

LAWRENCE G. BROWN  
United States Attorney

Attorneys for the United States of America

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

UNITED STATES OF AMERICA,

**Plaintiff,**

3

ELWYN S. DUBEY, JEANNINE M.  
DUBEY, DUANE A. WOODMAN AS  
TRUSTEE FOR GARDEN VALLEY  
INVESTMENTS, EL DORADO COUNTY  
TAX COLLECTOR, CALIFORNIA  
FRANCHISE TAX BOARD.

## Defendants.

Civil No. 2:07-CV-02372-JAM-KJM

**STIPULATION AND REQUEST FOR  
ORDER REGARDING LIEN PRIORITY  
BETWEEN THE UNITED STATES AND  
EL DORADO COUNTY**

The United States of America and El Dorado County, through their respective attorneys, hereby stipulate and agree as follows:

1. The parcel of real property located at 7481 Wentworth Springs Road, Georgetown, California (referred to in the Complaint and herein as the "Wentworth Springs Road Property"), is situated in the County of El Dorado, State of California, and is more particularly described as follows:

**PARCEL NO. 1:**

A portion of the Southeast quarter of the Southwest quarter of Section 31, Township 13 North, Range 11 East, M.D.B.&M., and a portion of Lot 3, Section 6, Township 12 North, Range 11 East, M.D.B.&M., described as follows:

BEGINNING at the Northwest corner of the parcel herein described, being the West

1/16 corner of the Northerly line of said Section 6, a 7/8 inch drill steel in a rock  
mound being identical with the Northeast corner of the lands of Wesley A. Ash and  
Evelyn Jean Ash, as described in book 417 of Deeds, at page 237, El Dorado  
County Records; thence from point of beginning, along the line common to said  
Sections 6 and 31, North 89° 16' East 422.15 feet, a 3/4 inch capped iron pipe;  
thence leaving said line common to Sections 6 and 31, North 00° 44' West 34.67  
feet to a 3/4 inch capped iron pipe set in a fence line; thence along said fence North  
67° 29' East 140.06 feet to a similar pipe, the Northeast corner; thence South 29°  
14' 30" East 90.90 feet to a similar pipe; thence continuing South 29° 14' 30" East  
7.70 feet to a point on the line common to said Sections 6 and 31; thence  
continuing South 29° 14' 30" East 283.76 feet, the Southeast corner a 1-1/2 inch  
iron pipe in a fence line on the Northerly side of the Georgetown-Wentworth Springs  
County Road No. 63; thence along the Northerly side of said road (4 courses) along  
a curve to the right with a radius of 218.3 feet, through an angle of 53° 54' a chord  
distance of 197.89 feet which bears South 73° 00' West; thence North 80° 03' West  
(Record N. 81° 41' W.) 181.80 feet; thence along a curve to the left with a radius of  
280 feet, through an angel of 42° 56' a chord distance of 204.94 feet which bears  
South 78° 29' West; thence South 57° 01' West (Record S. 55° 23' W.) 160.00 feet,  
the Southwest corner, a 7/9 inch drill steel set in a rock mound, on the Northerly  
side of said road being the Southeast corner of said lands of Wesley A. Ash and  
Evelyn Jean Ash; thence leaving the Northerly side of said road and along the  
Easterly boundary of said lands of Wesley A. Ash and Evelyn Jean Ash, North 05°  
00' West, 395.97 feet (Record 395.69 feet) to the point of beginning.

SAVING AND EXCEPTION THEREFROM all that portion lying within said Section  
31, and more particularly described as follows;

BEGINNING at the Southwest corner, a point on the Section line common to said  
Sections 6 and 31, from whence the West 1/16th corner of said Section 6 bears  
South 89° 16' West 422.15 feet; thence from said point of beginning being marked  
by a 3/4 inch capped iron pipe, North 00° 44' West 34.67 feet to a 3/4 inch capped  
iron pipe set in a fence line; thence along said fence North 67° 29' East 140.06 feet  
to a similar pipe; thence South 29° 14' 30" East 90.90 feet to a similar pipe; thence  
continuing South 29° 14' 30" East 7.70 feet to a point on the line common to said  
Sections 6 and 31; thence along said Section Line South 80° 16' West 177.14 feet  
to the point of the beginning.

According to a survey by Harvey L. Butler, LS. 2725 on April 26, 1960.

**PARCEL NO. 2:**

A portion of the Southeast quarter of the Southwest quarter of Section 31, Township  
13 North, Range 11 East, M.D.B.&M., described as follows;

BEGINNING at the Southwest corner of the parcel herein described, a 3/4 inch  
capped iron pipe set on the Southerly boundary of said Section 31 from which the  
West 1/16 corner on the North line of Section 6, Township 12 North., Range 11 East  
M.D.B.&M., a 7/8 inch drill steel in a rock mound, said point being the Northeast  
corner of that certain tract of land conveyed to Wesley A. Ash and Evelyn Jean Ash,  
as recorded in Book 417 of Deeds, at Page 237, El Dorado county Records, Bears  
South 89° 16' West, 422.15 feet; thence from point of beginning, North 00° 44'  
West, 34.67 feet to a 3/4 inch capped iron pipe set in a fence line; thence along said  
fence North 67° 29' East 140.06 feet to a similar pipe; thence South 29° 14' 30" East

1                   7.70 feet to a point on the Southerly boundary of said Section 31, thence along the  
2                   Southerly boundary of Section 31, South 89° 16' West 177.14 feet to the point of  
beginning

3                   According to a survey by Harvey L. Butler, LS. 2725 on April 26, 1960.

4                   2.       The parcel of real property located at 8258 Fair Pines Lane, Garden Valley,  
5                   California (referred to in the Complaint and herein as the "Fair Pines Lane Property") is  
6                   situated in the County of El Dorado, State of California, and is more particularly described  
7                   as follows:

8                   PARCEL 4, as said parcel is shown on that certain Parcel Map entitled "A  
9                   PORTION OF THE N.E. 1/4 OF THE S.W. 1/4 SECTION OF 35, T. 12 N., R. 10 E.,  
M.D.M" filed in the office of the County Recorder of said County on November 9,  
10                   1977, in Book 18 of Parcel Maps at Page 3.

11                   3.       The parcel of real property located at 2021 Buckeye Court, Georgetown,  
12                   California<sup>1</sup> (referred to in the Complaint and herein as the "Buckeye Cabin Property"), is  
13                   situated in the County of El Dorado, State of California, and is more particularly described  
as follows:

14                   A portion of the Northwest quarter of Section 6, Township 12 North, Range 11 East,  
M.D.M., described as follows:

15                   Commencing at the quarter section corner on the North boundary of Section 6,  
16                   Township 12 North, Range 11 East, M.D.M.; thence running South 65° 31' West  
209.9 feet; thence South 72° 6' feet West 200 feet; thence South 66° 49' West 50  
feet; thence South 51° 18' West 50 feet; thence South 37° 17' West 50 feet; thence  
17                   South 34° 20' West 50 feet; thence South 37° 35' West 50 feet; thence South 45°  
18                   16' West 50 feet to the point of beginning of this description; South 16° 12' East 120  
feet to the North line of what is known as Buckeye Avenue; thence South 52° 42'  
19                   West 50 feet; thence North 16° 12' West 120 feet to the South line of the  
20                   Georgetown and Lake Tahoe Highway; thence North 52° 42' East 50 feet to the  
point of beginning.

21                   4.       The parcel of real property located off Del Oro Lane in the proximity of  
22                   Coloma, California (referred to in the Complaint and herein as the "Del Oro Lane  
23                   Property"), is situated in the County of El Dorado, State of California, and is more  
24                   particularly described as follows:

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26                   <sup>1</sup> Defendants Elwyn and Jeannine Dubey have also represented this property as located  
27                   at 7498 Wentworth Springs Road, Georgetown, California.

1 A portion of the Northeast quarter of the Northwest quarter, and the Northwest  
2 quarter of the Northeast quarter of Section 13, Township 11 North, Range 9 East,  
M.D.B.&M., described as follows:

3 BEGINNING at the Northeast corner of said Section 13; thence along the North line  
4 of said Section 13 North 89° 42' 30" West 1532.11 feet; thence leaving said North  
line South 0° 17' 30" West 368.74 feet to the true point of beginning, the Northeast  
5 corner of the herein described parcel of land; thence continuing South 0° 17' 30"  
West 355.94 feet to the Southeast corner; thence North 89° 42' 30" West 825.85  
feet; thence South 0° 17' 30" West 9.68 feet; thence South 43° 06' West 114.27 feet  
6 to a point in the center line of the South Fork of the American River; thence along  
the center line of said River North 55° 16' 20" West 253.09 feet, and North 47° 44'  
7 West 238.48 feet; thence leaving said River North 42° 47' East 131.28 feet, thence  
North 0° 17' 30" East 50.03 feet; thence South 89° 42' 30" East 1200.87 feet to the  
8 true point of beginning, the Northeast corner of the herein described parcel of land.  
According to a survey by K. Nelson, L.S. 2822.

9 EXCEPTING THEREFROM all that portion thereof described as follows:  
10 A portion of the Northeast quarter of the Northwest quarter and the Northwest  
11 quarter of the Northeast quarter of Section 13, Township 11 North, Range 9 East,  
M.D.B.&M., described as follows:

12 BEGINNING at the Northeast corner of Section 13; thence along the North line of  
13 said Section 13 North 89° 42' 30" West 1532.11 feet; thence leaving said North line  
South 0° 17' 30" West 527.81 feet to the true point of beginning, the Northeast  
14 corner of the herein described parcel of land; thence continuing South 0° 17' 30"  
West 196.87 feet to the Southeast corner; thence North 89° 42' 30" West 825.85  
feet; thence South 0° 17' 30" West 9.68 feet; thence South 43° 06' West 114.27 feet  
15 to a point in the centerline of the South Fork of the American River; thence along  
said centerline North 55° 16' 20" West 246.57 feet; thence leaving said centerline  
16 of River North 42° 48' East 130.42 feet; of beginning, the Northeast corner of the  
herein described parcel of land.

17 According to a survey by K. Nelson, L.S. 2822.

18 TOGETHER with the non-exclusive right of way as set forth in Grant to Dieter A.  
19 Doemelt, et ux.; recorded October 7, 1970, in Book 1010 of Official Records, at  
page 327, as contained in Grant to Don C. Brooks, et ux., recorded October 27,  
1971, in Book 1085 of Official Records, at page 379.

20 5. The United States claims that federal tax liens and a judgment lien, which are  
21 identified in the First Amended Complaint in the above-captioned matter, encumber the  
22 Wentworth Springs Road Property, Fair Pines Lane Property, the Buckeye Cabin Property,  
23 and the Del Oro Lane Property. The first of these federal tax liens arose on August 24,  
24 1990.

25 6. El Dorado County, California has property tax liens on the Wentworth Springs  
26 Road Property, Fair Pines Lane Property, the Buckeye Cabin Property, and the Del Oro  
27

1 Lane Property.

2       7. The United States and El Dorado County agree that El Dorado County's  
3 property tax liens have priority over the federal tax liens and judgment lien at issue in the  
4 above-captioned action.

5       8. In the event that the Court permits the sale of the Wentworth Springs Road  
6 Property, the property will be sold free and clear of all liens of record, with the lien to follow  
7 the proceeds of the sale. The Order of Judicial Sale shall provide that the sale proceeds  
8 shall be distributed first to the United States to the extent of its costs and expenses of the  
9 sale, then to El Dorado County to the extent of El Dorado County's property tax lien on the  
10 Wentworth Springs Road Property (including principal and interest to the date of  
11 distribution, in an amount according to proof at that time), and then to the United States  
12 in satisfaction of its federal tax liens and judgment lien. If the affected parties cannot  
13 stipulate to the amounts of the liens, the Court may hold an evidentiary hearing to  
14 determine the amounts.

15       9. In the event that the Court permits the sale of the Fair Pines Lane Property,  
16 the property will be sold free and clear of all liens of record, with the lien to follow the  
17 proceeds of the sale. The Order of Judicial Sale shall provide that the sale proceeds shall  
18 be distributed first to the United States to the extent of its costs and expenses of the sale,  
19 then to El Dorado County to the extent of El Dorado County's property tax lien on the Fair  
20 Pines Lane Property (including principal and interest to the date of distribution, in an  
21 amount according to proof at that time), and then to the United States in satisfaction of its  
22 federal tax liens and judgment lien. If the affected parties cannot stipulate to the amounts  
23 of the liens, the Court may hold an evidentiary hearing to determine the amounts.

24       10. In the event that the Court permits the sale of the Buckeye Cabin Property,  
25 the property will be sold free and clear of all liens of record, with the lien to follow the  
26 proceeds of the sale. The Order of Judicial Sale shall provide that the sale proceeds shall

1 be distributed first to the United States to the extent of its costs and expenses of the sale,  
2 then to El Dorado County to the extent of El Dorado County's property tax lien on the  
3 Buckeye Cabin Property (including principal and interest to the date of distribution, in an  
4 amount according to proof at that time), and then to the United States in satisfaction of its  
5 federal tax liens and judgment lien. If the affected parties cannot stipulate to the amounts  
6 of the liens, the Court may hold an evidentiary hearing to determine the amounts.

7       11. In the event that the Court permits the sale of the Del Oro Lane Property, the  
8 property will be sold free and clear of all liens of record, with the lien to follow the proceeds  
9 of the sale. The Order of Judicial Sale shall provide that the sale proceeds shall be  
10 distributed first to the United States to the extent of its costs and expenses of the sale, then  
11 to El Dorado County to the extent of El Dorado County's property tax lien on the Del Oro  
12 Lane Property (including principal and interest to the date of distribution, in an amount  
13 according to proof at that time), and then to the United States in satisfaction of its federal  
14 tax liens and judgment lien. If the affected parties cannot stipulate to the amounts of lien,  
15 the Court may hold an evidentiary hearing to determine the amounts.

16       12. The United States and El Dorado County agree to bear their respective costs  
17 related to this litigation, including any possible attorney's fees.

18       13. Unless ordered by the Court, El Dorado County is excused from appearing  
19 in Court, or otherwise asserting its claim in this case. El Dorado County agrees to be  
20 bound by the judgment in this case.

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1           14. This stipulation shall not prevent El Dorado County from pursuing any rights  
2 for the collection of property taxes which may otherwise exist under applicable law.

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4           The parties so agree and request an order confirming the foregoing.

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7           Dated: April 10, 2009

8           By: /s/ Adair Boroughs  
ADAIR BOROUGH  
Trial Attorney, Tax Division  
U.S. Department of Justice

9           Attorney for the United States

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11           Dated: April 2, 2009

12           By: /s/ Michael J. Ciccozi (as  
authorized on 4/2/09)  
MICHAEL J. CICCOZZI  
Deputy County Counsel  
County of El Dorado

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14           Attorney for El Dorado County

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17           **IT IS SO ORDERED.**

18           DATED this 10<sup>th</sup> day of April, 2009.

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20           /s/ John A. Mendez  
JOHN A. MENDEZ  
U.S. District Court Judge