

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

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROGER J. LAPANT, JR., et al.,

Defendants.

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

ORDER

The United States' unopposed motion to enter its consent decree with defendants Goose Pond Ag., Inc. (Goose Pond) and Farmland Management Services (Farmland) is before the court. Mot., ECF No. 88; Prop. C.D., ECF No. 87. The public comment period for the proposed consent decree expired on October 17, 2018 and no public comments were received. ECF No. 90 (notice). The court held this motion in abeyance while resolving a challenge to its jurisdiction raised by other defendants. *See* ECF No. 59. With that challenge resolved, *see* ECF No. 104, and as explained below, the court GRANTS the motion.

I. BACKGROUND

The United States filed this action against defendants Roger J. LaPant, Jr., J&J Farms, Goose Pond, and Farmland, alleging the defendants violated and continue to violate Clean Water Act (CWA) section 301(a), 33 U.S.C. § 1311(a). Compl., ECF No. 1. The alleged CWA violations occurred on approximately 1,505 acres of real property in rural Tehama County,

1 California, and resulted in the unauthorized discharge of pollutants into waters of the United States.
2 *Id.* ¶¶ 30–31, 40–93; *see* Mot. at 2–3.

3 The United States alleges that beginning in November 2012, Goose Pond and
4 Farmland “operated a slip plow, tractor with tillage implements, road-building machinery, land-
5 leveler, trencher, and/or other earthmoving equipment” in uplands and waters of the United States,
6 affecting “potentially 100 or more acres of waters of the United States.” Compl. ¶¶ 109–13. The
7 United States alleges the equipment “constituted a ‘point source’” under 33 U.S.C. § 1362(14) and
8 “resulted in the placement of dredged spoil, biological materials, rock, sand, cellar dirt or other
9 earthen material constituting ‘pollutants’ within the meaning of 33 U.S.C. § 1362(6) into waters of
10 the United States.” *Id.* ¶¶ 114–15. The operation allegedly impacted hydrophydic plants, changed
11 the bottom elevation of or replaced portions of waters of the United States with dry land, and
12 “resulted in the ‘discharge of any pollutant’ within the meaning of 33 U.S.C. § 1311(a).” *Id.*
13 ¶¶ 116–19. The discharge of pollutants was not authorized by a CWA section 404 permit, and after
14 operation of the equipment ceased, defendants allowed the discharged pollutants to remain in
15 waters of the United States. *Id.* ¶¶ 121–23. The United States seeks injunctive relief and civil
16 penalties. *Id.* at 18 (request for relief).

17 Although not an exhaustive survey, the following summarizes provisions of the
18 proposed consent decree:

19 - Goose Pond and Farmland will pay a \$1,750,000 civil penalty to
20 the United States. Prop. C.D. ¶ 22.

21 - Except as necessary to fulfill certain prescribed remedial
22 requirements and as described in the proposed consent decree, Goose
23 Pond and Farmland are permanently enjoined from disturbing a
24 specified portion of the property comprised of approximately 616
acres, termed the “Conservation Reserve.” *Id.* ¶¶ 10, 25. This
provision runs with the land, binding Goose Pond and Farmland’s
successors and assigns, and will not be extinguished by the consent
decree’s termination. *Id.* ¶¶ 25, 68.

25 - Within a specified timeline, Goose Pond and Farmland are required
26 to take steps necessary to implement the parties’ Corps-approved
27 remedial plan and thereafter obtain approval of completion from the
Corps. *Id.* ¶ 26; *see* App. 3 (Remedial Plan).

28 - For five years following completion of the remedial plan, Goose
Pond and Farmland must monitor, manage and maintain the work

1 required under that plan and submit annual reports and a completion
2 request to the United States as prescribed in the consent decree.
Prop. C.D. ¶ 27.

3 - Goose Pond and Farmland will submit to the Corps a proposed
4 expenditure of \$3,550,000 “to purchase vernal pool establishment,
5 re-establishment, or rehabilitation credits from one or more Corp-
approved mitigation banks that serve the [applicable] area” *Id.*
¶ 30.

6 - Upon the Corps’ approval, Goose Pond and Farmland are required
7 to complete the \$3,550,000 mitigation and provide the United States
8 with written notice of completion. *Id.* The United States and its
9 contractors and consultants may, upon reasonable advance notice and
10 at reasonable times, access the site to monitor progress and activities
11 required under the proposed consent decree; verify data and
information submitted by Goose Pond and Farmland to the Corps;
12 monitor and confirm compliance by obtaining samples; obtain
13 documentary evidence to monitor compliance; and generally assess
14 compliance with the consent decree. *Id.* ¶ 36.

15 - Goose Pond and Farmland will pay stipulated penalties of \$3,000
16 per day per violation of consent decree obligations, subject to
17 exceptions identified in the consent decree. *Id.* ¶¶ 49-56.

18 - The proposed consent decree will terminate eight years after its
19 effective date, extended by the number of days, if any, Goose Pond
20 and Farmland were out of compliance with consent decree
21 requirements. *Id.* ¶ 67.

22 - The consent decree does not extinguish obligations under paragraph
23 25 of the proposed consent decree, described above, or the United
24 States’ ability to access the site to assess compliance with ¶ 25. *Id.*
25 ¶ 68.

26 II. LEGAL STANDARD

27 “Because of the unique aspects of settlements, a district court should enter a
28 proposed consent judgment if the court decides that it is fair, reasonable and equitable and does not
violate the law or public policy.” *Sierra Club, Inc. v. Elec. Controls Design, Inc.*, 909 F.2d 1350,
1355 (9th Cir. 1990); *S.E.C. v. Randolph*, 736 F.2d 525, 529 (9th Cir. 1984) (“Unless a consent
decree is unfair, inadequate, or unreasonable, it ought to be approved.”). Further, “courts should
pay deference to the judgment of the government agency which has negotiated and submitted the
proposed judgment.” *Randolph*, 736 F.2d at 529. Although it may explain its reasons for
withholding approval of a proposed consent decree, the court lacks the authority to modify the

//////

1 parties' proposal and therefore must either accept or reject the proposal as submitted. *See Officers*
2 *for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 630 (9th Cir. 1982).

3 III. DISCUSSION

4 Having carefully considered the consent decree, the court finds it is fair, reasonable
5 and consistent with statutory purposes. The parties reached this settlement after more than two
6 years of litigation. The United States represents that settlement followed arms-length negotiations
7 conducted by experienced counsel aware of the strengths and weaknesses of their respective cases.
8 Mot. at 6. Further, the proposed consent decree would achieve significant goals of the Clean Water
9 Act, permanently protecting from disturbance "the Conservation Reserve[, which] contains
10 between 75 and 139 acres of waters of the United States," remediating damage caused by
11 unauthorized discharges, implementing a long term pre-clearance injunction, requiring off-site
12 compensatory mitigation and recouping a significant civil penalty. *Id.* at 6-7. The unopposed
13 motion to enter the consent decree is GRANTED.

14 IT IS SO ORDERED.

15 DATED: June 3, 2019.

16
17 
18
19
20
21
22
23
24
25
26
27
28
UNITED STATES DISTRICT JUDGE