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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
and CALIFORNIA DEPARTMENT
OF TOXIC SUBSTANCES CONTROL,

Plaintiffs,

v.

STERLING CENTRECORP INC.,
STEPHEN P. ELDER and ELDER
DEVELOPMENT, INC.,

Defendants.

No. 2:08-cv-02556-MCE-JFM

MEMORANDUM AND ORDER

Both the United States and the California Department of Toxic Substances (hereinafter collectively referred to as "Plaintiffs" or "government" unless otherwise specified) have designated the former Lava Cap Mine, located in Nevada County, California, as a Superfund site polluted by elevated levels of arsenic that were disseminated through tailings and waste materials generated by mine operations. Plaintiffs have undertaken cleanup efforts designed to remediate that arsenic contamination. The present action, filed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq. ("CERCLA"), seeks contribution for the costs of those activities both from former owners

1 of the site and operators responsible for its mining.

2 Presently before the Court is Plaintiffs' Motion for Partial Summary Judgment,
3 filed February 8, 2016, as to Defendant Sterling Centrecorp Inc.'s statute of limitations
4 defense. By way of Sterling's Twelfth Affirmative Defense as set forth in its Amended
5 Answer (ECF No. 33-2), Sterling asserts that the statute of limitations under Section
6 113(g)(2)(B) of CERCLA, 42 U.S.C. §9613(g)(2)(B), bars the recovery of a portion of
7 Plaintiffs' costs associated with their investigation and removal activities at the Lava Cap
8 site. Plaintiffs move for summary judgment on grounds that because the removal
9 activities for which Plaintiffs incurred costs was a single, continuous process, their
10 lawsuit to recover removal costs, filed within three years after completion of said removal
11 action, was timely as a matter of law.

12 On March 17, 2016, Defendant Sterling filed a Statement of Non-Opposition to
13 Plaintiff's Motion stating both that it does not oppose the Motion and that it "does not
14 assert a statute of limitations defense with respect to any of [Plaintiffs' claimed] costs."
15 ECF No. 282, 1:1-6. In light of that non-opposition, Sterling's representation, and good
16 cause appearing, Plaintiffs' Motion for Partial Summary Judgment as to Defendant
17 Sterling's Statute of Limitations Defense (ECF No. 267) is GRANTED.¹

18 IT IS SO ORDERED.

19 Dated: September 19, 2016

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21 MORRISON C. ENGLAND, JR.
22 UNITED STATES DISTRICT JUDGE
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28 ¹ Because oral argument would not be of material assistance, the Court ordered this matter submitted on the briefing in accordance with Eastern District Local Rule 230(g).