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2 Assistant Attorney General
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13 *Attorneys for United States of America*

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 UNITED STATES OF AMERICA,)
18) Case No. 3:08-CV-03968 (TEH)
19 Plaintiff,)
20)
21 v.)
22)
23 BRADLEY MINING COMPANY,)
24 et al.,)
25 Defendants.)

26 UNITED STATES OF AMERICA,)
27) Case No. 3:08-CV-05501 (TEH)
28 Plaintiff,)
29)
30 v.)
31)
32 BRADLEY MINING COMPANY,)
33)
34 Defendant.)

35 **FIRST MODIFICATION TO CONSENT DECREE**

1 WHEREAS, the United States of America (“United States”), the Bradley Mining
2 Company (“Bradley Mining”), Frederick Bradley, in his representative capacity as Trustee of the
3 Worthen Bradley Family Trust (“Bradley Trust”) (together, “Defendants”), and the Elem Indian
4 Colony of Pomo Indians of the Sulphur Bank Rancheria, California (“Elem Tribe”) are parties to
5 the Consent Decree entered by this Court on April 19, 2012 (ECF No. 95) (“Consent Decree”);

6 WHEREAS, the Consent Decree resolved claims and counterclaims between and among
7 the parties thereto, under the Comprehensive Environmental Response, Compensation, and
8 Liability Act (“CERCLA”), 42 U.S.C. § 9601, *et seq.*;

9 WHEREAS, Section VIII of the Consent Decree required the creation of a
10 Redevelopment Trust for the benefit of the United States and the Elem Tribe, to which the
11 Defendants would convey their respective interest in certain parcels of land comprising a portion
12 of the Sulphur Bank Mercury Mine Superfund Site in Lake County, California (“Site”) and
13 surrounding property (“Covered Parcels”);

14 WHEREAS, pursuant to Paragraph 18 of the Consent Decree, on April 30, 2012,
15 Defendants executed a Redevelopment Trust Agreement in the form specified in the Consent
16 Decree, attached hereto as Exhibit 1 (“Trust Agreement”), which became part of the Consent
17 Decree upon execution in accordance with Paragraph 78 of the Consent Decree;

18 WHEREAS, Defendants subsequently transferred all of their respective interest in the
19 Covered Parcels to the Redevelopment Trust;

20 WHEREAS, Section VIII of the Consent Decree addresses, among other things, how the
21 Redevelopment Trust is funded, Trustee compensation, and management and disposition of the
22 transferred parcels. *See also* Trust Agreement;

23 WHEREAS, the Redevelopment Trust receives ten percent of the net sales proceeds and
24 annual net lease proceeds from certain Covered Parcels to fund administration of the trust and
25 distributes the other 90 percent to EPA to conduct or finance response actions at the Site or be
26 transferred to the Hazardous Substance Superfund. Consent Decree ¶ 23; Trust Agreement §
27 4.02. The Trustee is compensated in accordance with 11 U.S.C § 326(a). Consent Decree ¶ 24;
28 Trust Agreement § 8.04, Exh. A;

1 WHEREAS, the Consent Decree and the Trust Agreement require the Redevelopment
2 Trust to manage and maintain Parcels 33, 39, 57, 58, and 81 until (1) portions of Parcels 33 and
3 57 containing hazardous waste are excised (“Excised Lands”), and (2) the Elem Tribe provides
4 written instruction to the Redevelopment Trust to transfer Parcels 39, 58, 81, and newly
5 configured Parcels 33 and 57 to the Elem Tribe or another trust or entity identified by it.
6 Consent Decree ¶ 22(b)-(c); Trust Agreement § 3.01(c)-(d);

7 WHEREAS, to date the Excised Lands remain part of Parcels 33 and 57;

8 WHEREAS, the Redevelopment Trust does not have sufficient funds to carry out the
9 duties required by Section VIII of the Consent Decree or the Trust Agreement;

10 WHEREAS, the compensation provided for the Trustee under Section 8.04 and Exhibit A
11 of the Trust Agreement is inadequate to compensate the Trustee or any future Trustee for their
12 duties under the Consent Decree and Trust Agreement;

13 WHEREAS, Paragraph 18 of the Consent Decree states that “if EPA determines that the
14 Redevelopment Trust needs to be amended . . . to effectuate the purposes of the Trust,
15 Defendants shall cooperate fully in the amendment of the Redevelopment Trust Agreement and
16 their agreement to amend the Agreement shall not be unreasonably withheld. As to Parcels 33,
17 39, 57, 58, and 81, however, the Redevelopment Trust may be modified . . . only by joint written
18 consent of EPA and the Elem Tribe and by Order of this Court”;

19 WHEREAS, the Section 10.04 of the Trust Agreement states that it may only be modified
20 with the consent of EPA and by order of this Court, and only to the extent that such modification
21 does not change or inhibit the purpose of the Trust as set forth in Section 2.02 thereof or allow
22 for distributions other than as provided in Section 4.02;

23 WHEREAS, the United States and the Elem Tribe, in consultation with the Trustee of the
24 Redevelopment Trust, have agreed to the modifications to the Consent Decree and the Trust
25 Agreement detailed herein;

26 WHEREAS, the United States represents that on December 13, 2024, it contacted
27 counsel for the Defendants to request Defendants’ cooperation in the amendment of the Trust
28 Agreement, consistent with Paragraph 18 of the Consent Decree;

1 WHEREAS, counsel for the Defendants represents that Frederick Bradley is deceased
2 and, to his knowledge, the Bradley Mining Company and the Worthen Bradley Family Trust no
3 longer exist and he is therefore unable to act on their behalf; and

4 WHEREAS, the United States and the Elem Tribe recognize, and the Court by entering
5 this First Modification finds, that this First Modification has been negotiated by the United States
6 and the Elem Tribe in good faith and that this First Modification is fair, reasonable, and
7 consistent with CERCLA, and, with respect to modifications to the Trust Agreement, does not
8 change or inhibit the purpose of the Redevelopment Trust or allow for distributions other than as
9 provided in Section 4.02;

10 NOW THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED,
11 ORDERED, AND DECREED as follows:

12 1. Except as specifically modified herein, all provisions of the Consent Decree
13 entered by this Court on April 19, 2012 (ECF No. 95) shall remain unchanged and in full force
14 and effect.

15 2. Paragraph 3 shall be revised as follows:

16 ... “Covered Parcels” shall mean Parcels 24, 25, 29, 30, 32, 33, 39, 57, 58, 81, and 83,
17 and the Excised Lands, if any, when they are owned or controlled by the Redevelopment Trust.

18 ...

19 “Elem Tribe” shall mean the Elem Indian Colony of Pomo Indians of the Sulphur Bank
20 Rancheria, California, a federally recognized Indian tribe.

21 ...

22 “Excised Lands” shall be those areas of Parcels 33 and 57, if any, that are not transferred
23 by the Redevelopment Trust, ~~to the Elem Tribe due to the presence of hazardous substances~~ as
24 shown and delineated generally in the map attached hereto as Appendix E, ~~and subject to~~
25 ~~modification based on the results of the environmental assessment to be performed under~~
26 ~~Paragraph 25 of this Consent Decree~~ or as otherwise determined under Paragraph 22(b).

1 3. Paragraph 4(a) shall be revised as follows:

2 To reach a settlement among the Parties with respect to the Covered Sites that requires:

3 (i) Bradley Mining to Assign certain parcels of property to the Redevelopment Trust for the
4 benefit of the United States; (ii) Bradley Mining to make cash payments from the proceeds of
5 insurance claims and annual payments of a percentage of its Total Income to the United States;
6 (iii) Bradley Trust to Assign certain parcels of property to the Redevelopment Trust for the
7 benefit of the United States; and (iv) Bradley Trust to Assign certain parcels of property to the
8 Redevelopment Trust which are to be transferred to the United States to be held in trust for the
9 benefit of the Elem Tribe;

10 4. Paragraph 5 shall be revised to add new subparagraph (c):

11 5(c) Within 180 days of the transfer of title for Parcels 33, 39, 57, 58, and 81 from the
12 Redevelopment Trust to the United States and without requiring a request from the Elem
13 Tribe to commence the acquisition process, DOI shall take those parcels in trust for the
14 benefit of the Elem Tribe.

15 5. Paragraph 17 shall be revised as follows:

16 . . . (ii) receiving and holding title to Parcels 33, 39, 57, 58, and 81 until the parcels are
17 transferred to the United States to be held in trust for the benefit of ~~in fee to~~ the Elem Tribe
18 ~~without the Excised Lands~~; . . .

19 6. Paragraph 19 shall be revised as follows:

20 . . . (iv) subject to recovery from its insurer pursuant to Paragraph 8, Bradley Mining shall
21 pay \$126,250 plus accrued interest, if any, to the Redevelopment Trust for the payment of
22 expenses associated with both the ownership, marketing, and sale of Parcels 24, 25, 29, 30, 32,
23 and 83, and the Excised Lands, and the ownership of Parcels 33, 39, 57, 58, and 81 until they are
24 transferred to the United States to be held in trust for the benefit of the Elem Tribe. . . .

25 7. Paragraph 22(b) shall be revised as follows:

26 To receive, hold, manage, and maintain Parcels 33 and 57 until: (i) the Excised Lands
27 are appended to Parcels 29 and 30; and (ii) the Redevelopment Trust is instructed in writing by
28 the Elem Tribe to transfer the newly reconfigured Parcels 33 and 57 to the United States to be

1 ~~held in trust for the benefit of the Elem Tribe or to another trust or entity identified by the Elem~~
2 ~~Tribe; provided, however, that the Elem Tribe will use its best efforts to accomplish transfers of~~
3 ~~Parcels 33 and 57 from the Redevelopment Trust to the Elem Tribe or to another trust or entity~~
4 ~~identified by the Elem Tribe by no later than one year after the Effective Date of this Consent~~
5 ~~Decree, unless the United States and the Elem Tribe mutually agree to extend this period. If~~
6 ~~DOI, EPA, and the Elem Tribe determine that no land shall be excised, or if the Excised Lands~~
7 ~~are not excised from Parcels 33 and 57 and appended to Parcels 29 and 30 within 90 days of~~
8 ~~entry of the First Modification to Consent Decree, then the Elem Tribe will instruct the~~
9 ~~Redevelopment Trust in writing to transfer Parcels 33 and 57, without modification, to the~~
10 ~~United States to be held in trust for the benefit of the Elem Tribe, and the Redevelopment Trust~~
11 ~~shall have no further obligations with respect to the Excised Lands;~~

12 8. Paragraph 22(c) shall be revised as follows:

13 To receive, hold, manage, and maintain Parcels 39, 58, and 81 until the Redevelopment
14 Trust is instructed in writing by the Elem Tribe to transfer Parcels 39, 58, and 81 to the United
15 States to be held in trust for the benefit of the Elem Tribe ~~or to another trust or entity identified~~
16 ~~by the Elem Tribe; provided, however, that the Elem Tribe will use its best efforts to accomplish~~
17 ~~transfers of Parcels 38, 58 and 81 from the Redevelopment Trust to the Elem Tribe or to another~~
18 ~~trust or entity identified by the Elem Tribe by no later than one year after the Effective Date of~~
19 ~~this Consent Decree, unless the United States and the Elem Tribe mutually agree to extend this~~
20 ~~period;~~

21 9. Paragraph 23 shall be revised as follows:

22 In accordance with the provisions of the Redevelopment Trust Agreement, (i) within 15
23 Days after the closing of the sale of any of Parcels 24, 25, 29, 30, 32, and 83, and the Excised
24 Lands, the Redevelopment Trust shall retain 4090 percent of the Net Sales Proceeds to be used
25 solely for the purposes provided in this Consent Decree, and shall thereafter distribute the
26 remainder of the Net Sale Proceeds from the sale to EPA's Site/Spill Special Account Number
27 2009 TR2B 09K0XK2 302DD2 (Sulphur Bank Site) to be retained and used to conduct or
28 finance response actions at or in connection with the Sulphur Bank Site, or transferred by EPA to

1 the Hazardous Substance Superfund, and (ii) within 15 Days after the annual accounting
2 pursuant to the Redevelopment Trust Agreement, if Parcels 24, 25, 29, 30, 32, and 83, and the
3 Excised Lands, have been leased in the previous year, the Redevelopment Trust shall retain ~~1090~~
4 percent of the Net Lease Proceeds to be used solely for the purposes provided in this Consent
5 Decree, and shall thereafter distribute the remainder of the Net Lease Proceeds from the lease of
6 Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, to EPA's Site/Spill Special Account
7 Number 2009 TR2B 09K0XK2 302DD2 (Sulphur Bank Site) to be retained and used to conduct
8 or finance response actions at or in connection with the Sulphur Bank Site, or transferred by EPA
9 to the Hazardous Substance Superfund;

10 10. Paragraph 47(b)(3) shall be revised as follows:

11 liability based on the ownership or operation of the Mt. Diablo Mine Site, the Stibnite
12 Mine Site, the Springfield Mine Site, the IMA Mine Site, the Bretz Mine Site, and the Opalite
13 Mine Site ~~Covered Sites~~ by Settling Federal Agencies when such ownership or operation
14 commences after signature of this Consent Decree;

15 11. Paragraph 75 shall be revised as follows:

16 . . .

17 As to the United States:

18 Chief, Environmental Enforcement Section
19 Environment and Natural Resources Division
20 U.S. Department of Justice (DJ # 90-11-3-07593)
21 P.O. Box 7611, Ben Franklin Station
22 Washington, D.C. 20044

21 ~~Robert D. Mullaney~~
22 ~~Senior Counsel~~
23 ~~Environmental Enforcement Section~~
24 ~~U.S. Department of Justice~~
25 ~~301 Howard Street, Suite 1050~~
26 ~~San Francisco, CA 94105~~

27 Chief, Environmental Defense Section
28 Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-6-18411)
P.O. Box 7611
Washington, D.C. 20044-7611

1 ~~Paul Cirino~~
2 ~~Trial Attorney~~
3 ~~Environmental Defense Section~~
4 ~~U.S. Department of Justice~~
5 ~~P.O. Box 7611~~
6 ~~Washington, D.C. 20044-7611~~

7 As to EPA Region IX:

8 ~~Larry Bradfish~~~~Dustin Minor~~, ORC-3
9 Assistant Regional Counsel
10 United States Environmental Protection Agency
11 75 Hawthorne Street
12 San Francisco, CA 94105

13 and

14 ~~Gary Riley~~~~Carter Jessop~~, ~~SFD-7-12~~
15 Remedial Project Manager
16 United States Environmental Protection Agency
17 75 Hawthorne Street
18 San Francisco, CA 94105

19 As to EPA Region X:

20 Chris Field
21 U.S. Environmental Protection Agency
22 Region X
23 1200 6th Avenue, Suite 900
24 ECL-116
25 Seattle, WA 98101

26 and

27 Wendy Watson
28 Attorney-Adviser
29 U.S. Environmental Protection Agency
30 Region X
31 1200 6th Avenue, Suite 900
32 ORC-158
33 Seattle, WA 98101

34 As to the Regional Financial Management Officers:

35 ~~Joe Schmidt~~, ~~PMD-5~~~~Anabel Yo-Eco~~
36 United States Environmental Protection Agency
37 75 Hawthorne Street
38 San Francisco, CA 94105

1 Financial Management Officer, Region X
2 Attn: Chris Field
3 United States Environmental Protection Agency
4 1200 6th Avenue, Suite 900
5 ECL-116
6 Seattle, WA 98101

7 As to the Forest Service:

8 Gary Fremerman
9 USDA/OGC
10 3351 South Building
11 1400 Independence Avenue, S.W.
12 Washington, D.C. 20250-1412

13 Dean Morgan
14 Salmon-Challis NF
15 HC 63, Box 1669, Hwy. 93
16 Challis, ID 83226

17 As to BLM, BIA or DOI:

18 ~~Karen Koeh~~Janet Fealk
19 Assistant Regional Solicitor
20 Office of the Regional Solicitor
21 U.S. Department of the Interior
22 2800 Cottage Way, Suite E-1712
23 Sacramento, CA 95825

24 and

25 ~~Casey S. Padgett~~Sari Levin, Assistant Solicitor
26 Branch of Environmental Compliance and Response
27 Office of the Solicitor, Mail Stop #5530
28 U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

As to the Elem Tribe:

~~Kyle Cohen, Esq.~~
~~Kyle Cohen, Attorney at Law, P.C.~~
~~P.O. Box 210076~~
~~San Francisco, CA 94121~~
~~The Cleary Law Group, P.C.~~
~~101 West Prairie Center, #362~~
~~Hayden, ID 83835~~

and

1 Agustin Garcia, Tribal Chairman
2 1400 North Dutton Avenue, Suite 7
3 Santa Rosa, CA 95401
4 Nathan R. Brown II
5 e/o The Elem Pomo Tribe
6 13300 E. Highway 20, Suite B
P.O. Box 757
Clearlake Oaks, CA 95423

7 11. Paragraph 78 shall be revised as follows:

8 ...

9 “Appendix E” is a map generally depicting those areas of Parcels 33 and 57 ~~(the Excised~~
10 ~~Parcels) that are not assigned to the Elem Tribe due to the presence of hazardous substances~~that
11 may be excised from those parcels and appended to Parcels 29 and 30, in accordance with
12 Paragraph 22.b.

13 “Appendix F” is the ~~unexecuted draft~~fully executed April 30, 2012 Redevelopment Trust
14 Agreement.

15 12. Appendix E shall be replaced with new maps as set forth in Exhibit 2 hereto.

16 13. Appendix F (April 30, 2012 Redevelopment Trust Agreement) shall be revised as
17 set forth in Exhibit 3 hereto.

18 * * *

19 14. The effective date of this First Modification shall be the date upon which this First
20 Modification is entered by the Court or the motion to enter this First Modification is granted,
21 whichever occurs first, as recorded on the Court’s docket.

22 15. This First Modification shall be lodged with this Court for a period of at least
23 thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United
24 States reserves the right to withdraw or withhold its consent if the comments regarding this First
25 Modification disclose facts or considerations indicating that this First Modification is
26 inappropriate, improper, or inadequate. The Elem Tribe consents to entry of this First
27 Modification as proposed without further notice and agrees not to withdraw from or oppose entry
28 of this First Modification by the Court or to challenge any provision of this First Modification,

1 unless the United States has notified the Elem Tribe in writing that the United States no longer
2 supports entry of this First Modification.

3 16. Each undersigned representative of the Elem Tribe and the Assistant Attorney
4 General for the Environment and Natural Resources Division of the United States Department of
5 Justice, on behalf of the United States, certifies that they are fully authorized to enter into the
6 terms and conditions of this First Modification and to execute and legally bind the Party they
7 represent to this First Modification.

8 17. This First Modification to the Consent Decree constitutes the final, complete, and
9 exclusive agreement and understanding between the United States and the Elem Tribe with
10 respect to this First Modification to the Consent Decree, and this First Modification supersedes
11 all prior agreements and understandings, whether oral or written, concerning the First
12 Modification embodied herein.

13 18. This First Modification may be executed in counterparts, and its validity shall not
14 be challenged on that basis.

15
16 Dated and entered this ___ day of _____, 2025.

17
18 BY:

19
20 _____
21 THE HON. _____
22 UNITED STATES DISTRICT JUDGE
23
24
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28

1 The undersigned hereby consents and certifies that they are authorized to consent to the terms
2 and conditions of this First Modification to the Consent Decree in the matter of *United States of*
3 *America, et al. v. Bradley Mining Co., et al.*

4
5 FOR THE UNITED STATES OF AMERICA

6
7 Todd Kim
8 Assistant Attorney General
9 Environment and Natural Resources
10 Division U.S. Department of Justice
11 Washington, D.C. 20530

12 **BETHANY
ENGEL**

Digitally signed by
BETHANY ENGEL
Date: 2025.01.15
15:57:38 -05'00'

Dated: 1/15/25

Bethany Engel
Senior Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

13
14
15
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17
18
19 Dated: 1/15/25

/s/ Paul Cirino
Paul Cirino
Senior Counsel
Environmental Defense Section
Environment and Natural Resources
Division U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

20
21
22
23
24 **ATTESTATION**

25 Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence
26 in the filing of this document has been obtained from the other signatories hereto.

27 Dated: 1/15/25 /s/ Bethany Engel
28 Bethany Engel

1 FOR THE UNITED STATES OF AMERICA (Cont.)

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Dated: _____

DANA BARTON Digitally signed by DANA BARTON
for Date: 2025.01.08 10:53:50 -08'00'

Michael Montgomery
Director, Superfund Division
Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Dated: _____

DUSTIN MINOR Digitally signed by DUSTIN MINOR
Date: 2025.01.06 14:35:35 -08'00'

Dustin Minor
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

1 The undersigned hereby consents and certifies that they are authorized to consent to the terms
2 and conditions of this First Modification to the Consent Decree in the matter of *United States of*
3 *America, et al. v. Bradley Mining Co., et al.*

4 FOR THE ELEM TRIBE

5 Dated: _____

Kyle Cohen

Digitally signed by Kyle Cohen
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-08'00'

Kyle Cohen, Esq.
Kyle Cohen, Attorney at Law, P.C.
P.O. Box 210076
San Francisco, CA 94121
Attorney for the Elem Tribe

11 Dated: 1-8-25


Agustin Garcia
Tribal Chairman
1400 North Dutton Avenue, Suite 7
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