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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,)
14 Plaintiff,)
15 v.)
16 BRADLEY MINING COMPANY,)
17 et al.,)
18 Defendants.)

Case No. 3:08-CV-03968 TEH

JOINT STATUS REPORT,
STIPULATION, AND
~~PROPOSED~~ ORDER

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1 On November 12, 2008, Plaintiff United States and Defendants Bradley
2 Mining Company (“Bradley Mining”) and Frederick Bradley, as Trustee of the
3 Worthen Bradley Family Trust (“Bradley Trust”), filed a stipulation for a stay and
4 a continuance of the initial case management conference together with a proposed
5 Order. Court Docket No. 18. The Court entered its Order on November 17, 2008,
6 granting the stay and continuing the conference. Court Docket No. 21. Pursuant to
7 the Court’s Order, the parties provide this joint report on case status, prospects of
8 settlement, and case management scheduling, and submit a proposed Order to the
9 Court.

10 **I. CASE BACKGROUND**

11 **A. Sulphur Bank Mercury Mine - Case No. 3:08-CV-03968 (TEH)**

12 The United States filed this case on August 19, 2008, alleging that Bradley
13 Mining and the Bradley Trust are liable under Section 107 of the Comprehensive
14 Environmental Response, Compensation, and Liability Act (“CERCLA”), 42
15 U.S.C. § 9607, for costs incurred by the United States in connection with releases
16 and threatened releases of hazardous substances at or from the Sulphur Bank
17 Mercury Mine Site in Lake County, California (“Sulphur Bank Site”). In an Order
18 dated October 30, 2008, the Court, with the consent of all parties, assigned Martin
19 Quinn as the Mediator in this case. Court Docket No. 17. At the parties’ request,
20 the Court stayed this case on November 17, 2008, to allow the parties to participate
21 in mediation before engaging in initial disclosures. Court Docket No. 21.

22 **B. Stibnite Mine - Case No. 3:08-CV-05501 (TEH)**

23 On September 26, 2008, the United States filed an action under Section 107
24 of CERCLA, 42 U.S.C. § 9607, against Bradley Mining in the District Court of
25 Idaho for recovery of costs incurred by the United States in connection with the
26 Stibnite Mine Site in Valley County, Idaho. Pursuant to the parties’ stipulation, the
27 District of Idaho ordered that the venue be changed to the Northern District of
28 California.

1 In response to the parties' stipulation and the United States' motion in the
2 Sulphur Bank case, this Court determined the Sulphur Bank and Stibnite Mine
3 cases were related on December 23, 2008. Case No. 3:08-CV-03968 TEH, Docket
4 No. 31. On January 16, 2009, in response to a stipulation from the parties, this
5 Court ordered that the Stibnite Mine litigation be stayed to allow the parties to
6 participate in mediation before engaging in initial disclosures. Case No. 3:08-CV-
7 05501 TEH, Docket No. 15.

8 **II. MEDIATION**

9 On March 2 and 3, 2009, Plaintiff, the United States of America, and
10 Defendants, Bradley Mining and Bradley Trust, participated in a mediation session
11 with Mr. Quinn. In addition, representatives of the Elem Tribe attended the
12 mediation. The Elem Tribe, which is a trustee for natural resources at the Sulphur
13 Bank Site under 42 U.S.C. § 9601(16), has asserted, but not yet filed, cost recovery
14 and natural resource damage claims under 42 U.S.C. § 9607 against Bradley
15 Mining, Bradley Trust, and the United States. Finally, representatives of two of
16 Defendants' three insurance carriers attended the session.

17 At the mediation, the parties and the Elem Tribe reached an agreement in
18 principle to settle the United States' claims against the Defendants in the Sulphur
19 Bank and Stibnite Mine cases, the Defendants' counterclaims against the United
20 States in the two cases, and the Elem Tribe's potential claims against the
21 Defendants. The United States and Defendants continue to pursue settlement
22 negotiations with two additional insurers. The United States also needs to
23 conclude negotiations with the Elem Tribe about its claims.

24 The agreement in principle is not binding on the United States, the
25 Defendants, or the Elem Tribe. Final approval of the principal terms of the
26 settlement and the terms of any settlement document on the part of the United
27 States is subject to the approval of senior officials at the U.S. Department of
28 Justice, U.S. EPA, and the U.S. Forest Service. Assuming that the parties can

1 reach a settlement on all major terms, the United States will draft a Consent Decree
2 to reflect the terms of the settlement, and send it to Defendants and the Elem Tribe.
3 After Defendants and the Elem Tribe review and comment on the draft Consent
4 Decree, the parties will finalize the agreement.

5 If approved, the United States will then lodge the Consent Decree with the
6 Court in both the Sulphur Bank and Stibnite Mine actions for a thirty-day public
7 comment period. Final approval by the United States and entry of a proposed
8 Consent Decree is subject to the Department of Justice's requirements set forth at
9 28 C.F.R. § 50.7, which provides for notice of the lodging of the Consent Decree in
10 the Federal Register, a thirty-day public comment period, and consideration of any
11 comments. After expiration of the thirty-day public comment period, the United
12 States will review any comments. If there is no reason for the United States to
13 withhold its consent, the United States will submit a Motion to Enter the Consent
14 Decree that will address any public comments received. The Court's entry of the
15 Consent Decree will constitute a final judgment between and among the United
16 States, the Elem Tribe, and the Defendants.

17 **III. STIPULATION REGARDING PROPOSED ORDER**

18 As provided in the proposed Order below, the parties jointly stipulate and
19 request the Court to: (1) stay all proceedings in this matter, with the exception of
20 any further mediation-related proceedings, until the continued Initial Case
21 Management Conference; and (2) extend the Initial Case Management Conference
22 until July 20, 2009, so that the parties may conclude settlement negotiations with
23 the remaining insurers and the Elem Tribe. The parties propose to report to the
24 Court by June 19, 2009, regarding case status, prospects of settlement, and case
25 management scheduling, if needed.

26 IT IS SO STIPULATED.

27 I attest that concurrence in the filing of this joint status report, stipulation,
28 and [proposed] order has been obtained from Mr. Jon K. Wactor, the attorney for

1 Defendants Bradley Mining Company and Frederick Bradley, Trustee for the
2 Worthen Bradley Family Trust.

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4 Dated: March 19, 2009

/s/ Robert D. Mullaney

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15 Dated: March 18, 2009

/s/ Jon K. Wactor

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22 Attorneys for Defendants Bradley Mining
23 Company and Frederick Bradley, as Trustee
24 of the Worthen Bradley Family Trust

25
26 **~~[PROPOSED]~~ ORDER**

27 GOOD CAUSE APPEARING, IT IS ORDERED that:

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- (1) all proceedings in this matter, with the exception of any further mediation-related proceedings, shall be stayed until the continued Initial Case Management Conference;
 - (2) the Initial Case Management Conference, which is currently set for 1:30 p.m. on April 20, 2009, shall be continued until 1:30 p.m. on July 27, 2009, or a date thereafter that is set by the Court;
 - (3) the United States' response to the counterclaims is not due until September 21, 2009, 60 days after the continued Initial Case Management Conference;
- and

1 (4) the parties shall provide a joint report to the Court on case status, prospects
2 of settlement, and case management scheduling, if needed, by June 19, 2009.
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4 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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6 Dated: 03/20/09

