

1 **DUGAN BARR**..... State Bar No. 40663
 2 **DOUGLAS MUDFORD**..... State Bar No. 156392
 3 **J. MICHAEL FAVOR** State Bar No. 85558
 4 **DAVID CASE**..... State Bar No. 56701
 5 **DOUGLAS H. NEWLAN** State Bar No. 032250
 6 **BARR & MUDFORD, LLP**
 1824 Court Street/Post Office Box 994390
 7 Redding, California 96099-4390
 8 Telephone: (530) 243-8008 Fax: (530) 243-1648

9 Attorneys for Plaintiffs STANLI MAE THROCKMORTON
 10 TERBUSH and JAMES W. TERBUSH

11 **UNITED STATES DISTRICT COURT**
 12 **EASTERN DISTRICT OF CALIFORNIA**
 13 **FRESNO BRANCH**

14 STANLI MAE THROCKMORTON TERBUSH
 15 and JAMES W. TERBUSH, Heirs at Law and
 16 Successors in Interest of PETER JAMES
 17 TERBUSH, Decedent,,
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 19 Plaintiffs,
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 21 vs.
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 23 UNITED STATES OF AMERICA,
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 25 Defendants.

No. CIV. 1:02-CV-05509-SMS
 STIPULATION RE:
 CONFIDENTIAL INFORMATION
 OF CHESTER W. WATTS;
 ORDER

26 THE PARTIES HERETO, BY AND THROUGH THEIR ATTORNEYS OF RECORDS,
 27
 28 HEREBY STIPULATE AND AGREE AS FOLLOWS:

STIPULATION RE: CONFIDENTIAL INFORMATION

1. For the purpose of this Stipulation, “documents” shall mean the technical report files labeled “CONFIDENTIAL” generated by Chester W. Watts relating to sensitive information related to mineral deposits, or information related construction claims, or to litigation. These

1 documents are the documents produced by Chester W. Watts in response to the Deposition
2 Notice served by defendant, USA, and are not documents relating to Mr. Watts' upcoming
3 Supplemental Report.

4 2. The documents generated by Chester W. Watts are confidential, proprietary
5 information until such time that information is made available for public use.

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7 3. Until the documents generated by Chester W. Watts are made publicly available,
8 defendant, including their experts, consultants and others, are obligated to protect the proprietary
9 documents and may utilize them only for purposes of evaluating the matters at issue in this
10 litigation which include evaluation of the expert reports presented by the plaintiffs and for the
11 United States of America to form their opinions, for use only in this case, regarding the cause of
12 the June 13, 1999 rockslide that killed Peter Terbush. Defendant and their experts agree not to
13 use, reproduce or discuss the documents that are provided by the plaintiffs in this case in any
14 context outside this litigation or with any persons or entities not involved in this litigation until
15 such time as these documents are made publicly available.

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17 4. The documents produced by the plaintiffs in this action are subject to this Stipulation,
18 and neither the documents, nor information or opinions derived therefrom, shall not be used by
19 defendant or their experts, consultants, or others to whom such documents or materials are
20 disclosed, for any purpose other than preparation for trial and trial of this action, or for settlement
21 thereof, and only in the manner prescribed herein.

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23 5. If documents and/or information deemed confidential are filed with the court for
24 purposes of law and motion, they shall either be (1) redacted to omit the sensitive, confidential,
25 private and/or proprietary information if that information is not relevant to the purposes for which
26 the documents are being filed, or (2) filed under seal and marked "CONFIDENTIAL." Such
27 documents or testimony filed under seal shall only be opened by the court or by personnel
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1 authorized to do so by the court and not made part of a publicly accessible court file. The
2 plaintiffs anticipate providing the Court with a disc of the documents marked “Confidential” once
3 the Order has been signed by the Judge.

4 6. Disclosure of the documents that are deemed confidential shall be restricted solely to
5 the following persons, who are bound by the terms of this Stipulation, unless additional persons
6 are agreed upon and stipulated to in writing by counsel or authorized by the Court.

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8 a. Counsel for any party to the above-captioned litigation, including all employees of
9 counsel’s law firms or offices, such as (without limitation) attorneys, paralegals,
10 secretaries, assistants, stenographical and clerical employees;

11 b. Those persons retained by any party herein for the purposes of furnishing consulting
12 expert services or for giving expert testimony in this matter. Any such expert or
13 consultant shall be shown a copy of this Stipulation and affirmatively agree to be bound by
14 its terms before receiving documents and/or information deemed confidential. Such
15 consultants and experts agree not to use the documents and/or information deemed
16 confidential. Such consultants and experts agree not to use the data for any purposes
17 outside of this litigation including they agree not to use these materials in reports, articles,
18 classes, or for any other non-litigation related purpose and agree not to share or discuss
19 this material with anyone outside the context of this litigation including, without limitation,
20 students, colleagues, publishers, or others. To the extent that the retained experts or
21 consultants need to share the documents with others assisting them in this action, those
22 additional persons shall also be provided a copy of this stipulation and expressly agree,
23 and adhere to, the terms herein. Defense counsel shall retain a list of all persons provided
24 these documents and in the event a breach occurs, inform and identify for the plaintiffs all
25 persons who received the confidential documents;
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c. Employees or officers of the parties whose job responsibilities relate to the matters at issue in this action and whose review of the documents and/or testimony is necessary and proper to assist the party in preparation for trial and trial of this action, or for settlement thereof;

d. The court and its personnel, including but not limited to, stenographic reporters employed by the court or engaged at a party's request during this litigation;

e. A witness during the course of his or her deposition if the attorney disclosing the document and/or information first has shown the deponent a copy of this stipulation and the deponent has been requested to affirmatively agree on the deposition record to be bound by its terms, and if the deponent would have seen the document and/or information in the ordinary course of his or her business. A witness' refusal to be bound by the stipulation shall not thwart the deposition and the depositions will continue regardless leaving it up to any counsel to seek a protective order as to that witness. Under no circumstances shall the witness be entitled to a copy of any documents deemed confidential.

7. Each party shall take reasonable steps in storing documents and/or information deemed confidential to limit access to those persons who are authorized under the terms of this stipulation to inspect, review, or receive such documents and/or information.

8. Whenever documents and/or information deemed confidential are to be disclosed in a deposition or other hearing or proceeding, any party may exclude from the room any person, other than the persons designated as authorized pursuant to the terms of this stipulation, for that portion of said deposition, hearing or proceeding. Nothing in this stipulation shall limit any party from introducing documents and/or information deemed confidential into evidence at trial, subject to the introducing party giving prior notice of its intent to do so, and subject to any party's right

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to seek further protection from the court.

9. Upon final determination of this action, including all appeals therefrom, copies of all documents and/or information produced by the plaintiffs and deemed confidential shall be returned to counsel for the plaintiffs. In order to comply with this provision, it will be necessary for the attorneys for parties receiving confidential information to retrieve all copies of confidential documents from their clients, experts, consultants and/or anyone else authorized to receive copies of such confidential information. Notwithstanding the foregoing, the parties may retain all pleadings, briefs, memoranda, and other documents containing their own work product, which refer to or incorporate confidential information and will continue to be bound by the terms of this stipulation with respect to all such retained information.

This stipulation shall govern the production and disclosure of all documents and/or information produced or disclosed in this case, both before and after entry of this stipulation.

IT IS SO STIPULATED.

DATED: August 17, 2009.

BARR & MUDFORD, LLP

/s/ John D. (Dugan) Barr
By: JOHN D. (DUGAN) BARR
Attorney for Plaintiffs

DATED: August 17, 2009.

LAWRENCE G. BROWN
Acting United State Attorney

/s/ Kelli L. Taylor
By: Kelli L. Taylor
Assistant United States Attorney
Counsel for the United States

DATED: _____

Defendant USA Experts

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ORDER

Pursuant to the parties’ stipulation, and good causing appearing, the Court hereby deems as confidential the documents labeled “CONFIDENTIAL” generated by Chester F. Watts and plaintiffs. The Court hereby authorizes the plaintiffs to label those documents as confidential and submit them on disk to the Court once this Order has been signed and not make it part of this Court’s electronic file. The Court further orders that a copy of the documents also be sent on disk to defense counsel at the same time. This Court also hereby Orders that the documents be labeled “Confidential” and treated as such for purposes of this litigation and precludes defendants, and their experts, consultants, or others, from using the documents for any purpose outside the context of this litigation including, without litigation, precluding the sharing of this information with persons or entities not associated with this litigation or using the confidential documents for non-litigation related purposes such as for publication, articles, classes, or non-litigation related purposes.

IT IS SO ORDERED.

Dated: August 18, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE