

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

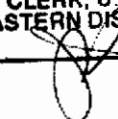
LAWRENCE G. BROWN
United States Attorney
SYLVIA QUAST
Assistant United States Attorney
501 I Street, Suite 10-100
Sacramento, California 95814
Telephone: (916) 554-2740

KARL J. FINGERHOOD
Environmental Enforcement Section
Environmental & Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044
Telephone: (202) 514-7519

Of Counsel:
ROSE MIKSOVSKY
Special Assistant United States Attorney
Office of the General Counsel
United States Department of Agriculture
Attorneys for the United States and
Federal Defendants

FILED

JAN 27 2010

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY  DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

USA v. El Dorado County, et al

Doc. 369

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
EL DORADO COUNTY, CALIFORNIA;)
and CITY OF SOUTH LAKE TAHOE,)
)
Defendants.)
-----)
EL DORADO COUNTY,)
)
Third-Party Plaintiff,)
)
v.)
)
DOUGLAS COUNTY, et al.,)
)
Third-Party Defendants.)
-----)

No. 2:01-CV-01520-MCE-GGH

**SETTLEMENT AGREEMENT;
RELEASES; DISMISSAL WITHOUT
PREJUDICE; AND PROPOSED ORDER**

1 SOUTH TAHOE PUBLIC UTILITY)
2 DISTRICT,)
3 Cross-Complainant,)
4 v.)
5 UNITED STATES OF AMERICA, et al.,)
6 Cross-Defendants.)

7 SOUTH TAHOE PUBLIC UTILITY)
8 DISTRICT,)
9 Fourth-Party Plaintiff,)
10 v.)
11 UNITED STATES OF AMERICA, et al.,)
12 Fourth-Party Defendants.)

13
14 The following parties make and enter into this Settlement and Mutual General Release
15 Agreement ("Agreement"):

16 A. Third Party Cross-Complainant and Fourth Party Plaintiff South Tahoe Public Utility
17 District ("District");

18 B. Third Party Cross-Defendant and Third Party Cross-Claimant, United States of
19 America ("United States"); and

20 C. Fourth-Party Defendants, United States Department of Agriculture ("USDA"); Ed
21 Schafer, Secretary of the USDA in his official capacity; Randy Moore, Regional Forester of
22 Region 5 of the USDA, Forest Service, in his official capacity; and Terri Marceron, Forest
23 Supervisor, Lake Tahoe Basin Management Unit of the USDA, Forest Service, in her official
24 capacity; and the individually named defendants' successors-in-interest ("Federal Defendants").

25 This Agreement is based on the following facts:

26 D. The United States, on behalf of the USDA, Forest Service, filed a complaint against
27 El Dorado County ("EDC"), California, and the City of South Lake Tahoe, California, pursuant
28 to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act

1 of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of costs
2 necessitated by the actual or threatened release of hazardous substances at the Meyers Landfill
3 Site in Meyers, El Dorado County, California (the "Site"). The Site encompasses the areal extent
4 of contamination, including approximately eleven acres of buried waste, and includes the
5 groundwater plume originating therefrom (which presently has an areal extent of approximately
6 31 acres). The Site is generally shown on the map attached hereto as Exhibit "A".

7 E. EDC filed a third party complaint against third parties, including the District, alleging
8 CERCLA liability as a generator of hazardous substances. In response, and among other actions
9 taken, the District filed a Third Party Cross-Complaint against Third Party Cross-Defendant the
10 United States, seeking Declaratory and Injunctive Relief under CERCLA for contribution, as
11 well as Quiet Title, alleging, among other things, that it had an easement to maintain its sewer
12 lines on National Forest System lands.

13 F. The United States filed a Third Party Cross-Claim against the District for Declaratory
14 and Injunctive Relief, and Trespass and Ejectment, contending the District's sewer lines were on
15 National Forest System lands without authorization. Subsequently, the District filed a First
16 Amended and Second Amended Third Party Cross-Complaint, to which the United States
17 reiterated its responses and cross-claims.

18 G. The District filed a Fourth-Party Complaint against the Federal Defendants for
19 Declaratory and Injunctive Relief and other Remedies under the Administrative Procedures Act,
20 5 U.S.C. §§ 701-06 ("APA"). The APA claim seeks judicial review of the Forest Service's
21 Amendment 3 of the District's Special Use Permit and the Forest Service's May 5, 2003, letter
22 from Maribeth Gustafson concerning the District's special use authorization of its sewer lines on
23 National Forest System lands.

24 The District, Federal Defendants and United States (the Parties) hereby agree to the
25 following disposition of this case:

26 1. Concurrently with this Agreement, the Parties will execute a Consent Decree that
27 settles the District's Second Amended Third Party Cross-Complaint against the United States for
28 Declaratory Judgment and Contribution under CERCLA ("Consent Decree"). This Agreement

1 and the Consent Decree together shall constitute an integrated agreement. As set forth in the
2 Consent Decree, should the Court reject the Consent Decree, or if it is subsequently determined
3 to be invalid or set aside, this Agreement will be null and void.

4 2. Upon the Court's entry of the Consent Decree and the Parties' filing of this
5 Agreement, the Parties will request that the Court sign and enter this proposed order dismissing
6 without prejudice the: District's Second Amended Third Party Cross-Complaint cause of action
7 against the United States for Quiet Title; District's Fourth Party Complaint against the Federal
8 Defendants for Declaratory and Injunctive Relief under the APA; and United States' Third Party
9 Cross-Claims against the District for Declaratory and Injunctive Relief, and Trespass and
10 Ejectment. As provided in paragraph 21, below, the Parties will move separately for an order
11 dismissing the actions identified above with prejudice once the time to appeal the Consent
12 Decree expires, or, if an appeal is taken, once the appellate process is concluded.

13 3. The Parties agree that this Agreement has been negotiated in good faith, and is fair,
14 reasonable and in the public interest. By settling and dismissing the actions identified in
15 paragraph 2. above, the Parties intend to avoid the expenses and risks of further litigation but
16 without interfering with their respective duties, obligations and rights stated in, or that may arise
17 from the Consent Decree.

18 4. The District will file a special use permit ("SUP") application for all of its sewer lines
19 and facilities located on National Forest System lands that are identified in the District's Second
20 Amended Third Party Cross-Complaint, including that portion of the Trout Creek Trunk Pipeline
21 ("Pipeline") that is located within the Site, within sixty (60) days after entry of the order
22 dismissing without prejudice the actions listed in paragraph 2, above. In return, the Forest
23 Service agrees to process the District's SUP application in good faith and in accordance with
24 applicable rules, regulations and policies. This Agreement shall not be construed to waive or
25 release any Party's rights with respect to the SUP application process, whether administrative,
26 judicial, or otherwise.

27 5. The Parties recognize that until the Forest Service takes final administrative action on
28 the District's SUP application, the District may need reasonable access to the sewer lines

1 identified in the SUP application to be filed pursuant to Paragraph 4, for the purpose of
2 conducting the following activities: routine and/or emergency repairs, replacement, maintenance
3 and/or inspection, surveying, and related operations. Upon the condition that the District
4 provides a written request to the Forest Service that identifies the District's proposed access
5 routes, the dates/length of time needed for access, purpose, and extent of access, the Forest
6 Service will provide written authorization, which may include reasonable terms and conditions,
7 to the District for access to the District's sewer lines for the purposes identified above. In the
8 event of an emergency, such as the rupture of a sewer line, the District may take reasonable and
9 necessary emergency action and shall provide the Forest Service with notice, either verbally, by
10 e-mail or by fax, within 24 hours of the time that the District has knowledge of the emergency.
11 The District's notice of emergency to the Forest Service shall include a description of the nature
12 of the emergency, the date and time the emergency occurred, the action taken by the District to
13 date, and whether the emergency requires an additional response by the District. If the
14 emergency requires an additional response, the District shall provide a description of the
15 District's proposed actions and time lines for the emergency response. The Forest Service shall
16 respond to the District in accordance with the nature and degree of the emergency.

17 6. If the Forest Service transfers to another entity any National Forest System lands
18 within the Site under which the Pipeline is located (the "Transferred Property") after it has issued
19 an SUP to the District, the Forest Service agrees that prior to, or concurrently with, any such
20 transfer to: (a) convert the portion of the SUP pertaining to the Transferred Property into an
21 easement for the District's benefit; and (b) grant or reserve, or cause to be granted or reserved, an
22 easement to the District for the transferred Property. The Forest Service agrees that any such
23 easement will be in substantial compliance with the terms and conditions of the District's SUP
24 for the Transferred Property.

25 7. Upon entry of a dismissal order with prejudice as provided in paragraph 21, below,
26 and in consideration of the Parties' promises herein, the District, for itself and its employees,
27 representatives, agents, successors, predecessors, transferees, assigns, sureties and insurers, fully
28 and forever releases, discharges and covenants not to ever sue or otherwise institute legal or

1 administrative proceedings against, respectively, the United States or the Federal Defendants, or
2 any of their employees, representatives, agents, successors, predecessors, transferees, assigns and
3 sureties with respect to any matter, claim, liability, demand, obligation, cause of action or thing
4 in action, of every nature, kind and description in law, equity, or otherwise, whether or not now
5 known or ascertained, which heretofore has existed or presently exists, that relates to, or that is
6 connected in any way with the facts or circumstances giving rise to the Second Amended Third
7 Party Cross-Complaint and the Fourth Party Complaint, as defined in paragraph 2, above.

8 8. Upon entry of a dismissal order with prejudice as provided in paragraph 21, below,
9 and in consideration of the Parties' promises herein, the United States (including the Federal
10 Defendants), for itself and its employees, representatives, agents, successors, predecessors,
11 transferees, assigns, and sureties, fully and forever releases, discharges and covenants not ever to
12 sue, or otherwise institute legal or administrative proceedings against the District or its
13 employees, representatives, agents, successors, predecessors, transferees, assigns, sureties, or
14 insurers with respect to any matter, claim, liability, demand, obligation, cause of action or thing
15 in action, of every nature, kind and description in law, equity, or otherwise, whether or not now
16 known or ascertained, which heretofore has existed or presently exists, that relates to, or that is
17 connected in any way, with the facts or circumstances giving rise to the United States' Third
18 Party Cross-Claims, as defined in paragraph 2, above.

19 9. Notwithstanding paragraphs 7 and 8, any Party shall be permitted to bring an action or
20 suit against any other Party for a breach of any provision of this Agreement.

21 10. With respect to the Parties' mutual releases, the District, the Federal Defendants and
22 the United States expressly waive any and all rights and benefits conferred upon them by the
23 provisions of Section 1542 of the California Civil Code, which states as follows:

24 A general release does not extend to claims which the creditor does
25 not know or suspect to exist in his or her favor at the time of
26 executing the release, which if known by him or her, must have
materially affected his or her settlement with the debtor.

27 In connection with this waiver and relinquishment, each of the Parties acknowledges and
28 understands that its attorneys, consultants, accountants, or other professionals whom it may retain

1 may hereafter discover some matter, claim, liability, demand, obligation, cause of action, or thing
2 in action in addition to, or different from, those that are now known or believed to exist with
3 respect to any of the matters referred to herein. Nevertheless, each of the Parties intends hereby
4 to release and settle fully, finally and forever, all of the respective aforementioned matters,
5 known or unknown, suspected or unsuspected, which heretofore have existed or presently exist.
6 Each of the Parties further acknowledges and understands that this release shall continue to
7 remain in full force and effect notwithstanding the future discovery or existence of any
8 additional, or different, matter, claim, liability, demand, obligation, cause of action, or thing in
9 action.

10 11. This Agreement and the Parties' mutual promises stated herein constitute a
11 settlement of disputed obligations and nothing contained in this Agreement shall constitute, or be
12 treated as an admission of any liability of, or any wrongdoing by any of the Parties or their
13 respective officers, directors, representatives, agents, employees, successors, predecessors,
14 transferees, or assigns.

15 12. This Agreement is not for the benefit of any third party.

16 13. This Agreement and the Consent Decree memorialize the Parties' entire agreement
17 with respect to the: District's Second Amended Third Party Cross-Complaint, District's Fourth
18 Party Complaint; and United States' Third Party Cross-Claims, all as defined in paragraph 2,
19 above. It supersedes and replaces any and all prior or contemporaneous agreements or
20 understandings, written or oral, with regard to the matters set forth in it, except the Consent
21 Decree. This Agreement's terms are contractual and not mere recitals, and may be amended or
22 modified in whole, or in part, at any time only by an agreement in writing, executed in the same
23 manner as this Agreement.

24 14. Each Party and its attorneys have carefully and fully reviewed this Agreement.
25 Further, each Party and its attorneys have revised, or had an opportunity to revise this Agreement.
26 Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved
27 against the drafting Party shall not be utilized in the interpretation of this Agreement.
28

1 15. With the exception of paragraphs 4, 5, 6, 7 and 8, any term, provision, covenant or
2 condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or
3 unenforceable, the remainder of the provisions shall remain in full force and effect and shall in
4 no way be affected, impaired or invalidated. If any of these five paragraphs are held by an order
5 of a court of competent jurisdiction to be invalid, void or unenforceable, any Party may declare
6 this Agreement to be unenforceable by providing written notice of their declaration to the other
7 Parties within sixty (60) days after entry of such a court order. A Party's failure to serve timely
8 notice of its declaration shall constitute a waiver of its right to invoke this provision. A timely
9 declaration under this paragraph, however, shall not affect the validity of the Consent Decree,
10 once the decree becomes a final judgment.

11 16. A fully executed copy of this Agreement shall be deemed an original for all purposes,
12 and this Agreement may be executed in one or more counterparts, each of which shall be an
13 original, but all of which shall constitute one instrument.

14 17. Whenever this Agreement's context so requires, the masculine gender shall be
15 deemed to refer to and include the feminine and neuter, and the singular to refer to and include
16 the plural. Whenever in this Agreement the context so requires, the word "person" shall be
17 deemed to refer to, and include, any natural person, corporation, partnership, trust, joint venture,
18 or any other association, or any private, public, or quasi-public entity.

19 18. Each Party to this Agreement represents and warrants that it has the sole and
20 exclusive authority to execute this Agreement and receive the consideration stated herein.

21 19. Each Party to this Agreement represents and warrants that each person whose
22 signature appears in this Agreement has been duly authorized and has the full authority to
23 execute this Agreement on behalf of the person, persons or entity who is a Party to this
24 Agreement. Each person executing this Agreement further represents that he or she has read and
25 understands its contents and that he or she executes this Agreement voluntarily.

26 20. Each Party to this Agreement shall be responsible for payment of the attorneys' fees
27 and costs that it has incurred in the prosecution or defense of these actions.

28

1 21. Upon the entry of the Consent Decree, the Parties request that the Court enter an
2 order dismissing without prejudice the: District's Second Amended Third Party Cross-Complaint
3 cause of action against the United States for Quiet Title; District's Fourth Party Complaint
4 against the Federal Defendants for Declaratory and Injunctive Relief under the APA; and United
5 States' Third Party Cross-Claims against the District for Declaratory and Injunctive Relief, and
6 Trespass and Ejectment. Thereafter, the Parties will move separately for an order dismissing the
7 actions above with prejudice, according to the following schedule: (a) if no appeal of the Consent
8 Decree is taken, within thirty (30) days after the time stated in 28 U.S.C. § 2107 to file an appeal
9 expires; (b) if an appeal from the district court is timely filed, within thirty (30) days after the
10 court of appeals' mandate upholding the Consent Decree; and (c) if a timely appeal or petition for
11 certiorari from the court of appeals is taken pursuant to 28 U.S.C. § 2101, within thirty (30) days
12 after the United States Supreme Court, either by action or inaction, fails to hold the Consent
13 Decree to be invalid, void or unenforceable.

14 22. If the Court rejects the Consent Decree, subsequently sets it aside, or determines it to
15 be invalid, or if one of the Parties declares this Agreement unenforceable pursuant to paragraph
16 15, above, and the Parties resume their litigation (reasserting only claims previously pleaded and
17 no others), they agree they will not raise time related defenses against each other as stated in this
18 paragraph. The Parties agree that the time period between the entry date of the order dismissing
19 this case without prejudice and the earlier of either the date the Court rejects the Consent Decree,
20 sets it aside, or determines it to be invalid, or the date this Settlement Agreement is declared
21 unenforceable, shall be excluded when determining whether any claims are time barred by any
22 statute of limitations, laches, equitable tolling or any other time related defenses ("Time
23 Defenses"). The Parties waive and agree they will not plead any Time Defenses except those
24 defenses in existence prior to the effective date of this Agreement. The Parties further agree that
25 evidence of activities or documents in connection with the SUP application required by
26 paragraph 4 above that would be inadmissible under Federal Rule of Evidence 408 shall not be
27 admissible in the litigation if it resumes, as the District would not have otherwise agreed to the
28 inclusion of paragraph 4 above.

1 23. The Parties request that, notwithstanding the entry of a dismissal herein, the Court
2 retain jurisdiction to enforce the terms of this Agreement.

3 24. Whenever, under the terms of this Settlement Agreement, written notice is required
4 to be given or a report or other document is required to be sent by one Party to another, it shall be
5 directed to the individuals at the addresses specified below, unless those individuals or their
6 successors give notice of a change to the other Parties in writing. All notices and submissions
7 shall be considered effective upon receipt, unless otherwise provided. Written notice as specified
8 herein shall constitute complete satisfaction of any written notice requirement of the Settlement
9 Agreement with respect to the United States, the Forest Service, and the District, respectively.

10 **As to the United States:**

11 Civil Division
12 Defense Litigation Unit Chief
13 United States Attorney's Office
14 501 I Street, Suite 10-100
15 Sacramento, CA 95814
16 Phone (916) 554-2700
17 Fax (916) 554-2900

18 **As to the Forest Service:**

19 Robert Rodman Jr
20 Lands Program Manager
21 R-5 Lake Tahoe Basin Management Unit
22 35 College Drive
23 South Lake Tahoe, CA 96150
24 rrodmanjr@fs.fed.us
25 (530) 543-2613
26 cell (530) 307-0913
27 Fax (530) 543-2869

28 Rose Miksovsky
Staff Attorney
Office of the General Counsel
33 New Montgomery St., 17th Floor
San Francisco, California 94150
Telephone: (415) 744-3158
Fax: (415) 744-3170
Email: rose.miksovsky@usda.gov

29 **As to the District:**

30 General Manager
31 South Tahoe Public Utility District
32 1275 Meadow Crest Drive

1 South Lake Tahoe, CA 96150
Telephone: 530-544-6474
2 Fax: 530-441-0614

3 Gary M. Kvistad
Brownstein Hyatt Farber Schreck, LLP
4 21 East Carrillo Street
Santa Barbara, CA 93101
5 Telephone: 805-963-7000
6 Fax: 805-965-4333

7 FOR THE UNITED STATES (INCLUDING THE FEDERAL DEFENDANTS):

8 LAWRENCE G. BROWN
Acting United States Attorney

9
10 Date: 9/16/2009

By: 

11 SYLVIA QUAST
Assistant United States Attorney
Attorneys for the United States of America
12 and the Federal Defendants

13
14 FOR SOUTH TAHOE PUBLIC UTILITY DISTRICT:

15
16 Date: _____

By: _____

17 MARY LOUISE MOSBACHER
PRESIDENT, BOARD OF DIRECTORS

18
19 APPROVED AS TO FORM AND CONTENT:

20 BROWNSTEIN HYATT FARBER SCHRECK, LLP

21
22 Date: _____

By: _____

23 STEVEN L. HOCH
Attorneys for South Tahoe Public Utility District

24
25 **ORDER**

26 Pursuant to the Parties' Settlement Agreement above, and Fed. R. Civ. P. 41, the
27 following actions are **DISMISSED WITHOUT PREJUDICE**: the District's Second Amended
28 Third Party Cross-Complaint cause of action against the United States for Quiet Title; the

1 South Lake Tahoe, CA 96150
Telephone: 530-544-6474
2 Fax: 530-441-0614


3 Gary M. Kvistad
Brownstein Hyatt Farber Schreck, LLP
4 21 East Carrillo Street
Santa Barbara, CA 93101
5 Telephone: 805-963-7000
6 Fax: 805-965-4333

7 FOR THE UNITED STATES (INCLUDING THE FEDERAL DEFENDANTS):

8 LAWRENCE G. BROWN
Acting United States Attorney
9

10 Date: _____ By: _____
11 SYLVIA QUAST
Assistant United States Attorney
12 Attorneys for the United States of America
and the Federal Defendants
13

14 FOR SOUTH TAHOE PUBLIC UTILITY DISTRICT:

15
16 Date: 07/14/09 By: 
17 MARY LOUISE MOSBACHER
PRESIDENT, BOARD OF DIRECTORS
18

19 APPROVED AS TO FORM AND CONTENT:

20 BROWNSTEIN HYATT FARBER SCHRECK, LLP

21
22 Date: _____ By: _____
23 STEVEN L. HOCH
Attorneys for South Tahoe Public Utility District
24

25 **ORDER**

26 Pursuant to the Parties' Settlement Agreement above, and Fed. R. Civ. P. 41, the
27 following actions are **DISMISSED WITHOUT PREJUDICE**: the District's Second Amended
28 Third Party Cross-Complaint cause of action against the United States for Quiet Title; the

1 South Lake Tahoe, CA 96150
Telephone: 530-544-6474
2 Fax: 530-441-0614

3 Gary M. Kvistad
Brownstein Hyatt Farber Schreck, LLP
4 21 East Carrillo Street
Santa Barbara, CA 93101
5 Telephone: 805-963-7000
6 Fax: 805-965-4333

7 FOR THE UNITED STATES (INCLUDING THE FEDERAL DEFENDANTS):

8 LAWRENCE G. BROWN
Acting United States Attorney
9

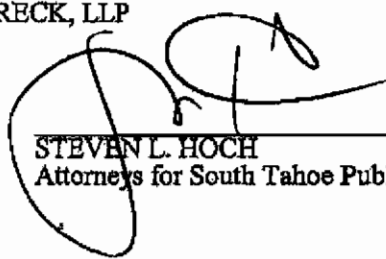
10 Date: _____ By: _____
11 SYLVIA QUAST
Assistant United States Attorney
12 Attorneys for the United States of America
and the Federal Defendants
13

14 FOR SOUTH TAHOE PUBLIC UTILITY DISTRICT:

15
16 Date: _____ By: _____
17 MARY LOUISE MOSBACHER
PRESIDENT, BOARD OF DIRECTORS
18

19 APPROVED AS TO FORM AND CONTENT:

20 BROWNSTEIN HYATT FARBER SCHRECK, LLP

21
22 Date: 1/14/09 By: 
23 STEVEN L. HOCH
Attorneys for South Tahoe Public Utility District
24

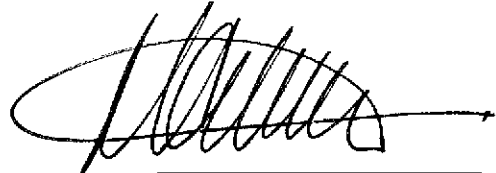
25 **ORDER**

26 Pursuant to the Parties' Settlement Agreement above, and Fed. R. Civ. P. 41, the
27 following actions are **DISMISSED WITHOUT PREJUDICE**: the District's Second Amended
28 Third Party Cross-Complaint cause of action against the United States for Quiet Title; the

1 District's Fourth Party Complaint against the Federal Defendants for Declaratory and Injunctive
2 Relief under the Administrative Procedures Act; and the United States' Third Party Cross-Claims
3 against the District for Declaratory and Injunctive Relief, and Trespass and Ejectment. The
4 Court shall retain jurisdiction to enforce, if necessary, the terms of the Settlement Agreement and
5 Consent Decree, the terms of which are incorporated herein.

6 IT IS SO ORDERED.










7
8 Date: 1. 27. 2010

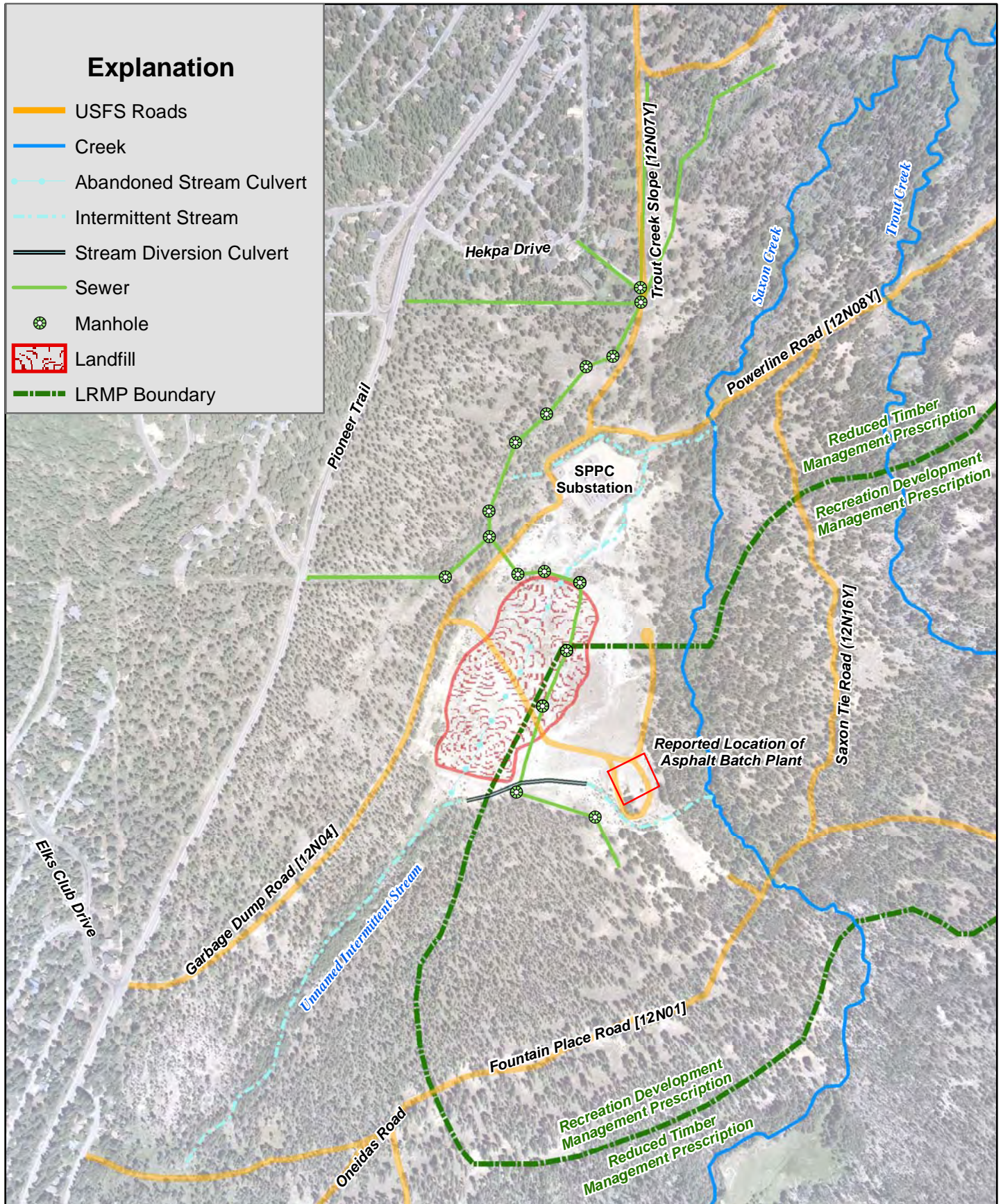


9 MORRISON C. ENGLAND, JR.
United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Explanation

-  USFS Roads
-  Creek
-  Abandoned Stream Culvert
-  Intermittent Stream
-  Stream Diversion Culvert
-  Sewer
-  Manhole
-  Landfill
-  LRMP Boundary







Site Map
Meyers Landfill
El Dorado County, California

