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OCCIDENTAL CHEMICAL CORPORATION

7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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12 RIO LINDA ELVERTA COMMUNITY
WATER DISTRICT,

13 Plaintiff,

14 v.

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

21 Defendants.
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23 SACRAMENTO SUBURBAN WATER
DISTRICT,

24 Plaintiff,

25 v.

26 ELEMENTIS CHROMIUM
27 INCORPORATED, OCCIDENTAL
CHEMICAL CORPORATION,
28 HONEYWELL INCORPORATED, BASF

Case Nos. 2:17-cv-01349-KJM-GGH and
2:17-cv-01353-KJM-GGH

**STIPULATION TO STAY ACTIONS;
AND ORDER**

1 CORPORATION, PPG INCORPORATED,
2 E.I. DU PONT DE NEMOURS AND
3 COMPANY, LUXFER HOLDINGS PLC,
4 UNIVAR INCORPORATED, SIGMA-
ALDRICH CORPORATION, DOW
5 CHEMICAL COMPANY, and THE
6 UNITED STATES OF AMERICA,

Defendants.

7 Plaintiffs Rio Linda Elverta Community Water District and Sacramento Suburban Water
8 District (together, “Plaintiffs”) and Defendants the United States of America, Elementis
9 Chromium Incorporated, Occidental Chemical Corporation, Honeywell International, Inc., BASF
10 Corporation, PPG Industries, Inc. sued as PPG Incorporated, E.I. Du Pont de Nemours and
11 Company, Univar Inc., Univar USA, Inc., Luxfer Holdings PLC, Sigma-Aldrich Corporation,
12 and The Dow Chemical Company, in the above-captioned related matters, through their
13 undersigned counsel, hereby stipulate and agree to the following:

14 **I. Recitals**

15 1. Plaintiffs Rio Linda Elverta Community Water District and Sacramento Suburban
16 Water District filed actions against the United States of America and the United States
17 Department of the Air Force in the United States Court of Federal Claims on June 23, 2017. The
18 Court of Federal Claims case names and numbers are: *Rio Linda Elverta Community Water*
19 *District vs. The United States of America, et al.*, Case No. 1:17-cv-00859-VJW; and *Sacramento*
20 *Suburban Water District vs. The United States of America, et al.*, Case No. 1:17-cv-00860-RHH
21 (together, the “Federal Claims Actions”).

22 2. Plaintiffs subsequently filed these actions in this Court on June 30, 2017 (*Rio*
23 *Linda Community Water District v. United States, et al.*) and July 12, 2017 (*Sacramento*
24 *Suburban Water District v. Elementis Chromium Inc., et al.*).

25 3. On September 18 and 25, 2017, Non-Federal Defendants¹ filed motions to dismiss
26 under Federal Rule of Civil Procedure 12.

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¹ The “Non-Federal Defendants” are all Defendants except the United States.

1 4. On September 20, 2017, based on a stipulation between Plaintiffs and Non-
2 Federal Defendants, this Court entered an Order re Scheduling and Case Management (Docket
3 34) that, in addition to addressing service issues, established a schedule for motions to be brought
4 by Non-Federal Defendants. That Order set the following schedule:

- 5 • “All [Non-Federal] Defendants named in this stipulation will file responsive
6 pleadings by September 25, 2017”;
- 7 • “Plaintiff will respond to any pleading motions by October, 25, 2017”;
- 8 • “Defendants will file reply briefs by November 8, 2017”; and
- 9 • “The parties propose a hearing date of November 17, 2017, or the soonest the
10 Court can hear the matter following the filing of the reply briefs.”

11 5. On September 21, 2017, Plaintiffs and Defendant United States filed a Stipulation
12 to Stay Plaintiffs’ Counts Against the United States of America and Proposed Scheduling Order
13 for Defendant United States of America. On September 25, 2017, this Court entered an Order
14 (Docket 43) based on the stipulation staying this action against the United States “at least for the
15 period of time that may be required for Plaintiffs to obtain a ruling from the United States Court
16 of Federal Claims on Plaintiffs’ anticipated motions to stay” the Federal Claims Actions. The
17 Order further requires that the United States will answer or otherwise respond to Plaintiffs’
18 claims against the United States in these actions within 60 days of Plaintiffs’ notification that the
19 Federal Claims Actions have been stayed or dismissed, Plaintiffs will respond to any pleading
20 motion filed by the United States within 28 days thereafter, and the United States will file its
21 reply brief within 14 days thereafter.

22 6. On September 27, 2017 in the Rio Linda Federal Claims Action and on September
23 28, 2017 in the Sacramento Suburban Federal Claims Action, Plaintiffs filed motions to stay the
24 Federal Claims Actions pending resolution of the instant actions. United States’ responses to
25 those motions are due on October 11 and 12, 2017, respectively. Also on September 28, 2017, the
26 United States filed motions to dismiss the Federal Claims Actions under Rule of the Court of
27 Federal Claims 12(b)(1). Plaintiffs’ responses to those motions to dismiss are due on October 26,
28 2017.

1 7. This Court has set a Status (Pretrial Scheduling) Conference in these actions on
2 November 17, 2017 at 10:00 a.m.

3 8. Counsel for Plaintiffs and certain Non-Federal Defendants met and conferred on
4 September 22, 2017 concerning the scheduling of these actions in light of the Federal Claims
5 Actions, Plaintiffs' motions to stay the Federal Claims Actions, the overlapping issues in these
6 actions and the Federal Claims Actions, and means of litigating the matters efficiently without
7 duplicating issues or needlessly burdening the courts.

8 9. To reduce the potential for duplication of effort and overlap of proceedings, and to
9 avoid scheduling conflicts, the parties have agreed to the following proposed order.

10 **II. [Proposed] Order Staying Actions Against Non-Federal Defendants And Setting**
11 **Briefing and Discovery Schedule**

12 1. If the United States Court of Federal Claims enters orders staying or dismissing
13 Plaintiffs' United States Court of Federal Claims lawsuits, then Plaintiffs' counsel will file a
14 notice with the Eastern District of California of the orders **within 48 hours, or 72 hours if the**
15 **orders are issued on a Friday.**

16 2. These actions are hereby stayed against the Non-Federal Defendants until sixty
17 (60) days after Plaintiffs file such notification.

18 3. The briefing schedule set forth in the Court's September 20, 2017 Order (Docket
19 No. 34) is hereby modified as follows:

20 a. Plaintiffs will respond to the Rule 12 motions filed by the Non-Federal
21 Defendants within 28 days following the expiration of the stay of these actions
22 against the Non-Federal Defendants.

23 b. All Defendants who have filed motions in response to the complaints may file
24 reply briefs in support of those motions within 14 days after Plaintiffs'
25 opposition briefs are due.

26 c. The hearing date on the currently filed motions, set for November 17, 2017, at
27 10:00 a.m. is hereby vacated. Within ten days after Plaintiffs' notification that
28 the United States Court of Federal Claims cases have been stayed or

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dismissed, the parties shall propose to the Court an agreed hearing date for all Defendants' Rule 12 motions.

4. Discovery is stayed until the Court issues rulings on the Non-Federal Defendants' currently pending Rule 12 motions and any motions to dismiss filed by the United States pursuant to the deadlines entered by the Court on September 25, 2017 for all counts against the United States. Initial disclosures under Federal Rule of Civil Procedure 26(a)(1) shall be due 45 days after this Court's ruling on all then-pending Rule 12 motions.

5. The Status (Pretrial Scheduling) Conference set for November 17, 2017 at 10:00 a.m. is hereby vacated. The parties request that a Status (Pretrial Scheduling) Conference be set to coincide with oral argument on Defendants' Rule 12 motions or within 30 days after entry of an order resolving all Rule 12 motions filed by all defendants.

Pursuant to Local Rule 131(e), all undersigned counsel have authorized Occidental Chemical Corporation's counsel, R. Morgan Gilhuly, to sign and submit this Stipulation on their behalf.

Dated: October 10, 2017

SHER EDLING, LLP

By: /s/ Timothy R. Sloane
As authorized on October 9, 2017
Timothy R. Sloane

Attorneys for Plaintiffs
RIO LINDA ELVERTA COMMUNITY WATER
DISTRICT SACRAMENTO SUBURBAN WATER
DISTRICT

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Dated: October 10, 2017

U.S. DEPARTMENT OF JUSTICE, CIVIL DIVISION

By: /s/ Michael L. Williams
As authorized on October 9, 2017
Michael L. Williams

Attorneys for Defendant
UNITED STATES OF AMERICA

Dated: October 10, 2017

KING & SPALDING LLP

By: /s/ Megan R. Nishikawa
As authorized on October 10, 2017
Megan R. Nishikawa

Attorneys for Defendant
BASF CORPORATION

Dated: October 10, 2017

BARG COFFIN LEWIS & TRAPP, LLP

By: /s/ R. Morgan Gilhuly

Attorneys for Defendant
OCCIDENTAL CHEMICAL CORPORATION

Dated: October 10, 2017

MORGAN, LEWIS & BOCKIUS, LLP

By: /s/ Greg A. Christianson
As authorized on October 10, 2017
Greg A. Christianson

Attorneys for Defendant
ELEMENTIS CHROMIUM INCORPORATED

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Dated: October 10, 2017

ARNOLD PORTER KAYE SCHOLER LLP

By: /s/ Stephanie B. Weirick
As authorized on October 10, 2017
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Attorneys for Defendant
HONEYWELL INTERNATIONAL INC.

Dated: October 10, 2017

BEVERIDGE & DIAMOND, P.C.

By: /s/ Gary J. Smith
As authorized on October 10, 2017
Gary J. Smith

Attorneys for Defendant
PPG INDUSTRIES, INC., sued as PPG
INCORPORATED

Dated: October 10, 2017

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By: /s/ Adam Rapp
As authorized on October 10, 2017
Adam Rapp

Attorneys for Defendant
E.I. DU PONT DE NEMOURS AND COMPANY

Dated: October 10, 2017

ARCHER & GREINER, LLP
HANSON BRIDGETT LLP

By: /s/ Landon S. Bailey
As authorized on October 10, 2017
Landon S. Bailey

Attorneys for Defendant
LUXFER HOLDINGS PLC

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Dated: October 10, 2017

ALEXANDER & ASSOCIATES PC

By: /s/ Alisyn J. Palla
As authorized on October 10, 2017
Alisyn J. Palla

Attorneys for Defendant
UNIVAR USA INC. and UNIVAR INC.

Dated: October 10, 2017

STEPTOE & JOHNSON, LLP

By: /s/ Jay E. Smith
As authorized on October 10, 2017
Jay E. Smith

Attorneys for Defendant
SIGMA-ALDRICH CORPORATION

Dated: October 10, 2017

MITCHELL CHADWICK, LLP

By: /s/ Clifton McFarland
As authorized on October 10, 2017
Clifton McFarland

Attorneys for Defendant
THE DOW CHEMICAL COMPANY

IT IS SO ORDERED.

DATED: October 16, 2017.


UNITED STATES DISTRICT JUDGE