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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

**RIO LINDA ELVERTA**  
**COMMUNITY**  
**WATER DISTRICT,**

**No. 2:17-cv-01349 KJM GGH**

**Plaintiff,**

**v.**

**THE UNITED STATES OF**  
**AMERICA, ELEMENTIS**  
**CHROMIUM INCORPORATED,**  
**OCCIDENTAL CHEMICAL**

**STIPULATION TO STAY PLAINTIFFS' COUNTS AGAINST**  
**THE UNITED STATES OF AMERICA AND SCHEDULING ORDER FOR**  
**DEFENDANT UNITED STATES OF AMERICA**

1 CORPORATION, HONEYWELL  
2 INCORPORATED, BASF  
3 CORPORATION, PPG  
4 INCORPORATED, E.I. DU PONT  
5 DE NEMOURS AND COMPANY,  
6 UNIVAR INCORPORATED,  
7 LUXFER HOLDINGS PLC, SIGMA-  
8 ALDRICH CORPORATION, and  
9 DOW CHEMICAL COMPANY,

10 **Defendants.**

11 \_\_\_\_\_  
12 SACRAMENTO SUBURBAN  
13 WATER DISTRICT,

14 **Plaintiff,**

15 **v.**

16 ELEMENTIS CHROMIUM  
17 INCORPORATED, OCCIDENTAL  
18 CHEMICAL CORPORATION,  
19 HONEYWELL INCORPORATED,  
20 BASF CORPORATION, PPG  
21 INCORPORATED, E.I. DU PONT  
22 DE NEMOURS AND COMPANY,  
23 UNIVAR INCORPORATED,  
24 LUXFER HOLDINGS PLC, SIGMA-  
25 ALDRICH CORPORATION, DOW  
26 CHEMICAL COMPANY, and THE  
27 UNITED STATES OF AMERICA,

28 **Defendants.**

**No. 2:17-cv-01353 KJM GGH**

**STIPULATION TO STAY  
PLAINTIFFS' COUNTS AGAINST THE  
UNITED STATES OF AMERICA AND  
PROPOSED SCHEDULING ORDER  
FOR DEFENDANT UNITED STATES  
OF AMERICA**

**STIPULATION TO STAY PLAINTIFFS' COUNTS AGAINST THE UNITED STATES  
AND PROPOSED SCHEDULING ORDER FOR DEFENDANT UNITED STATES**

**STIPULATION TO STAY PLAINTIFFS' COUNTS AGAINST  
THE UNITED STATES OF AMERICA AND SCHEDULING ORDER FOR  
DEFENDANT UNITED STATES OF AMERICA**

1 Plaintiffs, Rio Linda Elverta Community Water District and Sacramento Suburban Water  
2 District, and Defendant, United States of America, in the above-captioned related matters,  
3 through their undersigned counsel hereby stipulate and agree to the following:

4 **A. PLAINTIFFS' FIRST-FILED SUITS IN THE UNITED STATES COURT OF  
5 FEDERAL CLAIMS**

- 6 1. Plaintiffs, Rio Linda Elverta Community Water District and Sacramento Suburban  
7 Water District, filed actions against the United States of America and the United  
8 States Department of the Air Force in the United States Court of Federal Claims on  
9 June 23, 2017. The Court of Federal Claims case numbers are: *Rio Linda Elverta  
10 Community Water District vs. The United States of America, et al.*, Case No. 1:17-cv-  
11 00859-VJW; and *Sacramento Suburban Water District vs. The United States of  
12 America, et al.*, Case No. 1:17-cv-00860-RHH.
- 13 2. Plaintiffs subsequently filed lawsuits in the Eastern District of California against the  
14 United States, *Rio Linda Community Water District v. United States, et al.*, Case No.  
15 2:17-cv-01349-WBS-GGH on June 30, 2017 and *Sacramento Suburban Water  
16 District v. Elementis Chromium Inc., et al.*, Case No. 2:17-cv-01353-TLN-AC on July  
17 12, 2017. Service on the United States has been effectuated pursuant to Federal Rule  
18 of Civil Procedure 4. The default deadline for the United States to answer or  
19 otherwise plead for the two District Court lawsuits is September 25, 2017.
- 20 3. Counsel for the United States in the above-captioned actions and separate Counsel for  
21 the United States in the parallel actions in the Court of Federal Claims met and  
22 conferred with Plaintiffs' counsel on September 14 and 20, 2017, concerning the  
23 overlapping issues in each case, means of litigating the matters efficiently without  
24 duplicating issues or needlessly burdening judicial resources. Counsel discussed the  
25 application of 28 U.S.C. section 1500 and the Supreme Court's most recent  
26 interpretation of that section in *U.S. v. Tohono O'Odham Nation*, 563 U.S. 307  
27 (2011), as it related to parallel actions pending in the Court of Federal Claims and in  
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26 STIPULATION TO STAY PLAINTIFFS' COUNTS AGAINST  
27 THE UNITED STATES OF AMERICA AND SCHEDULING ORDER FOR  
28 DEFENDANT UNITED STATES OF AMERICA

1 District Court. *See, e.g. Tecon Engineers, Inc. v. U.S.*, 170 Ct.Cl. 389, 343 F.2d 943  
2 (1965) , *cert. denied* 382 U.S. 976 (announcing rule); *Hardwick Bros. Co. II v. U.S.*,  
3 72 F.3d 883 (Fed.Cir. 1995) (confirming *Tecon* after Federal Circuit and Supreme  
4 Court review of the order of filing rule); *Brandt v. U.S.*, 710 F.3d 1369 (Fed.Cir.  
5 2013) (interpreting *Tecon's* order of filing rule in context of post-judgment period  
6 before opportunity to appeal has expired). Counsel also discussed Ninth Circuit  
7 authority related to the first-to-file rule and federal comity. *Alltrade v. Uniweld*  
8 *Prods., Inc.*, 946 F.2d 622, 625 (9th Cir. 1991); *Pacific Coast Breaker, Inc. v.*  
9 *Connecticut Elec., Inc.*, Civ. No. 10-3134 KJM EFB, 2011 WL 2073796 (E.D. Cal.  
10 May 24, 2011).

- 11 4. Though Plaintiffs characterize their claims for relief as non-duplicative, Plaintiffs and  
12 Defendant, United States, have agreed that the United States Court of Federal Claims  
13 cases against the United States and Eastern District of California counts against the  
14 United States raise common core issues and should not proceed concurrently.
- 15 5. Plaintiffs proposed a joint stipulation to stay the Court of Federal Claims cases in  
16 favor of the District Court action for, among other reasons, the non-Government  
17 defendants would not have an opportunity to participate in the Court of Federal  
18 Claims proceedings and to avoid multiple proceedings on common issues  
19 recommending that the District Court action proceed first. The Government declined  
20 to stipulate. As such, Plaintiffs intend to file a motion to stay the Court of Federal  
21 Claims cases.
- 22 6. The United States has not agreed to join a request from Plaintiffs to stay the Court of  
23 Federal Claims cases.
- 24 7. The Court of Federal Claims has not yet received or ruled upon a request to stay the  
25 Court of Federal Claims cases.

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1 **B. CASE MANAGEMENT DEADLINES FOR DEFENDANT UNITED STATES IN**  
2 **THE EASTERN DISTRICT OF CALIFORNIA**

- 3 1. Plaintiffs and Defendant, United States, have agreed that Plaintiffs' counts against the  
4 United States in the Eastern District of California should be stayed at least for the  
5 period of time that may be required for Plaintiffs to obtain a ruling from the United  
6 States Court of Federal Claims on Plaintiffs' anticipated motions to stay Plaintiffs'  
7 concurrently pending United States Court of Federal Claims cases.
- 8 2. Plaintiffs and Defendant, United States, have agreed that if the United States Court of  
9 Federal Claims enters orders staying the United States Court of Federal Claims cases  
10 against the United States and the United States Air Force, then Plaintiffs' cases  
11 against the United States in the Eastern District of California should proceed.
- 12 3. Plaintiffs and Defendant, United States, have agreed upon and request that this Court  
13 order the following schedule:
- 14 a. Plaintiffs' counts against the United States in the Eastern District of California  
15 are stayed at least for the period of time that may be required for Plaintiffs to  
16 obtain a ruling from the United States Court of Federal Claims on Plaintiffs'  
17 anticipated motions to stay Plaintiffs' concurrently pending United States  
18 Court of Federal Claims cases.
  - 19 b. If the United States Court of Federal Claims enters orders staying or  
20 dismissing Plaintiffs' United States Court of Federal Claims lawsuits against  
21 the United States and the United States Department of Air Force, then  
22 Plaintiffs' counsel will file a notice with the Eastern District of California of  
23 the orders.
  - 24 c. If the United States Court of Federal Claims enters orders staying Plaintiffs'  
25 United States Court of Federal Claims lawsuits against the United States and  
26 the United States Department of Air Force, then the following filing deadlines  
27 will apply to Plaintiffs' counts against the United States:
    - 28 i. Defendant, United States, will plead to or otherwise file a responsive  
pleading to any counts alleged against it in the District Court cases

STIPULATION TO STAY PLAINTIFFS' COUNTS AGAINST  
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DEFENDANT UNITED STATES OF AMERICA

1 within 60 days of Plaintiffs' notification that its United States Court of  
2 Federal Claims cases have been stayed.

3 ii. Plaintiffs will respond to any pleading motion by 28 days thereafter.

4 iii. Defendant, United States, will file a reply brief in support of any  
5 pleading motion within 14 days thereafter.

6 4. So stipulated.  
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28 DEFENDANT UNITED STATES OF AMERICA

1 Pursuant to Local Rule 131(e), the undersigned Plaintiffs' counsel in the above-captioned  
2 related matters has authorized counsel for the United States, Michael L. Williams, to sign and  
3 submit this STIPULATION TO STAY PLAINTIFFS' COUNTS AGAINST THE UNITED  
4 STATES OF AMERICA AND PROPOSED ORDER FOR DEFENDANT UNITED STATES  
5 OF AMERICA on his behalf.

6  
7 Dated: September 21, 2017

/s/ Michael L. Williams  
MICHAEL L. WILLIAMS (D.C. Bar 471618)  
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Civil Division, Environmental Tort Litigation  
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14 Attorney for the UNITED STATES OF AMERICA

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17 Dated: September 21, 2017

/s/ Matthew K. Edling  
As authorized on September 21, 2017  
Matthew K. Edling  
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23 Attorney for Plaintiffs, RIO LINDA ELVERTA  
24 COMMUNITY WATER DISTRICT and  
25 SACRAMENTO SUBURBAN WATER DISTRICT

26 STIPULATION TO STAY PLAINTIFFS' COUNTS AGAINST  
27 THE UNITED STATES OF AMERICA AND SCHEDULING ORDER FOR  
28 DEFENDANT UNITED STATES OF AMERICA

1 **ORDER**

2 Pursuant to the above stipulation, and good cause appearing, the court orders the  
3 following:

4 Plaintiffs' counts against the United States in the Eastern District of California are stayed  
5 at least for the period of time that may be required for Plaintiffs to obtain a ruling from the United  
6 States Court of Federal Claims on Plaintiffs' anticipated motions to stay Plaintiffs' concurrently  
7 pending United States Court of Federal Claims cases.

8 If the United States Court of Federal Claims enters orders staying or dismissing  
9 Plaintiffs' United States Court of Federal Claims lawsuits against the United States and the  
10 United States Department of Air Force, then Plaintiffs' counsel will file a notice with the Eastern  
11 District of California of the orders **within 48 hours, or 72 hours if the orders are issued on a**  
12 **Friday.**

13  
14 If the United States Court of Federal Claims enters orders staying Plaintiffs' United  
15 States Court of Federal Claims lawsuits against the United States and the United States  
16 Department of Air Force, then the following filing deadlines will apply to Plaintiffs' counts  
17 against the United States:

18 1) Defendant, United States, will plead to or otherwise file a responsive pleading  
19 to any counts alleged against it in the District Court cases within 60 days of Plaintiffs'  
20 notification that its United States Court of Federal Claims cases have been stayed.

21 2) Plaintiffs will respond to any pleading motion by 28 days thereafter.

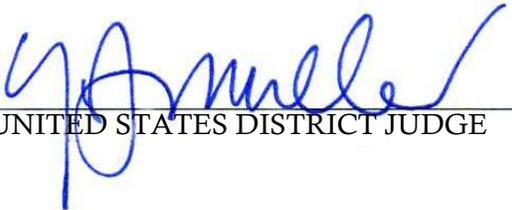
22 3) Defendant, United States, will file a reply brief in support of any pleading  
23 motion within 14 days thereafter.

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26 **STIPULATION TO STAY PLAINTIFFS' COUNTS AGAINST**  
27 **THE UNITED STATES OF AMERICA AND SCHEDULING ORDER FOR**  
28 **DEFENDANT UNITED STATES OF AMERICA**

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IT IS SO ORDERED.

Date: September 25, 2017.



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UNITED STATES DISTRICT JUDGE

STIPULATION TO STAY PLAINTIFFS' COUNTS AGAINST  
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DEFENDANT UNITED STATES OF AMERICA