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13 IN THE UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA

15 LUCIANO FARMS, LLC, a Limited Liability)
16 Company; ROBERT A. LUCIANO, JR., an)
individual and the trustee of the Robert A.)
17 Luciano Jr. Revocable Trust Dated February)
27, 1995,)

18 Plaintiffs,

19 vs.

20 UNITED STATES OF AMERICA; UNITED)
STATES DEPARTMENT OF)
21 AGRICULTURE; TOM VILSACK, Secretary)
of Agriculture; UNITED STATES FOREST)
22 SERVICE; TOM TIDWELL,)
Chief Forester; EARL FORD, Forest)
23 Supervisor, Plumas National Forest; DEB)
BUMPUS, District Ranger, Beckwourth)
24 Ranger District; and DOES 1-25,)

25 Defendants.

Case No. 2:13-cv-02116-KJM-AC

**ORDER GRANTING
JOINT MOTION FOR APPROVAL OF
DISCLAIMER AND TO VACATE
ORDER AND CONDITIONAL
STIPULATION OF DISMISSAL**

1 Having considered the parties' joint motion for approval of the United States' disclaimer
2 of interest and to vacate the court's May 23, 2014 order, the court makes the following orders:

3 **I. APPROVAL OF DISCLAIMER**

4 The court CONFIRMS the United States' disclaimer of interest, because it was executed
5 in good faith. *See Leisnoi, Inc. v. United States*, 313 F.3d 1181, 1184 n.5 (9th Cir. 2002) (citing
6 *Lee v. United States*, 809 F.2d 1406, 1409–10 (9th Cir. 1987)).

7 **II. VACATUR OF MAY 13, 2014 ORDER (ECF NO. 37)**

8 The court's May 23, 2014 order granting in part and denying in part defendant's motion
9 to dismiss (ECF No. 37) is an interlocutory order. Rule 54(b) of the Federal Rules of Civil
10 Procedure provides this court with authority to revise an interlocutory order "when it is
11 'consonant with equity' to do so." *De La O v. Arnold-Williams*, Nos. 04-0192 & 05-0280, 2008
12 WL 4192033, at *1 (E.D. Wash. Aug. 27, 2008) (quoting *Simmons v. Brier Bros. Co.*, 258 U.S.
13 82, 91 (1922)); *see also Cuiello v. Cal Expo*, No. 11-2456, 2014 WL 1379873, at *3 (E.D. Cal.
14 Apr. 8, 2014) (discussing *De La O*). Whether it is consonant with equity to vacate an
15 interlocutory order turns on several factors: "whether all the parties involved in the ruling(s)
16 request and agree to vacatur as a condition of a proposed settlement of the action; . . . whether a
17 former party to the action would be adversely affected by a vacatur; and whether the costs of
18 continuing the action with uncertain results are outweighed by the benefits of the proposed
19 settlement of the action." *Cuiello*, 2014 WL 1379873, at *3 (quoting *De La O*, 2008 WL
20 4192033, at *1).

21 Here, each of those factors favors vacatur. Both parties to the litigation request vacatur,
22 and there are no former parties to the litigation. As described in the parties' joint motion, the
23 settlement, when consummated, will bring significant benefits to both parties. Because the
24 settlement is conditioned upon vacatur, granting this motion will enable the parties to realize
25 those benefits. *See Cuiello*, 2014 WL 1379873, at *3 (citing *Major League Baseball Props.,*
26 *Inc. v. Pac. Trading Cards, Inc.*, 150 F.3d 149, 152 (2d Cir. 1998), and *De La O*, 2008 WL
27 4192033, at *1).

1 Should the settlement not be consummated, the parties would have to expend
2 considerable resources to see the case through to completion. Resolution of the case through
3 litigation would require both a multi-day trial of plaintiffs' claim to a right-of-way and summary
4 judgment proceedings on plaintiffs' claims brought under the APA. *See* ECF No. 62. Further,
5 there would be a risk of appeal, "which would generate further litigation expenses, and possible
6 remand to this Court." *Gemini Ins. Co. v. N. Am. Capacity Ins. Co.*, No. 14-00121, 2015 WL
7 3891423, at *3 (D. Nev. June 18, 2015). While the court is fully prepared to preside over any
8 trial needed, by granting the instant motion, "the Court will fully dispose of the case [and] allow
9 the Parties to efficiently resolve their dispute without the use of any further judicial resources."
10 *Id.*

11 The parties' filing recognizes that their motion implicates important public interests.
12 This court expended resources in crafting the order on the motion to dismiss, and even though "a
13 district court's order is not precedential, 'there is a systemic interest in preserving district court
14 judgments because they play a significant role in the development of decisional law by providing
15 guidance to private parties with respect to the availability of remedies and to litigation strategy,
16 and they can also be useful to the courts of appeals in rendering decisions.'" *Cuviello*, 2014 WL
17 1379873, at *4 (quoting *Philip Servs. Corp. v. City of Seattle*, No. 06-2518, 2007 WL 3396436,
18 at *3 (S.D. Tex. Nov. 17, 2007)) (internal quotation marks omitted).

19 Granting the parties' joint motion will neither remove the ability of the order to offer
20 guidance nor render the court's efforts in promulgating the order a nullity. The order "will
21 remain in electronic research databases, albeit flagged, and so [it will be] available for whatever
22 guidance [it] may give to parties and other courts." *Cuviello*, 2014 WL 1379873, at *4; *see also*
23 *Ohio Willow Wood Co. v. Thermo-Ply, Inc.*, 769 F. Supp. 2d 1065, 1068 (E.D. Tex. 2011)
24 (noting that orders published electronically are available to other parties and courts for
25 "[w]hatever persuasive guidance the order may provide").

26 Vacatur is further appropriate because this is a joint motion and the prospect of vacating
27 the order was not the primary motive for the settlement. *Am. Games v. Trade Prods., Inc.*, 142

1 F.3d 1164, 1170 (9th Cir. 1998). Thus, this is not a case where one party has suffered a litigation
2 defeat and seeks to execute “a refined form of collateral attack” to negate that defeat. *Cuviello*,
3 2014 WL 1379873, at *4 (quoting *NASD Dispute Resolution, Inc. v. Judicial Council of State of*
4 *Cal.*, 488 F.3d 1065, 1068 (9th Cir. 2007)); *see also U.S. Bancorp Mortg. Co. v. Bonner Mall*
5 *P’ship*, 513 U.S. 18, 27 (1994)). In contrast to *NASD* and *Bonner Mall*, both parties here gained
6 and lost through the order, and both parties seek its vacatur. *See NASD*, 488 F.3d at 1067 (noting
7 that the motion to vacate was opposed by the party that prevailed in the lower court
8 proceedings); *Bonner Mall*, 513 U.S. at 18 (same).

9 Finally, the Ninth Circuit has recognized that the public interest is furthered by settling
10 and quieting litigation. *E.g., Ahern v. Cent. Pac. Freight Lines*, 846 F.2d 47, 48 (9th Cir. 1988).
11 Granting this motion will further that public interest.

12 For the foregoing reasons, the court GRANTS the parties’ joint motion to vacate its May
13 23, 2014 order (ECF No. 37).

14 **III. DISMISSAL WITH PREJUDICE**

15 The parties’ settlement agreement calls for this action to be dismissed with prejudice.
16 The Quiet Title Act (QTA) provides that when the United States files a disclaimer of interest in
17 real property prior to the commencement of trial and the “disclaimer is confirmed by order of the
18 court, the jurisdiction of the district court [under the Quiet Title Act] shall cease . . .” 28 U.S.C.
19 § 2409a(e). Thus, the court’s confirmation of the disclaimer will divest the court of jurisdiction
20 over plaintiffs’ claims brought under the QTA. *Lee*, 809 F.2d at 1409.

21 Additionally, plaintiffs’ Administrative Procedures Act (APA) claims can be dismissed
22 under Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure. *See Pedroza v. Lomas Auto*
23 *Mall, Inc.*, 304 F.R.D. 307, 323 (D.N.M. 2014) (Rule 41 dismissal may be used to dismiss claims
24 remaining in an action after a court order has surrendered jurisdiction over some claims)
25 (discussing 8 James Wm. Moore et al., *Moore’s Federal Practice*, § 41.21[1] (3d ed. 2012)).
26 Rule 41(a)(1)(A)(ii) allows parties to dismiss an action voluntarily, after service of an answer, by
27 filing a written stipulation to dismiss signed by all parties who have appeared. *Carter v. Beverly*


1 *Hills Sav. & Loan Ass'n*, 884 F.2d 1186, 1191 (9th Cir. 1989); *Eitel v. McCool*, 782 F.2d 1470,
2 1472-73 (9th Cir. 1986). The parties here have satisfied the requirements of Rule
3 41(a)(1)(A)(ii). Accordingly, plaintiffs' APA claims are DISMISSED with prejudice.

4 **IV. CONCLUSION**

5 For the foregoing reasons, the court CONFIRMS the United States' disclaimer of interest
6 (ECF No. 74-1); VACATES the court's May 23, 2014 order granting in part and denying in part
7 defendant's motion to dismiss (ECF No. 37); and DISMISSES plaintiffs' APA claims with
8 prejudice. CASE CLOSED.

9 IT IS SO ORDERED.

10 DATE: September 13, 2016.

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14 UNITED STATES DISTRICT JUDGE
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17 SERVICE; TOM HEDWELL,
Chief Forester; EARL FORD, Forest
18 Supervisor, Plumas National Forest; DEB
BUMPUS, District Ranger, Beckwourth
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20 Defendants.
21
22

Case No. 2:13-cv-02116-KJM-AC

**DISCLAIMER OF INTEREST
PURSUANT TO 28 U.S.C. § 2409a(e)**

Date: None

Time: None

Location: None

Judge: Hon. Kimberly J. Mueller

23
24 COMES NOW the United States of America, through undersigned counsel, and,

25 pursuant to 28 U.S.C. § 2409a(e), disclaims any interest adverse to the claims of the Plaintiffs,

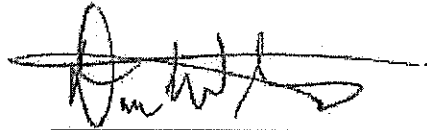
26 Luciano Farms, LLC and Robert A. Luciano, Jr., to ditch rights-of-way established under 43
27

1 U.S.C. § 661 ("R.S. 2339") asserted in Plaintiffs' First Amended Complaint in this action filed
2 May 27, 2014, as amended in accordance with the right-of-way descriptions contained in Exhibit
3 A attached hereto.

4 This Disclaimer is conditioned upon the entry by the Court of an Order
5 confirming the Disclaimer.

6 DATED this 2nd day of September, 2016

7 JOHN C. CRUDEN
8 Assistant Attorney General

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11 DAVID W. GEHLERT
12 Trial Attorney
13 U.S. Dept. of Justice

14 Attorneys for Defendants
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EXHIBIT "A"

LUCIANO FARMS

UPPER DITCH DESCRIPTION

A twenty (20) feet wide diversion ditch right of way, within a portion of the SW 1/4 of the NE 1/4 of Section 1, T21N, R12E, MDB&M, County of Plumas, State of California, the centerline of which is more particularly described as follows:

Commencing at the CN 1/16 corner of said Section 1, as shown on that certain map filed in Book 7 of Maps at Page 144, Plumas County Records; thence along the north 1/16 boundary of said Section 1, S 89°47'23" E, 443.69 feet to the Point of Beginning (POB), said POB being the intersection of the Luciano Farms Upper Ditch with the north 1/16 section line of said Section 1; thence along the centerline of the existing upper irrigation ditch the following 34 courses:

S 11°59'26" W, 5.27 feet;

Tangent curve concave to the east, having a radius of 75.00 feet and a central angle of 15°27'24" through an arc length of 20.23 feet;

S 03°27'59" E, 25.33 feet;

Tangent curve concave to the west, having a radius of 150.00 feet and a central angle of 25°25'23" through an arc length of 66.56 feet;

S 21°57'24" W, 90.66 feet;

Tangent curve concave to the west, having a radius of 100.00 feet and a central angle of 10°41'40" through an arc length of 18.67 feet;

S 32°39'04" W, 19.26 feet;

Tangent curve concave to the west, having a radius of 10.00 feet and a central angle of 18°34'33" through an arc length of 3.24 feet;

S 51°13'37" W, 0.29 feet;

Tangent curve concave to the east, having a radius of 5.00 feet and a central angle of 29°50'31" through an arc length of 2.60 feet;

S 21°23'05" W, 5.73 feet;

Tangent curve concave to the west, having a radius of 50.00 feet and a central angle of $1^{\circ}43'56''$ through an arc length of 1.51 feet to the intersection of the Lower Ditch, hereinafter referred to as the "Y";

Continuing on the curve concave to the west, having a radius of 50.00 feet and a central angle of $11^{\circ}24'52''$ through an arc length of 9.96 feet;

S $34^{\circ}31'53''$ W, 16.12 feet;

Tangent curve concave to the east, having a radius of 10.00 feet and a central angle of $25^{\circ}06'06''$ through an arc length of 4.38 feet;

S $09^{\circ}25'47''$ W, 6.01 feet;

Tangent curve concave to the west, having a radius of 10.00 feet and a central angle of $10^{\circ}28'57''$ through an arc length of 1.83 feet;

S $19^{\circ}54'43''$ W, 6.32 feet;

Tangent curve concave to the west, having a radius of 10.00 feet and a central angle of $35^{\circ}39'56''$ through an arc length of 6.22 feet;

S $55^{\circ}34'39''$ W, 3.06 feet;

Tangent curve concave to the east, having a radius of 5.00 feet and a central angle of $32^{\circ}16'13''$ through an arc length of 2.82 feet;

S $23^{\circ}18'26''$ W, 25.30 feet;

Tangent curve concave to the west, having a radius of 100.00 feet and a central angle of $11^{\circ}01'41''$ through an arc length of 19.25 feet;

S $34^{\circ}20'07''$ W, 11.28 feet;

Tangent curve concave to the west, having a radius of 20.00 feet and a central angle of $57^{\circ}01'09''$ through an arc length of 19.90 feet;

N $88^{\circ}38'45''$ W, 0.90 feet;

Tangent curve concave to the south, having a radius of 5.00 feet and a central angle of $27^{\circ}04'42''$ through an arc length of 2.36 feet;

S $64^{\circ}16'33''$ W, 21.56 feet;

Tangent curve concave to the southeast, having a radius of 20.00 feet and a central angle of 15°59'26" through an arc length of 5.58 feet;

S 48°17'07" W, 11.94 feet;

Tangent curve concave to the northwest, having a radius of 10.00 feet and a central angle of 32°51'00" through an arc length of 5.73 feet;

S 81°08'07" W, 3.61 feet;

Tangent curve concave to the southeast, having a radius of 5.00 feet and a central angle of 32°11'53" through an arc length of 2.81 feet;

S 48°56'14" W, 25.03 feet;

Tangent curve concave to the northwest, having a radius of 20.00 feet and a central angle of 13°56'21" through an arc length of 4.87 feet;

S 62°52'35" W, 7.7 feet more or less to the point of diversion.

The sidelines shall be prolonged or shortened to conform to the north 1/16 section line of said Section 1

LOWER DITCH DESCRIPTION

A twenty (20) feet wide diversion ditch right of way, within a portion of the SW 1/4 of the NE 1/4 of Section 1, T21N, R12E, MDB&M, County of Plumas, State of California, the centerline of which is more particularly described as follows:

Beginning at Point "Y" of the aforementioned Upper Ditch Description; thence along the centerline of the existing lower irrigation ditch the following 47 courses:

N 65°47'35" W, 1.85 feet;

Tangent curve concave to the south, having a radius of 20.00 feet and a central angle of 8°15'53" through an arc length of 2.88 feet;

N 74°03'28" E, 3.33 feet;

Tangent curve concave to the north, having a radius of 200.00 feet and a central angle of 6°15'26" through an arc length of 21.84 feet;

N 67°48'02" E, 11.75 feet;

Tangent curve concave to the southeast, having a radius of 100.00 feet and a central angle of 8°19'16" through an arc length of 14.52 feet;

N 76°07'17" E, 15.46 feet;

Tangent curve concave to the north, having a radius of 50.00 feet and a central angle of 9°39'37" through an arc length of 8.43 feet;

N 66°27'40" E, 25.64 feet;

Tangent curve concave to the northwest, having a radius of 100.00 feet and a central angle of 15°27'57" through an arc length of 26.99 feet;

N 50°59'44" E, 13.75 feet;

Tangent curve concave to the southeast, having a radius of 150.00 feet and a central angle of 13°12'30" through an arc length of 34.58 feet;

N 64°12'13" E, 44.09 feet;

Tangent curve concave to the south, having a radius of 5.00 feet and a central angle of 33°40'20" through an arc length of 2.94 feet;

S 82°07'35" E, 7.18 feet;

Tangent curve concave to the north, having a radius of 10.00 feet and a central angle of 30°22'29" through an arc length of 5.30 feet;

N 67°29'56" E, 11.86 feet;

Tangent curve concave to the south, having a radius of 20.00 feet and a central angle of 43°49'04" through an arc length of 15.30 feet;

S 68°41'00" E, 7.62 feet;

Tangent curve concave to the north, having a radius of 60.00 feet and a central angle of 48°06'17" through an arc length of 50.38 feet;

N 63°12'43" E, 38.26 feet;

Tangent curve concave to the north, having a radius of 20.00 feet and a central angle of 6°47'35" through an arc length of 2.37 feet;

N 56°25'08" E, 11.08 feet;

Tangent curve concave to the northwest, having a radius of 20.00 feet and a central angle of 28°10'02" through an arc length of 9.83 feet;

N 28°15'06" E, 3.48 feet;

Tangent curve concave to the southeast, having a radius of 20.00 feet and a central angle of 67°01'29" through an arc length of 23.40 feet;

S 84°43'25" E, 20.02 feet;

Tangent curve concave to the north, having a radius of 200.00 feet and a central angle of 3°37'53" through an arc length of 12.68 feet;

S 88°21'18" E, 21.63 feet;

Tangent curve concave to the southwest, having a radius of 5.00 feet and a central angle of 40°52'39" through an arc length of 3.57 feet;

S 47°28'39" E, 0.86 feet;

Tangent curve concave to the north, having a radius of 10.00 feet and a central angle of 62°22'45" through an arc length of 10.89 feet;

N 70°08'36" E, 6.84 feet;

Tangent curve concave to the northwest, having a radius of 20.00 feet and a central angle of 36°17'12" through an arc length of 12.67 feet;

N 33°51'24" E, 7.07 feet;

Tangent curve concave to the southeast, having a radius of 5.00 feet and a central angle of 43°42'41" through an arc length of 3.81 feet;

N 77°34'05" E, 5.55 feet;

Tangent curve concave to the northwest, having a radius of 5.00 feet and a central angle of 49°23'09" through an arc length of 4.31 feet;

N 28°10'55" E, 5.68 feet;

Tangent curve concave to the southeast, having a radius of 20.00 feet and a central