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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 June 18, 2009, Plaintiff United States and Defendants Bradley Mining Company  
2 (“Bradley Mining”) and Frederick Bradley, as Trustee of the Worthen Bradley Family Trust  
3 (“Bradley Trust”), filed a joint status report, stipulation, and proposed Order to stay the  
4 proceedings and continue the initial case management conference. Docket No. 36. The Court  
5 entered its Order on June 22, 2009, granting the stay and continuing the case management  
6 conference until October 26, 2009. Docket No. 37. Pursuant to the Court’s Order, the parties  
7 provide this joint report on case status, prospects of settlement, and case management  
8 scheduling, and submit a proposed Order to the Court.

9 **I. CASE BACKGROUND**

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

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

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

21 On September 26, 2008, the United States filed an action under Section 107 of CERCLA,  
22 42 U.S.C. § 9607, against Bradley Mining in the District Court of Idaho for recovery of costs  
23 incurred by the United States in connection with the Stibnite Mine Site in Valley County, Idaho.  
24 Pursuant to the parties’ stipulation, the District of Idaho ordered that the venue be changed to the  
25 Northern District of California.

26 In response to the parties’ stipulation and the United States’ motion in the Sulphur Bank  
27 case, this Court determined the Sulphur Bank and Stibnite Mine cases were related on December  
28 23, 2008. Case No. 3:08-CV-03968 TEH, Docket No. 31. On January 16, 2009, in response to a

1 stipulation from the parties, this Court ordered that the Stibnite Mine litigation be stayed to allow  
2 the parties to participate in mediation before engaging in initial disclosures. Case No. 3:08-CV-  
3 05501 TEH, Docket No. 15.

4 C. Mediation

5 On March 2 and 3, 2009, Plaintiff, the United States of America, and Defendants,  
6 Bradley Mining and Bradley Trust, participated in a mediation session with Mr. Quinn. In  
7 addition, representatives of the Elem Tribe attended the mediation. The Elem Tribe, which is a  
8 trustee for natural resources at the Sulphur Bank Site under 42 U.S.C. § 9601(16), had asserted,  
9 but not yet filed, cost recovery and natural resource damage claims under 42 U.S.C. § 9607  
10 against Bradley Mining, Bradley Trust, and the United States.<sup>1/</sup> Finally, representatives of two of  
11 Defendants' three insurance carriers attended the session.

12 At the mediation, the parties and the Elem Tribe reached an agreement in principle to  
13 settle the United States' claims against the Defendants in the Sulphur Bank and Stibnite Mine  
14 cases, the Defendants' counterclaims against the United States in the two cases, the Elem Tribe's  
15 potential claims against the Defendants and the United States, and other matters.

16 **II. CURRENT STATUS**

17 Because the agreement in principle involved a transfer of some real property that  
18 contains hazardous substances, the United States has negotiated with the Elem Tribe about the  
19 terms of the settlement of its claims. The United States and the Elem Tribe have taken  
20 substantial steps to resolve these issues. During the summer of 2009, the U.S. Environmental  
21 Protection Agency ("EPA") conducted additional sampling on those parcels of real property that  
22 are being considered for transfer to the Elem Tribe as part of the ongoing settlement  
23 negotiations. The additional sampling is necessary to assist the parties in determining the scope  
24 and geographic distribution of contamination on these parcels. The initial sampling carried out  
25 in late May revealed additional areas on these parcels having potential contamination. EPA

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28 <sup>1/</sup> In a demand dated May 16, 2009, the Elem Tribe provided written notice of its CERCLA  
claim to the United States.

1 conducted a second round of sampling in late August to characterize these new areas and to  
2 verify the initial sampling results. EPA expects to receive a report presenting the analytical  
3 results from this latest round of sampling in late September or early October, and will discuss the  
4 results with the Elem Tribe. Based on this report, the parties intend to further refine the  
5 boundaries of the real property that will be transferred to the Elem Tribe as part of the  
6 settlement.

7 The United States provided a draft Consent Decree to Defendants and the Elem Tribe on  
8 July 17, 2009. Counsel for the Elem Tribe responded with comments on the draft on September  
9 1, 2009. Counsel for Defendants provided comments on the draft on September 9, 2009. The  
10 United States is reviewing these comments and intends to send a revised draft to the parties for  
11 their review.

12 In addition, the United States and Defendants continue to pursue settlement negotiations  
13 with two additional insurers of Bradley Mining. One insurer provided a coverage letter to  
14 Bradley Mining on July 22, 2009, and indicated its interest in resolving this matter through  
15 further negotiation. On September 14, 2009, the second insurer of Bradley Mining sent a draft  
16 settlement form to Bradley Mining and the United States for review. Negotiations with both  
17 insurers are ongoing.<sup>2</sup>

18 The agreement in principle is not binding on the United States, the Defendants, or the  
19 Elem Tribe because final approval of the principal terms of the settlement and the terms of any  
20 settlement document on the part of the United States is subject to the approval of senior officials  
21 at the U.S. Department of Justice, U.S. EPA, and the U.S. Forest Service. At this point, the  
22 United States is drafting a revised Consent Decree to send to Defendants and the Elem Tribe for  
23 their review. After the parties agree to the terms of a Consent Decree, the parties intend to  
24 finalize the agreement.

25 If approved, the United States will then lodge the Consent Decree with the Court in both

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27 <sup>2</sup> If negotiations with these insurers are not productive, the parties are prepared to terminate  
28 negotiations with the insurers and to reserve their rights to proceed separately against the  
insurers.

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

11 **III. STIPULATION REGARDING PROPOSED ORDER**

12 As provided in the proposed Order below, the parties jointly stipulate and request the  
13 Court to: (1) stay all proceedings in this matter, with the exception of any further mediation-  
14 related proceedings, until the continued Initial Case Management Conference; and (2) extend the  
15 Initial Case Management Conference until February 1, 2010, so that the parties may conclude  
16 settlement negotiations. The parties propose to report to the Court by January 4, 2010, regarding  
17 case status, prospects of settlement, and case management scheduling, if needed.

18 IT IS SO STIPULATED.

19 I attest that concurrence in the filing of this joint status report, stipulation, and [proposed]  
20 order has been obtained from Mr. Jon K. Wactor, the attorney for Defendants Bradley Mining  
21 Company and Frederick Bradley, Trustee for the Worthen Bradley Family Trust.

22 Dated: September 28, 2009

/s/ Robert D. Mullaney

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1 Dated: September 28, 2009

/s/ Jon K. Wactor

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10 Company and Frederick Bradley, as Trustee of the  
11 Worthen Bradley Family Trust

12 ~~PROPOSED~~ ORDER

13 GOOD CAUSE APPEARING, IT IS ORDERED that:

- 14 (1) all proceedings in this matter, with the exception of any further mediation-related
- 15 proceedings, shall be stayed until the continued Initial Case Management Conference;
- 16 (2) the Initial Case Management Conference, which is currently set for 1:30 p.m. on October
- 17 26, 2009, shall be continued until 1:30 p.m. on February 1, 2010;
- 18 (3) the United States' response to the counterclaims is not due until April 2, 2010, 60 days
- 19 after the continued Initial Case Management Conference; and
- 20 (4) the parties shall provide a joint report to the Court on case status, prospects of settlement,
- 21 and case management scheduling, if needed, by January 4, 2010.

22 PURSUANT TO STIPULATION, IT IS SO ORDERED.

23 Dated: 09/29/09

