1 2 3 4 5 6 7 8	IGNACIA S. MORENO Assistant Attorney General Environment and Natural Resources Division U.S. Department of Justice ROBERT D. MULLANEY (Cal. Bar No. 116 Senior Counsel Environmental Enforcement Section U.S. Department of Justice 301 Howard Street, Suite 1050 San Francisco, CA 94105 Tel: (415) 744-6491 Fax: (415) 744-6476 E-mail: Robert.Mullaney@usdoj.gov Attorneys for Plaintiff United States of American	5441)
10	UNITED STATES DISTRICT COURT	
11	NORTHERN DISTRICT OF CALIFORNIA SAN FRANCISCO DIVISION	
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13	UNITED STATES OF AMERICA,) Case No. 3:08-CV-03968 TEH
14	Plaintiff,) Case INO. 3.00-C V-03900 IEF
15	v.	JOINT MOTION TO CONSOLIDATE
16	BRADLEY MINING COMPANY,	ACTIONS, STIPULATION, AND [PROPOSED] ORDER
17	et al.,	
18	Defendants.	
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Plaintiff, the United States of America, and Defendants, Bradley Mining Company and Frederick Bradley, Trustee for the Worthen Bradley Family Trust, hereby move, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, to consolidate the above-captioned action with the related action filed in this Court by the United States, <u>United States v. Bradley Mining Company</u>, Civil Action No. 3:08-CV-05501-TEH. The parties respectfully request that the Court consolidate these two actions under the above-captioned case number.

On August 19, 2008, the United States filed a Complaint against Defendants in the above-captioned action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq., seeking recovery of unreimbursed costs incurred and to be incurred by it, together with interest, for activities undertaken in response to the release or threatened release of hazardous substances at the Sulphur Bank Mercury Mine Superfund Site in Lake County, California ("Sulphur Bank case"). On September 26, 2008, the United States filed another action under Section 107 of CERCLA, 42 U.S.C. § 9607, against Bradley Mining Company in the District Court of Idaho for recovery of costs incurred by the United States in connection with the Stibnite Mine Site in Valley County, Idaho ("Stibnite Mine case"). Pursuant to the parties' stipulation, the District of Idaho ordered that the venue be changed to the Northern District of California. In response to the parties' stipulation and the United States' motion in the Sulphur Bank case, this Court determined that the Sulphur Bank and Stibnite Mine cases were related on December 23, 2008. Case No. 3:08-CV-03968 TEH, Court Docket No. ("DN") 31.

On December 2, 2011, the parties filed a Joint Notice of Settlement to inform the Court that the parties had reached final agreement on all of the terms of a Consent Decree, which, if entered, would fully resolve all of the claims in this matter and in the related Stibnite Mine case, United States v. Bradley Mining Company, Case No. 3:08-CV-05501 (TEH). DN 77. Counsel for the Elem Tribe, which is not yet a party to this action but is a party to the Consent Decree, has also represented that the terms of the Consent Decree are acceptable to the Elem Tribe. Id. at 2. If approval of the Consent Decree is obtained from all parties, the United States will lodge the Consent Decree with the Court and submit the Consent Decree for public comment in

accordance with 28 C.F.R. § 50.7. Id. The Court granted the parties' request to stay all proceedings in this matter for 75 days to allow for a final settlement of this matter. DN 78 at 3.

Consolidation is appropriate because the Sulphur Bank and the Stibnite Mine cases involve common parties and common questions of law and fact, and are expected to be resolved concurrently by the same Consent Decree. See Fed. R. Civ. P. 42(a). Furthermore, in addition to simplifying the public comment procedure by the lodging of a single decree, the parties agree that consolidation into one action will facilitate entry of the decree and any potential amendment, enforcement, or other future Court action related to the Consent Decree. Accordingly, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, the parties respectfully request that the Court consolidate these two actions under the above-captioned case number. A proposed Order is submitted below.

IT IS SO STIPULATED.

I attest that concurrence in the filing of this Joint Notice of Settlement has been obtained from Mr. Jon K. Wactor, the attorney for Defendants Bradley Mining Company and Frederick Bradley, Trustee for the Worthen Bradley Family Trust.

Dated: December 5, 2011

/s/ Robert D. Mullaney

Robert D. Mullaney **Environmental Enforcement Section** U.S. Department of Justice 301 Howard Street, Suite 1050 San Francisco, California 94105 Tel: (415) 744-6491

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Dated: December 5, 2011

/s/ Jon K. Wactor

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Attorneys for Defendants Bradley Mining

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

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[PROPOSED] ORDER

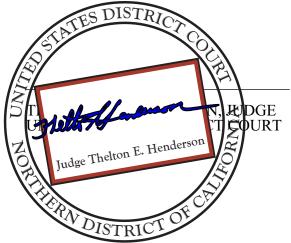
The Court, having read and considered the Joint Motion to Consolidate Actions and good cause appearing therefor,

IT IS HEREBY ORDERED that:

- The Joint Motion to Consolidate Actions is GRANTED; 1.
- Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, this action is consolidated 2. with the related Stibnite Mine case, <u>United States v. Bradley Mining Company</u>, Civil Action No. 3:08-CV-05501-TEH, and this action (3:08-CV-03968) shall be designated as the main case. Henceforth, these consolidated cases shall be considered as one case, and all pleadings shall be filed in the main case and captioned with case number 3:08-CV-03968.
- 3. The related Stibnite Mine case, <u>United States v. Bradley Mining Company</u>, Civil Action No. 3:08-CV-05501-TEH, shall be statistically closed.
- 4. Parties in the related action shall be added to the main case as consolidated plaintiffs/defendants, as applicable.

IT IS SO ORDERED.

Dated: 12/05/2011



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