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 SIERRA PACIFIC INDUSTRIES

8 UNITED STATES DISTRICT COURT  
 9 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,  
 12 Plaintiff,  
 13 v.  
 14 SIERRA PACIFIC INDUSTRIES, et al.  
 15 Defendants.

Case No. 2:09-CV-02445-KJM-EFB

**STIPULATION AND ORDER TO  
 RESOLVE DISCOVERY  
 DISAGREEMENT**

17 AND RELATED CROSS-ACTIONS

19 Defendant Sierra Pacific Industries (“Sierra Pacific”), and Plaintiff the United States of  
 20 America (“United States”), by and through their respective counsel, hereby submit the following  
 21 Stipulation as notice to the Court that they have resolved the discovery disagreement currently set  
 22 for hearing on August 3, 2011.

23 **RECITALS**

24  
 25 1. The above-captioned action arises out of a wildfire known as the “Moonlight  
 26 Fire,” which ignited in Plumas County on September 3, 2007 (the “Federal Action”). There are  
 27 six cases pending in Plumas County Superior Court that also arise out of the Moonlight Fire (the  
 28 “State Actions”).



1 by five (5) from that which was previously ordered by the Court. This brings the total remaining  
2 depositions that Defendants may notice in the Federal Action to eight (8) (the "Allotment").<sup>1</sup> On  
3 July 15, 2011, Sierra Pacific noticed seven of the eight depositions comprising the Allotment,  
4 and will notice the additional witness's deposition by close of business on July 27, 2011.

5           2.       The United States agrees that transcripts of the following depositions to be taken  
6 in the State Actions shall be treated as if taken in the Federal Action, but will not count towards  
7 Defendants' Allotment:

- 8                     1. Nick Beecham
- 9                     2. Kelly Holt
- 10                    3. Dennis Burns
- 11                    4. Walt Darran
- 12                    5. Danny Rackley
- 13                    6. Joe Waterman
- 14                    7. William Molumby
- 15                    8. Kent Swartzlander

16           3.       The United States' objections to questions posed during the depositions of  
17 Beecham, Holt, Burns, Darran, Rackley, and Waterman shall be preserved and Defendants'  
18 response to any such objections shall be preserved. Sierra Pacific agrees to coordinate with the  
19 United States when scheduling Mr. Molumby's and Mr. Swartzlander's depositions, as the  
20 United States anticipates defending the depositions of these former federal employees. To the  
21 extent the United States does defend Mr. Molumby and Mr. Swartzlander, all objections must be  
22 made on the record. The Parties agree to cooperate in good faith to schedule and conduct the  
23 depositions of Mr. Molumby and Mr. Schwartzlander by August 30, 2011.

24           4.       When the Molumby and Swartzlander depositions are noticed in the State  
25 Actions, they will be noticed to occur at a location that complies with the California Code of  
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27 <sup>1</sup> The outstanding deposition notices for Alan Carlson and Maria Garcia, and the continued deposition notice of  
28 Diane Welton, have already been applied to Defendants' number of available notices and shall not count against the Allotment.

1 Civil Procedure. The United States has the right to attend the Beecham, Holt, Burns, Darran,  
2 Rackley, and Waterman depositions by phone or live feed.

3 5. All depositions in Defendants' Allotment will be completed by the pending  
4 discovery deadline of August 15, 2011. Rule 16 shall apply to any requests to modify the  
5 discovery deadline set forth in the Court's scheduling order. The Parties agree that to the extent  
6 feasible, depositions will not be triple tracked, but in no event will more than three people be  
7 deposed simultaneously.

8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9 DATED: July 27, 2011

U.S. ATTORNEY'S OFFICE

11 By: /s/ Kelli Taylor (as authorized on 7/27/11)

12 KELLI TAYLOR  
13 Attorneys for Plaintiff  
UNITED STATES OF AMERICA

14 DATED: July 27, 2011

DOWNEY BRAND LLP

16 By: /s/ Michael J. Thomas

17 MICHAEL J. THOMAS  
18 Attorneys for Defendant/Cross-Defendant  
SIERRA PACIFIC INDUSTRIES

19  
20 DATED: July 27, 2011

MATHENY SEARS LINKERT AND JAIME

22 By: /s/ Richard S. Linkert (as authorized on 7/27/11)

23 RICHARD S. LINKERT  
24 Attorneys for Defendant  
W.M. BEATY AND ASSOCIATES, INC. AND  
25 LANDOWNER DEFENDANTS

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DATED: July 27, 2011

RUSHFORD AND BONOTTO, LLP

By: /s/ Phil Bonotto (as authorized on 7/27/11)  
PHIL BONOTTO

Attorneys for Defendant  
EUNICE HOWELL, INDIVIDUALLY AND D/B/A  
HOWELL'S FOREST HARVESTING PRODUCTS

**ORDER**

Pursuant to the stipulation of the parties and good cause appearing, IT IS SO ORDERED.

DATED: August 1, 2011

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE