S.C. § 1311(a);

5 WHEREAS the Complaint alleges, in its first count, that Roger J. LaPant, Jr.’s and J&J
6 Farms’ CWA violations resulted from operations occurring between approximately July, 2011,
7 and March, 2012, on real property (or “Site”) near Ohm Road, Paskenta Road, and the main stem
8 of Coyote Creek in Tehama County, California;

9 WHEREAS the Complaint alleges, in its second count, that Goose Pond Ag, Inc.’s and
10 Farmland Management Services’ (“Goose Pond Defendants”) CWA violations resulted from
11 operations beginning approximately November, 2012, on the Site;

12 WHEREAS the Complaint alleges, inter alia, that Goose Pond Defendants’ operations
13 resulted in the unauthorized discharge of dredged or fill material into “waters of the United
14 States” that are hydrologically and ecologically connected to Coyote Creek and the Sacramento
15 River;

16 WHEREAS the Complaint requests that the Court award injunctive relief and civil
17 penalties;

18 WHEREAS unless otherwise expressly admitted in Goose Pond Defendants’ Answer to
19 the United States’ Complaint, Goose Pond Defendants do not admit any facts as alleged in the
20 Complaint, and Goose Pond Defendants deny any and all liability to the United States arising out
21 of the transactions or occurrences alleged in the Complaint, but Goose Pond Defendants agree to
22 be bound by this Consent Decree to avoid the time, expense, and uncertainty of further litigation;

23 WHEREAS the Parties recognize that this Consent Decree has been negotiated by the
24 Parties in good faith and will avoid further litigation among the Parties, and the Court by
25 entering this Consent Decree finds that it is fair, reasonable, and in the public interest; and

26 THEREFORE, before the taking of any trial testimony, and without the adjudication or
27 admission of any issue of fact or law except as provided in Section I of this Consent Decree, and
28

1 with the consent of the Parties by their authorized representatives, it is hereby ORDERED,
2 ADJUDGED and DECREED as follows:

3 I. JURISDICTION, VENUE, AND SUFFICIENCY OF COMPLAINT

4 1. This Court has jurisdiction over the subject matter of the Complaint pursuant to at
5 least 28 U.S.C. §§ 1331 and 1345.

6 2. Venue is proper in the Eastern District of California pursuant to CWA section
7 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c).

8 3. For purposes of this Consent Decree, including any action to enforce this Consent
9 Decree, Goose Pond Defendants consent to personal jurisdiction and venue.

10 4. For purposes of this Consent Decree, including any action to enforce this Consent
11 Decree, the Parties agree (without Goose Pond Defendants admitting any liability), and the Court
12 finds, that the Complaint states claims upon which relief can be granted pursuant to CWA
13 sections 301(a) and 309(d), 33 U.S.C. §§ 1311(a) and 1319(d).

14 II. APPLICABILITY

15 5. This Consent Decree applies to and is binding upon the United States, and it also
16 applies to and is binding upon Goose Pond Defendants and any successors, assigns, or other
17 persons otherwise bound by law whether or not such person has notice of this Consent Decree.

18 6. No transfer of ownership or control of the Site, of any portion of the Site, or of
19 any less-than-fee-simple interest in the Site or a portion thereof (such as an easement or lease)
20 shall relieve Goose Pond Defendants of any of their obligations in this Consent Decree. As a
21 condition of any such transfer, Goose Pond Defendants shall reserve all rights necessary for
22 Goose Pond Defendants to comply with this Consent Decree. At the time of such transfer,
23 Goose Pond Defendants shall provide a copy of this Consent Decree to the transferee, shall
24 obtain the transferee's acknowledgement thereof, and shall provide written notice of the transfer
25 and a copy of such acknowledgement to the United States at the addresses specified in Section
26 XI of this Consent Decree. Any attempted or actual transfer of any interest in the Site without
27 complying with this Paragraph constitutes a violation of this Consent Decree. Currently existing
28 third-party easements on the Site shall not be considered a "transfer of ownership or control of

1 the Site, or any portion of the Site, or of any less-than-fee-simple interest in the Site or a portion
2 thereof” within the meaning of this Paragraph, nor shall a third-party’s exercise of its rights
3 under such currently existing easement result in a breach or default of this Consent Decree by
4 Goose Pond Defendants or their successors and assigns (provided that Goose Pond Defendants
5 or their successors and assigns lack relevant control over the third party’s exercise of such rights
6 according to the terms of such currently existing easement); within sixty (60) Days of the
7 Effective Date of this Consent Decree, Goose Pond Defendants shall provide copies of such
8 currently existing third-party easements to the United States at the addresses specified in Section
9 XI of this Consent Decree.

10 7. Goose Pond Defendants shall provide a copy of this Consent Decree to all officers
11 and agents whose duties might reasonably include compliance with any provision of this Consent
12 Decree, including any contractor or consultant retained to perform remedial work or monitoring
13 and maintenance required under this Consent Decree. To the extent that Goose Pond Defendants
14 retain any contractor or consultant to perform remedial work, monitoring and maintenance, or
15 any other obligation required under this Consent Decree, Goose Pond Defendants shall condition
16 any such contract upon performance that conforms to the terms of this Consent Decree.

17 8. In any action to enforce this Consent Decree, Goose Pond Defendants shall not
18 raise as a defense the failure by any of their officers, directors, employees, agents, contractors, or
19 consultants to take any actions necessary to comply with this Consent Decree.

20 III. DEFINITIONS

21 9. Terms used in this Consent Decree that are defined in the CWA or in regulations
22 promulgated pursuant to the CWA shall, unless otherwise provided in this Consent Decree, have
23 the meanings assigned to them in the CWA or such regulations that were in effect immediately
24 prior to the amendments provided in the Clean Water Rule: Definition of “Waters of the United
25 States,” 80 Fed. Reg. 37,054 (June 29, 2015).

26 10. Whenever the terms set forth below are used in this Consent Decree, the
27 following definitions shall apply:
28

1 “Balance of the Site” shall mean all areas of the Site except for (i.e., exclusive of) the
2 Conservation Reserve.

3 “Complaint” shall mean the complaint filed by the United States in this action on June
4 30, 2016.

5 “Conservation Reserve” shall mean an area of approximately 616 acres within the Site
6 that is shown and outlined in green on Appendix 2 attached hereto; the Conservation Reserve is
7 generally located on the eastern part of the Site as well as the entire length of Coyote Creek’s
8 main stem that traverses the Site’s southern boundary, including a buffer of one hundred fifty
9 (150) feet north of the northern ordinary high water mark of Coyote Creek’s main stem.

10 “Corps” shall mean the United States Army Corps of Engineers and any of its successor
11 departments or agencies. Unless the context shows otherwise, all references to the United States
12 herein shall include the Corps.

13 “Day,” whether or not capitalized, shall mean a calendar day unless expressly stated to be
14 a business day. In computing any period of time under this Consent Decree, where the last day
15 would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of
16 business of the next business day.

17 “Effective Date” shall mean the date on which this Consent Decree is entered by the
18 Court.

19 “Farming activities” shall mean activities that are appropriate to prepare, maintain, and
20 operate areas for the production of walnuts or other irrigated food crops.

21 “Goose Pond Defendants” shall mean Defendants Goose Pond Ag, Inc. and Farmland
22 Management Services.

23 “Parties” shall mean the United States and Goose Pond Defendants.

24 “Remedial Plan” shall mean the remedial work, monitoring, adaptive management, and
25 maintenance plan prepared and implemented by Goose Pond Defendants, with approval of the
26 Corps, in specified areas of the Site as set forth in Paragraphs 26 and 27 of this Consent Decree
27 and appended to this Consent Decree as Appendix 3.
28

1 “Site” shall mean the real property, currently owned or controlled by Goose Pond
2 Defendants, comprising approximately one thousand five hundred five (1,505) acres and located
3 in rural Tehama County, California, just south of the city of Red Bluff and due west of Interstate
4 Five (5). The Site is generally bounded on the north by Ohm Road (which may also be known as
5 Rawson Avenue), on the south by the main stem of Coyote Creek, on the west by Paskenta Road,
6 and on the east by Rawson Road. The Site is currently associated with Assessor Parcel Numbers
7 037-020-01, -03, -04, -023, -024, -025, and -026. The Site is labeled as such (and “Tehama
8 North Site” in the legend) on Appendix 1 attached hereto.

9 All references to “depressions” shall mean “wetland vernal pools,” “wetland
10 depressions,” or “pools” and vice-versa; these terms are interchangeable herein.

11 All references to “swales” shall mean “wetland swales” and vice-versa; these terms are
12 interchangeable herein.

13 All references to “wetlands” shall mean “swales” and “depressions.”

14 All references to “drainages” shall mean “drainage feature,” “streams,” or “stream” and
15 vice-versa; these terms are interchangeable herein.

16 All references to “aquatic features” shall mean “depressions,” “swales,” and “drainages.”

17 **IV. SCOPE, EFFECT, AND RESERVATION OF RIGHTS**

18 11. This Consent Decree resolves and shall constitute a complete and final settlement
19 of the civil claims of the United States alleged in the second count of the Complaint, subject to
20 Goose Pond Defendants’ compliance with this Consent Decree. The United States covenants not
21 to sue or take administrative action against Goose Pond Defendants and their respective officers,
22 directors, agents, and affiliates for the civil claims of the United States alleged in the second
23 count of the Complaint, subject to Goose Pond Defendants’ compliance with this Consent
24 Decree.

25 12. It is the express purpose of the Parties in entering this Consent Decree to further
26 the objectives set forth in CWA section 101, 33 U.S.C. § 1251.

27 13. Goose Pond Defendants’ obligations under this Consent Decree are joint and
28 several.

1 14. The Parties acknowledge that, as of the Effective Date of this Consent Decree,
2 Nationwide Permit 32, 82 Fed. Reg. 1,992 (Jan. 6, 2017), provides CWA section 404
3 authorization, subject to the conditions provided in Nationwide Permit 32 and this Consent
4 Decree, for any discharge of dredged or fill material that is necessary for Goose Pond Defendants
5 to fulfill the remedial requirements set forth in Paragraphs 26 and 27 of this Consent Decree.

6 15. This Consent Decree is not and shall not be interpreted to be a permit, or
7 modification of any permit, under any federal, state, or local laws or regulations. Goose Pond
8 Defendants are responsible for compliance with all applicable federal, state, and local laws,
9 regulations, and permits; and Goose Pond Defendants' compliance with this Consent Decree
10 shall be no defense to any action commenced pursuant to any such laws, regulations, or permits,
11 except as set forth in this Consent Decree. The United States does not warrant that Goose Pond
12 Defendants' compliance with any aspect of this Consent Decree will result in compliance with
13 any provision of federal, state, or local laws, regulations, or permits, except as set forth in
14 Paragraph 14 of this Consent Decree. Further, in any future CWA permit application, Goose
15 Pond Defendants may not rely upon (a) the on-Site remediation work or preservation required
16 under this Consent Decree, as part of any avoidance and minimization measures demonstration;
17 or (b) the off-Site compensatory mitigation required under this Consent Decree, as part of any
18 compensatory mitigation proposal.

19 16. Except as provided in Paragraph 14, nothing in this Consent Decree shall limit the
20 ability of the Corps to issue, modify, suspend, revoke, or deny any individual permit or any
21 nationwide or regional general permit, nor shall this Consent Decree limit the United States
22 Environmental Protection Agency's ability to exercise its authority pursuant to CWA section
23 404(c), 33 U.S.C. § 1344(c).

24 17. This Consent Decree in no way affects the rights of the United States or Goose
25 Pond Defendants as against Defendant Roger J. LaPant, Jr., Defendant J&J Farms, or any other
26 person not a party to this Consent Decree, except as expressly stated in the second sentence of
27 Paragraph 11 of this Consent Decree.
28

1 18. The United States reserves all legal and equitable remedies available to enforce
2 this Consent Decree and applicable law, except as expressly stated in Paragraph 11 of this
3 Consent Decree. This Consent Decree shall not be construed to limit the rights of the United
4 States to obtain remedies under the CWA or its implementing regulations, or under other federal
5 laws, regulations, or permit conditions, except as expressly specified in Paragraph 11 of this
6 Consent Decree.

7 (Paragraphs 19 through 21 are intentionally omitted.)

8 V. REMEDIAL PROVISIONS

9 A. CIVIL PENALTY

10 22. Within thirty (30) Days of the Effective Date of this Consent Decree, Goose Pond
11 Defendants shall pay a civil penalty to the United States in the amount of one million seven
12 hundred fifty thousand dollars (\$1,750,000).

13 23. Payment to the United States shall be made in accordance with written
14 instructions to be provided to Goose Pond Defendants by the United States Department of Justice
15 following entry of this Consent Decree. Promptly upon payment, Goose Pond Defendants shall
16 provide written notice thereof to the United States at the addresses specified in Section XI of this
17 Consent Decree.

18 24. Goose Pond Defendants shall not deduct any penalties paid under this Consent
19 Decree pursuant to this Section or Section X in calculating any federal income tax owed.

20 B. INJUNCTIVE RELIEF

21 25. Permanent Preservation of the Conservation Reserve. Except as necessary to
22 fulfill the remedial requirements of Paragraphs 26 and 27 of this Consent Decree, Goose Pond
23 Defendants and their agents, successors, and assigns and all persons having actual or
24 constructive notice of this Consent Decree are permanently enjoined from disturbing the
25 Conservation Reserve by any dredging, filling, land clearing, tillage, farming activities,
26 construction work, earthmoving activities, or any pollutant discharge. (The foregoing list is but
27 examples of prohibited disturbance, and these examples may be overlapping in their meaning.)
28

1 Nevertheless, Goose Pond Defendants and their agents, successors, and assigns may use the
2 Conservation Reserve for moderate non-irrigated cattle grazing and the following associated
3 activities: above-ground, non-toxic measures to control for weeds, pests, and invasive species;
4 cattle corrals, for loading and unloading cattle outside of aquatic areas; use of gates, fencing, and
5 earthen farm roads that currently exist in the Conservation Reserve; use of existing fuel tank; and
6 construction of a firebreak, if required by Tehama County, outside of aquatic areas; provided,
7 however, that as to Work Areas 5, 6, and 9 within the Conservation Reserve, Goose Pond
8 Defendants must await the reestablishment of vegetation cover in the Conservation Reserve in
9 accordance with the Remedial Plan before conducting such grazing and associated activities in
10 those areas. Goose Pond Defendants and their agents, successors, and assigns may also use the
11 Conservation Reserve for additional activities associated with and necessary to conduct moderate
12 non-irrigated cattle grazing (such as installation and/or maintenance of T-posts or similar
13 fencing, installation of above-ground water sources, and placement of additional earthen access
14 roads for ingress and egress to/from cattle corrals), provided that Goose Pond Defendants first
15 submit a plan with requisite information about the intended additional activities, including their
16 location and impact if any on aquatic areas, to the Corps for its review and approval, which
17 approval shall not be unreasonably withheld. The obligations and rights of this Paragraph shall
18 run with the land and bind Goose Pond Defendants' successors and assigns and any person with
19 actual or constructive notice of it, and shall be enforceable by the United States (by any
20 appropriate legal proceeding, including but not limited to enforcement of this Consent Decree).
21 The Balance of the Site is not affected by this Paragraph.

22 26. Remedial Work in the Conservation Reserve and Balance of the Site.

23 a. Goose Pond Defendants have submitted to the Corps, and the Corps has
24 approved, the Remedial Plan that is appended to this Consent Decree as Appendix 3. Within
25 sixty (60) Days of the Effective Date of this Consent Decree, Goose Pond Defendants shall
26 pursue approval by the Corps of a 60-percent drawing set (also referred to as the "Grading Plans"
27 in the Remedial Plan), which approval shall not be unreasonably withheld. If the Corps finds
28 Goose Pond Defendants' 60-percent drawing set to be incomplete or inadequate, the Corps shall

1 provide Goose Pond Defendants written notice of a determination to decline to accept it, and the
2 Corps may supplement that notice with written recommendations for modifications or additions
3 to the 60-percent drawing set sufficient to make it approvable by the Corps.

4 b. (Paragraph 26.b. is intentionally omitted.)

5 c. Goose Pond Defendants shall implement the Remedial Plan and 60-
6 percent drawing set as approved by the Corps and in accordance with the deadlines set forth
7 therein.

8 d. Within thirty (30) Days of what Goose Pond Defendants believe is the
9 completion of all work set forth in the Remedial Plan (with the exception of monitoring, adaptive
10 management, and maintenance), Goose Pond Defendants shall submit a written request for
11 approval of completion of such work to the Corps, which approval shall not be unreasonably
12 withheld. If the Corps disapproves, Goose Pond Defendants shall promptly correct the
13 deficiencies as identified by the Corps in accordance with a schedule approved by the Corps.
14 Within thirty (30) Days of obtaining the Corps' approval that all remedial work set forth in the
15 Remedial Plan has been completed, Goose Pond Defendants shall provide written notice to the
16 United States at the addresses specified in Section XI of this Consent Decree.

17 27. Monitoring, Adaptive Management, and Maintenance of the Remedial Work. As
18 set forth in the Remedial Plan that is appended to this Consent Decree as Appendix 3, Goose
19 Pond Defendants shall monitor, adaptively manage, and maintain the success of the work
20 required by Paragraph 26 of this Consent Decree for a period of five years following the
21 completion of such work. During this five-year period, Goose Pond Defendants shall submit
22 annual reports to the United States at the addresses specified in Section XI of this Consent
23 Decree. Within thirty (30) Days of what Goose Pond Defendants believe is the completion of all
24 monitoring, adaptive management, and maintenance tasks set forth in the Remedial Plan, Goose
25 Pond Defendants shall submit a written request for approval of such completion, which approval
26 shall not be unreasonably withheld. If the Corps disapproves, Goose Pond Defendants shall
27 promptly correct the deficiencies as identified by the Corps in accordance with a scheduled
28 approved by the Corps. Within thirty (30) Days of obtaining the Corps' approval, Goose Pond

1 Defendants shall provide written notice to the United States at the addresses specified in Section
2 XI of this Consent Decree.

3 28. Recording of the Consent Decree in furtherance of Permanent Protections for the
4 Conservation Reserve. Within thirty (30) Days of the Effective Date of this Consent Decree,
5 Goose Pond Defendants shall record a certified copy of this Consent Decree with the Tehama
6 County, California, recorder's office. Within thirty (30) Days of such recording, Goose Pond
7 Defendants shall provide written notice thereof, along with a true and correct copy of the
8 recorded instrument, to the United States at the addresses specified in Section XI of this Consent
9 Decree.

10 29. Use of the Balance of the Site.

11 a. This Consent Decree does not prohibit Goose Pond Defendants and their
12 agents, successors, and assigns from undertaking moderate non-irrigated cattle grazing in the
13 Balance of the Site and the following associated activities: above-ground, non-toxic measures to
14 control for weeds, pests, and invasive species; cattle corrals, for loading and unloading cattle
15 outside of aquatic areas; use of gates, fencing, and earthen farm roads that currently exist in the
16 Balance of the Site; and construction of a firebreak, if required by Tehama County, outside of
17 aquatic areas. Goose Pond Defendants and their agents, successors, and assigns may also use the
18 Balance of the Site for additional activities associated with and necessary to conduct moderate
19 non-irrigated cattle grazing (such as installation and/or maintenance of T-posts or similar
20 fencing, placement of above-ground water sources, and placement of earthen access roads for
21 ingress and egress to/from cattle corrals), provided that Goose Pond Defendants first submit a
22 plan with requisite information about the intended additional activities, including their location
23 and impact if any on aquatic areas, to the Corps for its review and consent, which consent shall
24 not be unreasonably withheld.

25 b. In the event that Goose Pond Defendants or their agents, successors, and
26 assigns wish to undertake activities in the Balance of the Site that are not the activities described
27 in Paragraph 29.a. above, Goose Pond Defendants shall, before initiating such other activities,
28 provide written notification to the Corps fully describing the proposed activities and shall obtain

1 from the Corps: (1) a written determination that no CWA section 404 permit is required for the
2 proposed activities; or (2) a written verification of the applicability of a nationwide or regional
3 CWA section 404 permit; or (3) an individual CWA section 404 permit. Subject to the
4 provisions of Paragraphs 29.a. and 29.b., nothing in this Consent Decree prohibits any legal use
5 of the Balance of the Site by Goose Pond Defendants and their agents, successors, and assigns.

6 c. At any time after one (1) year from the Effective Date of this Consent
7 Decree, Goose Pond Defendants and their agents, successors, and assigns may, with respect to
8 the Balance of the Site only, seek from the Corps a jurisdictional determination (which may
9 include a wetland delineation). In making such jurisdictional determination, the Corps shall
10 apply the then-applicable definition of “waters of the United States” and shall otherwise act in
11 accordance with then-governing law. Goose Pond Defendants and their agents, successors, and
12 assigns may thereafter conduct any activities otherwise consistent with then-governing law in
13 areas determined by such jurisdictional determination (as may be modified on judicial review
14 thereof) not to be “waters of the United States.” Further, as to those areas (i.e., areas within the
15 Balance of the Site determined by such jurisdictional determination (as may be modified on
16 judicial review thereof) not to be “waters of the United States”), Paragraphs 29.a. and 29.b.
17 above shall cease being applicable to those areas. Nothing in this Consent Decree is intended to
18 alter otherwise governing law or processes associated with jurisdictional determinations,
19 including, for example, the duration of their validity.

20 30. Off-Site Compensatory Mitigation:

21 a. Within sixty (60) Days of the Effective Date of this Consent Decree,
22 Goose Pond Defendants shall submit to the Corps for its review and approval, which shall not be
23 unreasonably withheld, a written proposal for the expenditure of three million five hundred fifty
24 thousand dollars (\$3,550,000) to purchase vernal pool establishment, re-establishment, or
25 rehabilitation credits from one or more Corps-approved mitigation banks that serve the area
26 encompassing the Site in Tehama County, California. To the extent that insufficient credits exist
27 at such local banks, Goose Pond Defendants may propose to expend the remaining funds to
28 purchase vernal pool establishment, re-establishment, or rehabilitation credits (or their functional

VII. RETENTION OF RECORDS AND ACCESS

1
2 34. Until three (3) years after termination of this Consent Decree pursuant to Section
3 XVI, Goose Pond Defendants shall retain, and shall instruct their contractors, consultants, and
4 other agents to preserve, all non-identical copies of all documents, records, or other information
5 (including electronically stored information) in their or their contractors' or other agents'
6 possession or control, or that come into their contractors' or other agents' possession or control,
7 and that relate in any manner to Goose Pond Defendants' performance of its obligations under
8 this Consent Decree. At any time during this information-retention period, upon request by the
9 United States, Goose Pond Defendants shall provide copies of any documents, records, or other
10 information required to be maintained under this Paragraph. If Goose Pond Defendants assert
11 that any information is protected from disclosure under any privilege or protection recognized by
12 federal law, and the United States disputes such assertion, the dispute may be resolved in
13 accordance with Section VIII of this Consent Decree.

14 35. (Paragraph 35 is intentionally omitted.)

15 36. The United States, including its contractors and/or consultants, shall have the
16 right to access the Site, at all reasonable times, with reasonable advance notice, in order to:

- 17 a. monitor the progress of activities required under this Consent Decree;
18 b. verify any data or information submitted to the Corps by or on behalf of
19 Goose Pond Defendants;
20 c. obtain samples to monitor or confirm compliance with this Consent
21 Decree;
22 d. obtain documentary evidence, including photographs and similar data, to
23 monitor or confirm compliance with this Consent Decree; and
24 e. assess compliance with this Consent Decree.

25 Nothing in this Consent Decree is intended to alter otherwise governing law of premises liability.

26 37. This Consent Decree in no way limits or affects the United States' or the Corps'
27 otherwise existing rights of entry and inspection or any right to obtain information under
28

1 applicable law, nor does it limit or affect any otherwise existing duty or obligation of Goose
2 Pond Defendants to maintain documents, records, or other information.

3 **VIII. DISPUTE RESOLUTION**

4 38. Unless otherwise expressly provided for in this Consent Decree, the Parties shall
5 attempt to resolve any and all disputes arising under or with respect to this Consent Decree
6 through the dispute resolution procedures of this Section (“Dispute Resolution”).

7 39. A dispute shall be considered to have arisen when a written Notice of Dispute is
8 transmitted to the opposing party at the addresses specified in Section XI. Such Notice of
9 Dispute shall state clearly the matter in dispute.

10 40. If after 30 Days of transmittal of the Notice of Dispute, the complainant concludes
11 that the Parties have reached an impasse, then the complainant may seek resolution of the dispute
12 by the Court. The Parties may continue to attempt to resolve the Notice of Dispute while the
13 matter is pending before the Court.

14 41. The invocation of Dispute Resolution procedures under this Section shall not, by
15 itself, extend, postpone, or affect in any way any obligation of Goose Pond Defendants under this
16 Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties
17 and interest, if applicable to the disputed matter, shall continue to accrue from the first Day of
18 violation, but payment shall be stayed pending resolution of the dispute as provided in Section X
19 of this Consent Decree. If Goose Pond Defendants do not prevail on the disputed issue,
20 stipulated penalties and interest, if applicable, shall be assessed and paid as provided in Section
21 X of this Consent Decree. If determined by the Court that Goose Pond Defendants did not
22 violate the Consent Decree, no stipulated penalty or interest shall be assessed.

23 (Paragraphs 42 and 43 are intentionally omitted.)

24 **IX. FORCE MAJEURE**

25 44. “Force majeure,” for purposes of this Consent Decree, is defined as any event
26 arising from causes beyond the control of Goose Pond Defendants, of any person controlled by
27 Goose Pond Defendants, or of Goose Pond Defendants’ contractors or consultants that delays or
28

1 prevents the performance of any obligation under this Consent Decree despite Goose Pond
2 Defendants' best efforts to fulfill the obligation.

3 45. If any event occurs or has occurred that may delay the performance of any
4 obligation under this Consent Decree, whether or not caused by a force majeure event, Goose
5 Pond Defendants shall provide notice to the United States, at the addresses specified in Section
6 XI, within a reasonable time after Goose Pond Defendants first know or should know that the
7 event might cause a delay. Goose Pond Defendants shall also provide an explanation and
8 description of the reasons for the delay; the anticipated duration of the delay; all actions taken or
9 to be taken to prevent or minimize the delay; a schedule for implementation of any measures to
10 be taken to prevent or mitigate the delay or the effect of the delay; Goose Pond Defendants'
11 rationale for attributing such delay to a force majeure event if they intend to assert such a
12 defense; and a statement as to whether, in the opinion of Goose Pond Defendants, such event
13 may cause or contribute to an endangerment to public health, welfare or the environment. Goose
14 Pond Defendants shall include with any written notice required by this Section all relevant
15 documentation.

16 46. If the United States agrees in writing that the delay or anticipated delay is
17 attributable to a force majeure event, the time for performance of the obligations under this
18 Consent Decree that are affected by the force majeure event may be extended for such additional
19 time as may be necessary to complete those obligations under the circumstances.

20 47. If the United States does not agree that the delay or anticipated delay has been or
21 will be caused by a force majeure event, or does not agree to the extension of time sought by
22 Goose Pond Defendants, then Goose Pond Defendants may invoke Dispute Resolution
23 procedures under Section VIII of this Consent Decree.

24 48. If Goose Pond Defendants invoke Dispute Resolution procedures under Section
25 VIII of this Consent Decree, Goose Pond Defendants shall have the burden of demonstrating that
26 the delay or anticipated delay has been or will be caused by a force majeure event; the number of
27 Days of delay or anticipated delay that was or will be caused by such force majeure event; that
28 the duration of the delay or the extension sought was or will be warranted under the

1 circumstances; that Goose Pond Defendants could not have foreseen and prevented such delay;
2 that Goose Pond Defendants exercised best efforts to prevent, avoid, minimize and mitigate the
3 delay and its effects; and that Goose Pond Defendants complied with the requirements of this
4 Section.

5 **X. STIPULATED PENALTIES**

6 49. Goose Pond Defendants shall be liable for stipulated penalties to the United States
7 for violations of this Consent Decree in accordance with this Section, unless excused under
8 Section IX (Force Majeure). A violation includes failing to perform any obligation required by
9 this Consent Decree, including but not limited to any remedial work plan or schedule approved
10 under this Consent Decree, within the specified time schedules established by or approved under
11 this Consent Decree.

12 50. Stipulated penalties shall accrue for violating this Consent Decree in the amount
13 of three thousand dollars (\$3,000) per Day for each Day that the violation persists; however, an
14 insubstantial violation that is cured within seven (7) days of Goose Pond Defendants' receiving
15 written notice from the United States or the Corps shall not incur penalties greater than ten
16 thousand dollars (\$10,000).

17 51. Stipulated penalties under this Section shall begin to accrue on the Day a violation
18 occurs and shall continue to accrue until the violation ceases.

19 52. Except as provided in this Section, Goose Pond Defendants shall pay any
20 stipulated penalty within thirty (30) Days of receiving the United States' written demand. Goose
21 Pond Defendants shall make any such payment in accordance with written instructions to be
22 provided by the United States. Upon such payment, Goose Pond Defendants shall provide
23 written notice thereof to the United States at the addresses specified in Section XI of this Consent
24 Decree.

25 53. The United States may, in the unreviewable exercise of its discretion, reduce or
26 waive stipulated penalties otherwise due it under this Consent Decree.

27 54. Any disputes concerning the amount of stipulated penalties or the underlying
28 violation that gives rise to the assessment of stipulated penalties are subject to the Dispute

1 Resolution provisions of Section VIII. Stipulated penalties disputed by Goose Pond Defendants
2 and any applicable interest shall continue to accrue as provided in this Consent Decree, but need
3 not be paid until the following:

4 a. If the dispute is resolved by agreement between the Parties, Goose Pond
5 Defendants shall pay the amount due under such agreement, together with any applicable
6 interest, to the United States within thirty (30) Days of the effective date of the agreement.

7 b. If the dispute is taken to this Court, Goose Pond Defendants shall pay all
8 accrued penalties determined by the Court to be owing, together with any applicable interest, to
9 the United States within thirty (30) Days of receiving the Court's decision, except as provided in
10 subparagraph c, below.

11 c. If any party appeals the Court's decision, Goose Pond Defendants shall
12 pay all accrued penalties determined to be owing, together with any applicable interest, to the
13 United States within fifteen (15) Days of receiving the final appellate decision.

14 55. If Goose Pond Defendants fail to pay stipulated penalties according to the terms
15 of this Consent Decree, Goose Pond Defendants shall be liable for interest on such penalties, as
16 provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this
17 Paragraph shall be construed to limit the United States from seeking any remedy otherwise
18 provided by law for Goose Pond Defendants' failure to pay any stipulated penalties.

19 56. The payment of stipulated penalties and interest, if any, shall not alter in any way
20 Goose Pond Defendants' obligation to complete performance of the requirements of this Consent
21 Decree.

22 57. Stipulated penalties are not the United States' exclusive remedy for violations of
23 this Consent Decree. Subject to the provisions of Section IV, the United States expressly
24 reserves the right to seek any other relief it deems appropriate for Goose Pond Defendants'
25 violation of this Consent Decree or applicable law, including but not limited to an action against
26 Goose Pond Defendants for statutory penalties, additional injunctive relief, mitigation or offset
27 measures, and/or contempt. However, the amount of any statutory penalty assessed for a
28

1 violation of this Consent Decree shall be reduced by an amount equal to the amount of any
2 stipulated penalty assessed and paid pursuant to this Consent Decree.

3 XI. NOTICES AND COMMUNICATIONS

4 58. All notices and communications required under this Consent Decree shall be
5 made to the Parties through each of the following persons and addresses:

6 a. TO THE UNITED STATES:

7 i. TO THE DEPARTMENT OF JUSTICE:

8 LETITIA A. GRISHAW
9 Chief, Environmental Defense Section
10 ANDREW J. DOYLE
11 JOHN THOMAS H. DO
12 ANDREW S. COGHLAN
13 United States Department of Justice
14 Environment and Natural Resources Division
15 P.O. Box 7611
16 Washington, DC 20044
17 andrew.doyle@usdoj.gov
18 john.do@usdoj.gov
19 andrew.coghlán@usdoj.gov
20 DJ # 90-5-1-1-20800

21 AND

22 McGREGOR W. SCOTT
23 United States Attorney
24 GREGORY T. BRODERICK
25 Assistant United States Attorney
26 501 I Street, Suite 10-100
27 Sacramento, CA 95814
28 gregory.broderick@usdoj.gov

ii. TO THE CORPS:

21 A.L. FAUSTINO
22 District Counsel
23 U.S. Army Corps of Engineers
24 Sacramento District
25 1325 J Street, Room 1440
26 Sacramento, CA 95814
27 Al.Faustino@usace.army.mil

28 AND

MICHAEL S. JEWELL
Chief, Regulatory Division

1 U.S. Army Corps of Engineers
2 Sacramento District
3 1325 J Street, Room 1440
4 Sacramento, CA 95814
5 Michael.S.Jewell@usace.army.mil

6 b. TO GOOSE POND DEFENDANTS:

7 i. TO GOOSE POND AG, INC.:
8 OLIVER WILLIAMS IV.
9 Goose Pond Ag, Inc.
10 197 Clarendon Street
11 Boston, MA 02116

12 ii. FARMLAND MANAGEMENT SERVICES:
13 PRESIDENT
14 Farmland Management Services
15 301 East Main Street
16 Turlock, CA 95380

17 iii. AND WITH COPIES TO:

18 PATRICIA WALL MUNDY
19 General Counsel
20 Hancock Natural Resources Group
21 197 Clarendon Street
22 Boston, MA 02116
23 pmundy@hnrng.com

24 ROBERT P. SORAN, ESQ.
25 Downey Brand LLP
26 621 Capitol Mall, 18th Floor
27 Sacramento, CA 95746
28 rsoran@downeybrand.com

59. Any Party may, by written notice to the Parties, change its designated notice recipient or notice address provided above.

60. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

1 XII. COSTS OF SUIT

2 61. The Parties shall bear their own costs of this action, including attorneys' fees,
3 except that the United States shall be entitled to collect the costs (including reasonable attorneys'
4 fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated
5 penalties due but not paid by Goose Pond Defendants.

6 XIII. PUBLIC PARTICIPATION

7 62. This Consent Decree shall be lodged with the Court for a period of not less than
8 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States
9 reserves the right to withdraw or withhold its consent if the comments regarding the Consent
10 Decree disclose facts or considerations indicating that the Consent Decree is inappropriate,
11 improper, or inadequate. Goose Pond Defendants consent to entry of this Consent Decree
12 without further notice and agree not to withdraw from or oppose entry of this Consent Decree by
13 the Court or to challenge any provision of the Decree, unless the United States has notified
14 Goose Pond Defendants in writing that it no longer supports entry of the Decree.

15 (Section XIV and Paragraphs 63 through 65 are intentionally omitted.)

16 XV. MODIFICATION

17 66. The terms of this Consent Decree may be modified only by a subsequent written
18 agreement signed by all the Parties. Where the modification constitutes a material change to any
19 term of this Consent Decree, it shall be effective only upon the Court's approval. Nothing in this
20 Consent Decree shall preclude Goose Pond Defendants from seeking modification of Paragraph
21 25 of this Consent Decree to conduct "establishment (creation)" (33 C.F.R. § 332.2) in upland
22 areas in the Conservation Reserve, in accordance with then-governing law. The United States
23 expresses no view on the merits or demerits of any such proposal, and nothing in this Consent
24 Decree is intended to alter the United States' discretion in reviewing any such proposal.

25 XVI. TERMINATION

26 67. This Consent Decree terminates eight (8) years following the Effective Date,
27 unless, at that time or at any time during the life of this Consent Decree, Goose Pond Defendants
28 are or were out of compliance with any provision of this Consent Decree, in which case this

1 Consent Decree shall not expire until eight (8) years following the Effective Date plus the total
2 of all Days that Goose Pond Defendants were out of compliance with any provision of this
3 Consent Decree. In no event shall this Consent Decree terminate if Goose Pond Defendants
4 remain out of compliance with any provision of this Consent Decree.

5 68. Irrespective of Paragraph 67 above, termination of this Consent Decree does not
6 extinguish: (a) Paragraph 25 above, and (b) Paragraph 36.c., 36.d., and 36.e. above insofar as
7 they apply to assessing compliance with Paragraph 25 for the Conservation Reserve. In addition,
8 termination of this Consent Decree does not affect the expiration of Paragraph 34 above because,
9 as provided in that Paragraph, it expires three (3) years after termination of this Consent Decree.

10 (Paragraphs 69 and 70 are intentionally omitted.)

11 **XVII. SIGNATURES/SERVICE**

12 71. Each undersigned representative of Goose Pond Defendants and the United States
13 Department of Justice certifies that he or she is fully authorized to enter into the terms and
14 conditions of this Consent Decree and to execute and legally bind the party he represents to this
15 document.

16 72. This Consent Decree may be signed in counterparts, such counterpart signature
17 pages shall be given full force and effect, and its validity shall not be challenged on that basis.

18 **XVIII. INTEGRATION**

19 73. This Consent Decree constitutes the final, complete, and exclusive agreement and
20 understanding among the Parties with respect to the settlement embodied in the Consent Decree
21 and supersedes any prior agreements and understandings, whether oral or written, concerning the
22 settlement embodied herein. Other than Appendices hereto and modifications made effective in
23 accordance with Section XV of this Consent Decree, the Parties acknowledge that there are no
24 representations, agreements, or understandings relating to the settlement other than those
25 expressly contained in this Consent Decree.

1 XIX. FINAL JUDGMENT AND RETENTION OF JURISDICTION

2 74. Upon its approval and entry by the Court, this Consent Decree shall constitute a
3 final judgment of the Court as to the United States and Goose Pond Defendants. The Parties
4 waive any rights to appeal such final judgment.

5 75. This Court retains jurisdiction over this action for the purpose of resolving
6 disputes arising under this Consent Decree, or entering orders modifying this Consent Decree, or
7 effectuating or enforcing compliance with the terms of this Consent Decree.

8 XX. APPENDICES

9 76. The following Appendices are attached to and part of this Consent Decree:

- 10 a. Appendix 1, which shows the Site's location and boundary.
11 b. Appendix 2, which shows the Conservation Reserve's boundary.
12 c. Appendix 3, which is the Corps-approved Remedial Plan.

13 (Remainder of page is intentionally blank.)
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JEFFREY H. WOOD
Acting Assistant Attorney General
JONATHAN D. BRIGHTBILL
Deputy Assistant Attorney General

Dated: Sept. 11, 2018


ANDREW J. DOYLE
JOHN THOMAS H. DO
ANDREW S. COGHLAN
United States Department of Justice
Environmental and Natural Resources Division
P.O. Box 7611
Washington, DC 20044
Telephone: (202) 514-4427 (Doyle)
andrew.doyle@usdoj.gov

McGREGOR W. SCOTT
United States Attorney
GREGORY T. BRODERICK
Assistant United States Attorney
501 I Street, Suite 10-100
Sacramento, CA 95814
Telephone: (916) 554-2780
gregory.broderick@usdoj.gov

Attorneys for the United States

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: 9/11, 2018



Oliver Williams, IV
For: Goose Pond Ag, Inc.

Mark Hutson
For: Farmland Management Services

Approved as to form

DOWNEY BRAND LLP
ROBERT P. SORAN
621 Capitol Mall, 18th Floor
Sacramento, CA 95814-4731
Telephone: (916) 444-1000
rsoran@downeybrand.com

Attorneys for Goose Pond Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____, 2018

Oliver Williams, IV
For: Goose Pond Ag, Inc.



Mark Hutson
For: Farmland Management Services

Approved as to form

DOWNEY BRAND LLP
ROBERT P. SORAN
621 Capitol Mall, 18th Floor
Sacramento, CA 95814-4731
Telephone: (916) 444-1000
rsoran@downeybrand.com

Attorneys for Goose Pond Defendants

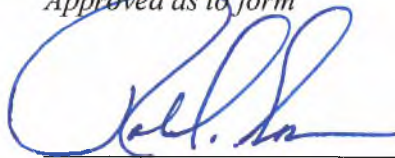
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____, 2018

Oliver Williams, IV
For: Goose Pond Ag, Inc.

Mark Hutson
For: Farmland Management Services

Approved as to form



DOWNEY BRAND LLP
ROBERT P. SORAN
621 Capitol Mall, 18th Floor
Sacramento, CA 95814-4731
Telephone: (916) 444-1000
rsoran@downeybrand.com

Attorneys for Goose Pond Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED

Dated, entered, and made effective this _____ day of _____, 201____.

UNITED STATES DISTRICT JUDGE