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8   UNITED STATES DISTRICT COURT

9   EASTERN DISTRICT OF CALIFORNIA

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11 UNITED STATES OF AMERICA,
    and CALIFORNIA DEPARTMENT
12 OF TOXIC SUBSTANCES CONTROL,   No. 2:08-cv-02556-MCE-JFM

13   Plaintiffs,

14   v.   **ORDER**

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

17   Defendants.

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20   This is an action brought by Plaintiffs pursuant to the

21 Comprehensive Environmental Response, Compensation and Liability

22 Act (CERCLA"), 42 U.S.C. § 9601, et seq., seeking, *inter alia*,

23 the recovery of response costs related to the release of

24 hazardous substances from the Lava Cap Mine Superfund Site. By

25 Order dated March 24, 2009, this Court bifurcated the case into

26 two phases. Phase 1 is limited to discovery and trial as to the

27 Court's jurisdiction over Defendant Sterling, as well as whether

28 Defendants bear any liability under CERCLA.

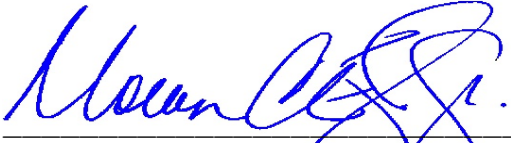   1

Phase 2, if necessary, will address the extent of Plaintiffs'
entitlement to the response costs being sought, as well as any
statute of limitations defenses to those potential damages.

Presently before the Court is Defendant Sterling's Motion
for Leave to File a First Amended Answer which incorporates a
counterclaim against Plaintiff United States that was not set
forth in Sterling's original answer. Defendant Sterling has also
filed a second motion seeking to assign that counterclaim to
Phase 2 of this litigation.

On September 25, 2009, the United States filed a Notice of
Non-Opposition to both of Sterling's Motions. Given that non-
opposition, and good causing appearing therefor, Defendant
Sterling's Motion for Leave to File First Amended Answer (Docket
No. 33) and its Motion to Assign Counterclaim to Phase 2 of this
litigation (Docket No. 36) are hereby GRANTED.[1] Accordingly, the
October 15, 2009 motions hearing is vacated.

IT IS SO ORDERED.

Dated: October 16, 2009

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MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE

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[1] Because oral argument will not be of material assistance,
the Court orders this matter submitted on the briefs. E.D. Cal.
Local Rule 78-230(h).