

MICHAEL L. WILLIAMS (D.C. Bar 471618)
Trial Attorney

BETHANY J. HENNEMAN (MD Atty # 1512150313)
Trial Attorney

U.S. Department of Justice
Civil Division, Environmental Tort
Litigation Section
P.O. Box 340, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-3839
Facsimile: (202) 616-4473

THOMAS J. ALFORD (MN Bar No. 0388221)
Trial Attorney

U.S. Department of Justice
Environmental and Natural Resources Division,
Environmental Defense Section
Washington, D.C. 20044
Telephone: (202) 514-0165
Facsimile No.: 202-514-8865

Attorneys for United States of America

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RIO LINDA ELVERTA
COMMUNITY
WATER DISTRICT,

Plaintiff,

v.

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

No. 2:17-cv-01349 KJM GGH

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
28

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.

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

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
THE UNITED STATES OF AMERICA AND SCHEDULING ORDER FOR
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.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

26 STIPULATION TO STAY PLAINTIFFS' COUNTS AGAINST
27 THE UNITED STATES OF AMERICA AND SCHEDULING ORDER FOR
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)
Trial Attorney
U.S. Department of Justice
Civil Division, Environmental Tort Litigation
P.O. Box 340, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-3839
Facsimile: (202) 616-4473
Email: Michael.L.Williams@usdoj.gov

14 Attorney for the UNITED STATES OF AMERICA

15
16
17 Dated: September 21, 2017

/s/ Matthew K. Edling
As authorized on September 21, 2017
Matthew K. Edling
SHER EDLING LLP
100 Montgomery St., Ste. 1410
San Francisco CA 94104
Telephone: (628) 231-2500
Facsimile: (628) 231-2929
Email: Matt@sheredling.com

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.

24
25
26 **STIPULATION TO STAY PLAINTIFFS' COUNTS AGAINST**
27 **THE UNITED STATES OF AMERICA AND SCHEDULING ORDER FOR**
28 **DEFENDANT UNITED STATES OF AMERICA**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Date: September 25, 2017.



UNITED STATES DISTRICT JUDGE

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