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10 MCKEEVER HATCH, AS TRUSTEE OF THE HATCH
11 1987 REVOCABLE TRUST; et al.

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 SIERRA PACIFIC INDUSTRIES, et al.,

18 Defendants.

19 ANN MCKEEVER HATCH, AS
20 TRUSTEE OF THE HATCH 1987
21 REVOCABLE TRUST, et al.,

22 Crossclaimants,

23 v.

24 SIERRA PACIFIC INDUSTRIES,

25 Crossdefendant.

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

**STIPULATION FOR BIFURCATION OF
INDEMNITY AND ORDER**

26 Pursuant to Local Rule 281(b)(18) and Rule 42(b) of the Federal Rules of Civil Procedure,
27 Landowner Defendants and Sierra Pacific Industries ("Sierra Pacific"), by and through their
28 undersigned counsel, hereby submit the following Stipulation and Proposed Order (1) bifurcating
the Landowner Defendants' crossclaims for Express Contractual Indemnity – Breach of Contract,

1 Duty to Defend – Breach of Contract, Total and Partial Equitable Indemnity and Contribution,
2 Negligence, Implied Contractual Indemnity, and Declaratory Relief against Sierra Pacific
3 (collectively, the “Indemnity Claims”) from Plaintiff United States of America’s (“United
4 States”) underlying claims of common law and statutory negligence against all defendants (the
5 “Plaintiff’s Claims”); and (2) deferring pretrial briefing of issues relating to the Indemnity Claims
6 until trial of the Plaintiff’s claims concludes in the above captioned Moonlight Fire Case.

7 RECITALS

8 1. On or about August 31, 2009, the United States commenced the Moonlight Fire
9 Case by filing a Complaint alleging that Beaty, Landowner Defendants, and Sierra Pacific,
10 together with Eunice Howell, individually and doing business as Howell’s Forest Harvesting
11 Company (collectively “Defendants”) are jointly and severally liable for damages resulting from
12 the Moonlight Fire, which ignited on September 3, 2007, in Plumas County. Defendants
13 answered the United States’ Complaint and denied liability, and also asserted affirmative
14 defenses.

15 2. On or about January 15, 2010, Landowner Defendants filed their Indemnity
16 Claims alleging that Sierra Pacific must defend and indemnify Landowner Defendants for, *inter*
17 *alia*, any judgment entered against Defendants with respect to the Plaintiff’s Claims. On or about
18 February 22, 2010, Sierra Pacific answered Landowner Defendants’ crossclaims and denied
19 liability, and also asserted affirmative defenses.

20 3. On February 13, 2012, Judge Mueller ordered the parties to the Moonlight Fire
21 Case to file a joint pretrial statement by May 24, 2012. Local Rule 281(b)(18) requires the parties
22 to determine whether separate trials of any issues in the case is feasible and advisable.

23 4. Bifurcation promotes efficiency and fairness, and could significantly reduce time-
24 demands on the Court and the jury in the Moonlight Fire Case. Regardless of the outcome of the
25 Plaintiff’s Claims, that disposition will affect the claims at issue in the Indemnity Claims. At that
26 point, either the United States will not have prevailed and the Indemnity Claims may not need to
27 be pursued, thereby rendering further proceedings unnecessary, or the United States will have
28

1 prevailed and a finding will be entered regarding how the Moonlight Fire was caused, which will
2 enable Landowner Defendants and Sierra Pacific to determine whether the Indemnity Claims can
3 be settled or resolved pursuant to a stipulated resolution or, alternatively, whether an indemnity
4 trial will be necessary.

5 5. In addition, Landowner Defendants and Sierra Pacific further agree that
6 bifurcating the trial of the claims will also avoid prejudice that would be caused to Defendants
7 during trial of the Plaintiff's Claims by forcing Defendants to discuss insurance issues in front of
8 the jury while it is considering liability for the Moonlight Fire, in violation of Rule 411 of the
9 Federal Rules of Evidence. This is because insurance issues are linked with the indemnity
10 provision in the TSA, and the Federal Rules of Evidence Advisory Committee Notes explain that
11 this information is prejudicial insofar as it "would induce juries to decide cases on improper
12 grounds." Fed. R. Evid. 411 Advisory Committee's Notes 1972. In comparison, bifurcating the
13 claims would permit the jury in the Moonlight Fire Case to evaluate liability issues regarding the
14 Plaintiff's Claims without regard to the indemnity issues and insurance issues related to the
15 Indemnity Claims. Bifurcation would also avoid further prejudice that Defendants may suffer by
16 being forced to use time in an already complex case on indemnity issues that may never need to
17 be litigated following resolution of the Plaintiff's Claims in the Moonlight Fire Case.

18 6. For the foregoing reasons, Landowner Defendants and Sierra Pacific agree that
19 pursuant to Local Rule 281(b)(18), bifurcating and trying separately the Indemnity Claims from
20 the Plaintiff's Claims in the Moonlight Fire Case will be both feasible and advisable, and
21 pursuant to FRCP 42(b), will be more convenient, expeditious, and economical for the parties and
22 the Court, and will avoid prejudice for Defendants.

23 7. If the Indemnity Claims are bifurcated, Landowner Defendants and Sierra Pacific
24 further agree to postpone pretrial briefing of the indemnity issues until it is determined whether a
25 trial on those claims will be necessary. Doing so is more efficient and expeditious for the parties
26 and the Court because these issues may never need to be briefed if trial of the Indemnity Claims
27 becomes unnecessary.
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Pursuant to the foregoing recitals, the parties hereby agree and stipulate to the following:

STIPULATION

Based on the foregoing recitals, the parties hereby STIPULATE that:

1. Indemnity will be bifurcated and tried, if necessary, after the liability and/or damages phase(s) of the Moonlight Fire Case has/have been completed;
2. Landowner Defendants and Sierra Pacific retain their rights to a trial by jury of the Indemnity Claims, if a trial is necessary;
3. The issues pertaining to the Indemnity Claims that would otherwise need to be included in the joint pretrial statement that is due to be filed in the Moonlight Fire Case on May 24, 2012, need not be briefed at this time, and Landowner Defendants and Sierra Pacific agree to defer this briefing until after trial of the Plaintiff's claims concludes and it is determined whether trial of the Indemnity Claims will be required, or until such time as the Court directs. Defendants will work cooperatively together and with the Court to set a date for filing a joint pretrial statement that includes issues pertinent to the Indemnity Claims.

IT IS SO STIPULATED.

DATED: May 15, 2012

MATHENY, SEARS, LINKERT & JAIME LLP

By: /s/ Richard Linkert

RICHARD S. LINKERT
Attorneys for Defendants/Crossclaimants,
W.M. BEATY & ASSOCIATES, INC. AND
LANDOWNER DEFENDANTS.

DATED: May 15, 2012

DOWNEY BRAND LLP

By: /s/ William R. Warne

WILLIAM R. WARNE
Attorneys for Defendant/Crossdefendant
SIERRA PACIFIC INDUSTRIES

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DATED: May 15, 2012

KEKER & VAN NEST LLP

By: /s/ Steven P. Ragland
 STEVEN P. RAGLAND
 Attorneys for LANDOWNER DEFENDANTS

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2 **ORDER**

3 This matter came before the Court on the parties' Stipulation to bifurcate trial of
4 Landowner Defendants' Indemnity Claims from trial of the Plaintiff's Claims in the Moonlight
5 Fire Case, as those terms are defined in the parties' Stipulation. For the reasons stated in the
6 Stipulation and good cause having been shown, the Court ADOPTS the Stipulation and GRANTS
7 the relief requested as follows:

8 1. Indemnity will be bifurcated and tried, if necessary, after the liability and/or
9 damages phase(s) of the Moonlight Fire Case has/have been completed;

10 2. Landowner Defendants and Sierra Pacific all retain their rights to a trial by jury of
11 the Indemnity Claims, if a trial is necessary;

12 3. The issues pertaining to the Indemnity Claims that would otherwise need to be
13 included in the joint pretrial statement that is due to be filed in the Moonlight Fire Case on May
14 31, 2012, need not be briefed at this time; briefing of these issues shall be deferred until after trial
15 of the Plaintiff's Claims concludes and it is determined whether trial of the Indemnity Claims will
16 be required, or until such time as the Court directs. If the resolution of the Plaintiff's Claims in
17 the Moonlight Fire Case does not obviate the need to try the Indemnity Claims, or Landowner
18 Defendants and Sierra Pacific are not otherwise able to resolve the Indemnity Claims informally,
19 they shall work cooperatively together and with the Court to set a date for filing a joint pretrial
20 statement that includes issues pertinent to the Indemnity Claims.

21 **IT IS SO ORDERED.**

22 DATED: May 22, 2012.

23 
24 UNITED STATES DISTRICT JUDGE
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