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7 Attorneys for Defendant/Cross-Defendant  
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.

16  
17 AND RELATED CROSS-ACTIONS

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

**STIPULATED PROTECTIVE ORDER**

18  
19 WHEREAS disclosure and discovery activity in this Action are likely to involve  
20 production of confidential, proprietary, or private information for which special protection from  
21 public disclosure and from use for any purpose other than prosecuting litigation related to the  
22 Moonlight Fire would be warranted.

23 WHEREAS the Parties hereby stipulate to and petition the Court to enter the following  
24 Stipulated Protective Order.

25 WHEREAS the Parties acknowledge that this Stipulated Protective Order does not confer  
26 blanket protections on all disclosures or responses to discovery and that the protection it affords  
27 extends only to the limited information or items that are entitled under the applicable legal  
28 principles to treatment as confidential.

STIPULATED PROTECTIVE ORDER

1 WHEREAS the Parties further acknowledge that this Stipulated Protective Order creates  
2 no entitlement to file confidential information under seal; Civil Local Rule 141 sets forth the  
3 procedures that must be followed and reflects the standards that will be applied when a Party  
4 seeks permission from the court to file material under seal;

5 WHEREAS the Parties, by and through their respective undersigned counsel, HEREBY  
6 STIPULATE, AGREE, and REQUEST that the Court enter the following Order with respect to  
7 this Action:

8 1. Proceedings and Information Governed.

9 This Stipulated Protective Order shall govern any document, information or other thing  
10 furnished by any Party, or any person, including third persons, to any other Party in connection  
11 with the consolidated discovery and pretrial phase of the Action. The information protected  
12 includes, but is not limited to, responses to requests to produce documents or other things,  
13 responses to interrogatories, responses to requests for admissions, deposition testimony and all  
14 copies, extracts, summaries, compilations, designations and portions thereof.

15 This Stipulated Protective Order does not govern proceedings during trial nor does it  
16 prohibit any Party from seeking a protective order to govern proceedings during trial. The  
17 Parties reserve for future agreement the procedure to be followed in using “Confidential  
18 Information” (defined below) at trial.

19 2. Definitions.

20 2.1 Party: any party to this Action, including all of its officers, directors, employees,  
21 consultants, retained Experts, and Outside Counsel (and their support staff) (more than one Party  
22 collectively referred to as “Parties”).

23 2.2 Disclosure or Discovery Material: all items or information, regardless of the  
24 medium or manner generated, stored, or maintained (including, among other things, testimony,  
25 transcripts, or tangible things) that are produced or generated in disclosures or responses to  
26 discovery in this matter.

27 2.3 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
28 Producing Party.

1           2.4    Producing Party: a Party or non-party that produces Disclosure or Discovery  
2 Material in this Action.

3           2.5    Designating Party: a Party or non-party that designates information or items that it  
4 produces in disclosures or in responses to discovery as “Confidential.”

5           2.6    Outside Counsel: attorneys who are not employees of a Party but who are  
6 retained to represent or advise a Party in this Action.

7           2.7    House Counsel: attorneys who are employees of a Party.

8           2.8    Counsel (without qualifier): Outside Counsel and House Counsel (as well as their  
9 support staffs).

10          2.9    Expert: a person with specialized knowledge or experience in a matter pertinent to  
11 the litigation who has been retained by a Party or its Counsel to serve as an Expert witness or as a  
12 consultant in this Action and who is not a past or current employee of a Party or of a competitor  
13 of a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party  
14 or a competitor of a Party. This definition includes a professional jury or trial consultant retained  
15 in connection with this litigation.

16          2.10   Action: the above-captioned case and any cross-actions, designated as *United*  
17 *States of America v. Sierra Pacific Industries, et al.*, Case No. 2:09-cv-02445-JAM-EFB.

18    3.       Designation of Information for Protection Under This Stipulated Protective Order.

19           Any Disclosure or Discovery Material produced in this Action that is reasonably believed  
20 by any party to be nonpublic and/or proprietary and/or confidential and/or contain/constitute  
21 trade secrets may be designated as “Confidential Information” as described more fully in  
22 paragraph 4, below. Such designation may be made by labeling or otherwise clearly marking the  
23 material as “Confidential” in such a manner as will not interfere with the legibility thereof. Any  
24 report or other multi-page document considered “Confidential” shall be marked “Confidential in  
25 its Entirety” or “Confidential Per Pages Marked.” In the case of written material, documents or  
26 tangible items, the designation shall be made, to the extent possible, at the time the copy of the  
27 writing or thing is produced. In the case of materials produced by a non-party or any other Party,  
28 the designation may be made by any Party within ninety (90) days following the date the

1 Designating Party receives a copy of the documents so produced. In the case of deposition  
2 testimony, a Party seeking to invoke the protections of this Stipulated Protective Order shall give  
3 notice thereof as set forth in paragraph 11, below.

4 4. Disclosure of Confidential Information.

5 Confidential Information may be disclosed and disseminated by the Receiving Party only  
6 to:

7 (a) The Parties and their officers, directors and employees;

8 (b) The attorneys of record in the Action, and their respective associates, clerks and  
9 legal assistants, and any organizations retained by such attorneys to provide litigation support  
10 services in the Action and the employees of said organizations;

11 (c) Independent consultants and Expert witnesses retained in the Action by the  
12 attorneys of record, and the employees of such consultants and Expert witnesses who are  
13 assisting them;

14 (d) The Court and its administrative staff, including law clerks and the jury at trial (if  
15 any);

16 (e) Stenographic reporters engaged in deposition proceedings; and

17 (f) Such other persons as hereafter may be designated by written agreement of all  
18 Parties in the Action or by order of the Court, such order obtained on noticed motion (or on  
19 shortened time as the Court may allow), permitting such disclosure.

20 5. Unauthorized Disclosure of Confidential Information.

21 If a Party learns that, by inadvertence or otherwise, it or another Party has disclosed  
22 Confidential Information to any person or in any circumstance not authorized under this  
23 Stipulated Protective Order, that Party must immediately (a) notify in writing the Producing  
24 and/or Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all  
25 copies of the Confidential Information, (c) inform the person or persons to whom unauthorized  
26 disclosures were made of all the terms of this Stipulated Protective Order, and, if appropriate, (d)  
27 request such person or persons to execute the "Acknowledgement and Agreement to Be Bound"  
28 that is attached hereto as Exhibit A.

1     6.     Agreement To Comply with Stipulated Protective Order.

2             Each person referred to in paragraph 4 hereof to whom Confidential Information is to be  
3     given, shown, disclosed, made available or communicated in any way, except personnel falling  
4     within paragraphs 4(b), 4(d) or 4(e) above, shall execute an agreement, in the form attached  
5     hereto as Exhibit A, before said disclosure or communication of Confidential Information is  
6     made, stating that he or she agrees to be bound by and fully comply with the terms of this  
7     Stipulated Protective Order. Said declarations shall be retained by the attorney who procured the  
8     agreement and, upon request by a Party, be made available for inspection.

9     7.     Use.

10            Except as otherwise provided by this Stipulated Protective Order or by further order of  
11    the Court, documents or testimony designated as Confidential Information, and all information  
12    contained therein, shall not be used for any purpose other than in connection with prosecution of  
13    the Action or any other action arising out of the Moonlight Fire, and any appellate proceeding  
14    concerning the same.<sup>1</sup> No person who is furnished Confidential Information shall disclose or  
15    disseminate it to any person not entitled under this Stipulated Protective Order to receive and  
16    review it.

17            To the extent Confidential Information is used in an action arising out of the Moonlight  
18    Fire other than this Action, the parties shall follow the procedures that have been agreed upon or  
19    are otherwise required in such other actions for filing such materials.

20            No duplicates, copies, reproductions, or reprints of any Confidential Information, or any  
21    parts thereof, shall be made unless reasonably necessary.

22            If there is a disclosure or utilization of Confidential Information in violation of the terms  
23    of this Stipulated Protective Order, the Party who becomes aware of such disclosure or  
24    utilization shall promptly notify the attorneys of record for the other Parties. In addition to any  
25    other remedy the Court may order, the Party making the disclosure shall be obligated to take all  
26

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27    <sup>1</sup> In the event a party attempts to use Confidential Information in litigation arising out of the Moonlight Fire other  
28    than the Action, the provisions set forth in paragraph 7 shall not be construed as a waiver or admission that said  
Confidential Information is legally admissible in that litigation.

1 reasonable steps to limit further utilization or dissemination of Confidential Information in  
2 violation of this Stipulated Protective Order.

3  
4 8. Challenging Confidentiality Designations.

5 8.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's  
6 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
7 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
8 waive its right to challenge a confidentiality designation by electing not to mount a challenge  
9 promptly after the original designation is disclosed.

10 8.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating  
11 Party's confidentiality designation must do so in good faith and must begin the process by  
12 conferring with counsel for the Designating Party. In conferring, the challenging Party must  
13 explain the basis for its belief that the confidentiality designation was not proper and must give  
14 the Designating Party an opportunity to review the designated material, to reconsider the  
15 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
16 designation. A challenging Party may proceed to the next stage of the challenge process only if it  
17 has engaged in this meet and confer process first.

18 8.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality  
19 designation after considering the justification offered by the Designating Party may file and serve  
20 a motion under Local Rules 230 and 251 (and in compliance with Civil Local Rule 141, if  
21 applicable) that identifies the challenged material and sets forth in detail the basis for the  
22 challenge. Each such motion must be accompanied by a competent declaration that affirms that  
23 the movant has complied with the meet and confer requirements imposed in the preceding  
24 paragraph and that sets forth with specificity the justification for the confidentiality designation  
25 that was given by the Designating Party in the meet and confer dialogue.

26 9. Procedures for Filing Confidential Information with the Court.

27 Without written permission from the Designating Party or a court order secured after  
28 appropriate notice to all interested persons, a Party may not file in the public record in this

1 Action any Confidential Information. A Party that seeks to file under seal any Confidential  
2 Information must comply with Local Rule 141.

3 10. Disclosure to Author or Addressee.

4 Nothing herein shall prohibit a Party or Party's attorney from disclosing a document  
5 which has been designated as Confidential Information to the person the document identifies as  
6 an author or addressee of such document.

7 11. Party's Own Information:

8 The restrictions on the use of Confidential Information established herein are applicable  
9 only to the use by a Party of Confidential Information received from another Party or any non-  
10 party. This Stipulated Protective Order shall not restrict a Party's use of such documents,  
11 information and other things which that Party possessed before the commencement of this Action  
12 or acquired after the commencement of this Action through informal means not involving  
13 discovery or other compulsory process.

14 12. Depositions.

15 Any stenographer or reporter who takes down testimony in the Action at a deposition  
16 shall be given a copy of this Stipulated Protective Order and shall be required to agree, before  
17 taking down any such testimony, that all testimony and information revealed at the deposition  
18 shall not be disclosed by such reporter or any person who transcribed such testimony except to  
19 the attorneys of record for the Parties in the Action and the deponent. All deposition testimony  
20 and exhibits designated as Confidential Information shall be bound in a separate transcript, and  
21 clearly marked on each page with the notation "Confidential Information." All other copies of  
22 such transcripts and exhibits, to the extent they pertain to or contain Confidential Information or  
23 summaries or extracts thereof, shall themselves be treated as Confidential Information pursuant  
24 to the terms of this Stipulated Protective Order.

25 At the time of the taking of the deposition, any Party, Party's attorney or third-party  
26 deponent or his or her attorney may designate any portion of the testimony as Confidential  
27 Information. Additionally, Counsel may also designate the testimony as Confidential  
28 Information within ten (10) business days of the date that the transcript becomes available, by

1 providing the reporter in writing with specific page and line citations for any portion of the  
2 testimony to be marked as Confidential Information.

3 If any deposition is recorded via videotape, Counsel accepts responsibility for insuring  
4 that Confidential Information is not disclosed to any person not entitled under this Stipulated  
5 Protective Order to receive it.

6 During the deposition of a third-party witness, any Party to this proceeding may disclose  
7 Confidential Information to such deponent provided that said deponent is not given a copy of any  
8 document designated as Confidential Information to be taken from the place of the deposition,  
9 and provided further that said deponent is advised that he or she is subject to and bound by the  
10 provisions of this Stipulated Protective Order, and agrees to be so bound by executing a copy of  
11 Exhibit A. attached hereto.

12 13. Interrogatories and Requests for Admissions.

13 Any response to an interrogatory or request for admission that contains Confidential  
14 Information shall be clearly designated in the response in which the Confidential Information  
15 appears, and responses bearing such designations shall be segregated from non-confidential  
16 responses.

17 14. No Waiver.

18 Neither the taking of nor the failure to take any Action to enforce the provisions of this  
19 Protective Order, nor the failure to object to any designation or any such Action or omission,  
20 shall constitute a waiver of any right to seek and obtain protection or relief other than as  
21 specified herein of any claim or defense in the Action or any other Action including, but not  
22 limited to, the claim or defense that any information is or is not proprietary to any Party, is or is  
23 not entitled to particular protections or that such information embodies trade secrets of any Party.  
24 The procedures set forth herein shall not affect the rights of the Parties to object to discovery on  
25 grounds other than those related to trade secrets or proprietary information claims, nor shall it  
26 relieve a Party of the necessity of proper response to discovery devices.

27 15. No Probative Value.



1 This Stipulated Protective Order shall not abrogate or diminish any contractual, statutory  
2 or other legal obligation or right of any Party or person with respect to any Confidential  
3 Information. The fact that information is designated "Confidential Information" under this  
4 Stipulated Protective Order shall not be deemed to be determinative of what a trier of fact may  
5 determine to be confidential or proprietary. This Stipulated Protective Order shall be without  
6 prejudice to the right of any Party to bring before the Court the question of: (i) whether any  
7 particular material is or is not confidential; (ii) whether any particular information or material is  
8 or is not entitled to a greater or lesser degree of protection than provided hereunder; (iii) whether  
9 any particular information or material is or is not relevant to any issue of this case, or (iv) how to  
10 provide reasonable protection for Confidential Information during any trial or other public legal  
11 proceeding in this matter, provided that in doing so the Party complies with the foregoing  
12 procedures.

13 Absent a stipulation of all Parties, the fact that information has been designated  
14 Confidential under this Stipulated Protective Order shall not be admissible during the trial of the  
15 Action, nor shall the jury be advised of such designation. The fact that any information is  
16 disclosed, used or produced in discovery or trial herein shall not be construed admissible, or  
17 offered in any Action or proceeding before any court, agency or tribunal as evidence of or  
18 concerning whether or not such information is confidential or proprietary.

19 16. Return of Confidential Information.

20 At the conclusion of the Action, all Confidential Information and all documents which  
21 repeat such information, including all copies, extracts and summaries thereof, shall, upon the  
22 request of the Party furnishing such Confidential Information, be delivered to that Party.  
23 Alternatively, Counsel may certify in writing to the Party furnishing the Confidential  
24 Information that all such Confidential Information, together with all copies, extracts and  
25 summaries thereof, have been destroyed and that no additional copies are known to exist.

26 17. Court's Jurisdiction.

27 The Court retains jurisdiction to make such amendments, modifications, deletions and  
28 additions to this Stipulated Protective Order as the Court may from time to time deem

1 appropriate. This Stipulated Protective Order shall remain in effect for the duration of the  
2 litigation unless terminated by agreement executed by Counsel of record for the Parties or  
3 pursuant to an order of the Court. The provisions of this Stipulated Protective Order regarding  
4 the use and/or disclosure of Confidential Information shall survive the termination of the Action,  
5 and the Court shall retain jurisdiction with respect to this Stipulated Protective Order.

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7  
8 DATED: July 27, 2010

U.S. ATTORNEY'S OFFICE

9  
10 By /s/ Kelli Taylor

KELLI TAYLOR  
Attorneys for Plaintiff  
UNITED STATES OF AMERICA

11  
12  
13 DATED: August 11, 2010

DOWNEY BRAND LLP

14  
15 By: /s/ William R. Warne

WILLIAM R. WARNE  
Attorneys for Defendant/Cross-Defendant  
SIERRA PACIFIC INDUSTRIES

16  
17  
18 DATED: July 31, 2010

RUSHFORD & BONOTTO, LLP

19  
20 By: /s/ Phil Bonotto

PHIL BONOTTO  
Attorneys for Defendants/Cross-Defendants  
EUNICE HOWELL, INDIVIDUALLY and d/b/a  
HOWELL'S FOREST HARVESTING

1 DATED: August 4, 2010

MATHENY SEARS LINKERT & JAIME, LLP

2  
3 By: /s/ Richard S. Linkert

4 RICHARD S. LINKERT  
Attorneys for Defendants/Cross-Claimants  
5 W.M. BEATY & ASSOCIATES and  
LANDOWNER DEFENDANTS  
6 (Brooks Walker et al.)

7 DATED: August 10, 2010

SEDGWICK, DETERT, MORAN, & ARNOLD LLP

8  
9 By: /s/ Frederic Grannis

10 FREDERIC GRANNIS  
Attorneys for Cross-Defendant  
11 CATERPILLAR, INC.

12  
13 SO ORDERED.

14 Dated: August 11, 2010.

15   
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE

1  
2 EXHIBIT A

3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
5 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
6 understand the Stipulated Protective Order that was issued by the United States District Court for  
7 the Eastern District of California on \_\_\_\_\_ in the case of *United States of America*  
8 *v. Sierra Pacific Industries, et al.*, Case No. 2:09-CV-02445-JAM-EFB. I agree to comply with  
9 and to be bound by all the terms of this Stipulated Protective Order and I understand and  
10 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature  
11 of contempt. I solemnly promise that I will not disclose in any manner any information or item  
12 that is subject to this Stipulated Protective Order to any person or entity except in strict  
13 compliance with the provisions of this Stipulated Protective Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective  
16 Order, even if such enforcement proceedings occur after termination of this Action.

17 I hereby appoint \_\_\_\_\_ [print or type full name] of  
18 \_\_\_\_\_ [print or type full address and telephone number]  
19 as my California agent for service of process in connection with this Action or any proceedings  
20 related to enforcement of this Stipulated Protective Order.

21  
22 Date: \_\_\_\_\_

23 City and State where sworn and signed: \_\_\_\_\_

24 Printed name: \_\_\_\_\_

25 Signature: \_\_\_\_\_  
26  
27  
28