

SHARI M. HOWARD (IL Bar No. 6289779)
Trial Attorney

U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044
Telephone: (202) 305-0999
Facsimile No.: (202) 514-8865

MICHAEL L. WILLIAMS (D.C. Bar No. 471618)
GEOFFRY C. COOK (D.C. Bar No. 460301)
Trial Attorneys

U.S. Department of Justice
Civil Division, Environmental Tort Litigation Section
P.O. Box 340, Ben Franklin Station
Washington, DC 20044
Telephone: (202) 307-3839
Facsimile No.: (202) 616-4473

Attorneys for the United States of America

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

RIO LINDA ELVERTA COMMUNITY
WATER DISTRICT,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, ET
AL.,

Defendants.

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

**UNITED STATES OF AMERICA'S
MOTION TO DISMISS FOR LACK OF
SUBJECT-MATTER JURISDICTION
AND FAILURE TO STATE A CLAIM**

SACRAMENTO SUBURBAN WATER
DISTRICT,

Plaintiff,

vs.

ELEMENTIS CHROMIUM
INCORPORATED, ET AL.,

Defendants.

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

Judge: Kimberly J. Mueller

Date: September 25, 2020

Time: 10:00 A.M.

Ctrm: 3

Actions filed: June 30, 2017

1 **UNITED STATES OF AMERICA’S MOTION TO DISMISS FOR LACK OF**
2 **SUBJECT-MATTER JURISDICTION AND FAILURE TO STATE A CLAIM**

3 Defendant United States of America (“United States”), pursuant to Federal Rule of Civil
4 Procedure 12(b)(1), hereby moves to dismiss the Complaint of Plaintiff, Rio Linda Elverta
5 Community Water District, and Second Amended Complaint of Plaintiff, Sacramento Suburban
6 Water District, (collectively “Plaintiffs” or “Water Districts”), in the above-captioned related
7 matters¹ for lack of subject-matter jurisdiction because: (1)(a) Section 113(h) of the
8 Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42
9 U.S.C. § 113(h), bars Plaintiffs’ challenges to the ongoing CERCLA response actions; (b) the
10 Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6972(b)(2)(B)(ii)-(iii)
11 prohibits Plaintiffs’ RCRA claim because CERCLA response actions are ongoing; and (c)
12 Plaintiffs have not alleged an injury-in-fact sufficient to demonstrate Article III standing to raise
13 their RCRA or CERCLA claims(Count 1 and Count 8); (2) The discretionary function exception
14 to the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2671-80, bars Plaintiffs’ FTCA
15 tort claims (Counts 2-4 and 7) for lack of subject-matter jurisdiction; (3) No waiver of sovereign
16 immunity is pled or available for Plaintiffs’ Cal. Civil Code § 1882 claim (Count 7); and (4)
17 Plaintiffs’ alleged CERCLA response costs are not necessary and consistent with the National
18 Contingency Plan (Count 8). In addition, to the extent other defendants file a motion to dismiss
19 by July 6, 2020, pursuant to this Court’s February 7, 2020 stipulated order, *See* Orders, ¶II(3)(a)
20 (ECF104, Sacramento Suburban; ECF 96, Rio Linda Elverta), the United States joins in these
21 motions to dismiss.
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27 ¹The Court previously ordered that the above-captioned matters are related within the meaning of
28 Local Rule 123(a). *See ECF 7, Related Case Order* (08/03/2017).

1 The Court should grant this motion to dismiss all of Plaintiffs' claims against the United
2 States for the reasons set forth in the accompanying Memorandum of Law², Statement of Facts,
3 Declarations of Philip H. Mook and Steven K. Mayer, and Exhibits 1-73, filed in support of this
4 motion to dismiss.

5 Counsel for Defendant United States hereby certifies that consistent with the Federal Rules
6 of Civil Procedure and the Court's Standing Order, Defendant United States has exhausted effort
7 to meet and confer with Plaintiffs' counsel regarding the substance of this Motion via emails
8 exchanged between June 30, 2020, and July 1, 2020. Plaintiffs do not consent to the relief
9 sought in this motion. Per agreement of the parties, hard copy courtesy copies will not be
10 provided at this time due to COVID-19, but will be provided to the Court in advance of the
11 Court's hearing.
12

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14
15 Date: July 6, 2020

16 Respectfully submitted,

17
18 Letitia J. Grishaw
Chief, Environmental Defense Section

19 Martha Mann
20 Assistant Chief, Environmental Defense Section

21 s/ Shari M. Howard
22 SHARI M. HOWARD (IL Bar No. 6289779)
Trial Attorney

23 U.S. Department of Justice
24 Environment and Natural Resources Division
25 Environmental Defense Section
26 P.O. Box 7611, Ben Franklin Station
Washington, DC 20044

27 _____
28 ² The Court previously enlarged the page limit for the United States' Memorandum of Law by 15
pages, not to exceed 35 pages. *See ECF 108. Stipulation and Order (3/10/2020).*

1 Telephone: (202) 305-0999
2 Facsimile No.: (202) 514-8865
3 shari.howard@usdoj.gov

4 Ethan P. Davis
5 Acting Assistant Attorney General, Civil Division

6 J. Patrick Glynn
7 Director, Torts Branch

8 Christina M. Falk
9 Assistant Director, Torts Branch

10 s/ Michael L. Williams

11 Michael L. Williams (DC Bar # 471618)

12 Geoffrey C. Cook (DC Bar #460301)

13 Trial Attorneys, Tort Branch

14 Environmental Tort Litigation

15 P.O. Box 340

16 Ben Franklin Station

17 Washington, DC 20004

18 Phone: 202-616-4224

19 Telephone: (202) 307-3839

20 Facsimile No.: (202) 616-4473

21 michael.l.williams@usdoj.gov

22 geoffery.c.cook@usdoj.gov

23 **CERTIFICATE OF SERVICE**

24 I hereby certify that on July 6, 2020, the foregoing Motion to Dismiss for Lack of
25 Subject-Matter Jurisdiction And Failure To State A Claim and referenced supporting
26 Memorandum in Support, Statement of Facts, Declarations of Philip H. Mook and Steven K.
27 Mayer, and Exhibits 1-73, were filed *via* the U.S. District Court's CM/ECF electronic filing
28 system and a copy thereof was served upon all counsel of record.

s/ Michael L. Williams

MICHAEL L. WILLIAMS