

1 IGNACIA S. MORENO  
Assistant Attorney General  
2 Environment and Natural Resources Division  
U.S. Department of Justice

3 ROBERT D. MULLANEY (Cal. Bar No. 116441)  
4 Senior Counsel  
Environmental Enforcement Section  
5 U.S. Department of Justice  
301 Howard Street, Suite 1050  
6 San Francisco, CA 94105  
Tel: (415) 744-6491  
7 Fax: (415) 744-6476  
E-mail: Robert.Mullaney@usdoj.gov

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9 Attorneys for Plaintiff United States of America

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, )  
et al., )  
17 Defendants. )  
18 )  
19 )

Case No. 3:08-CV-03968 TEH

JOINT MOTION TO CONSOLIDATE  
ACTIONS, STIPULATION, AND  
~~PROPOSED~~ ORDER

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1 Plaintiff, the United States of America, and Defendants, Bradley Mining Company and  
2 Frederick Bradley, Trustee for the Worthen Bradley Family Trust, hereby move, pursuant to  
3 Rule 42(a) of the Federal Rules of Civil Procedure, to consolidate the above-captioned action  
4 with the related action filed in this Court by the United States, United States v. Bradley Mining  
5 Company, Civil Action No. 3:08-CV-05501-TEH. The parties respectfully request that the  
6 Court consolidate these two actions under the above-captioned case number.

7 On August 19, 2008, the United States filed a Complaint against Defendants in the  
8 above-captioned action under the Comprehensive Environmental Response, Compensation, and  
9 Liability Act of 1980 (“CERCLA”), 42 U.S.C. § 9601 et seq., seeking recovery of unreimbursed  
10 costs incurred and to be incurred by it, together with interest, for activities undertaken in  
11 response to the release or threatened release of hazardous substances at the Sulphur Bank  
12 Mercury Mine Superfund Site in Lake County, California (“Sulphur Bank case”). On September  
13 26, 2008, the United States filed another action under Section 107 of CERCLA, 42 U.S.C.  
14 § 9607, against Bradley Mining Company in the District Court of Idaho for recovery of costs  
15 incurred by the United States in connection with the Stibnite Mine Site in Valley County, Idaho  
16 (“Stibnite Mine case”). Pursuant to the parties’ stipulation, the District of Idaho ordered that the  
17 venue be changed to the Northern District of California. In response to the parties’ stipulation  
18 and the United States’ motion in the Sulphur Bank case, this Court determined that the Sulphur  
19 Bank and Stibnite Mine cases were related on December 23, 2008. Case No. 3:08-CV-03968  
20 TEH, Court Docket No. (“DN”) 31.

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

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

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

12 IT IS SO STIPULATED.

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

16 Dated: December 5, 2011

/s/ Robert D. Mullaney

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18 Robert D. Mullaney  
19 Environmental Enforcement Section  
20 U.S. Department of Justice  
21 301 Howard Street, Suite 1050  
22 San Francisco, California 94105  
23 Tel: (415) 744-6491  
24 Fax: (415) 744-6476  
25 Attorneys for Plaintiff United States of  
26 America

27 Dated: December 5, 2011

/s/ Jon K. Wactor

28  
29 Jon K. Wactor  
30 Wactor & Wick LLP  
31 180 Grand Avenue, Suite 950  
32 Oakland, California 94612  
33 Tel: (510) 465-5750  
34 Fax: (510) 465-5697  
35 Attorneys for Defendants Bradley Mining  
36 Company and Frederick Bradley, as Trustee of the  
37 Worthen Bradley Family Trust

1 **[PROPOSED] ORDER**

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

4 IT IS HEREBY ORDERED that:

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

15 IT IS SO ORDERED.

16  
17 Dated: 12/05/2011

