Edgcomb Law Group, LLP
JOHN D. EDGCOMB (SBN 112275)
ADAM P. BAAS (SBN 220464)
One Post Street, Suite 2100
San Francisco, California 94104
Telephone: (415) 399-1555
Facsimile: (415) 399-1885
abaas@edgcomb-law.com

Attorneys for Petitioner
SUNOCO, INC.

STATE WATER RESOURCES CONTROL BOARD

STATE OF CALIFORNIA

In the Matter of SUNOCO, INC., Petitioner, For Review and Rescission of Cleanup and Abatement Order No. R5-2014-0124, Mount Diablo Mercury Mine, Contra Costa County, dated October 10, 2014	PETITION NO. **SUNOCO, INC.'S PETITION FOR REVIEW AND RESCISSION OF CLEANUP AND ABATEMENT ORDER NO. R5-2014-0124**

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I. PETITION

Pursuant to California Water Code Section 13320 and Title 23 of the California Code of Regulations §§ 2050 *et seq.*, Petitioner Sunoco, Inc. ("Sunoco" or "Petitioner") hereby petitions the State Water Resources Control Board ("State Board") for review and rescission of Cleanup and Abatement Order R5-2014-0124 adopted pursuant to Sections 13267 and 13304 of the California Water Code regarding the Mount Diablo Mercury Mine, Contra Costa County ("Site"), issued on October 10, 2014 ("CAO"), by the Regional Water Quality Control Board, Central Valley Region ("Regional Board").

II. PETITIONER

The name and address of Petitioner is:

Sunoco, Inc.
Attn: Kevin Dunleavy, Counsel
Sunoco, Inc.
1735 Market St., Ste. LL
Philadelphia, PA 19103-7583

Sunoco can be contacted through its outside legal counsel:

Edgcomb Law Group, LLP
Attn: Adam P. Baas
One Post Street, Suite 2100
San Francisco, CA 94104
abaas@edgcomb-law.com
(415) 692-8144

III. ACTION OF THE REGIONAL BOARD TO BE REVIEWED AND RESCINDED

Sunoco requests that the State Board review and rescind the Regional Board's CAO adopted on October 10, 2014, and attached hereto as Exhibit 1 to the Declaration of Adam P. Baas In Support of Sunoco's Petition for Review and Rescission, and Petition for Stay of Action ("Baas Decl."). Paragraph 17 of the CAO concludes:

> The **Cordero Mining Company operated the Mine Site from approximately 1954 to 1956**, and was responsible for sinking a shaft, driving underground tunnels that connected

> new areas to pre-existing mine workings, and discharging mine waste. **There is no record of mercury production for this time period and the amount of mercury production, if any, from this time period is unknown.** The United States Environmental Protection Agency (USEPA), Region IX, named Sunoco Inc. a responsible party for Mount Diablo Mercury Mine in the Unilateral Administrative Order for the Performance of a Removal Action, USEPA Docket No. 9-2009-02, due to its corporate relationship to the Cordero Mining Company. **Based on the evidence submitted, including but not limited to verified interrogatories submitted in federal court in an action for cleanup at another mine site, Sunoco, Inc. expressly or impliedly assumed the liabilities of Cordero Mining Company. Sunoco, Inc. is a named Discharger in this Order, as a party legally responsible for Cordero's discharges at the Mine Site.** Drainage from Cordero Mining Company's mine workings creates, or threatens to create, a condition of pollution or nuisance.

(Baas Decl., Exh. 1, ¶ 17) (emphasis added).

The Regional Board has acted in an arbitrary and capricious manner by adopting the CAO based on an erroneous interpretation of law and unsupported findings of fact. In an accompanying Petition for Stay, Sunoco asks that the State Board stay the CAO until the State Board completes its review and issues its decision in this matter. A stay is particularly appropriate in this matter given that Sunoco was named by the Regional Board as an indirect discharger based solely on an erroneous application of contract law principles – not the Water Code. Indeed, the Regional Board Chair recognized this issue at the recent hearing on these issues, stating "quite frankly we're going to see this order more than likely go on up to the State Board and maybe on up to the courts … and I don't want to hamper the state board." (See, Baas Decl., Exh. 50, October 10, 2014, Regional Board Hearing Audio Recording ("Hearing Recording") at 5:27-5:28)).

IV. DATE OF THE REGIONAL BOARD ACTION

The Regional Board adopted the CAO on October 10, 2014.

V. STATEMENT OF REASONS WHY THE REGIONAL BOARD'S ACTION IS IMPROPER

The State Board should review and rescind the CAO, as it pertains to Sunoco, because:

A. Sunoco's Non-Liability as a Mere Shareholder of Cordero Mining Co.

The Regional Board's finding in the CAO that Sunoco is "a party legally responsible for Cordero's discharges at the Mine Site" because "Sunoco … expressly or impliedly assumed the liabilities of Cordero Mining Company" *is not* supported by law or fact. It is undisputed that: the Cordero Mining Company of Nevada ("Cordero") was a separate corporate entity that dissolved completely in 1975; Sunoco did not continue Cordero's mercury exploration operations after Cordero dissolved in 1975; there is no evidence of an asset transfer agreement between Sunoco or its predecessors and Cordero having occurred at any time; and, there is no evidence that Sunoco ever owned, leased, or operated at the Site at any time. Therefore, there is no basis for the Regional Board to find that Sunoco has any liability at the Site as a *direct* discharger.

Moreover, the Regional Board does not cite to any legal precedent or sufficient facts to support its decision to name Sunoco as an *indirect* discharger – because neither exists. Instead, the Regional Board relies solely on two sets of insufficient evidence: i) interrogatories, correspondence, and pleadings from a litigation concerning an unrelated site conducted in or about 1994, which post-date Cordero's dissolution by 20 years and cannot by themselves create an express or implied assumption of liability contract regarding the Site; and, ii) Sunoco's prior cooperation at this Site with orders issued first by the EPA and then Regional Board since 2008, which is an unprecedented and particularly egregious argument that in addition to being insufficient to create an express or implied assumption of liability contract, seeks to punish Sunoco for its compliance with prior agency orders.

The applicable law is clear: without a written or oral contract between Sunoco and Cordero set forth in words, the Regional Board cannot conclude that an *express* assumption of liability exists; and, without evidence of the elements of a contact (*i.e.* mutual promises, consideration, and a meeting of the minds), the Regional Board cannot

conclude that an *implied* assumption of liability exists. Applying this legal standard here, the Regional Board presents no evidence to establish either type of assumption by Sunoco of any Cordero liability at the Site. Thus, the Regional Board's findings that Sunoco expressly or impliedly assumed Cordero's Site liabilities is inappropriate and improper, not supported by law or facts, and must be rescinded.

B. Any Cordero Liability is *De Minimis* and Should Be Apportioned.

Notwithstanding Sunoco's non-liability, the Regional Board also acted arbitrarily and capriciously, and without the support of law, when it chose not to apportion liability between Cordero and the other dischargers. Nowhere in the Water Code does it state that joint and several liability applies to all Water Code Section 13304 orders. In fact, California courts recognize that Water Code liability is akin to common law nuisance liability and, as such, common law – *i.e.* the Restatement (Second) of Torts – dictates that if the Regional Board can apportion harm, it must do so. By refusing to perform an apportionment analysis and apportion only *de minimis* liability to Cordero in this matter, the Regional Board acted inappropriately and improperly, and committed reversible error.

There was clear evidence presented at and before the hearing that the mercury contamination at the Mt. Diablo Site can be apportioned on a reasonable basis and that Cordero should be apportioned a *de minimis* (at most) share of the liability: i) Cordero was involved with the Site for a very short period of time, operated on only a small area of the Site, did not mill any ore or generate any tailings, and contributed only 1.2 percent (%) of the waste rock (as opposed to tailings) at the Site; ii) 88% of the mercury sourced to surface water from the Site is linked to the mine tailings disposed of on the Site's hillside by other Dischargers; iii) the remaining mercury is sourced from groundwater seeping as a spring from a horizontal adit (tunnel) constructed by a former Discharger and is unrelated to Cordero's historical activities; and iv) as a lessee, Cordero cannot be held liable for discharges caused by prior property owners/lessees.

The reasons the Regional Board's actions were inappropriate and improper are

more fully set forth in Sunoco's Memorandum of Points and Authorities, which may be found beginning at page 6 of this Petition.

VI. THE MANNER IN WHICH PETITIONER HAS BEEN AGGRIEVED

The Regional Board's actions have aggrieved Sunoco because the CAO is arbitrary and capricious, overreaching, and unsupported by the relevant law or facts. First, there is a general principle of corporate law "deeply ingrained in our economic and legal systems that a parent corporation … is not liable for the acts of its subsidiaries," which must be followed in this case. (U.S. v. Bestfoods, et al. 524 U.S. 51, 56 (U.S. Sup. Ct. 1998)) (citations omitted)). Sunoco never owned, leased, or operated the Site and there is no evidence that Sunoco assumed the liabilities of Cordero in 1975 by way of a contract – express or implied. Sunoco's predecessor was a shareholder of Cordero only, and there is no evidence that an asset transfer agreement exists or merger took place between the companies. Second, notwithstanding Sunoco's non-liability for Cordero's Site liabilities, if any, under corporate and contract law principles, any Cordero liability as a discharger could have, and should have, been apportioned by the Regional Board pursuant to the Water Code and common law – with Cordero being apportioned a *de minimis* share (if any) of the Site liability.

VII. STATE BOARD ACTION REQUESTED BY PETITIONER

Sunoco requests that the State Board immediately stay enforcement of the CAO, and then after considering Sunoco's legal arguments and submitted evidence, determine that the CAO is arbitrary and capricious or otherwise without factual or legal bases, and rescind it for the reasons set forth in this Petition.

VIII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION

Sunoco's Memorandum of Points and Authorities may be found beginning at page 6 of this Petition, and is supported by the Declarations of Adam P. Baas, Paul D. Horton, and Robert M. Gailey submitted herewith as part of the administrative record. Sunoco reserves the right to file a Supplemental Statement of Points and Authorities, including references to the complete administrative record and other legal authorities and factual

documents and testimony, as well as to supplement its evidentiary submission, as may be necessary.

IX. STATEMENT REGARDING SERVICE OF THE PETITION ON THE REGIONAL BOARD AND NAMED DISCHARGERS

A copy of this Petition, with its Memorandum of Points and Authorities, as well as the simultaneously submitted Petition for Stay, supporting declarations, and exhibits, were sent to the Regional Board on November 10, 2014, to the attention of Pamela C. Creedon, Executive Officer, by email addressed to Pamela.creedon@waterboards.ca.gov.

X. STATEMENT REGARDING ISSUES PRESENTED TO THE REGIONAL BOARD/REQUEST FOR HEARING

The substantive issues raised in this Petition were all raised during, or as part of, proceedings related to the October 10, 2014 hearing on the CAO before the Regional Board.

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XI. SUNOCO'S MEMORANDUM OF POINTS AND AUTHORITIES

A. FACTUAL BACKGROUND - CORDERO HISTORY

Sunoco is a successor to Sun Oil Company of Delaware ("Sun Oil"), a former shareholder of Cordero, a dissolved Nevada corporation with no remaining assets. The facts demonstrate that Cordero's formation, operation, and ultimate liquidation and dissolution evolved around a straightforward parent-subsidiary relationship between Cordero and Sun Oil. There is neither evidence of any asset transfer agreement or merger between Sun Oil and Cordero, nor evidence of a continuation of Cordero's operations by Sunoco after Cordero's dissolution. (Baas Decl. ¶ 58).

In 1941, Cordero was incorporated in Nevada, to "engage in the business of mining generally," with its principle office and place of business in McDermitt, Nevada. (Baas Decl. Exh. 2). At the time of incorporation, and at all relevant times thereafter, Sun Oil owned 100% of Cordero's common stock. (Id.) Cordero's Articles of Incorporation established a Board of Directors and By-laws, which were separate and

apart from Sun Oil. (Id.) Cordero's initial capitalization came by way of a stock purchase agreement to Sun Oil for 750 shares @ $100/share, or $750,000, authorized by the Board of Directors on March 11, 1941. Also in March 1941, Cordero's Board of Directors instructed Cordero's treasurer to open a bank account "in the name of the Company with the First National Bank of Reno, Nevada ... to carry on the operations of the Company [Cordero] in the State of Nevada." (Baas Decl. Exh. 3). The record further shows that Cordero held regular board meetings, separate and apart from Sun Oil, as well as stockholder meetings during its entire time of existence. (Baas Decl. Exh. 4, sample set of Meeting Minutes). As such, all available evidence indicates that Cordero was a fully capitalized, independently operated company, with its own Board of Directors and assets separate and apart from Sun Oil.

In 1972, pursuant to the Agreement and Plan of Liquidation dated December 31, 1972, the officers of Cordero were directed to liquidate the company by selling or otherwise liquidating all remaining tangible assets of Cordero, providing for all proper debts of the corporation, and distributing all remaining assets (if any remained) to its sole shareholder, Sun Oil. (Baas Decl. Exh. 5). To provide for its debts as required at the time to legally effectuate the dissolution, a declaration of the officers of Cordero indicates that Sun Oil assumed the responsibility of the Cordero Retirement and Stock Purchase Plans. (Id.) In turn, on November 18, 1975, Cordero was legally dissolved as a corporate entity, as acknowledged by the Nevada Secretary of State. (Baas Decl. Exh. 6). There is no evidence of a merger or asset transfer agreement between Sun Oil and Cordero at that time. (Baas Decl. ¶ 58). Nor is there evidence that indicates Sun Oil continued any mercury mining operations after Cordero's dissolution. (Id.) In or around 1998, Sun Company, Inc. (f/k/a Sun Oil Company) changed its name to Sunoco, Inc. (Baas Decl. Exh. 7).

Sunoco has searched its historical files and public records for any evidence of Cordero's assets that may exist today, as well as any evidence of what assets (if any) may have been distributed by Cordero to Sun Oil at the time of Cordero's dissolution. After a reasonable and diligent search, Sunoco has been unable to identify any remaining assets.

(Baas Decl. Exh. 8). Nor has Sunoco been able to locate any insurance policies held by Cordero during that time period, or other policies that would cover the CAO and/or time period at issue here. (Baas Decl. Exh. 9, letter from D. Chapman to R. Atkinson directing the Regional Board to insurance coverage of other PRPs). In addition, Cordero's federal dissolution tax form for the period ending December 31, 1972, appears to demonstrate that any assets (if any) distributed to Sun Oil by way of the dissolution in 1975 were offset by the limited pension liabilities assumed at that time – making Cordero's balance sheet as of December 31, 1972, zero (0), and the value of any distributed assets zero (0). (Baas Decl. Exh. 10).

B. FACTUAL BACKGROUND – 1994 INTERROGATORIES

The interrogatories, and related correspondence and pleadings from the 1994 U.S. District Court matter County of Santa Clara v. Myers Industries, Inc. ("Myers Industries Case") were submitted as evidence at the October 10, 2014 hearing by the Prosecution Team. (See Baas Decl., Exh. 11, interrogatories; Exh. 12, correspondence; and, Exh. 13, pleadings). This evidence was ultimately relied upon – almost solely – by the Regional Board to support the conclusion that Sunoco "expressly or impliedly assumed the liabilities of Cordero." However, the interrogatories, and related correspondence and pleadings, from the Myers Industries Case refer to Cordero Mining Company of *Delaware*, a coal mining company, and not Cordero Mining Company of *Nevada*, the company that operated briefly at the Site, making those documents immaterial to proving that Sun Oil contractually assumed Cordero's liabilities in or about 1975.

1. Background of the Multiple Cordero Mining Companies

Historically, there have been three Cordero Mining Companies – one mined for mercury and two mined for coal. None existed and operated at the same time. In April 2009, the Regional Board was put on notice of this potentially confusing fact in the Sulphur Creek Mines matter in Colusa County, California.[1] At that time, the Regional Board believed that "the Cordero Mining Company purchased by Kennecott Corporation in 1993 [the coal company] is one and the same company that was created in 1941 by

[1] The full caption for this site is "Central Hill, Empire, Manzanita, and West End Mines, Colusa County."

Sun Oil Company [the mercury company]." (Baas Decl. Exh. 14). Because Kennecott was a wholly owned subsidiary of Rio Tinto Services, Inc ("Rio Tinto"), the Regional Board named Rio Tinto as a discharger on a Sulphur Creek Mines order. (Id.) Rio Tinto notified the Regional Board that there were multiple Cordero Mining Companies and that the Regional Board had named the wrong one on the order. (Baas Decl. Exh. 15). Based on a Public Records Act Request performed by Sunoco's counsel, it appears that the Regional Board does not have any records related to the outcome of this correspondence between the Regional Board and Rio Tinto (Baas Decl. Exh. 16). Noticeably, however, neither Rio Tinto nor Kennecott are named on any subsequent Sulphur Creek Mines order, suggesting that the Regional Board accepted Rio Tinto Mines' argument.

Rio Tinto's argument is supported by the record. Cordero Mining Company of Nevada was formed in 1941. Cordero briefly leased the Mt. Diablo Mercury mine beginning in 1955, dissolved completely in 1975, liquidated all of its assets, and closed all of its existing operations. (See above). A second Cordero Mining Company – similar in name only – was formed in or around 1975 in Delaware by Sun Oil Company to mine for coal (hereinafter, "Delaware Cordero I"). (Baas Decl. Exh. 17). In 1983, Delaware Cordero I merged with a Sun Oil Company subsidiary in its coal division, SUNEDCO, that had also been incorporated in Delaware in circa 1975, and Delaware Cordero I dissolved as a corporate entity and became defunct. (Id.) SUNEDCO then took the name "Cordero Mining Company" and continued operating in the coal mining business (hereinafter, "Delaware Cordero II"). (Baas Decl. Exh. 18). Delaware Cordero II, the coal company, was sold to Kennecott Corp. in 1993. (Baas Decl. Exh. 19). Kennecott Corp. had been purchased four years earlier by Rio Tinto. (Id.)

Thus, of the three historical Cordero Mining Companies, two had nothing to do with the Mt. Diablo Mercury Mine Site. The only Cordero Mining Company that had any limited contact with the Site was the Cordero incorporated in Nevada, which dissolved entirely in 1975 and as to which there is no record that Sunoco ever continued its operations. Further, there is no record of any direct connection between the "Nevada" Cordero and Delaware Cordero I or Delaware Cordero II.

2. Confusion in Relation to the Interrogatories

The multiple uses of the name Cordero Mining Company throughout history have not only caused confusion in the Sulphur Creek Mines matter, but it is apparent that they also caused confusion in relation to the Interrogatories in the Myers Industries Case. To explain this confusion and its likely affect on the Interrogatories, as well as the subsequent correspondence and pleadings, response to Interrogatory No. 2 – which was the focus of the Prosecution Team's case against Sunoco – is analyzed sentence by sentence:

i. Cordero Mining Company, a Nevada corporation, was dissolved on November 18, 1975.

This sentence is accurate. On November 18, 1975, the Cordero Mining Company of Nevada was legally dissolved as a corporate entity, as acknowledged by the Nevada Secretary of State. (Baas Decl. Exh. 6).

ii. At the time of dissolution, a subsidiary of Sun Company, Inc. was the sole shareholder of Cordero Mining Company [of Nevada].

This sentence, taken together with the first sentence, is accurate. At the time of dissolution in 1975, Sun Oil Company of Delaware was the sole shareholder of the Nevada Cordero. (Baas Decl. Exh. 5). Sun Oil Company of Delaware later changed its name to Sun Exploration and Production Company ("Sun E&P") in circa 1981. (Baas Decl. Exh. 7). Sun E&P was a subsidiary of Sun Company, Inc. (Baas Decl. Exh. 20).

iii. This subsidiary [Sun E&P] was subsequently spun-off to the shareholders of Sun Company, Inc. on November 1, 1988 as part of a corporate restructuring, although Sun Company, Inc. retained responsibility for the liabilities of Cordero Mining Company.

This sentence is inaccurate to the extent that it purportedly refers to the Cordero entity incorporated in Nevada and relevant to this Petition. In 1988, the Board of Directors of Sun Company, Inc. determined that it was in the best interest of the shareholders to distribute all of the outstanding shares of Sun E&P to Sun Company, Inc. shareholders. (Baas Decl. Exh. 20). This transaction was referred to as a spin-off and was memorialized in a 1988 Distribution Agreement between Sun Company, Inc. and

Sun E&P. (Id.) In 1989, Sun E&P, the independent company that remained after the spin-off, changed its name to Oryx Energy Company.

The inaccuracy within this sentence is the apparent link it makes between the November 1, 1988 spin-off of Sun E&P from Sun Company, Inc. and the "Nevada" Cordero. Pursuant to the 1988 Distribution Agreement – *i.e.* the spin-off referenced in the Interrogatories – Sun Company, Inc. remained responsible for the "Sun Business Liabilities," which are defined within the agreement as "[a]ll liabilities of Sun, including all liabilities arising out of, in connection with or relating principally to, any of Sun Businesses." (Id.) The definition of "Sun Businesses" includes the companies listed in Appendix B of the 1988 Distribution Agreement. The defunct Delaware Cordero I is listed on page 4 of Appendix B titled "Sun Company, Inc. – Defunct Companies;"[2] and the active Delaware Cordero II, the coal company formerly known as SUNEDCO, is listed on page 7 of Appendix B titled "Sun Company, Inc. Businesses." (Id.) There is no reference to the Nevada Cordero within the 1988 Distribution Agreement. Thus, the statement that as part of the spin-off, Sun Company, Inc. "retained responsibility for the liabilities of Cordero Mining Company" is factually *inaccurate* to the extent that it apparently refers to the "Nevada" Cordero. The 1988 Distribution Agreement actually references only the Delaware Cordero Mining Companies – one defunct and the other active. The fact that there were two "defunct" Cordero Mining Companies as of 1988, Delaware Cordero I and Nevada Cordero, appears to have caused confusion during the drafting of the interrogatory responses.

In addition, the context in which the Interrogatories were drafted supports the likelihood that confusion regarding the two Cordero Mining entities occurred as a result of the 1988 Distribution Agreement. In May 1993, before it even became a party to the Myers Industries Case, Sun Company, Inc. was contacted by Myers Industries, Inc.'s ("Myers") counsel regarding which company Myers should file a cross claim against,

[2] Notably, the defunct company is titled "Cordero Mining Co. (DE)." (Id.)

Sun Company, Inc. or Oryx. (Baas Decl. Exh. 21). Myers counsel believed at that time that Oryx Energy Company, not Sun Company, Inc. was the immediate successor-in-interest to "Sun Oil Company (Delaware),' and . . . Sun Oil Company (Delaware), in turn is alleged to be responsible for the . . . liabilities of Cordero Mining Company at the Almaden Quicksilver County Park." (Id.) After what appears to be a review of the 1988 Distribution Agreement, Sun Company, Inc. determined that Oryx (*i.e.* Sun E&P) did not keep the responsibility for the Cordero Mining Company liabilities after the 1988 spin-off. (Baas Decl. Exh. 22). Sun Company, Inc. even made it clear at that time that the representation was "for purposes of allocating liability, if any, as between Sun and Oryx, and does not constitute an admission of liability by Sun." (Id.)

After Sun Company, Inc. was named as a party to the litigation, the court ordered all parties to respond to a "First Set of Interrogatories to All Parties" regarding, in part, corporate succession. (Baas Decl. Exh. 23). Sun Company, Inc.'s responses to these interrogatories are the "Interrogatories" relied upon by the Regional Board to support their allegations that Sunoco assumed Cordero's liability. Interrogatory No. 2 expressly asks for the identity of "all documents constituting **any agreements** for the purchase, sale, assignment, or gift of assets or stock, or other documents reflecting asset or stock ownership between You . . . and the alleged Predecessor-in-Interest." (Id.) (emphasis added). In response, Sun Company, Inc. clearly focused on the 1988 spin-off – or the 1988 Distribution Agreement – and mirrored the position represented to Myers' counsel regarding the distribution of liability between Sun Company, Inc. and Oryx/Sun E&P after the 1988 spin-off.

Thus, it appears that the focus on the 1988 Distribution Agreement carried through from the exchange between Myers and Sun Company, Inc. in 1993 to the responses within the Interrogatories in 1994, and ultimately to the consent decree in 1996. (Baas Decl. Exhs. 11-13).

iv. Sun Company, Inc. admits that it is the successor in interest to Cordero

Mining Company.

The facts as stated above demonstrate that it is more likely than not that this statement erroneously applies the 1988 Distribution Agreement to the Nevada Cordero; and that this error was repeated throughout the correspondence and pleadings in the Myers Industries Case. (Id.) As set forth above, Sunoco was simply a shareholder of the Nevada Cordero.

Finally, Sunoco is unaware of any other instance in which an affirmative representation was made that Sunoco is responsible for the "liabilities of Cordero Mining Company," other than Myers Industries Case. (Baas Decl. ¶ 58). Accordingly, for the reasons set forth above, the apparent errors made by Sun Company, Inc. 20 years ago in the Interrogatories should be given little, if any, weight.

C. FACTUAL BACKGROUND – SITE HISTORY

1. Pre-1955 Operations at the Site, Before Cordero Leased the Site from the Mt. Diablo Quicksilver Mining Company.

The record, including the allegations made in the CAO, demonstrate that a majority, if not all, of the mine waste rock and mill tailings currently present at the Site – and were generated prior to 1955. Mt. Diablo Quicksilver Mining Company ("Mt. Diablo Quicksilver") operated the Site for six years, between 1930 and 1936, producing approximately 739 flasks of mercury. (Declaration of Robert M. Gailey In Support of Sunoco's Petition for Review and Petition for Stay of Action ("Gailey Decl.") Exh. C, 2-1).[3] Bradley Mining Company ("Bradley Mining") then leased the Site from Mt. Diablo Quicksilver in 1936 and conducted extensive and invasive surface and underground mining operations at the Site over the next fifteen (15) years, producing over 10,000 flasks or 785,000 lbs of mercury and generated 91,561 tons of calcine. (Id.; Baas Decl.

[3] The Gailey Decl. was originally submitted by Sunoco in support of its Petition for Review and Rescission of CAO RE-2013-0701. Exhibit D to the Gailey Decl. contains the Declaration of Paul D. Horton, which was originally submitted by Sunoco in support of its Petition for Review and Rescission of Reporting Order No. R5-2009-0869. The Declarations of Mr. Gailey and Mr. Horton, as well the attached exhibits, were submitted into the record by Sunoco before the October 10, 2014, Regional Board hearing. In a July 30, 2014 pre-hearing ruling, the Regional Board admitted the Declarations of Mr. Gailey and Mr. Horton into evidence.

Exh. 15, p. 13). At the end of Bradley's operations, extensive underground mine workings existed at the Site, consisting of four levels in a steeply dipping shear zone, and large aboveground deposits of mine tailings on the southeastern hillside of the site (the "Bradley Mine Tailings"). (Id.) The Bradley workings were accessed by a main shaft (the "Main Winze") and had a drain or adit tunnel that exited to the north-facing hillside on the 165-foot level ("Bradley's 165'-level Adit") where Bradley's extensive mine tailings piles are located today. (Id.; See also, Gailey Decl. Exh. B).

In 1951, the Ronnie B. Smith partnership ("Smith") surface mined mercury ore until 1954, which they processed on Site to produce more flasks of mercury. (Gailey Decl. Exh. C, 2-1). Together these three owners and/or operators (Mt. Diablo Quicksilver, Bradley Mining, and Smith) extracted significant volumes - almost 11,000 flasks - of mercury. Smith, however, has not been named as a Discharger. (Id.)

During the Korean War, the United States Department of Interior ("DOI"), through its Defense Minerals Exploration Administration ("DMEA"), commenced the development of the "DMEA Shaft" in a further effort to extract mercury at the Site by granting Smith a loan to explore the deeper parts of a shear zone that Bradley previously explored. (Gailey Decl., Exh. C, p. 2-1; Baas Decl. Exhs. 24-26). Between August 1953 and January 1954, Smith excavated a 300-foot-deep shaft, but is not documented to have encountered any mercury ore. (Id.) The DMEA Shaft is located over 200 feet north of the open pit, shafts, adits, and drifts mined extensively by Mt. Diablo Quicksilver, Bradley Mining, and Smith.

In addition, under contract to DMEA, Smith constructed rail tracks for ore cars to dump waste rock from the DMEA Shaft to the north, across the road (away from the pre-existing Bradley Mine Tailings) to an "unlimited location," believed to be on the north-facing slope in the Dunn Creek watershed where geologist E. M. Pampeyan ("Pampeyan") of the California Division of Mines and Geology ("CDMG") mapped a large waste rock dump in 1963. (Gailey Decl. Exh. C, 2-1; Exh. D, the Declaration of Paul D. Horton; Baas Decl. Exh. 27). In January 1954, Smith assigned his lease and DMEA contract to Jonas and Johnson, who extended the DMEA Shaft cross-cut to 120

feet, but ceased mining after encountering water and gas. (Id.) The DMEA Shaft and cross-cut flooded on February 18, 1954. (Id.)

During the 1952/53 time period, after the operations of Mt. Diablo Quicksilver and Bradley Mining had generated over a thousand tons of waste rock and mill tailings at the Site, but before Cordero appeared at the Site, Water Pollution Control Board #5 (predecessor to the Regional Board) received multiple complaints from neighboring property owners concerning downstream water quality. (Baas Decl. Exh. 28, pgs. 15, 19). On June 9, 1952, Water Pollution Control Board #5 issued the first waste discharge requirements for the mine discharge, Order No. 135. The Order was addressed to Smith. The Pollution Control Board later issued Resolution Number 53-71 on February 27, 1953. (Id.) The record is unclear as to what if any remedial action resulted from this Resolution. The next administrative order that appears in the record is Order No. 78-114 on September 8, 1978, issued to current Site owner Jack Wessman. (Id.)

Notably, *circa* 1993, a three-year study of the Marsh Creek watershed was commissioned by Contra Costa County to determine the sources of mercury in the Marsh Creek watershed to which the Site is argued to be a contributor. The results of this independent study concluded that the pre-1955 (and pre-Cordero) operations at the Mt. Diablo Mine are the source of a majority, if not all, of the contamination that currently exists at the Site. (Baas Decl., Exh. 29, March 1996 report titled "Marsh Creek Watershed 1995 Mercury Assessment Project – Final Report" prepared by Darell G. Slotton, Shaun M. Ayers, and John E. Reuter ("Slotton Report")). The Slotton Report concluded that the exposed mine tailings and waste rock (Bradley Mine tailings) above the existing onsite pond combined with acid discharge from the spring (Bradley's 165'-level Adit) emanating from the waste rock was the dominant source of mercury in the watershed. (Slotton Report at 61("[w]ith an estimated 88% of the currently exported mercury linked directly to the tailings piles themselves, mercury source mitigation work within the watershed would clearly be best directed toward this localized source [i.e. the Bradley Mine Tailings]"); Gailey Decl. Exh. C, pgs.6-2, 6-3).

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2. Cordero's 14 Months of Exploration Activities at the Site from November 1954 to December 1955.

In contrast to the extensive mining, milling, and tailings generation and disposal activities of three owner/operators between 1930 and 1951 (21 years), Cordero conducted sporadic underground mining activities, in a separate location (the DMEA Shaft), over approximately a one-year period (1954-55). (Gailey Decl., Exh. C, pgs. 2-1, 2-2). Moreover, there is no evidence that Cordero's activities included or otherwise resulted in the processing (milling) of any mercury ore, the production of any flasks of mercury, or the discharge of any mill tailings. (Id.; Horton Decl. ¶ 4)

Cordero leased the Site from Mt. Diablo Quicksilver on November 1, 1954. (Baas Decl., Exhs. 31). After reconditioning the flooded DMEA Shaft, Cordero drove a new series of cross-cut tunnels a total of 790 feet from the DMEA Shaft towards the shear zone previously mined by Bradley, but at a depth 200 feet below Bradley's extensive workings. (Gailey Decl., Exh. C, p. 2-2, Figs. 3-1 to 3-4). Thereafter, Cordero intermittently used the DMEA Shaft for one year, from approximately December 1954-December 1955, and made only a single connection between its westernmost tunnel at the 360 foot level with the bottom of the vertical Main Winze shaft previously excavated by Bradley Mining. (Gailey Decl. Exh. C, pgs. 2-1, 3-1, Fig. 3-3).

Aboveground, Cordero rehabilitated the furnace and constructed a trestle from the DMEA Shaft to the ore bin, near the furnace. (Gailey Decl., Exh. C, p. 4-2, Fig. 4-1). However, no records have been located indicating that Cordero ever used the furnace. Cordero also conducted water handling and treatment activities extending from the DMEA Shaft to a pond 1,350 feet to the west. Id. Water pumped to this location either evaporated or drained to Dunn Creek, to the satisfaction of the Water Pollution Control Board, which inspected and approved of Cordero's water handling facilities. (Id., pp. 5-2 – 5-4, Fig. 5-3; Baas Decl. Exhs. 31-35)(Gailey Decl. ¶ 8).

The total volume of waste rock generated by Cordero from its underground workings at the DMEA Shaft during its one year of intermittent use was approximately 1,228 cubic yards, using a 20% bulking factor. (Gailey Decl. Exh. C, p. 5-1). This is *de minimis* compared to the tailings piles and waste rock left by the three other owner-

operators that pre-existed Cordero, which total approximately 105,848 cubic yards. (Id.; Horton Decl. ¶ 5).

Near the end of its one-year period, Cordero encountered small zones of ore from which it excavated approximately 100-200 tons of ore (about 50-100 cubic yards). Cordero stockpiled this ore for sampling and assaying. (Gailey Decl. Exh. C, p. 5-1). However, no evidence in the record indicates that Cordero milled any of the small amounts of ore it mined. Nor is there any evidence that Cordero generated any tailings, or added even a single rock to the pre-existing"[e]xtensive waste rock piles and mine tailings [that] cover the hill slope below the open cut," that are the focus of the Slotton Report and the CAO. (Baas Decl., Exh. 1; Gailey Decl. Exh. C, p. 3-1; Horton Decl. ¶¶ 4-5). In fact, the DMEA records reveal that Cordero's activities were unsuccessful, resulting in no mercury production. (Baas Decl. Exh. 36).

In 1956/57, following the mining by the DMEA contractors and Cordero, Pampeyan updated his topographical map by, in part, adding a pile of waste rock adjacent to the DMEA shaft. (Gailey Decl. Exh. C, p. 5-1, Fig. 5-2; Baas Decl. Exh. 11). The record shows that Cordero placed waste rock adjacent to the DMEA Shaft, and that current Site owner Jack Wessman used it to refill the shaft, or, it was placed in the Northern Dump, over the ridge, into the Dunn Creek drainage, using the rail track from the DMEA Shaft. (Gailey Decl. Exh. C, p. 5-1, Figs. 5-2 – 5-3; Horton Decl., ¶¶ 7-8). Waste rock now in that location is typical of the waste rock extracted from the DMEA Shaft. (Horton Decl. ¶ 8).

In December 1955, Cordero indefinitely suspended all mining activities due to heavy rainfall that flooded the mine to the 130-foot level. During the entire time it had any relationship to the Site, all available evidence demonstrates that Cordero was strictly prospecting. Indeed, the Regional Board admits that "[t]here is no record of mercury production for this time period and the amount of mercury production, if any, from this time period is unknown." (Baas Decl. Exh. 1 ¶ 17).

Significantly, the Water Pollution Control Board (predecessor to the Regional Board) was monitoring the groundwater and surface water conditions, as well as

Cordero's activities, at the Site during the relevant time. (see *e.g.* Baas Decl. Exh. 28). There is no evidence that Cordero was ever found to be non-compliant or issued an administrative order or other directive related to the Site from a state or federal agency. (Id.) As such, there were no known existing liabilities for which Cordero could be held responsible related to the Site prior to its dissolution in 1975. Indeed, the first cleanup and abatement order ever issued at the Site was in 1978, three years after Cordero had dissolved. (Baas Decl. Exh. 37). These facts were undisputed by the Prosecution Team at the October 10, 2014 Regional Board hearing.

The Site remained idle until March 1956, when the Cordero lease with Mt. Diablo Quicksilver was transferred to Nevada Scheelite, Inc. ("Scheelite"), which began dewatering the mine and conducted some basic prospecting activities. Scheelite was a subsidiary of Kennametal Inc.

Notably, during the short period of time that Cordero was active at the Site, there is no evidence in the record that Sun Oil, Sun Company, or Sunoco ever directly owned, leased, operated, or otherwise had any direct contact with the Site. (Baas Decl. ¶ 58).

D. PROCEDURAL BACKGROUND

In December 2008, in response to a Unilateral Administrative Order ("UAO") from the EPA, Sunoco commissioned work at the Site, without prejudice, to shore up the "toe" of the water impoundment at the base of the Site. This work was deemed a "Time-Critical Removal Action" by the EPA's Emergency Response Section and was purportedly meant to help assure that Dunn Creek would not undercut the impoundment, potentially causing the release of mercury contaminated sediments. (Baas Decl. Exh. 38). In a letter dated December 15, 2008, Sunoco agreed to perform the work with the understanding that compliance with the UAO will not be construed by the EPA as a waiver of Sunoco's right to object to such "unauthorized demands" in any future orders or in connection with any expanded demands for work; and, to the extent that Sunoco had not commented on any of the factual (or legal) assertions made by the EPA in the order, its silence should not be taken as assent to or an admission of their accuracy or justification. (Baas Decl. Exh. 39). Sunoco, through its consultant the Source Group,

Inc., and under its reservation of rights, completed the work in 2009 and has not been ordered to perform any additional work by the EPA since that time. (Baas Decl. Exh. 40).

On March 25, 2009, the Regional Board issued an order to Sunoco, *et al.* directing it to submit a site investigation work plan and report. On April 24, 2009, Sunoco filed a Petition for Stay of the order. The 2009 Petition was later voluntarily withdrawn without prejudice. On June 30, 2009, the Regional Board issued a revised order to Sunoco, *et al.* In response, Sunoco submitted a Divisibility Position Paper ("Divisibility Report") to the Regional Board outlining the historical activities at the Site – highlighting: (i) the short period Cordero leased the Site (1954-1956); (ii) Cordero's use of less than 10% of the Site; and (iii) that Cordero's activities took place well after the open cut, shafts and adits were excavated, and well after extensive waste rock piles and mine tailings were discarded along the hillside by prior owners and operators. (Gailey Decl. Exh. C). Sunoco's Divisibility Report detailed numerous key findings based upon its technical consultant's review of historical records, maps and aerial photos that establish a reasonable basis for divisibility of Cordero's share of the cleanup.

In July 2009, Sunoco also submitted a voluntary Potentially Responsible Party Report (Baas Decl. Exh. 41), wherein it identified more than 20 former owners and operators that the Regional Board had failed to name as dischargers on its June Order, including Bradley Mining – which operated the Site from 1936-1951, producing over 10,000 flasks of mercury and a great majority of the waste rock and mine tailings at the Site. (See, Baas Decl. Exh. 1, CAO).

In October 2009, despite the detailed factual presentation set forth in the Divisibility and PRP Reports, the Regional Board issued its Divisibility Response, which stated that "Board staff disagree that there is a reasonable basis for apportioning liability." (Baas Decl. Exh. 42). The Regional Board then issued a Revised Order on December 30, 2009 ("Revised Order"), seeking to hold Sunoco jointly and severally liable to investigate and develop a remediation work plan for the entire Site – including the extensive Bradley Mine Tailings. The Revised Order required the drafting of three

reports: (i) Mining Waste Characterization Work Plan; (ii) Mining Waste Characterization Report; and (iii) Mine Site Remediation Work Plan. (Baas Decl. Exh. 43). In January 2010, Sunoco submitted a Petition for Review and Stay of the Revised Order. The 2010 petition was later withdrawn without prejudice.

In compliance with the Revised Order, in August 2010, Sunoco submitted a Site Characterization Report to the Regional Board presenting evidence that: (i) the "My Creek" watershed was not contributing any mercury to Dunn Creek, which significantly reduces the scope of the area of concern at the Site, including areas that may have been utilized for waste rock disposal by Cordero; (ii) that a sample of water emanating from Bradley's 165'-level Adit collected after it passed through some of the tailings, was low in total mercury and contained no dissolved mercury; and (iii) instead, Bradley Mining's large tailings piles are the source of nearly all of the mercury-laden Site runoff. (Baas Decl. Exh. 32). On August 30, 2010, the Regional Board responded by requesting additional studies be performed. (Baas Decl. Exh. 44).

In December 2011, after having additional on-site investigative work performed, Sunoco submitted an Additional Characterization Report to the Regional Board, which concluded that: (1) the 360'-level Cordero workings have little to no impact on the flow of water from Bradley's 165'-level Adit workings; (2) water emanating from Bradley's 165'-level Adit contains mercury concentrations above freshwater Regional Board and USEPA criteria, but does not contribute a significant enough flow into Dunn Creek to result in downgradient concentrations above the criteria; and, (3) other compounds present in Dunn Creek above these criteria are also present in background water samples above water quality criteria. (Gailey Decl. Exh. B). This additional data supports the conclusions reached by previous investigations (*i.e.* the Slotton Report) that the key remedial focus at the Site is mitigating rain water and spring water from contact with the Bradley Mining tailings piles through removal and/or capping, conditions that Cordero's mining activities did not cause or exacerbate, to any meaningful degree.

On January 20, 2012, in advance of an in-person meeting with the Regional Board, counsel for Sunoco, John Edgcomb, sent State Board Senior Staff Counsel, Julie Macedo,

Esq. a letter, copying a Regional Board representative, Victor Izzo, which outlined Sunoco's position of non-liability as a former shareholder of Cordero (*i.e.* the parent-subsidiary argument). The letter detailed Cordero's corporate history, its dissolution, the argument that Sunoco cannot be held liable for the actions of Cordero, and Nevada law time-baring the Regional Board's actions against Cordero. (Baas Decl. Exh. 45).

Nonetheless, in compliance with the Revised Order, and based upon the Site Characterization Reports, Sunoco submitted a Work Plan to the Regional Board on May 9, 2012, which presented a plan to mitigate the migration of particulate material and water potentially containing mercury from mine-related materials (e.g., waste rock, tailings, and spring/adit discharges) associated with the Site (but not Cordero's activities) that are potential sources of mercury to Dunn and Marsh Creeks. Examples of the proposed work included: the removal, consolidation, and capping of mine wastes of concern, the capture and re-routing of spring/adit discharges, and the restoration of the Dunn Creek Floodplain immediately below the Site. (Baas Decl. Exh. 46, "Work Plan").

On April 16, 2013, the Regional Board issued CAO RE-2013-0701, naming seven "Dischargers": Jack and Carolyn Wessman; the Bradley Mining Co.; the United States Department of Interior; Mt. Diablo Quicksilver, Co., Ltd; Kennametal Inc.; the California Department of Parks and Recreation; and Sunoco. (Baas Decl. Exh. 47) (Notably, CAO RE-2013-0701 was later revised by the CAO at issue in this Petition, and Kennametal, Inc. was removed from the order).

On May 15, 2013, Sunoco filed a Petition for Review and Rescission of CAO RE-2013-0701 with the State Board.[4] On August 8, 2013, the Regional Board notified Sunoco *via* letter that it would schedule a hearing to reconsider CAO RE-2013-0701. (Baas Decl. Exh. 48).

After a series of postponements requested by the Prosecution Team, the Regional Board held a hearing on October 10, 2014 to reconsider CAO RE-2013-0701. Prior to the hearing, the Regional Board made the following ruling concerning its burden of proof:

[4] Sunoco understands that this specific Petition is no longer pending due to the adoption of CAO R5-2014-0124.

> The Central Valley Water Board employs a preponderance of the evidence standard of review in deciding whether to issue 13304 Orders. . . . At the pre-hearing conference held on May 8, 2014, the designated parties also asked for a ruling as to which party bears the burden of proof in naming parties to a 13304 Order. The Evidence Code provides further guidance on this issue. Under Evidence Code section 500, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting. Accordingly, **the Prosecution Team, and ultimately the Central Valley Water Board has the burden of proof in establishing that each of the designated parties should have been named in the 13304 Order**.

(Baas Decl. Exh. 49) (emphasis added).

At the October 10th hearing, the Prosecution Team presented evidence in an effort to meet its burden of proof pertaining to: i) Cordero's alleged discharger liability under Water Code 13304; and, ii) Sunoco's indirect discharger liability as an alleged successor in interest to Cordero under corporate and contract law principles. (See *e.g.* Baas Decl. Exh. 50). The Prosecution Team argued that the Regional Board is not required to apportion liability, and that Sunoco should be found joint and severally liable for the entire Mt. Diablo Site. Further, the Prosecution Team presented two theories on successor liability: 1) Sun Oil (Sunoco) merged with Cordero when Cordero liquidated and dissolved in 1975; or, 2) Sun Oil (Sunoco) expressly or impliedly assumed all of the liabilities, known and unknown, of Cordero by way of verified interrogatories submitted in federal court in a circa 1994 action for cleanup of another mine site, unrelated to Mt. Diablo. (Id.; see also, Baas Decl. Exh. 51, Prosecution Team's Corporate Successor Liability Brief; and Exh. 52, Prosecution Team's Assumption of Liability Brief). Sunoco rebutted each of the Prosecution Team's arguments and requested a finding that Sunoco, as a shareholder, is not liable for the pre-dissolution actions of Cordero and, notwithstanding this fact, that Cordero should be apportioned a *de minimis* (if any) share

of the liability for the Site.[5] (See *e.g.* Baas Decl. Exh. 50).

Ultimately, the Regional Board reached the following conclusions:

5. There is insufficient evidence to find that a *de facto* merger occurred between Sun Oil (Sunoco) and Cordero in 1975; and
6. There is sufficient evidence to find that an *express or implied* assumption of liability agreement exists between Sun Oil (Sunoco) and Cordero; and
7. The Regional Board will not apportion discharger liability under Water Code 13304.

(Id. at 5:17-5:31). CAO R5-2013-0701 was edited at the conclusion of the hearing and the Regional Board's basis for finding Sunoco liable was set forth in paragraph 17 of CAO R5-2014-0124. (Baas Decl. Exh. 1).

Notably, the Regional Board exhibited unease with its conclusions at the hearing. When ruling on the apportionment issue, the Board Chair stated that "much more evidence is needed" and Board Member Ramirez expressed that she feels an "inherent sense of unfairness" in apportioning all of the liability to Cordero – and thus to Sunoco – in this matter. (Baas Decl. Exh. 50 at 5:14-5:16). Further, when asked by Sunoco's counsel to distinguish between whether the Regional Board's conclusion is that an "express" assumption of liability exists or an "implied" assumption of liability exists between Sun Oil (Sunoco) and Cordero, the Board Chair responded, "**well I don't know** and given the nature of this … I'd rather not strike express at this point, I think quite frankly we're going to see this order more than likely go on up to the State Board and maybe on up to the courts … and I don't want to hamper the state board." (Id. at 5:27-5:28) (emphasis added).

Sunoco timely filed this Petition for Review and Rescission of the CAO, and accompanying Petition for a Stay, on November 10, 2014.

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[5] Sunoco's hearing arguments are more fully articulated throughout this Petition.

E. LEGAL BASES FOR SUNOCO'S CHALLENGE TO THE CAO

It is a general principle of corporate law "deeply ingrained in our economic and legal systems that a parent corporation … is not liable for the acts of its subsidiaries." (U.S. v. Bestfoods, et al. 524 U.S. 51, 56 (U.S. Sup. Ct. 1998)) (citations omitted)). It is further accepted that, when one corporation purchases the assets of another, the purchaser *does not* assume the seller's liabilities unless: (1) there is an express or implied agreement of assumption; (2) the transaction amounts to a consolidation or merger of the two corporations; (3) the purchasing corporation is a mere continuation of the seller; or (4) the transfer of assets to the purchaser is for the fraudulent purpose of escaping liability for the seller's debts. (Ray v. Alad Corp., 19 Cal. 3d 22, 28 (Cal. Sup. Ct. 1977)). Thus, to make its case that Sunoco expressly or impliedly assumed all of Cordero's liabilities, and that therefore Sunoco is 100% liable for the mercury contamination at the Site, it was the Prosecution Team's burden during the October 10, 2014 hearing to prove three arguments by a preponderance of the evidence:

1. That what transpired in 1975 was not a typical liquidation of a corporation, but involved Sun Oil (Sunoco) corporation – Cordero's shareholder – entering into an asset transfer or broad assumption of liability agreement with Cordero;
2. That exception no. 1 set forth in Ray applies and Sun Oil (Sunoco) either expressly or impliedly assumed Cordero's liabilities related to the Mt. Diablo Site; and
3. Sunoco (in Cordero's shoes) is liable for 100% of the contamination at the Mt. Diablo Site.

As set forth in this Petition, the Prosecution Team failed to meet its burden of proof on all three arguments.

Nevertheless, the Regional Board ruled against Sunoco and concluded that Sunoco "expressly or impliedly assumed the liabilities of Cordero" and refused to apportion liability for the mercury contamination. (Baas Decl. Exh 1 ¶ 17). By doing so, the Regional Board committed four reversible errors: 1) finding that what transpired in 1975 was an asset transfer, and not a simple corporate dissolution, without any supporting evidence or law; 2) finding that Sunoco *expressly* assumed the liabilities of Cordero,

without a showing that a written or oral contract exists as required by law; 3) finding that Sunoco *impliedly* assumed the liabilities of Cordero, based entirely upon statements made 20 years after Cordero dissolved, and without any evidence of a meeting of the minds between Cordero and Sun Oil in 1975 or citing to any legal precedent; and, 4) finding that the Regional Board is not required to apportion liability under the law and thereby refusing to apportion Cordero a *de minimis* (if any) share of liability.

1. Cordero Dissolved in 1975 Pursuant to Nevada Law Without an Asset Transfer Agreement, Without a Corporate Successor, and Without a Continuation of its Mining Operations.

Cordero was incorporated in Nevada and therefore Nevada law governs the procedures and legal effect of Cordero's dissolution. The Supreme Court of California has confirmed this conclusion. (Greb, et al. v. Diamond Intl. Corp., 56 Cal.4th 243, 257-263 (Feb. 21, 2013).) Dissolution of a Nevada corporation is accomplished by having the board of directors adopt a resolution authorizing the dissolution and recommending it to the corporation's shareholder(s), which must then approve the dissolution. (See Nevada Revised Statute ("NRS") § 78.580(1)). Once director and shareholder approval has been obtained, a certificate of dissolution is filed with the Nevada Secretary of State and the corporation is deemed dissolved. (See NRS § 78.580(4)). Nevada law provides that, during this period, the dissolved corporation's directors become trustees for the dissolved corporation. (See NRS §§ 78.580(3) and 78.590(1)). As trustees, the dissolved corporation's directors are authorized to "settle the affairs, collect the outstanding debts, sell and convey the property, real and personal, and divide the money and other property among the stockholders, after paying or adequately providing for the payment of [the corporation's] liabilities and obligations." (Id.) Once the corporation is dissolved, any remedy or cause of action available to or against it or its shareholder(s) are barred unless commenced within 2 years. (See NRS § 78.585).

Cordero followed each of these steps to the letter. In 1972, the directors of Cordero and its shareholder, Sun Oil, agreed to dissolve the company. (Baas Decl. Exh. 5). The officers of Cordero were directed to liquidate the company by selling or

otherwise liquidating all remaining tangible assets of Cordero, providing for all proper debts of the corporation, and distributing all remaining assets (if any remained) to Sun Oil. (Id.) To provide for its debts and settle its affairs, on March 6, 1973, the directors (trustees) of Cordero agreed to transfer the responsibility of the Cordero Retirement and Stock Purchase Plans to Sun Oil, which is the only record of any Cordero liability known to exist at that time being transferred to Sun Oil. Notably, the transfer was made *via* a declaration of the officers of Cordero and not an agreement executed by Sun Oil. (Id.) On November 18, 1975, Cordero was legally dissolved as a corporate entity, as acknowledged by the Nevada Secretary of State.[6] (Baas Decl. Exh. 6). There is no evidence that Sun Oil continued any mercury mining operations thereafter.

Thus, there is no evidence that what took place in *circa* 1975 was anything more than a lawful dissolution of a subsidiary company pursuant to applicable Nevada corporate law. It is a general principle of corporate law "deeply ingrained in our economic and legal systems that a parent corporation … is not liable for the acts of its subsidiaries." (U.S. v. Bestfoods, *et al.* 524 U.S. 51, 56 (U.S. Sup. Ct. 1998)) (citations omitted)). In Bestfoods, the United States Supreme Court concluded that a parent corporation, which actively participates in and exercises control over the operations of a subsidiary, may not, without more, be held liable as an operator of a polluting facility owned or operated by the subsidiary, unless the corporate veil can be pierced. (Id. at 63).

The Regional Board did not address this first step in its ruling, or even articulate what type of agreement the Regional Board was concluding bound Sunoco to the liabilities of the Mt. Diablo Site. Indeed, when asked by Sunoco's counsel to identify the nature of any contract alleged to exist between Sun Oil (Sunoco) and Cordero, the Board Chair responded, "well I don't know." (Baas Decl. Exh. 50 at 5:27-5:28). By failing to recognize the dissolution of Cordero in 1975 for what it was, a straightforward corporate

[6] Nevada law also requires that any claim against Cordero, Sun Oil, and Sunoco must have been commenced within 2 years after the date of Cordero's Nov. 18, 1975 dissolution. (See, NRS 78.595).

liquidation voted on by the shareholders and approved by the Nevada Secretary of State, the Regional Board's action is inappropriate and improper, and not supported by facts or law.

2. The Regional Board Relied on Insufficient Evidence and Misapplied the Law when it Concluded that an "Express" Assumption of Liability Agreement Exists between Sun Oil (Sunoco) and Cordero.

The Regional Board cannot find that an express assumption of liability exists without first finding that an actual agreement exists between Sunoco and Cordero, which was expressed in words. See Cal. Civ. Code § 1620) (an express contract is one where the terms are stated in words); See also No Cost Conference, Inc. v. Windstream Com. Inc., 940 F. Supp. 2d 1285, 1299 (S. D. Cal. 2013). Moreover, the Regional Board must prove the actual terms of the express agreement establishing Sunoco's liability for Cordero's activities at the Mt. Diablo Mercury Mine. (Id.) (citing to Winner Chevrolet, Inc. v. Universal Underwriters Ins. Co., 2008 U.S. Dist. LEXIS 111530, at *11 (E.D. Cal. July 1, 2008); see e.g., Winner Chevrolet at *12-13 ("[P]laintiffs here must not only plead the existence of an assumption of liability but either the terms of that assumption of liability (if express) or the factual circumstances giving rise to an assumption of liability (if implied).")

It is undisputed that no written or oral agreement exists between Cordero and Sun Oil. In fact, the Prosecution Team's brief submitted to the Regional Board admitted that "the record does not contain a written agreement between Cordero and its successor, Sun Oil Company, regarding the transfer of Cordero's liabilities." (Baas Decl. Exh. 52, PT Br. 3:28-4:1). Consequently, the Regional Board did not have the requisite evidence before it to conclude that Sunoco expressly assumed the liabilities of Cordero – regardless of the statements made in the Myers Industries Case or Sunoco's cooperation with the EPA and Regional Board post-2008, which are not contracts. Nevertheless, the CAO concludes that an express assumption of liability agreement exists – without any supporting evidence or relevant law. (Baas Decl. Exh. 1 ¶ 17).

The State Board previously has confirmed this important principle of contract law, which was ignored by the Regional Board. In the Matter of Purex Industries, Inc, WQ 97-04, State Board (1997), the Regional Board named Purex Industries, Inc. in a cleanup order as the corporate successor of several entities, including Purex Corp., a former operator of the contaminated site. Purex argued that a leveraged buy-out in 1982 shifted all liability for the site from Purex Corp. to Baron-Blakeslee. (Baas Decl. Exh. 53, in re Purex at *1-2). When addressing the issue of whether Baron-Blakeslee assumed the liabilities of Purex Corp. in 1982, the State Board noted that the issue "is a question of fact," and "[t]o resolve the issue, **the Board must review the contractual agreements** between Purex Corporation and PII Acquisitions, Inc. and between PII Acquisitions, Inc. and Baron-Blakeslee/Del." (Id. at *4) (emphasis added). The State Board ultimately ruled that:

> Baron-Blakeslee/Del's agreement to assume the unknown liabilities related to the former division was contractual in nature. **Absent the agreement, the corporation was not legally obligated to assume the liabilities** related to the former division because of the general rule that an asset purchaser does not assume the liabilities of the selling corporation. The legal effect of the agreement was to give PII Acquisitions, Inc., and its successors the right to compel Baron-Blakeslee/Del to perform its obligations under the assumption agreement.

(Id. at *7) (emphasis added).

Here, there is no written or oral assumption of liability agreement expressed in words between Sunoco, or its predecessors, and Cordero. Without such an agreement, the Regional Board cannot find, or even assess whether there exists, an express assumption of liability. By doing so, its actions are inappropriate and improper, and not supported by facts or law.

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3. The Regional Board Relied on Insufficient Evidence and Misapplied the Law when it Concluded that an "Implied" Assumption of Liability Agreement Exists between Sun Oil (Sunoco) and Cordero.

a. Implied contracts require mutual promises, consideration, and ultimately a meeting of the minds.

Cal. Civil Code sections 1619–1621 together provide as follows: "A contract is either express or implied. An express contract is one, the terms of which are stated in words. An implied contract is one, the existence and terms of which are manifested by conduct." Section 19(2) of the Restatement (Second) of Contracts provides: "The conduct of a party is not effective as a manifestation of his assent unless he intends to engage in the conduct and knows or has reason to know that the other party may infer from his conduct that he assents." An implied-in-fact contract entails an actual contract manifested in conduct rather than expressed in words." (Maglica v. Maglica 66 Cal.App.4th 442, 455 (1998)). If the agreement is shown by the direct words of the parties, spoken or written, the contract is said to be an express one. But if such agreement can only be shown by the acts and conduct of the parties, interpreted in the light of the subject matter and of the surrounding circumstances, then the contract is an implied one.'" Marvin v. Marvin, 18 Cal.v3d 660, 678, fn. 16 (1976) (citations omitted).

California courts recognize that the vital elements of a cause of action based on contract are **mutual assent** (usually accomplished through the medium of an offer and acceptance) **and consideration**. (Div. of Labor Law Enf. v. Transpacific Transport Co., 69 Cal. App. 3d 268, 275 (1977)). As to the basic elements, there is no difference between an express and implied contract. Id. Both types of contract are identical in that they require **a meeting of minds** or an agreement. Id.(citations omitted) (emphasis added); see also Desny v. Wilder, 46 Cal.2d 715, 735 (1956)). Thus, both the express contract and contract implied in fact are founded upon an ascertained agreement or, in other words, are consensual in nature, the substantial difference being in the mode of proof by which they are established (Caron v. Andrew 133 Cal.App.2d 412, 417 (1955)).

While an implied in fact contract may be inferred from the conduct, situation or mutual relation of the parties, the very heart of this kind of agreement is an intent to promise. As the court put in Mulder v. Mendo Wood Products, Inc., 225 Cal. App. 2d 619, 632 (1964), "[t]he true implied contract consists of obligations arising from a mutual agreement and intent to promise where the agreement and promise have not been expressed in words."

a. There is no evidence of an "implied" assumption of liability agreement between Sun Oil (Sunoco) and Cordero.

The Prosecution Team's briefing on the issue of implied assumption of liability is unsupported by citation to any legal precedent. (Baas Decl. Exh. 52). Indeed, not a single reference was made by the Prosecution Team in its briefing papers or at the hearing regarding what California contract principles apply to implied assumption of liability agreements or what precedent exists for holding Sunoco liable for an alleged implied agreement based entirely on statements made 20 years after the other purported contracting party (Cordero) had dissolved. (See e.g. Baas Decl., Exh. 50). This void of authority was recognized by the Regional Board's Advisory Team attorney at the hearing. Advisory Team Attorney Coupe stated clearly to the Regional Board that:

> **there weren't any cases cited to support the proposition that the ... implied assumption of liability, as an exception, may be specifically applied outside the context of some kind of "contractual agreement"**... all of the cases that were cited in the briefing involve some kind of agreement between the parties, whether that is an asset transfer agreement or ... some kind of written contractual agreement ... the Prosecution Team can correct me if I'm wrong, but I'm not aware of any case that this exception [implied assumption of liability] may be invoked in the absence of an express agreement."

(Id. at 3:26-3:30) (emphasis added). Sunnoco's explanation of California implied assumption of liability law *was not* rebutted by the Prosecution Team at the hearing. Further, Advisory Team Attorney Coupe advised the Regional Board that "the Board

needs to be mindful of the fact that as I understand the case law there isn't any specific case that says … in the absence of any kind of agreement at all as long as you have something like verified rogs or a settlement agreement, **that that in and of itself is a sufficient basis** to **support application of the [implied assumption of liability] exception**." (Id.) (emphasis added).

Despite this warning, the Regional Board ruled against Sunoco, ignoring the lack of legal precedent, and relying solely on two pieces of insufficient evidence: 1) the 1994 Interrogatories, correspondence, and pleadings from the Myers Industries Case; and 2) Sunoco's history of cooperation, but under a full reservation of rights, at the Site beginning in 2008. Neither provides support for the conclusion that there was an implied contract between Sun Oil and Cordero in 1975 or between Sunoco and Cordero at anytime for that matter – because they fail to establish the existence of mutual promises, consideration, and ultimately a meeting of the minds between Sunoco and Cordero.

By comparison, the evidence presented by Sunoco clearly demonstrates that Cordero's dissolution in 1975 was a straightforward liquidation of a company whose board of directors concluded that it was no longer advisable to remain in business, and whose shareholder voted to dissolve the company pursuant to the applicable state law. Moreover, **the Prosecution Team admitted this fact at the hearing**, stating on the record that Sun Oil "did not assume any more liabilities then it had to under the laws" in order to dissolve Cordero as a corporate entity and that, in 1975, Sun Oil took on only those liabilities it needed to as a shareholder to dissolve the company. (See Baas Decl., Exh. 50 at 4:50-4:59). When asked if the Prosecution Team had "any additional information [evidence]" with regard to whether Sunoco "took on any other debts other than what was minimally required to dissolve as a corporation" under the laws of Nevada in 1975, the Prosecution Team responded "no." (Id.)

The evidence presented at the hearing and relied upon by the Regional Board falls far short of proving by a preponderance of the evidence that an implied agreement to

assume Site liabilities existed between Sun Oil (Sunoco) and Cordero.[7] In fact, it defies reason that promises were exchanged and a meeting of the minds occurred in *circa* 1994 regarding Site liabilities when Cordero did not exist and had been dead and gone since 1975. The interrogatories, correspondence, and pleadings from the Myers Industries Case alone cannot form a contract. (See Section B(3)(a) above).

Further, the Prosecution Team's argument that Sunoco's cooperation with EPA and the Regional Board with a full reservation of rights equates to an implied assumption of liability is unprecedented and without factual or legal support. Sunoco has a long record of cooperating with environmental agencies. Its historical cooperation at the Mt. Diablo Mercury Mine is no different. As the record demonstrates, Sunoco has spent considerable time, energy, and money complying with the EPA's and Regional Board's orders. Sunoco's consultant, The Source Group, Inc., has worked cooperatively with Regional Board staff to characterize the environmental conditions at the Site and prepare a remedial action work plan that has been approved by the Regional Board. (Id.) Sunoco also challenged the Regional Board's orders when reasonably appropriate, given the known facts and applicable laws.

During this time, Sunoco performed a diligent search for public and private documents to fully understand the corporate history of the Nevada-based Cordero Mining Company as it relates to Sunoco. Once its non-liability position was clearly supported by the documents, Sunoco informed the Regional Board of its corporate law arguments and requested to be removed from any future orders. (See, Baas Decl. Exh. 54, the Declaration of A. Baas, and Exh. 55, the Declaration of J. Edgcomb In Support of Sunoco's Opposition to the Prosecution Team's Motion in Limine). Sunoco's decision to cooperate with the Regional Board orders while it performed a diligent search for historical files and performed research as to the legal effect of those documents in no way

[7] The Interrogatories and related correspondence and pleadings from circa 1994 are explained and refuted in the Background Section above.

served to waive Sunoco's right to argue its non-liability at a later date; and in no way should Sunoco's cooperation be used against it as evidence that it assumed the liabilities of Cordero. Holding Sunoco's cooperation against it here goes against all notions of equitable treatment and will likely serve as a disincentive for future Regional Board order respondents to similarly adopt a compliance stance while further investigating their legal defenses, an outcome that the Regional Board should not be promoting. Not surprisingly, in its papers or at the hearing, the Prosecution Team does not cite to any case law in support of its position – penalizing a PRP for its agency cooperation.

By failing to rely on any legal precedent, conduct any legal analysis concerning implied assumption of liability, and instead relying solely on insufficient evidence, the Regional Board's actions are arbitrary and capricious, overreaching, and unsupported by the law or facts.

4. The Regional Board Committed Reversible Error when it Failed to Apportion Cordero a *De Minimis* (at most) Share of Liability.

a. Common law principles of joint and several liability require the Regional Board to apportion liability when there is a reasonable basis to determine the cause of the harm.

There is no legal precedent for the Regional Board's position that joint and several liability is automatically applied in all Water Code Section 13304 matters. Water Code Section 13304's plain language establishes that discharger liability is based on common law nuisance principles. In relevant part, Water Code Section13304 provides that:

> Any person ...who has **caused or permitted ...any waste to be discharged** or deposited where it is, or probably will be, discharged into the waters of the state and creates, **or threatens to create, a condition of pollution or nuisance**, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.

(Cal. Water Code §13304(a) (emphasis added). By its own terms, the Water Code

requires the Regional Board to prove individual discharger liability in language akin to common law tort principles – that a discharger "caused or pemitted … any waste to be discharged" where it creates a condition of "pollution or nuisance." (Id.) Indeed, California courts recognize this association between the Water Code and common law nuisance. (See, City of Modesto Redevelop. Agency v. The Sup. Ct. of San Francisco County, 119 Cal. App. 4th 28, 38 (2004) ("the Legislature not only did not intend to depart from the law of nuisance, but also explicitly relied on it in the Porter-Cologne Act," . . . "the statute [Water Code] must be construed 'in light of common law principles bearing upon the same subject [nuisance]")). As such, the Regional Board must look to common law joint and several liability principles for guidance.

Under traditional tort law regarding joint and several liability:

> **Damages for harm are to be apportioned among two or more causes where** (a) there are distinct harms, or (b) **there is a reasonable basis for determining the contribution of each cause to a single harm.**
>
> . . . And,
>
> **If two or more persons, acting independently, tortiously cause distinct harms or a single harm for which there is a reasonable basis for division according to the contribution of each, each is subject to liability only for the portion of the total harm that he has himself caused.**

Restatement (Second) of Torts §§ 433A, 481 (emphasis added). Moreover, even in the case "where two or more persons cause a single and indivisible harm" and "each is subject to liability for the entire harm," the Restatement recognizes that the harm can be divisible in terms of degree:

> Where two or more factories independently pollute a stream, the interference with the plaintiff's use of the water may be treated as divisible in terms of degree, and may be apportioned among the owners of the factories, on the basis of evidence of the respective quantities of pollution discharged into the stream.

(Restatement (Second) of Torts, § 433A, Comments c, d; see, also Pentair Thermal

Mgmt., LLC v. Rowe Indus., 2013 U.S. Dist. LEXIS 47390 (N.D. Cal., Mar. 31, 2013) ("A single harm also may be 'divisible because it is possible to discern the degree to which different parties contributed to the damage,' by looking to, for example, relative quantities of hazardous materials discharged"); 3000 E. Imperial, LLC v. Robertshaw Controls Co., Case No. CV 08-3985, 2010 U.S. Dist. LEXIS 138661, *25-26 (C.D. Cal. Dec. 29, 2010); In re Bell Petroleum Servs., Inc., 3 F.3d 889, 903 (5th Cir. 1993) (holding volume apportionment reasonable where only one single harm was detected even though it was not possible to determine with absolute certainty the amount of chromium each defendant released)).

Thus, the Regional Board should have taken apportionment of liability into consideration and, by refusing to do so, committed reversible error.

b. This principle of apportionment is supported by the United States Supreme Court's ruling in Burlington Northern.

The United States Supreme Court recognizes the principles of common law joint and several liability in environmental contamination matters and has expressly held that the division of liability for site cleanup is appropriate where a party can show a reasonable basis for apportionment. (Burlington No. & Santa Fe Ry. Co. et al. v. United States, 556 U.S. 599, 129 S. Ct. 1870 (2009).) In Burlington Northern, neither the parties nor the lower courts disputed the principles that govern apportionment in CERCLA cases, and both the District Court and Court of Appeals agreed that the harm created by the contamination of the facility at issue there, although singular, was capable of apportionment. (Id. at 1881.) Thus, the issue before the Court was whether the record provided a "reasonable basis" for the District Court's conclusion that the railroad defendants were liable for only 9% of the harm caused by contamination at the facility. Id. Despite the parties' failure to assist the District Court in linking the evidence supporting apportionment to the proper allocation of liability, the District Court concluded that this was **"a classic 'divisible in terms of degree' case, both as to the**

time period in which defendants' conduct occurred, and ownership existed, and as to the estimated maximum contribution of each party's activities that released hazardous substances that caused site contamination." Id. at 1882 (emphasis added).

Ultimately, the District Court in Burlington Northern apportioned liability, assigning the railroad defendants 9% of the total remediation costs. (Id.) The District Court created an apportionment formula taking into account geographic, chronological, and volumetric percentages, based on its findings that the primary pollution at the facility was contained in an unlined sump and an unlined pond in the southeastern portion of the facility distant from the railroads' parcel, and that the spills of hazardous chemicals that occurred on the railroad parcel contributed to no more than 10% of the total facility contamination, some of which did not require remediation. (Id. at 1882-3) The Supreme Court concluded that the facts in the record reasonably supported the District Court's apportionment of liability, and stated that ". . . **if adequate information is available, divisibility may be established by 'volumetric, chronological, or other types of evidence,' including appropriate geographic considerations**" Id. at 1883 (emphasis added). Notably, although the evidence adduced by the parties did not allow the Court to calculate precisely the amount of hazardous chemicals contributed by the railroad parcel to the total Site contamination, or the exact percentage of harm caused by each chemical, the evidence did show that fewer spills occurred on the railroad parcel and that of those spills that occurred, not all were carried across the railroad parcel to the sump and pond from which most of the contamination originated. (Id.)

Since Burlington Northern, courts have articulated a two-step process for assessing whether a reasonable basis for apportionment exists based on the Restatement (Second) of Torts § 433A, which states that "when two or more persons acting independently cause a distinct or single harm for which there is a reasonable basis for division according to the contribution of each, each is subject to liability only for the portion of the total harm that he himself caused." First, a court must determine whether

the harm is capable of apportionment; and second, if the harm can be apportioned, the court must determine how to apportion damages. It is the defendants' burden to demonstrate a reasonable basis for apportionment exists. (Burlington Northern, at 129 S. Ct. at 1881).

Here, as demonstrated below, Cordero's liability, if any, at the site is readily divisible and the facts support apportioning Cordero, at most, less than 5% share of the cleanup responsibility, if any cleanup is attributable to Cordero at all. First, there is an undisputable chronological record and overpowering geographic and volumetric bases for divisibility of the cleanup. Second, these bases provide clear evidence that Cordero did not cause any material part of the contamination in this matter, if any at all.

c. There Are Multiple Grounds on Which the Regional Board Should Have Reasonably Apportioned Little or No Liability to Cordero.

i. The short time period (chronology) during which Cordero leased the Site and was active is readily known and distinguishable from the other, more culpable, Dischargers.

The chronology of operations at the Site alleged in the CAO generally fall into two categories, (1) consistent prospecting and mining operations from 1930 to 1958; and (2) sporadic and/or non-existent prospecting and mining operations from 1958 to the present. (Baas Decl. Exh. 1, 15; Gailey Decl. Exh. C). Within these time spans, Cordero was at the Site intermittently for one year. When comparing Cordero's short period spent prospecting at the Site to the period of years the Site was consistently in operation (28 years), Cordero's percentage of time at the Site is minimal – or 3.5%; and, when comparing Cordero's short period spent prospecting at the Site to the 83 years covered by the CAO, Cordero's percentage drops to <1%. Thus, from a purely temporal standpoint, Cordero's work at the Site accounts for between 1 and 3.5% of the historical mining activities alleged by the Regional Board to be the cause of the environmental conditions at the Site. (Baas Decl., Exh. 1, p. 2).

In Burlington Northern, the Supreme Court affirmed the use of time of ownership

as a reasonable basis for divisibility where the District Court calculated that the railroad had leased its parcel to an operator for 13 years, which was 45% of the time the operator operated the facility. (Burlington Northern, 129 S. Ct. at 1882) Here, the time of ownership is even more definitive, since it is undisputed that Cordero never owned the Site and operated for no more than 1 year (in a distinct location, no less), while other more culpable Dischargers consistently operated the mining site for 27 years (over the entire portion of the Site that is of concern). Thus, the evidence for apportionment on a chronological basis for Cordero is even clearer and more favorable for Cordero than it was for the railroad in Burlington Northern.

ii. **The geographic area in which Cordero was active is readily known and distinguishable from the other, more culpable, Dischargers.**

The CAO states that the Site is comprised of approximately 80 acres and asserts that the Site consists "of an exposed open cut and various inaccessible underground shafts, adits and drifts. Extensive waste rock piles and mine tailings cover the hill slope below the open cut, and several springs and seeps discharge from the tailings-covered area." (Baas Decl., Exh. 1, at p. 1).

The historical mine plans, maps, aerial photographs and other records, however, demonstrate that Cordero was active on and under only a small portion of the Site and that Mt. Diablo Quicksilver, Bradley Mining, and Smith, excavated the "open exposed cut" portion of the mine referenced in the CAO, until landslides partially covered the area. (Gailey Decl. Exh. C; Baas Decl. Exhs. 28, 18-22). No evidence suggests that Cordero operated the open pit mine or discharged anything to the waste rock piles and mine tailings covering the hill slope below it, which the CAO identifies as significant areas of environmental concern. (Baas Decl. Exh. 1, p. 1). Instead, the evidence shows that Cordero is known only to have been associated with the DMEA Shaft and related Cordero tunnels, refurbishing of the furnace, the waste rock pile formerly adjacent to the DMEA Shaft, the settling pond area approximately 1,350 feet north of the DMEA Shaft,

and the Northern Dump at the end of Smith's rail spur leading northerly away from the DMEA Shaft. (Gailey Decl. Exh. C; Gailey Decl. ¶ 8). Thus, Cordero had no involvement (0%) with any of the surface areas responsible for the ongoing releases of mercury at the Site, as described in more detail below.

In Burlington Northern, the Supreme Court affirmed the geographic basis for apportionment where the railroad's portion of the site was 19% compared with the total size of the liable operator's facility. Burlington Northern, 129 S. Ct. at 1882. Again, Cordero's argument is even stronger than the defendant railroad's position because there is no evidence demonstrating that Cordero operated on or contributed to the tailings and waste rock piles that are the source of releases of mercury discussed below – i.e. the Bradley Mine Tailings. (Horton Decl. ¶¶ 5-7).

iii. The estimated contribution (waste volume) of Cordero's activities at the Site (if any) is readily divisible.

The March 1996 Slotton Report titled "Marsh Creek Watershed 1995 Mercury Assessment Project – Final Report" supports the conclusion that the exposed mine tailings and waste rock (Bradley Mining Tailings) above the existing onsite pond is the dominant source of mercury in the watershed. (Baas Decl. Exh. 29; Gailey Decl Exh. C, pgs. 6-2:6-3). The Regional Board specifically recognizes the Slotton Report and its conclusions in the CAO. (Baas Decl. Exh. 1, p.4). Indeed, the Slotton Report estimated that 88% of the mercury emanating from the Site is linked directly to the Bradley Mining Tailings. (Baas Decl. Exh. 29).

By comparison, the total volume of waste rock generated by Cordero from its underground workings at the DMEA Shaft during its one year of intermittent use was approximately 1,228 cubic yards, using a 20% bulking factor, which accounts for approximately 1.2% of the total volume of waste rock historically minted from the entire Site. (Horton Decl. ¶ 5; Gailey Decl. Exh. C, p. 5-1). This is *de minimis* compared to the tailings piles and waste rock left by the three other owner-operators that pre-existed

Cordero, which total approximately 105,848 cubic yards. (Id.; Horton Decl. ¶ 5).

In addition, the evidence reasonably shows that Cordero did not generate any mill tailings and that Cordero did not deposit its waste rock on the extensive Bradley Mine Tailings that are the primary concern of the CAO. (Gailey Decl. Exh. C; Horton Decl. ¶¶ 4-6). Particularly, the relevant reports and related documents submitted to the Regional Board indicate that: (1) Cordero's waste rock was either piled adjacent to the DMEA Shaft or was taken by rail in the opposite direction of the preexisting open pit and tailings on the southern portions of the Site toward the Northern Dump area in the Dunn Creek drainage north of the DMEA Shaft (Baas Decl. Exh. 4, 5, 8 p. 5-1, 1; Horton Decl. 7, 8; Baas Decl. Exh. 27); (2) the current Site owner Jack Wessman acknowledges that he moved some or all of that adjacent waste rock pile back into the DMEA Shaft, which is consistent with the observation that the DMEA Shaft is now filled (Horton Decl. ¶ 7) (Sunoco's consultant observed waste rock at the area near the end of where the short line rail formerly existed that is typical of the mining waste excavated from the DMEA Shaft); and (3) the data indicate that, after contact with waste rock on the northern portion of the Site, the overland flow from rainwater: (a) contains no mercury or arsenic, (b) is not acidic and (c) has a different geochemical signature than the water collected in the central and southern portions of the Site and, therefore, there are no apparent environmental impacts associated with the northern portion of the Site. (Gailey Decl.).

Therefore, the record, witness declarations, and independent studies show that work conducted and materials generated during Cordero's one year of mining activity at the Site were not and are not related to the mercury-contaminated waters emanating from the Bradley Mine Tailings – which account for 88% of the mercury emanating from the Site. At most, even using a technically unsound approach equating unproven mercury releases from waste rock mined by Cordero with proven releases from ore tailings and waste rock mined by and milled by Bradley and others, Cordero's contribution to the entire mercury loading to the existing impoundments (including the Lower Pond) at the

base of the Mine, or into Marsh Creek is "divisible" on an 88/12% basis.

iv. The connection (if any) between the Cordero workings and the Bradley 165'-level Adit is insignificant and there is no evidence that the Cordero workings contribute to the contaminants emanating from the Adit spring.

The Regional Board relied on two primary grounds when it rejected Sunoco's Divisibility Report in 2010. First, the Regional Board assumed, without any evidentiary basis, that the "790 feet of underground tunnels constructed by Cordero connect with, and thus contribute contaminated water to, the earlier underground tunnels [excavated by Bradley] via the Main Winze." (Baas Decl., Exh. 26, p. 1.) This contention has since been studied by Sunoco's consultant, resulting in the following findings:

> The groundwater sampling results indicate geochemical dissimilarities between groundwater at the 165'-level (the Bradley workings) and 360'-level (the Cordero workings) within the underground workings (results for monitoring wells ADIT-1 and DMEA-1, Exhibit B – Section 4.4.1 plus subsections, Figure 4-3 and Table 3-4). One difference is that water deeper in the underground workings (the 360'-level) contains no mercury (Id.) Another difference is the inorganic geochemical signature of the 165'-level and 360'-level waters observed during the July, 2011 sampling (Exhibit B – Table 3-4 and Appendix G). These observations indicate that groundwater from the 360'-level underground workings does not contribute mercury to flows at ground surface. The observations also indicate that the 360'-level underground workings contribute little, if any, flow to the overland flow that is sourced from underground mine workings at the Site. If the deeper workings did contribute significant flow, the geochemical signature of the deeper groundwater observed in July, 2011 would be evident, which it is not.

(Gailey Decl., ¶ 11).

In summary, there is substantial evidence in the record on which to reasonably to apportion liability pursuant to Burlington Northern and the Restatement "by volumetric, chronological, or other types of evidence, including appropriate geographic considerations," in the following manner: (1) Cordero worked for less than 1-3.5% of the Site history; (2) Cordero conducted its activities on a small portion of the Site's

geographic area and not at all where the established primary source of contamination is located; (3) Cordero is only responsible for 1.2% of the total volume of mine related waste at the Site; (4) Independent studies conclude that 88% of the mercury emanating from the Site is linked to the Bradley Mining Tailings, with which Cordero's activities have no causal relationship since Cordero's activities did not result in the processing of any mercury ore, meaning it generated no tailings, and there is no evidence that Cordero ever disposed of waste rock on or in the vicinity of the Bradley Mining Tailings; and, (5) the 360'-level Cordero workings have little to no impact on the flow of water from the Bradley 165'-level Adit, do not contain mercury and, in any event, the seep emanating from the Bradley 165'-level Adit does not contribute a significant enough flow into Dunn Creek to result in downstream concentrations above the criteria.

As a result, Cordero is, at most, responsible for less than 5% of any Site cleanup, while current and former owners and operators, especially Bradley, which benefited from extensive mercury mining and production, are responsible for at least the other 95%. By failing to perform this apportionment analysis, the Regional Board committed reversible error.

d. Cordero, as a lessee, is not liable for the discharges of prior property owners and/or lessees.

The CAO's requirement that Sunoco remediate the entire Site is substantially overbroad and inequitable, since Cordero's activities touched upon only a small portion of the Site during its one year of intermittent work and did not produce any mercury flasks or tailings. Sunoco should not be required to remediate areas on which it did not operate or cause any discharge to, which constitute the majority of the Site, including the open pit mining area to the south and southwest of the DMEA Shaft, and the related large tailings and waste rock piles on the southeast and south central portions of the Mine Site (Bradley Mining Tailings). (Baas Decl., Exh. 4, Fig. 5-1 (pre-Cordero tailings piles highlighted in blue).)

While the CAO generally references sections of the California Water Code, it does not specifically articulate any legal authority supporting the liability of Cordero as a

lessee for the entire period of time that the Site operated historically. Under California law, subsequent *owners* may be liable for passive migration of a continuing nuisance created by another, but *lessees,* such as Cordero, cannot be held liable for those discharges. California Civil Code §3483 assesses continuing nuisance liability only upon owners and former owners, not lessees. The plain language of §3483 reveals that the legislature explicitly excluded lessees from liability for continuing nuisance:

> "Every successive *owner* of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefore in the same manner as the one who first created it." (Cal. Civ. Code § 3483)(emphasis added.)

Therefore, to the extent that the Regional Board seeks to hold Cordero liable for operations and activities that preceded its activities at the Site based on a continuing nuisance theory, there is no legal support.

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For all the foregoing reasons, Sunoco respectfully requests that the State Board review the CAO and grant the relief as set forth above.

Respectfully submitted,

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EDGCOMB LAW GROUP, LLP

By: _____

Adam P. Baas
abaas@edgcomb-law.com
Attorneys for Petitioner
SUNOCO, INC.

Edgcomb Law Group, LLP
JOHN D. EDGCOMB (SBN 112275)
ADAM P. BAAS (SBN 220464)
One Post Street, Suite 2100
San Francisco, California 94104
Telephone: (415) 399-1555
Facsimile: (415) 399-1885
abaas@edgcomb-law.com

Attorneys for Petitioner
SUNOCO, INC.

STATE WATER RESOURCES CONTROL BOARD

STATE OF CALIFORNIA

In the Matter of SUNOCO, INC., Petitioner, For Stay of Cleanup and Abatement Order No. R5-2014-0124, dated October 10, 2014, Pursuant To Water Code Section 13267, Mount Diablo Mine, Contra Costa County	PETITION NO. **SUNOCO, INC.'S PETITION FOR STAY OF CLEANUP AND ABATEMENT ORDER NO. R5-2014-0124**

Pursuant to California Water Code § 13321 and 23 Cal. Code of Regs. § 2053, Sunoco, Inc. ("Sunoco" or "Petitioner") hereby petitions the State Water Resources Control Board ("State Board") to stay implementation of Cleanup and Abatement Order R5-2014-0124 issued pursuant to Sections 13267 and 13304 of the California Water Code regarding the Mount Diablo Mercury Mine, Contra Costa County ("Site"), issued on October 10, 2014 ("CAO"), by the Regional Water Quality Control Board, Central Valley Region ("Regional Board").

Sunoco has concurrently filed a Petition for Review and Rescission of the CAO with this Petition for Stay of Action. (The Petition for Review and Rescission and accompanying declarations are hereby incorporated by reference).

I. STANDARD OF REVIEW

Water Code § 13321 authorizes the State Board to stay the effect of Regional Board decisions. Title 23, Cal. Code of Regs. § 2053 requires that a stay shall be granted if a petitioner alleges facts and produces proof of:

1. Substantial harm to petitioner or to the public interest if a stay is not granted;
2. A lack of substantial harm to other interested persons and to the public if a stay is granted; and
3. Substantial questions of fact or law regarding the disputed action.

(23 CCR § 2053(a)).

Sunoco's stay request, as detailed below and in the accompanying Petition for Review and Rescission, satisfies all three elements of the test. Therefore, the State Board should grant a stay of the CAO, including the prescription of any civil penalties, while the State Board determines the substantial questions of law and fact presented in Sunoco's Petition for Review and Rescission.

II. ARGUMENT IN SUPPORT OF STAY

The record on file with the State Board in relation to the concurrently filed Petition for Review and Rescission contains the relevant supporting documents to this Petition for Stay of Action, which Sunoco reserves the right to supplement. Sunoco hereby incorporates all of the facts and arguments set forth in that Petition for Review and Rescission, and the accompanying Declarations of Adam P. Baas ("Baas Decl.") and Robert M. Gailey and Paul D. Horton in Support of Petition for Review and Petition for Stay being filed herewith, including any and all supplemental submissions made by Sunoco in support of its Petition.

A. Sunoco is Likely to Incur Substantial Harm if a Stay of the CAO is Not Granted

Sunoco was erroneously found liable by the Regional Board as an *indirect* discharger based solely on corporate and contract law principles and *not* the Water Code. It is undisputed that Sunoco never leased, owned, or operated at the Site. If the State Board does not grant Sunoco's request to stay implementation of the CAO, Sunoco likely will be substantially harmed because it would be forced effectively to choose between

two equally unfair options, each with potentially irreparable consequences: comply with the CAO[1] before the merits of its Petition for Review and Rescission of the CAO have been carefully considered OR violate the CAO and risk penalties. As an alleged *indirect* discharger, Sunoco should not be forced to make the decision regarding whether to comply or not comply with the CAO, which by its terms requires the implementation of a substantial remedial action work plan, and before it gets its day before a neutral arbiter. Indeed, the Regional Board Chair recognized the legal complexities of this case and stated at the conclusion of the October 10th hearing that he "did not know" what specific corporate or contract law principles the Regional Board was relying on to name Sunoco as an indirect discharger, but that nevertheless he would "rather not strike" out one of the possibilities at that time because he believed that "quite frankly we're going to see this order more than likely go on up to the State Board and maybe on up to the courts … and I don't want to hamper the state board." (Baas Decl. Exh. 50, October 10, 2014, Regional Board Hearing Audio Recording "Hearing Recording" at 5:27-5:28). Moreover, when ruling on the apportionment of liability issue, the Board Chair admitted that "much more evidence is needed" and Board Member Ramirez expressed that she feels an "inherent sense of unfairness" in apportioning all of the liability to Cordero Mining Company ("Cordero") – and thus to Sunoco – in this matter. (Id. at 5:14-5:16).

Sunoco has filed a Petition for Review and Rescission of the CAO contending that it is not liable because: 1) it is a non-liable former shareholder of Cordero and there is no evidence of an asset transfer agreement, assumption of liability agreement, or merger between Sunoco, or its predecessors, and Cordero; and 2) Cordero did not cause the environmental harm alleged, or at most has a divisible, *de minimis* share of liability. If Sunoco is successful in its Petition for Review and Rescission of the CAO, it would eliminate, or at least substantially limit, Sunoco's responsibility to comply with the CAO and incur the associated costs. Yet, if this Petition for a Stay is not granted, it would effectively remove any possibility for Sunoco to avoid harm and expedite the

[1] The first deadline within the CAO is set for December 12, 2014, and the next deadline for the submission of a remedial work plan is in March 2015, with regular reporting deadlines set thereafter. Thus, it is highly likely that these deadlines will pass before the State Board has acted – one way or the other – on Sunoco's Petition for Review and Rescission.

consequence of otherwise undetermined issues at this point – whether Sunoco has any liability for Cordero's actions, and if so, the extent of any such responsibility to perform and pay for the cleanup. Moreover, if the stay is not granted and Sunoco is forced to choose, and Sunoco were to choose to comply with the CAO, Sunoco would have to bear the cost and burden of completing the investigation and remediating the Site, while simultaneously opposing the CAO in another forum, all without any likely means of obtaining full reimbursement later.

Once these costs have been unfairly imposed upon it, Sunoco will likely have no means of recovering such costs since the dischargers named in the CAO with a majority or all of the liability for the past and ongoing discharges at the Site, appear to be without sufficient financial resources to reimburse Sunoco. For instance, the Bradley Mining Company ("Bradley Mining") – which is unquestionably the most culpable Discharger at the Site – has settled all of its liabilities associated with the Site *via* a settlement with the EPA related to its bankruptcy proceeding. (Baas Decl. Exh. 1, p. 3) (Bradley Mining agreed to pay just $50,500 and a small portion of likely, non-existent, future earnings in exchange for a release from its Site liabilities). In addition, The Quicksilver Mining Company ("Quicksilver Mining") – which owned the Site for decades and operated it for the second longest period – has dissolved. (Id.)

Indeed, Sunoco already has expended considerable funds to investigate the Site and to perform preliminary response actions in good faith while it investigated the defenses it currently asserts, at the direction of the Regional Board and the United states Environmental Protection Agency, and it is likely that Sunoco will be unable to recoup these funds from the more culpable dischargers listed in the CAO. (See e.g. WQ 2012-0012, In Re: Ocean Mist Farms and RC Farms, et al., 2012 Cal. ENV LEXIS 67 (Sept. 19, 2012) ([a] substantial cost alone may meet the first prong of a stay determination if the requesting party shows that it constitutes substantial harm. Such a conclusion is consistent with the language of our [State Board] regulations, and the purposes of extraordinary, interim relief).

Accordingly, forcing Sunoco – an alleged *indirect* discharger – to incur these

substantial costs now, as the CAO would do if a stay is not granted, with likely no possible means of reimbursement if the State Board or Superior Court later renders a decision in Sunoco's favor, will impose substantial and irreparable harm on Sunoco.

B. Other Interested Persons and the Public Will Not Incur Substantial Harm if a Stay is Granted

Sunoco, by and through its consultant, already has expended considerable time and funds to investigate the Site and generate a Work Plan for the remediation of the Site that was approved by the Regional Board. (Baas Decl, Exh. 46). The next step is for the remaining named (and solvent) dischargers, who did not petition the CAO or participate in the October 10th hearing, to perform the work proposed in the Work Plan. Thus, while there may be some delay, if any at all, in the performance of the investigations and remediation sought by the Regional Board as a result of Sunoco's requested stay, that delay should be limited and will not cause substantial harm given that: 1) the Regional Board has been generally aware of the Site conditions it now seeks to have addressed for 50 years or more, without issuing any similar orders to Sunoco's knowledge; 2) Sunoco already has delineated the Site conditions and submitted a Work Plan for the Site's remediation to the Regional Board, which the Regional Board approved (Baas Decl, Exh. 46); 3) there are two remaining dischargers that can implement the Work Plan – the California Department of Parks and Recreation and the United Stated Department of the Interior; 4) should the other dischargers named in the CAO prove insolvent or are otherwise able to avoid liability, the Regional Board can itself take immediate action to implement the Work Plan and can, *via* the California Water Code Section 13443, apply for funds from the State Water Pollution Cleanup and Abatement Account to assist in responding to the water quality problem addressed by the CAO; and, 5) the public interest is well-served by insuring that only fair and just orders, supported by facts and law, are issued by the Regional Board.

C. The Regional Board's Action Raises Substantial Questions of Law on Which Petitioner Is Likely to Prevail.

A Petition for Review of the CAO has been filed contemporaneously with this Petition that delineates Sunoco's arguments regarding the legal questions on which

Sunoco is likely to prevail – each of which presents a substantial question of law.

The CAO's finding that Sunoco is "a party legally responsible for Cordero's discharges at the Mine Site" because "Sunoco … expressly or impliedly assumed the liabilities of Cordero Mining Company" **is not** supported by law or the facts. It is undisputed that: Cordero was a separate corporate entity that dissolved completely in 1975; Sunoco never continued Cordero's mercury mining operations after Cordero dissolved in 1975; there is no evidence of an asset transfer agreement between Sunoco, or its predecessors and Cordero; and, Sunoco never owned, leased, or operated at the Site, and is therefore not a direct discharger. Thus, the only legal basis on which the Regional Board can name Sunoco on the CAO is by way of corporate or contract law principles.

On this point, the CAO is based on errors of law and is not supported by the relevant evidence. Specifically, the Regional Board does not cite to any legal precedent for its decision to name Sunoco as an *indirect* discharger and instead erroneously relies solely on: i) interrogatories and correspondence from an unrelated litigation conducted in 1994, which post-date Cordero's dissolution by 20 years and cannot by themselves create an assumption of liability agreement; and, ii) Sunoco's cooperation with the EPA and Regional Board since 2008, which is an unprecedented argument that seeks to punish Sunoco for its prior compliance with EPA and Regional Board orders, under broad reservations of rights, a position contrary to good public policy.

California courts have made it clear: without a written or oral contract set forth in words, the Regional Board cannot find that an *express* assumption of liability exists; and, without evidence of the elements of a contact (*i.e.* mutual promises, consideration, and a meeting of the minds), the Regional Board cannot find that an *implied* assumption of liability exists either. Here, there is no evidence of either type of liability assumption having occurred. The Regional Board's actions are therefore arbitrary and capricious, and are not supported by the relevant law or facts.

Notwithstanding Sunoco's non-liability as a mere shareholder of Cordero, the Regional Board acted arbitrarily and capriciously when it did not apportion liability between Cordero and the other dischargers. Nowhere in the Water Code does it state that

joint and several liability applies to all Water Code Section 13304 orders. In fact, California courts recognize that liability under the Water Code is akin to common law nuisance liability. Consequently, common law dictates that if the Regional Board can apportion harm, it must do so.

There was substantial evidence presented at and before the hearing that liability for the mercury contamination at the Mt. Diablo Site clearly can be apportioned, and that Cordero should be apportioned a *de minimis* (at most) share of the liability. Such evidence includes the following facts: (i) Cordero was involved with the Site for a very short period of time, conducted operations on only a small area of the Site, did not mill any ore or generate any tailings, and contributed only 1.2 percent (%) of the waste rock (as opposed to tailings) at the Site; (ii) 88% of the mercury sourced from the Site in surface waters is linked to the mine tailings disposed of on the Site's hillside by other Dischargers; (iii) the remaining mercury is sourced from groundwater seeping as a spring from a horizontal adit constructed by a former Discharger and unrelated to Cordero's historical activities; and (iv) as a lessee, Cordero cannot be held liable for discharges caused by prior property owner/lessees.

The reasons the Regional Board's actions were inappropriate and improper are more fully set forth in Sunoco's Memorandum of Points and Authorities, which may be found beginning at page 6 of Sunoco's Petition for Review and Rescission.

The State Board should therefore stay the effect of the CAO on Sunoco until these material and substantial legal issues are fully and finally resolved.

III. CONCLUSION

Sunoco will be substantially and irreparably harmed if it is required to fully implement the CAO before the substantial questions of fact and law regarding its liability under the CAO are resolved, which, upon review in accordance with the historical record, relevant common law, and provisions of the California Water Code, are highly likely to be resolved in favor of Sunoco. Meanwhile, the other dischargers and the public interest will not be harmed significantly by the temporary stay requested. Therefore, the State

Board should issue a stay of the CAO as to Sunoco.

Respectfully submitted,

DATED: November 10, 2014

EDGCOMB LAW GROUP, LLP

By: _____

Adam P. Baas
abaas@edgcomb-law.com
Attorneys for Petitioner
SUNOCO, INC.

Edgcomb Law Group, LLP
JOHN D. EDGCOMB (SBN 112275)
ADAM P. BAAS (SBN 220464)
One Post Street, Suite 2100
San Francisco, California 94104
Telephone: (415) 399-1555
Facsimile: (415) 399-1885
abaas@edgcomb-law.com

Attorneys for Petitioner
SUNOCO, INC.

STATE WATER RESOURCES CONTROL BOARD

STATE OF CALIFORNIA

In the Matter of SUNOCO, INC., Petitioner, For Rescission and Stay of Cleanup and Abatement Order No. R5-2014-0124, dated October 10, 2014, Pursuant To Water Code Sections 13267 and 13304, Mount Diablo Mine, Contra Costa County	PETITION NO. **DECLARATION OF ADAM P. BAAS IN SUPPORT OF SUNOCO, INC.'S PETITION FOR REVIEW AND RESCISSION AND STAY OF CLEANUP AND ABATEMENT ORDER NO. R5-2014-0124**

I, the undersigned, Adam P. Baas, declare as follows:

1. I am an attorney admitted to practice law in the State of California. Edgcomb Law Group, LLP ("ELG") is counsel for petitioner Sunoco, Inc. ("Sunoco") in connection with "Cleanup and Abatement Order No. R5-2014-0124, Mount Diablo Mine, Contra Costa County," issued on October 10, 2014 ("CAO"), by the Regional Water Quality Control Board, Central Valley Region" ("Regional Board").

2. I have personal knowledge of the facts set forth herein or am familiar with such facts from: 1) my personal involvement in all aspects of this matter since 2012; 2) my review of the files, records, maps, and aerial photos obtained from public agencies and other public sources of information; and, 3) my participation in the proceedings before

the Regional Board related to the CAO, including but not limited to the hearing on October 10, 2014.

3. Attached hereto as **Exhibit 1** is a true and correct copy of the Regional Board's October 10, 2014, Cleanup and Abatement Order No. R5-2014-0124.

4. Attached hereto as **Exhibit 2** is a true and correct copy of the 1941 incorporation documents and articles of incorporation for the Cordero Mining Company of Nevada.

5. Attached hereto as **Exhibit 3** is a true and correct copy of the First Meeting of the Board of Directors named in the Articles of Incorporation of Cordero Mining Company of Nevada, dated March 10 and 11, 1941, which include a copy of the by-laws.

6. Attached hereto as **Exhibit 4** are true and correct copies of three examples of Minutes of Special Meeting of the Board of Directors of Cordero Mining Company of Nevada, dated February 12, 1954 – January 21, 1969.

7. Attached hereto as **Exhibit 5** are true and correct copies of the dissolution documents for Cordero Mining Company of Nevada, dated December 31, 1972, including the Agreement and Plan of Liquidation.

8. Attached hereto as **Exhibit 6** are true and correct copies of the Cordero Mining Company and Nevada's Certificate of Dissolution filed with the Nevada Secretary of State, dated November 18, 1975.

9. Attached hereto as **Exhibit 7** is a true and correct copy of a flow chart of Sun Company, Inc.'s corporate history.

10. Attached hereto as **Exhibit 8** is a true and correct copy of the Cordero Mining Company of Nevada's Federal Income Tax Return for the year 1975.

11. Attached hereto as **Exhibit 9** is a true and correct copy of the letter sent by David Chapman of the Edgcomb Law Group to Ross Atkinson of the Central Valley RWQCB, dated July 22, 2010.

12. Attached hereto as **Exhibit 10** is a true and correct copy of the Cordero Mining Company of Nevada's Corporate Dissolution or Liquidation filing to the IRS for the year 1972.

13. Attached hereto as **Exhibit 11** is a true and correct copy of Sun Company, Inc.'s Responses to First Set of Interrogatories to All Parties in the County of Santa Clara v. Myers Industries, Inc., United States District Court, Northern District of California ("Myers Industries Case"), dated August 30, 1994, which was produced by the Prosecution Team in relation to the October 10, 2014, hearing before the Regional Board.

14. Attached hereto as **Exhibit 12** is a true and correct copy of the letter from Peter R. Krakaur to John J. Verber, Esq. regarding the Myers Industries Case, dated June 4, 1993; and the letter from John J. Verber, Esq. to the Honorable James Ware regarding the Myers Industries Case, dated July 22, 1993.

15. Attached hereto as **Exhibit 13** is a true and correct copy of: the Second Amended Cross-Claim of Myers Industries, Inc., Buckhorn Inc., and BKHN Inc. in the Myers Industries Case, dated June 16, 1993; the Answer to Second Amended Cross-Claim, Counter Claims, and Cross-Claims of Sun Company, Inc. in the Myers Industries Case, dated July 6, 1993; and, the Consent Decree with BKHN, Inc., Buckhorn, Inc. Myers Industries, Inc., Sun Company, Inc., and Newson, Inc. in the Myers Industries Case, dated November 16, 1996.

16. Attached hereto as **Exhibit 14** is a true and correct copy of the letter from Victor J. Izzo, of the RWQCB, to Susan E. Taylor, of Rio Tinto, Inc., dated April 28, 2009. This document was retrieved from the Central Valley RWQCB website.

17. Attached hereto as **Exhibit 15** is a true and correct copy of the letter from Susan E. Taylor, of Rio Tinto, Inc., to Victor J. Izzo, of the RWQCB, dated April 3, 2009. This document was retrieved from the Central Valley RWQCB website.

18. Attached hereto as **Exhibit 16** is a true and correct copy of the email from Jeff S. Huggins, of the RWQCB, to Adam P. Baas, dated August 28, 2014.

19. Attached hereto as **Exhibit 17** is a true and correct copy of the Entity Details Sheet, File No. 0811909. This document was retrieved from the website of the Secretary of State of the State of Delaware.

20. Attached hereto as **Exhibit 18** is a true and correct copy of the Certificate of Merger of Cordero Mining Co. into Sunedco Coal Co. received from the Secretary of State of the State of Delaware, dated December 30, 1983; and a true and correct copy of the Entity Details Sheet, File No. 0829619. This document was retrieved from the website of the Secretary of State of the State of Delaware.

21. Attached hereto as **Exhibit 19** is a true and correct copy of an entry from the Oil & Gas Journal regarding Cordero Ming Co. and Kennecott Corp., dated March 1, 1993. This document was retrieved from LexisNexis on April 23, 2009.

22. Attached hereto as **Exhibit 20** is a true and correct copy of the Distribution Agreement between Sun Exploration and Production Company and Sun Company, Inc., dated October 7, 1988.

23. Attached hereto as **Exhibit 21** is a true and correct copy of the letter from Peter R. Krakaur to Robert Campbell, President of Sun Company, Inc. dated May 6, 1993.

24. Attached hereto as **Exhibit 22** is a true and correct copy of the letter from Robert W. Williams, counsel for Sun Company, Inc. to Peter R. Krakaur, dated June 3, 1993.

25. Attached hereto as **Exhibit 23** is a true and correct copy of the First Set of Interrogatories to All Parties in the Myers Industries Case.

26. Attached hereto as **Exhibit 24** is a true and correct copy of Defense Minerals Exploration Administration's ("DMEA") "Report of Examination by Field Team Region III" dated February 27, 1953, obtained from the Department of Interior, United States Geological Service ("USGS").

27. Attached hereto as **Exhibit 25** is a true and correct copy of the Exploration Project Contract between Ronnie B. Smith, Jene Harper and James Dunnigan

and the U.S. Department of the Interior, DMEA for the Mt. Diablo Mercury Mine, dated June 5, 1953. This document was obtained from the U. S. Department of the Interior, USGS.

28. Attached hereto as **Exhibit 26** is a true and correct copy of the Assignment of Lease signed by Ronnie Smith, Jene Harper and James Dunnigan and John Johnson and John Jonas for the Mt. Diablo Mercury Mine, dated November 1, 1953. This document was obtained from ELG's title research vendor.

29. Attached hereto as **Exhibit 27** is a true and correct copy of 1953 Narrative Reports by C.N. Schuette and E.H. Sheahan.

30. Attached hereto as **Exhibit 28** is a true and correct copy of the PRP Search Report Site Chronology and Property History, Mt. Diablo Quicksilver Mine, prepared by the US Army Corp. of Engineers, dated August 8, 2008.

31. Attached hereto as **Exhibit 29** is a true and correct copy of the March 1996 report titled, "Marsh Creek Watershed 1995 Mercury Assessment Project – Final Report," prepared by Darell G. Slotton, Shaun M. Ayers, and John E. Reuter (the "Slotton Report").

32. Attached hereto as **Exhibit 30** is a true and correct copy of the lease between Mt. Diablo Quicksilver Company, Ltd. and Cordero Mining Company, dated November 1, 1954.

33. Attached hereto as **Exhibit 31** is a true and correct copy of a topographic map of Mount Diablo Mine dated January 1953, obtained from the Department of the Interior, USGS.

34. Attached hereto as **Exhibit 32** is a true and correct copy of topographic map of Mount Diablo Mine reflecting changes to the site after work by the Defense Minerals Exploration Administration ("DMEA"), obtained from ELG's consultant.

35. Attached hereto as **Exhibit 33** is a true and correct copy of a map of the underground workings of Bradley Mining Company at the Mount Diablo Mine Site, obtained from the Department of the Interior, USGS.

36. Attached hereto as **Exhibit 34** is a true and correct copy of a map of the underground workings of the DMEA's contractors and Cordero Mining Company of Nevada at the Mount Diablo Mine Site, obtained from the Department of the Interior, USGS.

37. Attached hereto as **Exhibit 35** is a true and correct copy of two aerial photographs of the site, the first dated October 9, 1952 and the second dated May 16, 1957, obtained from ELG's consultant.

38. Attached hereto as **Exhibit 36** is a true and correct copy of the DMEA Project Summary Report, dated November 25, 1960.

39. Attached hereto as **Exhibit 37** is a true and correct copy of the Clean-Up and Abatement Order for Mount Diablo Quicksilver Mine, Contra Costa County, dated November 20, 1978.

40. Attached hereto as **Exhibit 38** is a true and correct copy of the United States Environmental Protection Agency Unilateral Administrative Order for the Performance of a Removal Action directed at Sunoco, Inc., dated December 9, 2008.

41. Attached hereto as **Exhibit 39** is a true and correct copy of the letter from Lisa A. Runyon, counsel for Sunoco, Inc., to Larry Bradfish, of the EPA, regarding the Unilateral Administrative Order, dated December 15, 2008.

42. Attached hereto as **Exhibit 40** is a true and correct copy of the letter report by The Source Group, Inc., titled "Summary Report for Removal Action to Stabilize the Impoundment Berm," dated April 8, 2009.

43. Attached hereto as **Exhibit 41** is a true and correct copy of Sunoco's Voluntary PRP Report ("PRP Report") to the Regional Board submitted on July 31, 2009.

44. Attached hereto as **Exhibit 42** is a true and correct copy of the Regional Board's response to Sunoco, Inc.'s Divisibility Paper, dated October 30, 2009.

45. Attached hereto as **Exhibit 43** is a true and correct copy of the Regional Board's Revised Order to Submit Investigative Reports, dated December 30, 2009.

46. Attached hereto as **Exhibit 44** is a true and correct copy of the report prepared by The Source Group Inc., titled, "Site Characterization Report, Mount Diablo Mercury Mine," dated August 2, 2010.

47. Attached hereto as **Exhibit 45** is a true and correct copy of the letter sent by John D. Edgcomb of the Edgcomb Law Group to Julie Macedo, Esq. of the State Board, dated January 20, 2012.

48. Attached hereto as **Exhibit 46** is a true and correct copy of the report prepared by The Source Group, Inc., titled, "Site Remediation Work Plan," dated May 8, 2012.

49. Attached hereto as **Exhibit 47** is a true and correct copy of Cleanup and Abatement Order No. R5-2013-0701 related to the Mount Diablo Mercury Mine Contra Costa County, dated April 16, 2013.

50. Attached hereto as **Exhibit 48** is a true and correct copy of the letter from Central Valley RWQCB to Adam P. Baas, counsel for Sunoco, Inc., and Christopher M. Sanders, counsel for Kennametal, Inc., regarding reconsideration of CAO R5-2013-0701, dated August 8, 2013.

51. Attached hereto as **Exhibit 49** is a true and correct copy of the Pre-Hearing Rulings by the Central Valley RWQCB in the Mt. Diablo Mercury Mine matter, dated May 14, 2014.

52. Attached hereto as **Exhibit 50** is a true and correct copy of the CD ROM of the audio recording of the October 10, 2014, Central Valley RWQCB hearing. This recording was received by ELG directly from the Central Valley RWQCB.

53. Attached hereto as **Exhibit 51** is a true and correct copy of the Prosecution Team's Rebuttal Brief, Corporate Successor Liability, in the Mt. Diablo matter, dated March 20, 2014.

54. Attached hereto as **Exhibit 52** is a true and correct copy of the "Prosecution Team Briefing Regarding Express and Implied Assumption of Liability," in the Mt. Diablo Mercury Mine matter, dated August 22, 2014.

55. Attached hereto as **Exhibit 53** is a true and correct copy of the unreported decision, in re: Purex Industries, Inc., Order WQ 97-04, Cal. ENV LEXIS 3 (May 14, 1997).

56. Attached hereto as **Exhibit 54** is a true and correct copy of the "Declaration of Adam P. Baas in Support of Sunoco, Inc.'s Opposition to the Prosecution Team's Motion in Limine," in the Mt. Diablo matter, dated March 24, 2014.

57. Attached hereto as **Exhibit 55** is a true and correct copy of the "Declaration of John D. Edgcomb in Support of Sunoco, Inc.'s Opposition to the Prosecution Team's Motion in Limine, in the Mt. Diablo matter, dated March 24, 2014."

58. To my knowledge, there is no evidence in the record that Sun Oil, Sun Company, or Sunoco ever owned, leased, operated, or otherwise had any direct contact with the Site; nor is there evidence of an asset transfer agreement between Sun Oil Company and the Cordero Mining Company of Nevada, or that Sun Oil Company continued the mining operations of Cordero Mining Company of Nevada.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 10th day of November, 2014 in San Francisco, California.

Respectfully submitted,

EDGCOMB LAW GROUP, LLP

By: _____

Adam P. Baas
abaas@edgcomb-law.com
Attorneys for Petitioner
SUNOCO, INC.

Edgcomb Law Group
JOHN D. EDGCOMB (SBN 112275)
ADAM P. BAAS (SBN 220464)
One Post Street, Suite 2100
San Francisco, California 94104
Telephone: (415) 399-1555
Facsimile: (415) 399-1885
abaas@edgcomb-law.com

Attorneys for Petitioner
SUNOCO, INC.

STATE WATER RESOURCES CONTROL BOARD

STATE OF CALIFORNIA

In the Matter of SUNOCO, INC., Petitioner, For Rescission and Stay of Cleanup and Abatement Order No. R5-2014-0124, dated October 10, 2014, Pursuant To Water Code Sections 13267 and 13304, Mount Diablo Mine, Contra Costa County	PETITION NO. **DECLARATION OF ADAM P. BAAS IN SUPPORT OF SUNOCO, INC.'S PETITION FOR REVIEW AND RESCISSION AND STAY OF CLEANUP AND ABATEMENT ORDER NO. R5-2014-0124**

Exhibits 1 – 55

(Exh. 50 contains a CD ROM)

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RECONSIDERATION OF CLEANUP AND ABATEMENT ORDER R5-2013-0701
ORDER R5-2014-0124

FOR

MOUNT DIABLO MERCURY MINE
CONTRA COSTA COUNTY

This Order is issued to Jack and Carolyn Wessman; the Bradley Mining Co.; the U.S. Department of Interior; Sunoco, Inc.; Mt. Diablo Quicksilver Co., Ltd., and the California Department of Parks and Recreation (hereafter collectively referred to as Dischargers) pursuant to California Water Code section 13304 which authorizes the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) to issue a Cleanup and Abatement Order (Order) and Water Code section 13267, which authorizes the Executive Officer to issue Orders requiring the submittal of technical or monitoring program reports.

Cleanup and Abatement Order R5-2013-0701 was previously issued by the Central Valley Water Board's Executive Officer and the Cleanup and Abatement Order was subsequently petitioned to the State Water Resources Control Board by Sunoco and Kennametal. On August 8, 2013, the Board Chair ruled to reconsider R5-2013-0701 by the full Board.

The Central Valley Water Board finds:

BACKGROUND

1. The Mount Diablo Mercury Mine (Mine Site) is an inactive mercury mine. The Mine Site is located on the northeast slope of Mount Diablo in Contra Costa County. The Mine Site and historic working areas are on 80 acres southwest of the intersection of Marsh Creek Road and Morgan Territory Road. The Mine Site is adjoined on the south and west by the Mount Diablo State Park and on the north and east by Marsh Creek Road and Morgan Territory Road.

2. The Mine Site consists of an exposed open cut and various inaccessible underground shafts, adits, and drifts. Extensive waste rock piles and mine tailings cover the hill slope below the open cut, and several springs and seeps discharge from the tailings-covered area. Three surface impoundments at the base of the tailings capture most spring flow and surface runoff.

3. Acid mine drainage containing elevated levels of mercury and other metals is being discharged to Pond 1, an unlined surface impoundment that periodically overflows discharging contaminants into Horse and Dunn Creeks. Horse and Dunn Creeks are tributaries to Marsh Creek which drains to the San Joaquin River.

4. Section 303(d) of the Federal Clean Water Act requires states to identify waters not attaining water quality standards (referred to as the 303(d) list). Dunn Creek, located below Mount Diablo Mine, and Marsh Creek, located below Dunn Creek, have been identified by the Central Valley Water Board as impaired water bodies because of high aqueous concentrations of mercury and metals.

5. It is the policy of the State Water Resources Control Board, and by extension the Central Valley Water Board, that every human being has the right to safe, clean, affordable and accessible water adequate for human consumption, cooking, and sanitary purposes. Dunn Creek and Marsh Creek may impact municipal drinking supply in the area. The current site conditions may constitute a threat to municipal drinking supply beneficial use. Therefore, the Water Board is authorized to protect such uses pursuant to Water Code section 106.3.

OWNERSHIP AND OPERATOR HISTORY

6. Jack and Carolyn Wessman have owned the Mine Site from 1974 to the present. The Wessmans have made some improvements to reduce surface water exposure to tailings and waste rock, including the construction of a cap over parts of the tailings/waste rock piles. Although these improvements have been made without an engineering design or approved plan, these improvements may have reduced some of the impacts from the Mine Site. However, discharges that contain elevated mercury levels continue to impact the Mine Site and site vicinity.

7. A portion of the mine tailings is located on land owned by Mount Diablo State Park. The California Department of Parks and Recreation is named as a Discharger in this Order. The California Department of Parks and Recreation has conducted activities on the property related to surveying and possible fence line adjustments.

8. The mine was discovered by a Mr. Welch in 1863 and operated intermittently until 1877. The Mine reopened in 1930 and was operated until 1936 by the Mt. Diablo Quicksilver Co., Ltd. producing an estimated 739 flasks of mercury. Mt. Diablo Quicksilver no longer exists.

9. Although Mt. Diablo Quicksilver no longer exists, it is named as a Discharger in this order because it likely has undistributed assets, including, without limitation, insurance assets held by the corporation that may be available in response to this order.

10. Bradley Mining Company leased the Mine from Mt. Diablo Quicksilver and operated from 1936 to 1947, producing around 10,000 flasks of mercury. During operations Bradley Mining Company developed underground mine workings, discharged mine waste rock, and generated and discharged ore tailings containing mercury.

11. In 2008 the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency (EPA), filed a complaint pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, against Bradley Mining Company and Frederick Bradley in his representative capacity as Trustee of the Worthen Bradley Family Trust (Bradley). Prior to the suit the EPA had identified

Bradley Mining as a potentially responsible party for the remediation of the Mount Diablo Mercury Mine Site. The complaint filed by the EPA and DOJ sought reimbursement and damages associated with various sites, including the Mount Diablo Mercury Mine Site in Contra Costa County, California.

12. In 2012 the EPA and Bradley Mining Company and Frederick Bradley in his representative capacity as Trustee of the Worthen Bradley Family Trust entered into a settlement for all sites set forth in the complaint. Under the terms of the Consent Decree $50,500 of the funds Bradley received from insurance was allocated to the Mt Diablo Mercury Mine Site, along with 10 percent of future payments made that were linked to Bradley's future income.

13. The Bradley Mining Company still exists, although it claims that it has limited resources and the resources it has are mostly tied up in environmental actions at other former mines. Bradley Mining Company is a named Discharger in this Order.

14. Ronnie B. Smith and partners leased the mine from Mt. Diablo Quicksilver from 1951 to 1954 and produced approximately 125 flasks of mercury by surface mining (open pit mining methods). Successors to the Smith et al. partnership have not been identified and are not named as Dischargers in this Order.

15. In 1953, the Defense Minerals Exploration Administration (DMEA) granted the Smith, et al. partners a loan to explore for deep mercury ore. The DMEA was created to provide financial assistance to explore for certain strategic and critical minerals. The DMEA contracted with private parties to operate the Mine Site under cost-sharing agreements from 1953 to 1954. The DMEA was a Federal Government Agency in the US Department of the Interior and is named as a Discharger in this Order.

16. John L. Jonas and John E. Johnson assumed the DMEA contract in 1954, producing 21 flasks of mercury in less than one year. Their successors have not been found and they are not named Dischargers in this Order.

17. The Cordero Mining Company operated the Mine Site from approximately 1954 to 1956, and was responsible for sinking a shaft, driving underground tunnels that connected new areas to pre-existing mine workings, and discharging mine waste. There is no record of mercury production for this time period and the amount of mercury production, if any, from this time period is unknown. The United States Environmental Protection Agency (USEPA), Region IX, named Sunoco Inc. a responsible party for Mount Diablo Mercury Mine in the Unilateral Administrative Order for the Performance of a Removal Action, USEPA Docket No. 9-2009-02, due to its corporate relationship to the Cordero Mining Company. Based on the evidence submitted, including but not limited to verified interrogatories submitted in federal court in an action for cleanup at another mine site, Sunoco, Inc. expressly or impliedly assumed the liabilities of Cordero Mining Company. Sunoco, Inc. is a named Discharger in this Order, as a party legally responsible for Cordero's discharges at the Mine Site. Drainage from Cordero Mining Company's mine workings creates, or threatens to create, a condition of pollution or nuisance.

18. No Findings are made in this Order regarding Nevada Scheelite Corporation as a discharger under Water Code section 13304 relative to the Mount Diablo Mine Site.

19. Victoria Resources Corp. owned the Mount Diablo Mine from 1960 to 1969. The extent of operations and the amount of production for this period is unknown. However, discharges have occurred from runoff from the mine waste piles and likely springs associated with the mine working. Victoria Resources Corp. no longer exists under that name. Technical Reporting Order No. R5-2009-0870 was issued to Victoria Gold Corp. on December 1, 2009, requiring submittal of a report describing the extent of Victoria Resources activities at the mine. Victoria Gold Corp. notified the Board that they have no relationship to Victoria Resources Inc. Research into the corporate evolution of Victoria Resources Inc. is ongoing.

20. The Guadalupe Mining Company owned the Mine site from 1969 to 1974. The extent of operations and amount of production for this period is unknown. However, discharges have occurred from runoff from the mine waste piles and likely springs associated with the mine working. Guadalupe Mining Company no longer exists and efforts to trace a corporate successor have been unsuccessful.

INVESTIGATIONS

21. In 1989, a technical investigation by JL Lovenitti used historical data and focused on Pond 1. The report characterized Pond 1 chemistry, its geohydrochemical setting, the source of contaminants, remedial alternatives and preliminary remediation cost estimates. The report documents acidic conditions and elevated concentrations of mercury, lead, arsenic, zinc, and copper that are greater than primary drinking water standards.

22. Between 1995 and 1997, a baseline study of the Marsh Creek Watershed was conducted by Prof. Darrell Slotton for Contra Costa County. The study concluded that the Mount Diablo Mercury Mine and specifically the exposed tailings and waste rock above the existing surface impoundment are the dominant source of mercury in the watershed.

23. Technical Reporting Order No. R5-2009-0869 was issued on 1 December 2009 to the Dischargers that had been identified at that time, Jack and Carolyn Wessman, Bradley Mining Co, US Department of the Interior, and Sunoco Inc. The Order required the Dischargers to submit a Mining Waste Characterization Work Plan by 1 March 2010 and a Mining Waste Characterization Report by 1 September 2010.

24. On 3 August 2010 Sunoco submitted a Characterization Report in partial compliance of Order No. R5-2009-0869. The report presented results of Sunoco's investigation to date, summarized data gaps and proposed future work to complete site characterization. Sunoco Inc. is the only party making an effort to comply with the Order.

25. The Characterization Report concludes that most mercury contamination in the Marsh Creek Watershed originates from the Mount Diablo Mine, is leached from mining waste and discharged via overland flow to the Lower Pond (Pond 1) and Dunn Creek.

26. Various investigations have sampled surface water discharging from the mine site. Sunoco submitted a Characterization Report that includes data from two sampling events conducted in the Spring of 2010. In addition, at the end of 2011 Sunoco submitted an Additional Characterization Report that includes data from up to five sampling events. The following summarizes results from the Characterization Report:

Constituent	Water Quality Goal (MCL)	Background[2]	Mine Waste[3]	Pond 1[4]	Dunn Creek Downstream[5]
TDS (mg/L)	500 - 1500	225.5	8056	6960	337.5
Sulfate (mg/L)	500	24.5	5660	5465	70.5
Mercury (ug/L)	2	<0.20[1]	97.6	91	0.69
Chromium (ug/L)	50	<5[1]	781.6	22.5	14
Copper (ug/L)	1300	5	202.2	46.5	14
Nickel (ug/L)	100	<5[1]	25224	13900	213.5
Zinc (ug/L)		10.5	693.4	351.5	22

(1) Non-detect result, stated value reflects the method detection limit.
(2) Average of two samples collected from My Creek and Dunn Creek above the mine site.
(3) Average of five surface water samples collected immediately below the tailings/waste rock piles.
(4) Average of two samples collected from Pond 1, the settling pond located at the base of the tailings/waste rock piles.
(5) Average to two samples collected from Dunn Creek downstream of the mine site.

27. The limited population of recent samples summarized in Finding 26 above demonstrates that water draining from the mine waste, collected in Pond 1 and in Dunn Creek downstream of the mine all have been impacted by increased concentrations of salts and metals including mercury. Dunn Creek drains into Marsh Creek. The 1997 Slotton study concluded that Mount Diablo Mercury Mine was the major source of mercury in the Marsh Creek, and the Sunoco study confirms the Slotton results.

LEGAL PROVISIONS

28. Section 303(d) of the Federal Clean Water Act requires states to identify waters not attaining water quality standards (referred to as the 303(d) list). Dunn Creek from Mount Diablo Mine to Marsh Creek and Marsh Creek below Dunn Creek have been identified by the Central Valley Water Board as an impaired water bodies because of high aqueous concentrations of mercury and metals.

29. The Central Valley Regional Board is in the process of writing Total Daily Maximum Loads (TMDLs) for Dunn Creek and Marsh Creek.

30. The Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 4th Edition* (Basin Plan) designates beneficial uses of the waters of the State, establishes water quality objectives (WQOs) to protect these uses, and establishes implementation policies to implement WQOs. The designated beneficial uses of Marsh Creek, which flows into Sacramento and San Joaquin Delta, are contact and non-contact recreation, warm freshwater habitat, wildlife habitat, and rare, threatened and endangered species. Additionally, portions of Marsh Creek within the legal boundary of the Delta have the commercial and sportfishing beneficial use.

31. The beneficial uses of underlying groundwater, as stated in the Basin Plan, are municipal and domestic supply, agricultural supply, industrial service supply, and industrial process supply.

32. Under Water Code section 13050, subdivision (q)(1), "mining waste" means all solid, semisolid, and liquid waste materials from the extraction, beneficiation, and processing of ores and minerals. Mining waste includes, but is not limited to, soil, waste rock, and overburden, as defined in Public Resources Code section 2732, and tailings, slag, and other processed waste materials...." The constituents listed in Finding No.21 are mining wastes as defined in Water Code section 13050, subdivision (q)(1).

33. Because the site contains mining waste as described in California Water Code sections 13050, closure of Mining Unit(s) must comply with the requirements of California Code of Regulations, title 27, sections 22470 through 22510 and with such provisions of the other portions of California Code of Regulations, title 27 that are specifically referenced in that article.

34. Affecting the beneficial uses of waters of the state by exceeding applicable WQOs constitutes a condition of pollution as defined in Water Code section 13050, subdivision (l). The Discharger has caused or permitted waste to be discharged or deposited where it has discharged to waters of the state and has created, and continues to threaten to create, a condition of pollution or nuisance.

35. Water Code section 13304, subdivision (a) states that: *"Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a Regional Water Board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the Regional Water Board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a Regional Water Board may require the provision of, or payment for, uninterrupted replacement water*

service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant."

36. The State Water Resources Control Board (State Board) has adopted Resolution No. 92-49, the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*. This Resolution sets forth the policies and procedures to be used during an investigation or cleanup of a polluted site and requires that cleanup levels be consistent with State Board Resolution No. 68-16, the *Statement of Policy With Respect to Maintaining High Quality of Waters in California*. Resolution No. 92-49 and the Basin Plan establish cleanup levels to be achieved. Resolution No. 92-49 requires waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with California Code of Regulations, title 23, section 2550.4. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Board.

37. Chapter IV of the Basin Plan contains the *Policy for Investigation and Cleanup of Contaminated Sites*, which describes the Central Valley Water Board's policy for managing contaminated sites. This policy is based on California Water Code sections 13000 and 13304, California Code of Regulations, title 23, division 3, chapter 15; California Code of Regulations, title 23, division 2, subdivision 1; and State Water Board Resolution Nos. 68-16 and 92-49. The policy addresses site investigation, source removal or containment, information required to be submitted for consideration in establishing cleanup levels, and the basis for establishment of soil and groundwater cleanup levels.

38. The State Board's Water Quality Enforcement Policy states in part: "At a minimum, cleanup levels must be sufficiently stringent to fully support beneficial uses, unless the Central Valley Water Board allows a containment zone. In the interim, and if restoration of background water quality cannot be achieved, the Order should require the discharger(s) to abate the effects of the discharge (Water Quality Enforcement Policy, p. 19)."

39. Water Code section 13267 states, in part:

"(b)(1) In conducting an investigation, the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region . . . shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board

shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

As described in the foregoing findings, the Dischargers are named in this Order because all have discharged waste at the Mine Site through their actions and/or by virtue of their ownership of the Mine Site and these wastes either are discharging or threatening to discharge waste to surface and/or groundwater and creates or threatens to create a condition of pollution or nuisance. The reports required herein are necessary to formulate a plan to remediate the wastes at the Mine Site, to assure protection of waters of the state, and to protect public health and the environment.

40. Water Code section 13268 states, in part:

(a)(1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267 . . . or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars ($1,000) for each day in which the violation occurs.

*****

(c) Any person discharging hazardous waste, as defined in Section 25117 of the Health and Safety Code, who knowingly fails or refuses to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or who knowingly falsifies any information provided in those technical or monitoring program reports, is guilty of a misdemeanor, may be civilly liable in accordance with subdivision (d), and is subject to criminal penalties pursuant to subdivision (e).

(d)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed five thousand dollars ($5,000) for each day in which the violation occurs.

As described above, failure to submit the required reports to the Central Valley Water Board according to the schedule detailed herein may result in enforcement action(s) being taken against one or more of the Dischargers, which may include the imposition of administrative civil liability pursuant to Water Code section 13268. Administrative civil liability of up to $5,000 per violation per day may be imposed for non-compliance with the directives contained herein.

IT IS HEREBY ORDERED that, pursuant to Water Code section 13304 and 13267, the Dischargers, their agents, successors, and assigns, shall investigate the discharges of waste, clean up the waste, and abate the effects of the waste, within 30 days of adoption of this order,

from Mount Diablo Mercury Mine (Mine Site). The work shall be completed in conformance with California Code of Regulations, title 27, sections 22470 through 22510, State Board Resolution No. 92-49 and with the Regional Water Board's Basin Plan (in particular the Policies and Plans listed within the Control Action Considerations portion of Chapter IV), other applicable state and local laws, and consistent with Health and Safety Code Division 20, chapter 6.8. Compliance with this requirement shall include, but not be limited to, completing the tasks listed below.

1. **The Discharger shall submit the following technical reports:**
   a. **By 12 December 2014**, form a respondents group to manage and fund remedial actions at the Mount Diablo Mine Site or independently take liability to implement the remedial actions in this Order. On or before **12 December 2014** submit a letter or report on any agreement made between the responsible parties. If no agreement is made between the parties, then submit a document stating no agreement has been made. Any agreement shall include all the signatures of the responsible parties agreeing to the respondents group.

   b. **By 31 March 2015,** submit a Work Plan and Time Schedule to close the mine tailings and waste rock piles in compliance with California Code of Regulations, title 27, sections 22470 through 22510 and to remediate the site in such a way to prevent future releases to surface and ground waters of Mercury and other Pollutants.

   c. **Beginning 90 Days after Regional Board approval of the Work Plan and Time Schedule,** submit regular quarterly reports documenting progress in completing remedial actions.

2. **By 31 December 2016,** complete all remedial actions and submit a final construction report.

3. Any person signing a document submitted under this Order shall make the following certification:

   "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

4. Pursuant to Water Code section 13304, subdivision (c)(1), the Discharger shall reimburse the Regional Water Board for reasonable costs associated with oversight of the cleanup of the sites subject to this Order. Failure to do so upon receipt of a billing statement from the State Water Board shall be considered a violation of this Order.

REPORTING

5. When reporting data, the Dischargers shall arrange the information in tabular form so that the date, the constituents, and the concentrations are readily discernible. The data shall be summarized in such a manner as to illustrate clearly the compliance with this Order.

6. Fourteen days prior to conducting any fieldwork, submit a Health and Safety Plan that is adequate to ensure worker and public safety during the field activities in accordance with California Code of Regulations, title 8, section 5192.

7. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, all reports shall be prepared by a registered professional or their subordinate and signed by the registered professional.

8. All reports must be submitted to the Central Valley Water Board. Electronic copies of all reports and analytical results are to be submitted over the Internet to the State Water Board Geographic Environmental Information Management System database (GeoTracker) at http://geotracker.swrcb.ca.gov. Electronic copies are due to GeoTracker concurrent with the corresponding hard copy. Electronic submittals shall comply with GeoTracker standards and procedures as specified on the State Water Board's web site.

9. Notify Central Valley Water Board staff at least five working days prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection.

NOTIFICATIONS

10. No Limitation on Central Valley Water Board Authority. This Order does not limit the authority of the Central Valley Water Board to institute additional enforcement actions and/or to require additional investigation and cleanup of the site consistent with the Water Code. This Order may be revised by the Executive Officer or her delegee as additional information becomes available.

11. Enforcement Notification: Failure to comply with requirements of this Cleanup and Abatement Order may subject the Discharger to additional enforcement action, including, but not limited to, the imposition of administrative civil liability pursuant to Water Code sections 13268 and 13350, or referral to the Attorney General of the State of California for injunctive relief or civil or criminal liability. Pursuant to Water Code section 13350, $5,000 in administrative civil liability may be imposed for each day in which the violation(s) occurs under Water Code section 13304; and pursuant to Water Code section 13268, $1,000 in administrative civil liability may be imposed for each day in which the violation(s) occurs under Water Code section 13267.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday (including

mandatory furlough days), the petition must be received by the State Water Board by 5:00 p.m. on the next business day.

Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

I, Kenneth D. Landau, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region on 10 October 2014.

Order by:

Order signed by

_____

KENNETH D. LANDAU, Assistant Executive Officer

CERTIFICATE

State of Nevada Department of State

I, MALCOLM McEACHIN, *Secretary of State of the State of Nevada, do hereby certify that* CORDERO MINING COMPANY

did on the FOURTH *day of* MARCH, 1941, *file in this office the original Articles of Incorporation; that said Articles are now on file and of record in the office of the Secretary of State of the State of Nevada; and further, that said Articles contain all the statements of facts required by the law of said State of Nevada.*

In Witness Whereof, I have hereunto set my hand and affixed the Great Seal of State, at my office in Carson City, Nevada, this FOURTH *day of* MARCH, A.D. 1941.

Malcolm McEachin

Secretary of State.

By ..... Deputy.

ARTICLES OF INCORPORATION

OF

[illegible] MINING COMPANY

WE, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the provisions and subject to the requirements of the General Corporation Law of the State of Nevada, and hereby certify:

ARTICLE I

The name of this corporation shall be BORDER MINING COMPANY.

ARTICLE II

The principal office and place of business of this corporation in Nevada shall be McDermitt in the County of Humboldt, State of Nevada.

ARTICLE III

The nature of the business and the objects and purposes proposed to be transacted, promoted and carried on by this corporation are:

To engage in the business of mining generally and in any or all of the various activities necessary or convenient for the prosecution thereof;

To purchase, hire, lease or otherwise acquire lands containing or believed to contain, cinnabar, gold, silver, lead, zinc, copper, iron, coal, manganese, oil, and other minerals, mineral ores or deposits of every kind and description;

To purchase, hire, lease, or otherwise acquire lands, mines, mineral lands, water, water rights, franchises, rights of way, easements, mill sites, timber and any and all rights and properties necessary or convenient in connection with the prosecution of the mining business;

To acquire mining, mineral or production rights;

To engage in searching for, prospecting and exploring for ores, deposits and minerals and to locate mining claims, mounds, fields, or holes, and to record same pursuant to the mining laws of Nevada, the United States, the several other states thereof and of other countries;

To crush, concentrate, smelt, roast, distill, manipulate and otherwise treat mineral ores or deposits of every kind and description;

To contract for, build, sell, hire, buy, operate, lease or otherwise acquire furnaces, crushers, stamp mills, smelters, refiners, buildings, machinery, dredges, stores, dwellings, office buildings and warehouses in connection with the operation and prosecution of said mining business;

To buy, sell, offer for sale, transport, store or otherwise deal in ores, minerals, metals, equipment, machinery and merchandise generally;

To enter into contracts of every kind and lawful nature whatsoever with any person, firm or corporation, public or private in furtherance of the objects and purposes of this corporation in the prosecution of the mining business.

ARTICLE IV

The amount of the total authorized capital stock of this corporation shall be One Hundred Thousand Dollars ($100,000), divided into One Thousand (1000) shares of common stock of the par value of One Hundred Dollars ($100) each.

ARTICLE V

The members of the governing board of this corporation shall be styled directors and the number thereof shall be not less than three (3), nor more than six (6) as may from time to time be determined by the By-Laws of this corporation. The number of directors of the first Board of Directors shall be three (3) and their names and post office addresses are as follows:

NAME	RESIDENCE
J. Edgar Pew	Mt. Moro Road, Villanova, Pa.
John Blair Moffett	Fishers Avenue, Bryn Mawr, Pa.
Frank B. Gummey, II.	Youngsford Road, Gladwyne, Pa.

ARTICLE VI

The capital stock of this company, after the amount of the par value has been paid in, shall not be subject to assessment to pay debts of the corporation.

ARTICLE VII

The name and post office address of each of the Incorporators signing these Articles of Incorporation is:

NAME	ADDRESS
John Blair Moffett	1608 Walnut Street, Phila., Pa.
Claude L. Roth	1608 Walnut Street, Phila., Pa.
Frank B. Gummey, II.	1608 Walnut Street, Phila., Pa.

ARTICLE VIII

This corporation shall have perpetual existence.

ARTICLE IX

The power to regulate the business of this corporation shall be vested in the Board of Directors and the power of the officers to conduct the affairs of this corporation shall be that entrusted to them from time to time by order of the Board of Directors.

IN WITNESS WHEREOF we have hereunto set our hands and seals this 28th day of February, A. D. 1941.

In the presence of:

Mary M Wiley — Claude L Roth (SEAL)

Catherine J. Unger — John Bluemmgart (SEAL)

Virginia F. Smith — Frank P. Gummey (SEAL)

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF PHILADELPHIA :

ON THIS 29th day of February, A. D. 1941, personally appeared before me, a Notary Public in and for the County and State aforesaid, JOHN BLAIR MOFFETT, CLARK L. [illegible], and FRANK L. [illegible], II, known to me to be the persons described in and who executed the foregoing Articles of Incorporation; who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and seal this 29th day of February, A. D. 1941.

Mary M. Kelly
NOTARY PUBLIC

My Commission expires:

May 14 1943

WAIVER OF NOTICE OF THE FIRST MEETING OF INCORPORATORS OF CORDERO MINING COMPANY, a NEVADA CORPORATION.

We, the undersigned, the incorporators of Cordero Mining Company, a Nevada Corporation, named in the Articles of Incorporation filed in the office of the Secretary of State of Nevada March 4, 1941, do hereby waive any and all further notice of the time, place and purpose of the first meeting of the Incorporators to be held at 1608 Walnut Street in the City and County of Philadelphia, Commonwealth of Pennsylvania on March 10, 1941 at 4 o'clock, P. M.

The undersigned do further consent to the transaction of any business requisite to complete the incorporation and organization of the Company and for the purpose of adopting by-laws and electing Directors named in the Articles of Incorporation.

Claude L Roth

Dated; March 10, 1941.

CORDERO MINING COMPANY

MINUTES OF THE FIRST MEETING OF THE INCORPORATORS

The first meeting of the incorporators of Cordero Mining Company was held at 1608 Walnut Street in the City and County of Philadelphia, Commonwealth of Pennsylvania, at 4 o'clock, P. M., on the 10th day of March, A. D. 1941, pursuant to a written Waiver of Notice signed by all the Directors fixing the time and place for said meeting.

All the Incorporators executing the Articles of Incorporation were present in person, to wit:

John Blair Moffett

Claude L. Roth

Frank B. Gummey, II.

On motion unanimously carried, Mr. John Blair Moffett was elected Chairman and Mr. Frank B. Gummey, II, Secretary of the meeting.

The Waiver of Notice signed by all the Incorporators was delivered to the Secretary to be filed with the minutes of this meeting.

The Chairman then reported that the Secretary of State of the State of Nevada, had filed the Articles of Incorporation on March 4th, 1941 and had issued his certificate thereof. The Chairman further stated that a certified copy of the Articles of Incorporation had been delivered to the Clerk of Humboldt County, State of Nevada to be filed and indexed in accordance with the provisions of the General Corporation Law of Nevada. The receipt of the Clerk of Humboldt County for payment of the fee for filing and indexing the Articles of Incorporation was delivered to the Secretary, together with the receipt of the State of Nevada for filing the Articles of Incorporation.

The Secretary was instructed to insert a copy of the Articles of Incorporation with the Certificate of the Secretary of State of Nevada in the Minute Book of the Company preceding the records of this meeting.

On motion duly made, seconded and unanimously carried, it was:

> "RESOLVED, that the Articles of Incorporation of Cordero Mining Company as filed in the Office of the Secretary of State of Nevada, be and they hereby are accepted and that this Company proceed to do business thereunder".

The Chairman then presented a set of by-laws for the regulation and management of the affairs of the Company which he proceeded to read to the meeting article by article. Following a discussion of the proposed by-laws they were, upon motion duly made, unanimously adopted as the By-Laws of the Cordero Mining Company and the Secretary was then directed to include said by-laws as a part of the permanent record of the minutes of this meeting in the Minute Book of the Company.

The Chairman called for the nomination of directors of the company to hold office until the next annual meeting of stockholders and until their successors are duly elected and qualified. The by-laws of the Company, as adopted by the incorporators, having provided for a board of three (3) directors, the following persons named in the Articles of Incorporation were duly nominated:

J. Edgar Pew

John Blair Moffett

Frank B. Gummey, II.

No further nominations having been made, the nominations, upon motion duly made, seconded and carried, were closed. The incorporators thereupon delivered their ballots to the Secretary of the meeting who,

having canvassed same, reported that the above named persons were elected Directors of the Company by the unanimous vote of all the incorporators. The Chairman thereupon declared the nominees elected as directors of the Company to hold office until the next annual meeting of stockholders of the Company and until their successors are duly elected and qualified.

On motion duly made and seconded, the following resolution was unanimously adopted:

> "RESOLVED, That the Board of Directors be and it is hereby authorized to issue all or any part of the capital stock of this Company authorized by the Articles of Incorporation, in such amounts and for such considerations as from time to time shall be determined by the Board of Directors and as may be permitted by law."

On motion duly made, seconded and carried, the meeting adjourned.

Frank W. Gunsaulus
SECRETARY

Chairman of the Meeting.

CORDERO MINING COMPANY

BY-LAWS

ARTICLE I

OFFICES

1. The principal office of the Company, as stated in the Certificate of Incorporation filed with the Secretary of State of Nevada, March 4, 1941, is at ~~McDermitt~~ Reno, ~~Humboldt~~ Washoe County, Nevada. See Minutes 3-11-41

2. The Company may, from time to time, change the location of its principal office within the State of Nevada.

3. The Company may also maintain offices at other places within and without the State of Nevada as the Board of Directors may, from time to time, appoint or as the business of the Company may require.

ARTICLE II

STOCKHOLDERS MEETINGS.

1. Meetings of the stockholders of the Company may be held at any place within or without the State of Nevada.

2. The annual meeting of stockholders of the Company for the election of Directors to succeed the directors named in the Certificate of Incorporation and those chosen annually thereafter, shall be held each year on the 3rd Tuesday of January, if not a legal holiday, and if a legal holiday, the day following at 10:30 A. M.

3. Special meetings of the stockholders may be called at any time by the President, the Secretary, a majority of the Board of Directors,

or upon the request in writing of the owners of a majority of all the issued and outstanding shares of the authorized capital stock entitled to vote upon the matters presented at such special meetings. Such request shall be delivered to the President or Secretary or any Directors, whereupon it shall be the duty of the President or Secretary or Director, to issue a call for such meeting to all the stockholders within three (3) days after receipt of the written request of the owner of a majority of the issued and outstanding authorized capital stock of the Company.

4. Written notice stating the purpose or purposes for which meetings of the stockholders are called and the time when and the place where they are to be held, shall be served either personally or by mail upon each stockholder entitled to vote at such meeting, not less than ten (10) nor more than sixty (60) days, before such meetings. If such notice be mailed, it shall be directed to each stockholder at the several addresses of the stockholders appearing upon the records of the Company.

5. Any stockholder may waive notice of any meeting by writing, signed by him, or by his duly authorized attorney, either before or after the meeting.

6. A quorum at any annual or special meeting of the stockholders of the Company shall consist of stockholders representing, either in person or by proxy, a majority of the issued and outstanding shares of the authorized capital stock of the Company entitled to vote at such meeting, and except as otherwise provided by law, a majority of the votes cast shall be sufficient to elect directors or pass any measure presented at any duly constituted meeting.

7. Voting at all stockholders meetings shall be viva voce unless any qualified voter shall demand a vote by ballot or the law specifically requires the question presented to the stockholders shall be determined by a ballot of the stockholders, in which event, each ballot shall be signed by the stockholder casting same or by his proxy and shall state the number of shares voted.

8. The Secretary of the Company shall have available for each meeting of the stockholders, either the stock ledger of the Company or a complete alphabetical list of the stockholders of the Company entitled to vote thereat. Whenever, at any meeting of the stockholders, the voting is to be by ballot, the presiding officer at the meeting shall appoint two Inspectors of Election, who shall examine all proxies and take charge of all ballots, with the power to decide upon the qualification of voters, the validity of proxies and the acceptance or rejection of votes.

ARTICLE III

STOCK

1. Certificates of shares of the authorized capital stock of this Company shall be issued in numerical order and each stockholder shall be entitled to a certificate issued in his name for the number of shares owned which shall be signed by the President and Secretary of the Company and sealed with the corporate seal.

2. Transfers of stock shall be made only on the transfer books of the Company and before a new certificate is issued for stock transferred, the old certificate thereof shall be surrendered for cancellation.

3. In case of loss or destruction of any certificate of stock, another may be issued in its place by order of the Board of Directors who may also, according to their judgment, require the owner or his legal representatives to give the Company a bond in such amount as they may direct as indemnity against any claim arising against the Company by reason thereof.

4. Stockholders shall be entitled to one (1) vote for each share of stock standing in his name on the books of the Company, provided however, the Directors may prescribe a period not exceeding forty (40) days prior to any meeting of stockholders during which no transfer on the books of the Company may be made, or may fix a day not more than forty (40) days prior to the holding of any such meeting, as the day as of which stockholders entitled to notice of and to vote at such meeting shall be determined, and in such event, stockholders of record on such day shall be entitled to notice and to vote at such meeting.

5. The stockholders registered on the books of the Company, shall be entitled to be treated by the Company as the holders in fact of the stock standing in their respective names, and the Company shall not be bound to recognize any equitable claim to, or interest in any share on the part of any other person, whether or not it shall have express or other notice thereof.

ARTICLE IV

BOARD OF DIRECTORS

Amended 1-19-60

1. The business of the Company shall be managed by a Board of Directors composed of not less than three ~~(3)~~ (5) directors, nor more than

Amended 1-16-73

six (6), in accordance with Article V of the Certificate of Incorporation. Directors shall be of full age and at least one (1) director shall be a citizen of the United States. Directors need not be stockholders.

Amended 1-19-60

2. The number of directors of this Company shall be three ~~(3)~~ 5 (5), until the number thereof is increased to six (6) by amendment of this clause of the By-Laws in the manner hereinafter provided.

Amended 1-16-73

3. All the directors shall be elected annually at the annual meeting of stockholders of the Company by a plurality of the votes cast at such meeting. If not elected at the annual meeting of the stockholders, they may be elected thereafter at any special meeting of the stockholders called and held for such purpose. Any director may be removed from office by the vote or written consent of stockholders representing not less than two-thirds of the issued and outstanding stock entitled to vote thereon.

4. All vacancies in the Board of Directors, including those caused by an increase in the Board of Directors, may be filled by a majority of the remaining directors, though less than a quorum. Directors may give notice of their resignation to the Board effective at a future date and the Board shall have power to fill such vacancy to take effect when such resignation shall become effective. All vacancies filled by a majority of the remaining members of the Board shall hold office during the remainder of the term of the vacated office.

5. Meetings of the Board of Directors may be held within or outside the State of Nevada. A majority of the Board shall constitute a quorum.

6. A regular meeting of the Board of Directors for the election of officers shall be held following the election of Directors at the annual meeting of the stockholders. Such regular meeting may be held without notice whenever a quorum of such Board shall assemble either at the place where the annual meeting of stockholders is held, or at any other place within or without the State of Nevada.

7. Special meetings of the Board of Directors may be called at any time by the President, Secretary, or a majority of the Board of Directors. Special meetings may be held at the principal office of the Company or at such other place or places within or without the State of Nevada designated in the notice calling such special meeting, which may be given to each Director personally, by mail or telegraph, twenty-four (24) hours in advance.

8. No stated salary shall be paid Directors as such for their services, but nothing herein contained shall be construed to preclude any Director from serving the Company in any other capacity and receiving compensation therefor.

ARTICLE V

OFFICERS.

Amended Jan. 18, 1944 amended Jan. 21, 1947

1. The officers of the Company shall be a President, a Vice-President, Secretary, Treasurer, two Assistant ~~Secretary~~ Secretaries and two Assistant Treasurers and a Comptroller. The Board of Directors may create additional offices from time to time. All officers shall be elected by the Board of Directors, and except in the case of the President, no officer need be a Director of the Company. Two or more offices may be held by the same person, but no instrument required by law or by these by-laws to be executed, acknowledged or verified by two or more officers, shall be executed, acknow-

Amended 1-2-45 Amended 1-19-60 Amended 9/10/65

ledged or verified by the same person in more than one capacity. The Officers of the Company shall be elected by the Board of Directors for one (1) year and hold office until their successors are duly elected and qualify. Any Officer may be removed by a majority of the Board of Directors and any such vacancy may be likewise filled.

2. The President of the Company shall be the chief executive officer and shall have general supervision of the affairs of the Company. He shall preside at all meetings of the stockholders and directors which he attends and shall sign or counter-sign stock certificates, contracts or other documents and instruments on behalf of the Company.

3. The Vice President shall sign or counter-sign all contracts, documents or other instruments on behalf of the Company as the President or the Board of Directors may by direction or resolution, authorize or qualify him to do.

The Vice President shall preside at meetings of the stockholders or directors in the absence of the President and if both be absent, the stockholders or directors shall appoint a Chairman pro tem for any meeting.

4. The Secretary shall issue notices of all meetings of stockholders and directors, unless otherwise specifically provided in these by-laws or in the General Corporation Laws of the State of Nevada. The Secretary shall keep the minutes of all meetings of Directors and Stockholders and have charge of the corporate seal, books, records and accounts of the Company. He shall perform such duties as shall be required of him by the Board of Directors and as are incident to his office.

5. The Treasurer shall have custody of all funds of the Company and shall keep an account thereof. He shall direct the disbursement of funds of the Company in payment of its debts or obligations or as he may be ordered by the Board of Directors, taking proper vouchers for such

disbursements and shall render to the Board of Directors an account of such transactions. He shall perform all other duties incident to his office or as required by him by the Board of Directors. The Board of Directors may, from time to time, authorize other officers of the Company to draw upon the funds of the Company and perform any other duties of the Treasurer as the Board shall specifically direct.

6. The Assistant Treasurer shall perform such duties as the Treasurer shall direct and other services authorized by the Board of Directors.

7. The Assistant Secretary shall perform such duties as the Secretary shall direct.

8. The Board of Directors may delegate additional powers to the officers of this Company from time to time, but unless so delegated the officers shall not have any power in addition to that provided in these By-Laws.

ARTICLE VI

DIVIDENDS AND FINANCE

1. Dividends may be paid to stockholders from the Company's net earnings or from the surplus of its assets over its liabilities, including capital in the manner provided by the General Corporation Law of Nevada.

2. The funds of the Company shall be deposited in the name of the Company in such bank or banks or trust company or trust companies as the Board of Directors shall designate and shall be drawn upon only by check or checks signed by the officers designated by Resolution of the Board of Directors.

ARTICLE VII

BOOKS AND RECORDS.

1. Books, accounts and records of the Company may be kept within or without the State of Nevada, provided nevertheless, a certified copy of the Certificate of Incorporation, a certified copy of the By-Laws and a duplicate stock ledger to be revised annually containing an alphabetical list of all persons who are stockholders showing their places or residence and the number of shares held, shall be kept at the principal office of the Company within the State of Nevada for the purposes and in the manner provided by the General Corporation Law of Nevada.

ARTICLE VIII

WAIVER OF NOTICE

1. A Waiver of Notice in writing signed by a stockholder, director, or officer, whether it be signed before or after the time stated in said waiver for the holding of any meeting or the transaction of any other business or purpose shall be deemed equivalent to any notice required to be given to any such stockholder, director or officer under the provisions of these By-Laws or the Laws of the State of Nevada, unless such waiver in any case be invalid to accomplish the purpose desired.

ARTICLE IX

AMENDMENTS, ALTERATIONS AND REPEALS.

1. Upon the issuance of capital stock by this Company, the stockholders thereof shall have the power to amend, alter and repeal these By-Laws.

2. A majority of the whole Board of Directors at any regular or special meeting may make additional or supplementary By-Laws, and alter or repeal any by-laws in any manner not inconsistent with any by-law which has been adopted by the stockholders. Any by-law or additional or supplementary provisions to any by-law which are adopted by the Board of Directors may be altered, or repealed at any subsequent or special meeting of the Stockholders.

FIRST MEETING OF THE BOARD OF DIRECTORS NAMED IN THE ARTICLES OF INCORPORATION OF CORDERO MINING COMPANY, A NEVADA CORPORATION.

The directors named in the Articles of Incorporation of Cordero Mining Company, held their first meeting at 1608 Walnut Street, in the City and County of Philadelphia, Commonwealth of Pennsylvania on March 11th, 1941 at 3:30 o'clock, P. M.

All of the Directors named in the Articles of Incorporation which were filed in the Office of the Secretary of State of Nevada on March 4th, 1941, were elected by the Incorporators of the Company at a meeting held March 10th, 1941. All Directors of the Company were present, to wit:

J. Edgar Pew

John Blair Moffett

Frank B. Gummey, II

Mr. J. Edgar Pew was appointed to act as Chairman of the meeting and Mr. F. S. Reitzel, present by invitation, was appointed to act as Secretary of the meeting.

A Waiver of Notice signed by all the Directors of the Company was handed to the Secretary of the meeting to be placed on file with the minutes.

The Minute Book of the Company with the minutes of the first meeting of the Incorporators therein, including a copy of the Articles of Incorporation and the By-Laws of the Company as adopted by the Incorporators, was delivered to the Secretary of the meeting.

The Chairman stated that the first order of business would be for the Board of Directors to adopt a corporate seal for the Company

and a form of Stock Certificate for shares of the authorized capital stock to be issued by the Company.

The following resolution was, upon motion duly made and seconded, unanimously adopted:

> RESOLVED, That the corporate seal of Cordero Mining Company shall consist of two concentric circles between which shall be inscribed the name of the Company "Cordero Mining Company" and within the inner circle "Incorporated, March 4, 1941, Nevada", and
>
> BE IT FURTHER RESOLVED, That the impression of the seal shall be made upon the margin of the minutes of this meeting wherein this resolution is inscribed.

A form of stock certificate was presented to the Directors and the following resolution was thereupon moved, seconded, and unanimously adopted:

> RESOLVED, That the form of stock certificate this day presented to the Board of Directors of Cordero Mining Company, to be attached to and made part of the minutes of this meeting, is hereby adopted as the form of the Certificate to be signed by the President and Secretary of the Company for certifying the number of shares of the authorized capital stock of this Company owned by the stockholder in whose name such Certificate is issued.

The Chairman then declared the meeting open for the election of officers. Mr. Gummey thereupon nominated Mr. J. Edgar Pew for President, Mr. S. H. Williston for Vice-President, Mr. F. S. Reitzel for Secretary, Mr. Robert G. Dunlop for Assistant Secretary, Mr. Frank Cross for Treasurer and Mr. S. H. Williston for Assistant Treasurer. The nominations having been duly seconded by

Mr. Moffett and there being no further nominations, the nominations were upon motion duly made, seconded and carried, closed.

The Chairman thereupon polled the Directors for the election of the several nominees for their respective offices and declared that as a result the aforesaid nominees had been duly elected to their respective offices by the unanimous vote of the Board, to serve as the officers of the Company until the next annual meeting of the stockholders and until their successors are duly elected and qualify.

Mr. John Blair Moffett thereupon tendered his resignation as a Director of the Company which was accepted by the Chairman. Mr. Gummey thereupon proposed the election of Mr. F. S. Reitzel as a Director of the Company to fill the vacancy caused by the resignation of Mr. Moffett. There being no other nominations, Mr. F. S. Reitzel was, by resolution, moved, seconded and carried, unanimously elected a Director of the Company.

Mr. Gummey stated to the Chairman that it was necessary for the Company to maintain a resident agent within the State of Nevada and that as Mr. S. H. Williston, Vice-President of the Company directing the operations of the Company within the State of Nevada, was not a resident of that State, he was not qualified to act as resident agent. It was thereupon proposed that the Company appoint The Corporation Trust Company of Nevada, the resident agent of this Company for the State of Nevada.

Mr. Gummey then stated to the Chairman that the appointment of The Corporation Trust Company of Nevada would necessitate a

change of the location of the principal office of the Company from McDermitt in the County of Humboldt as named in the Articles of Incorporation to the Town of Reno, County of Washoe. To accomplish this change, it is necessary for the Board of Directors to adopt a resolution reciting the change in the location of the principal office within the State of Nevada and to file a copy of the Resolution, certified by the President and Secretary, in the Office of the Secretary of State at Carson City and in the Office of the County Clerk of Washoe County. Accordingly, the following resolution was offerred, moved, seconded, and unanimously adopted:

> RESOLVED, That the principal office and place of business of Cordero Mining Company within the State of Nevada, be changed from McDermitt, Humboldt County, as set forth in the Articles of Incorporation, to Room 211, No. 206 North Virginia Street, Town of Reno, County of Washoe.

The Chairman then discussed the question of opening bank accounts for the funds of the Company. Following a discussion, the First National Bank of Reno, Nevada, was selected for depositing the funds of the Company needed to carry on the operations of the Company in the State of Nevada and the Central-Penn National Bank was selected for the main depository for funds of the Company in Philadelphia. The following resolutions were thereupon duly moved, seconded and unanimously carried:

> RESOLVED, That the officers of the Cordero Mining Company, a Nevada corporation, be and they hereby are authorized and directed to open a bank account

in the name of this Company with the First National Bank of Reno, Nevada, which bank be and is hereby authorized to honor from the deposits of this Company, checks drawn against such deposits signed either by Frank Cross, Treasurer, or S. H. Williston, Assistant Treasurer, so long as there be a balance in favor of this Company.

BE IT RESOLVED, That the officers of the Cordero Mining Company, a Nevada corporation, be and they hereby are authorized and directed to open a bank account in the name of this company with the Central-Penn National Bank in the City of Philadelphia, Pennsylvania, which bank be and is hereby authorized to honor from the deposits of this company checks drawn against such deposits signed either by Frank Cross, Treasurer, or J. Edgar Pew, President, so long as there be a balance in favor of this company.

The Chairman stated that the Sun Oil Company of Philadelphia, Pennsylvania, desired to subscribe for Seven hundred fifty (750) shares of stock, totalling Seventy-five thousand dollars ($75,000.), of the authorized capital stock of the Company. Accordingly the following resolution was, upon motion duly made and seconded, unanimously adopted:

RESOLVED, That the proper officers of this Company be and they hereby are authorized to issue 750 shares having a par value of $100 each of the authorized capital stock of this Company in the name of Sun Oil Company, said shares to be fully paid and non-assessable and to deliver same to the officers of Sun Oil Company upon the payment of $75,000.00 therefor. The issuance of said shares shall be made from time to time as the needs of the Company for capital require.

Mr. Frank B. Gummey, II, thereupon tendered his resignation as a Director of the Company which was accepted by the

Chairman. Mr. Reitzel thereupon proposed the election of Mr. S. H. Williston as a Director of the Company to fill the vacancy caused by the resignation of Mr. Gummey. There being no other nominations, Mr. S. H. Williston was, by resolution moved, seconded and carried, unanimously elected a Director of the Company.

Mr. Reitzel stated that it would be necessary for convenience at the mines to open a branch bank account with the First National Bank of Nevada at Winnemucco, Nevada, where it would be necessary to carry an average balance of approximately $500.00. The following resolution was thereupon duly made, seconded and unanimously carried:

> RESOLVED, That the Officers of the Cordero Mining Company, a Nevada corporation, be and they hereby are authorized and directed to open a bank account in the name of this Company with the First National Bank of Nevada at Winnemucco, Nevada, which bank be and is hereby authorized to honor from the deposits of this Company, checks drawn against such deposits, signed either by Frank Cross, Treasurer, S. H. Williston, Assistant Treasurer, or E. G. Lee, Chief Clerk, so long as there be a balance in favor of this Company.

There being no further business to come before the meeting, it was upon motion duly made, seconded and carried, adjourned.

Secretary of the meeting.

MINUTES OF SPECIAL MEETING OF
BOARD OF DIRECTORS OF CORDERO
MINING COMPANY HELD
AUGUST 21, 1941 at 2 P.M.

At the call of the Secretary a special meeting of the Board of Directors of Cordero Mining Company was held in the Philadelphia office of said company, 1608 Walnut Street, Philadelphia, Pa. at 2 P.M. on August 21, 1941. The following Directors were present, constituting a majority of the Board and a quorum

J. Edgar Pew
F. S. Reitzel

Director absent
S. H. Williston

On motion duly made and seconded, it was

RESOLVED, That the authority of Mr. E. G. Lee, Chief Clerk, to sign company checks against the company's account in the First National Bank of Nevada at Winnemucca, Nevada be discontinued as of August 21st and that starting with August 22nd Mr. D. Ford McCormick, General Superintendent, be authorized to sign checks of said account and said bank be notified accordingly.

There being no further business, the meeting adjourned.

Secretary

ANNUAL MEETING OF THE BOARD OF DIRECTORS
OF CORDERO MINING COMPANY, HELD FRIDAY,
FEBRUARY 12, 1954, AT 3:00 O'CLOCK P.M.

The Directors of Cordero Mining Company met for organization at the office of the Company, 1608 Walnut Street, Philadelphia, Pennsylvania, at 3:00 o'clock P.M., on Friday, February 12, 1954.

Present: S. H. Williston
D. P. Jones

Absent: J. N. Pew, Jr.

The first order of business was the election of a Chairman. Upon motion duly made, seconded and carried, S. H. Williston was elected Chairman of the meeting.

Upon motion duly made, seconded and carried, D. P. Jones was named Secretary of the meeting.

The Chairman of the meeting stated it was now in order to proceed with the election of the corporate officers, and called for nominations.

The following officers were nominated, and the nominations duly seconded:

J. N. Pew, Jr.	President
S. H. Williston	Vice President
J. C. Agnew	Secretary & Treasurer
Mrs. E. A. Williston	Assistant Secretary
Donald P. Jones	Assistant Secretary
S. H. Williston	Assistant Treasurer
H. W. Unruh	Assistant Treasurer
Donald P. Jones	Comptroller

There being no further nominations, the Secretary of the meeting was instructed to cast a unanimous ballot for the respective nominees.

The minutes of the meeting of the Board of Directors held January 20, 1953, were read and approved.

There being no further business, the meeting was, upon motion duly made and seconded, adjourned.

Donald P. Jones
Secretary of the Meeting

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS OF CORDERO MINING COMPANY HELD OCTOBER 22, 1954, AT 3:00 O'CLOCK P. M.

A Special Meeting of the Board of Directors of Cordero Mining Company was held at the office of the Company, 1608 Walnut Street, Philadelphia, Pennsylvania, on Friday, October 22, 1954, at 3:00 o'clock P. M.

The following members of the Board were present, constituting a majority of the Board:

J. N. Pew, Jr.
D. P. Jones

Mr. J. N. Pew, Jr. acted as Chairman of the meeting, and J. C. Agnew, Secretary of the Company, acted as Secretary of the meeting.

The following resolution was presented and, upon motion duly made and seconded, unanimously adopted:

RESOLVED, That the Treasurer of the Company be and he is hereby authorized to maintain a bank account in the Wells Fargo Bank and Union Trust Company, San Francisco, California;

AND BE IT FURTHER RESOLVED, That the funds of the Company on deposit in said bank be subject to withdrawal by checks signed as follows:

Checks amounting to $1000.00 or more signed by any one of the following:

J. C. Agnew, Treasurer
H. W. Unruh, Assistant Treasurer
J. Eldon Gilbert, Manager

Checks amounting to less than $1000.00 signed by the following:

Bert Mitchell, Superintendent

The following resolution was presented and, upon motion duly made and seconded, unanimously adopted:

RESOLVED, That the Treasurer of the Company be and he is hereby authorized to maintain a bank account in the United States National Bank of Portland, Madras, Oregon;

AND BE IT FURTHER RESOLVED, That the funds of the Company on deposit in said bank be subject to withdrawal by checks signed as follows:

Checks amounting to $1000.00 or more signed by any one of the following:

J. C. Agnew, Treasurer
H. W. Unruh, Assistant Treasurer
J. Eldon Gilbert, Manager

Checks amounting to less than $1000.00 signed by the following:

F. E. Lewis, Superintendent

There being no further business, the meeting was, upon motion duly made and seconded, adjourned.

J. C. Agnew
Secretary

MINUTES OF SPECIAL MEETING OF THE BOARD OF DIRECTORS OF CORDERO MINING COMPANY

A Special Meeting of the Board of Directors of Cordero Mining Company was held at 1608 Walnut Street, Philadelphia, Pennsylvania, on April 19, 1963 at 2:00 o'clock P. M.

The following Directors, constituting a quorum of the Board, were present:

Donald P. Jones
Jno. G. Pew
Jos. T. Wilson, Jr.

Absent:

Samuel H. Williston

Mr. Jno. G. Pew, Vice President of the Company, acted as Chairman of the meeting, and Jos. T. Wilson, Jr., Secretary of the Company, acted as Secretary of the meeting.

The Secretary presented and read a Waiver of Notice of the meeting, signed by all the Directors, which was ordered filed with the minutes of this meeting.

The minutes of the meeting of the Board of Directors held on March 12, 1963 were read and approved.

The Chairman advised that it would be appropriate to fill a vacancy on the Board of Directors resulting from the death of Mr. Joseph N. Pew, Jr. Upon motion duly made and seconded, Mr. Kingsley V. Schroeder was nominated as Director of the corporation to hold office until his successor is elected and qualified. There being no further nominations, the nominations were declared closed and the Secretary of the meeting was instructed to cast a unanimous ballot for the nominee. The Chairman thereupon declared Mr. Schroeder elected a Director of the Company to serve until his successor is elected and qualified.

The Chairman stated that it was now in order to elect certain officers of the Company to serve until their successors are elected and qualified. Upon motion duly made, seconded and carried, Mr. Jno. G. Pew was nominated for the office of President, and Mr. Kingsley V. Schroeder was nominated for the office of Vice-President. There being no further nominations, the nominations were declared closed and the Secretary of the meeting was instructed to cast a unanimous ballot for the respective nominees. The Chairman thereupon announced the election of the nominees to the offices for which they were nominated.

The Treasurer stated that it would now be appropriate to change bank signing authorities. Upon motion duly made, seconded and carried, the following resolutions were unanimously adopted:

RESOLVED, That the Treasurer of the Company be and he is hereby authorized to open an account on behalf of the Company in such banks or trust companies as may be designated;

BE IT FURTHER RESOLVED, That the funds of this corporation on deposit be subject to withdrawal by check signed by any one of the following officers:

Jno. G. Pew, President
Samuel H. Williston, Vice President
Jos. T. Wilson, Jr., Treasurer
W. S. Woods, Jr., Assistant Treasurer

There being no further business, the meeting, upon motion duly made, seconded and carried, was adjourned.

Secretary

MINUTES OF THE ANNUAL MEETING OF THE BOARD OF DIRECTORS OF CORDERO MINING COMPANY

The Directors of Cordero Mining Company met for organization at 1608 Walnut Street, Philadelphia, Pennsylvania on January 21, 1969 at 11:00 o'clock A.M.

The following directors, constituting a quorum of the Board, were present:

Richard R. Anderson
Joseph R. Layton
Kingsley V. Schroeder
Jos. T. Wilson Jr.

Absent:

J. Eldon Gilbert

Mr. Kingsley V. Schroeder, Chairman, acted as Chairman of the meeting and Jos. T. Wilson, Jr., Secretary, acted as Secretary of the meeting.

Mr. Kingsley V. Schroeder announced that at the Annual Meeting of Stockholders the following persons had been elected Directors of Cordero Mining Company for the ensuing year and until their successors are elected and qualify:

Richard R. Anderson
J. Eldon Gilbert
Joseph R. Layton
Kingsley V. Schroeder
Jos. T. Wilson, Jr.

Copies of the minutes of the meeting of the Board of Directors held on September 10, 1968 having been given to each Director, the Directors present agreed to dispense with the reading of the minutes and approved and adopted them as they appeared in copies received by them.

The Chairman stated that it was now in order to elect officers of the Company to serve for one year and until their successors are elected and qualify.

Upon motion duly made, seconded and carried, the following persons were nominated for the offices set opposite their respective names:

Kingsley V. Schroeder	Chairman of the Board
J. Eldon Gilbert	President
Verne P. Haas	Vice President
Richard R. Anderson	Vice President
Jos. T. Wilson, Jr.	Secretary & Treasurer
Joseph R. Layton	Comptroller
William S. Woods, Jr.	Ass't. Secretary & Ass't. Treasurer
Mrs. Patricia F. Gilbert	Ass't. Secretary

There being no further nominations, the nominations were declared closed and the Secretary of the meeting was instructed to cast a unanimous ballot for the respective nominees.

The Chairman thereupon announced the election of the nominees to the offices for which they were nominated.

There being no further business, the meeting, upon motion duly made, seconded and carried, was adjourned.

Secretary

CORDERO MINING COMPANY
UNANIMOUS CONSENT OF DIRECTORS

All members of the Board of Directors of CORDERO MINING COMPANY hereby consent to and adopt the following resolutions:

RESOLVED, that in the judgment of the Board of Directors of the Corporation it is hereby deemed advisable and for the benefit of the Corporation that it should be voluntarily liquidated out of court, in accordance with the Business Corporation Act of the State of Nevada; (NRS 78.420 et al)

RESOLVED, that the Plan of Liquidation, attached hereto and identified as Exhibit I be, and it hereby is, approved and adopted to effect such complete liquidation in accordance with the following resolutions;

RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized to sell or otherwise liquidate any or all of the tangible assets of the Corporation, which in their judgment should be so sold or liquidated to facilitate the liquidation of the Corporation;

RESOLVED, that after providing for all the proper debts of the Corporation, the remaining assets of the Corporation, including cash and furniture and fixtures, be distributed to the sole stockholder of the Corporation;

RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized and directed, to file all requisite instruments necessary to accomplish the subject liquidation of the Corporation with the Secretary of State of the State of Nevada;

RESOLVED, that the actions provided for in the foregoing resolutions providing for the complete liquidation of the Corporation and the distribution of all its assets be commenced immediately, and that such subsequent distribution of all its assets be completed as soon as practicable, but in no event later than December 31, 1973; and

RESOLVED, that the Board of Directors hereby recommends to the Shareholder that in the interest of the Corporation, the Corporation be completely liquidated, that it be withdrawn

from qualification in all states and other jurisdictions in which it is qualified to do business, but that corporate existence be maintained in the State of Nevada.

RESOLVED, that the Shareholder be approached by the Corporation and asked to give its consent to the voluntary liquidation of the Corporation, the Plan of Liquidation, and such other matters as are necessary to effectuate the liquidation of assets;

RESOLVED, that if the Shareholder consents to the voluntary complete liquidation of the Corporation and to the Plan of Liquidation then the President or any Vice President of the Corporation is hereby authorized and directed, in the name and on behalf of the Corporation, to execute the Plan of Liquidation, and the Secretary or any Assistant Secretary is hereby authorized and directed, in the name and on behalf of the Corporation to affix thereto the seal of the Corporation and to attest the same; and

RESOLVED, that the proper officers of the Corporation be, and they hereby are, authorized and directed to pay all such fees and taxes and to do or cause to be done such further acts and things as they may deem necessary or proper in order to carry out the liquidation of the Corporation and fully to effectuate the purposes of the foregoing resolutions.

All members of the Board of Directors of CORDERO MINING COMPANY hereby execute this consent as of the 31st day of December, 1972.

R. E. Foss RAE

F. M. Mayes

W. C. Keith

EXHIBIT I

AGREEMENT AND PLAN OF LIQUIDATION

Agreement and Plan of Liquidation, made this 31st day of December, 1972, between SUN OIL COMPANY (DELAWARE), a Delaware corporation, (herein called "Shareholder"), and CORDERO MINING COMPANY, a Nevada corporation (herein called the "Corporation").

WHEREAS, the Shareholder owns 750 shares of capital stock of the Corporation, which shares constitute all of the issued and outstanding capital stock of the Corporation; and,

WHEREAS, the Shareholder wishes to approve, authorize and consent to the complete liquidation of the Corporation under the provisions of NRS 78.420 et al of the Business Corporation Act of the State of Nevada and of Section 332 of the Internal Revenue Code of 1954, as amended;

NOW, THEREFORE, the parties hereto hereby agree as follows:

(1) Shareholder approves, authorizes and consents to the voluntary and complete liquidation of the Corporation, such liquidation to be completed as promptly as possible, and in no event later than December 31, 1973, in accordance with the Plan of Liquidation set forth in this Agreement.

(2) The Shareholder hereby authorizes and directs the officers of the Corporation to file all requisite instruments necessary to accomplish the subject liquidation with the Secretary of State of the State of Nevada.

(3) The Shareholder hereby directs that after proper provision has been made for the payment of the Corporation's debts and taxes, the

officers of the Corporation shall distribute all of the remaining property of the Corporation in complete cancellation or redemption of all of its issued and outstanding capital stock, such distribution to be made as promptly as practicable and in any event not later than December 31, 1973.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Plan of Liquidation to be executed by their respective duly authorized officers as of the day and year first above written.

SUN OIL COMPANY (DELAWARE)

ATTEST:

Secretary

By: H. C. Keith
Vice President RAe

CORDERO MINING COMPANY

ATTEST:

Secretary

By: Jud M. Mayo
Vice President

CORDERO MINING COMPANY
UNANIMOUS WRITTEN CONSENT OF SHAREHOLDERS

The undersigned, being the sole shareholder of Cordero Mining Company, does hereby consent to the following actions, to have the same force and effect as if these actions were duly taken at the Annual Meeting of Shareholders of the Company held on January 16, 1973:

RESOLVED, That Section 2 of Article IV of the By-Laws, entitled "Board of Directors," which reads as follows:

"2. The number of directors of this Company shall be five (5) until the number thereof is increased to six (6) by amendment of this clause of the By-Laws in the manner hereinafter provided."

be amended to read as follows:

"2. The number of directors of this Company shall be three (3) until the number thereof is increased to six (6) by amendment of this clause of the By-Laws in the manner hereinafter provided."

RESOLVED, That the following individuals be elected Directors of the Company, to serve until their successors are elected and qualify:

R. E. Foss
W. C. Keith
F. M. Mayes

IN WITNESS WHEREOF, the undersigned has set his hand and seal this 16th day of January 1973.

SUN OIL COMPANY (DELAWARE)

By R. E. Foss
R. E. Foss

CORDERO MINING COMPANY
UNANIMOUS WRITTEN CONSENT OF DIRECTORS

The undersigned, being all of the directors of Cordero Mining Company, do hereby consent to the following action to have the same force and effect as if said action were taken at the Annual Meeting of Directors of the Company held on January 16, 1973:

RESOLVED, That the following individuals be elected to the offices set opposite their names, to serve until their successors are elected and qualify:

Chairman of the Board and President	R. E. Foss
Vice President	F. M. Mayes
Secretary	P. F. Waltneight
Assistant Secretary	E. S. McLaughlin
Treasurer	W. C. Keith
Controller	E. C. Ladymon

IN WITNESS WHEREOF the undersigned have executed this action as of the date first above written.

R. E. Foss

W. C. Keith

F. M. Mayes

CORDERO MINING COMPANY
UNANIMOUS WRITTEN CONSENT OF DIRECTORS

The undersigned being all the directors of Cordero Mining Company do hereby adopt, approve and consent to the following action to have the same force and effect as if said resolution was duly adopted at a special meeting of the Directors held this 6th day of March, 1973.

WHEREAS, This Company was liquidated into Sun Oil Company (Delaware) effective December 31, 1972, pursuant to an Agreement and Plan of Liquidation between the Companies, dated December 31, 1972, and

WHEREAS, Sun Oil Company (Delaware) pursuant to said Agreement assumed all existing liabilities of this Company, now therefore, be it

RESOLVED, That all responsibility for the administration of this Company's qualified Retirement and Stock Purchase Plans are transferred to Sun Oil Company (Delaware) together with all assets and liabilities relating to such Plans.

R. E. Foss

W. C. Keith

F. M. Mayes

CORDERO MINING COMPANY
UNANIMOUS WRITTEN CONSENT OF DIRECTORS

The undersigned being all the directors of Cordero Mining Company do hereby adopt, approve and consent to the following action to have the same force and effect as if said resolution was duly adopted at a special meeting of the Directors held this 26th day of November, 1973.

RESOLVED, That W. C. Keith be elected to the office of Vice President of Cordero Mining Company to serve until his successor is elected and shall qualify.

R. E. Foss

W. C. Keith

F. M. Mayes

CORDERO MINING COMPANY

UNANIMOUS WRITTEN CONSENT OF SHAREHOLDERS

The undersigned, being the sole shareholder of Cordero Mining Company, does hereby consent to the election of the following as directors of the corporation:

R. E. Foss

W. C. Keith

F. M. Mayes

to have the same force and effect as if said persons were duly elected at the annual meeting of the shareholders of the corporation held on January 15, 1974.

IN WITNESS WHEREOF, the undersigned has set its hand and seal this 15th day of January, 1974.

SUN OIL COMPANY (DELAWARE)

By R. E. Foss

R. E. Foss

CORDERO MINING COMPANY
UNANIMOUS WRITTEN CONSENT OF DIRECTORS

The undersigned, being all of the directors of Cordero Mining Company, do hereby consent to the following action to have the same force and effect as if said action were taken at the Annual Meeting of Directors of the Company held on January 15, 1974:

RESOLVED, That the following individuals be elected to the offices set opposite their names, to serve until their successors are elected and qualify:

Chairman of the Board and President	R. E. Foss
Vice President	F. M. Mayes
Vice President and Treasurer	W. C. Keith
Secretary	J. K. Amsbaugh
Assistant Secretary	E. S. McLaughlin, Jr.
Controller	P. F. Waitneight

IN WITNESS WHEREOF the undersigned have executed this action as of the date first above written.

R. E. Foss

W. C. Keith

F. M. Mayes

CORDERO MINING COMPANY
UNANIMOUS WRITTEN CONSENT OF DIRECTORS

The undersigned, being all of the Directors of Cordero Mining Company, a Nevada Corporation, do hereby adopt, approve and consent to the following resolutions:

RESOLVED, That the resignation of R. E. Foss as a Director, President, and Chairman of the Board of the Company be accepted and that his letter of resignation be placed on file by the Corporate Secretary, and

FURTHER RESOLVED, That Robert McClements, Jr. be elected as a Director of the Company to have the same force and effect as if said person was duly elected at the annual meeting of the shareholders of the Corporation, and

FURTHER RESOLVED, That Robert McClements, Jr. be elected Chairman of the Board of the Company to have the same force and effect as if said person was duly elected at the annual meeting of the shareholders of the Corporation, and

FURTHER RESOLVED, That Robert McClements, Jr. be elected President of the Company to serve at the pleasure of the Board to have the same force and effect as if said resolutions were duly adopted at a special meeting of the Directors held this 21st day of November, 1974.

IN WITNESS WHEREOF the undersigned have executed this consent as of the 21st day of November, 1974.

R. E. Foss

W. C. Keith

F. M. Mayes

CORDERO MINING COMPANY
UNANIMOUS WRITTEN CONSENT OF DIRECTORS

The undersigned, being all of the directors of Cordero Mining Company, do hereby consent to the following action to have the same force and effect as if said action were taken at the Annual Meeting of Directors of the Company held on January 21, 1975:

> RESOLVED, That the following individuals be elected to the offices set opposite their names, to serve until their successors are elected and qualify:

Chairman of the Board and President	R. McClements, Jr.
Vice President	F. M. Mayes
Vice President	W. C. Keith
Secretary and Treasurer	J. K. Amsbaugh
Assistant Secretary and Assistant Treasurer	E. S. McLaughlin, Jr.
Controller	P. F. Waitneight

IN WITNESS WHEREOF the undersigned have executed this action as of the date first above written.

R. McClements, Jr.

W. C. Keith

F. M. Mayes

CORDERO MINING COMPANY

UNANIMOUS WRITTEN CONSENT OF SHAREHOLDERS

The undersigned, being the sole shareholder of Cordero Mining Company, does hereby consent to the election of the following as directors of the corporation:

R. McClements, Jr.

W. C. Keith

F. M. Mayes

to have the same force and effect as if said persons were duly elected at the annual meeting of the shareholders of the corporation held on January 21, 1975.

IN WITNESS WHEREOF, the undersigned has set its hand and seal this 21st day of January, 1975.

SUN OIL COMPANY (DELAWARE)

By _____
G. Burroughs

CORDERO MINING COMPANY

UNANIMOUS WRITTEN CONSENT OF DIRECTORS

The undersigned, being all of the directors of Cordero Mining Company, a Nevada corporation, do hereby adopt, approve and consent to the following resolutions:

WHEREAS, In the judgment of this Board of Directors, it is deemed advisable and for the benefit of the Company that said Corporation be dissolved in the State of Nevada;

NOW, THEREFORE, BE IT RESOLVED, That the Cordero Mining Company abandon its corporate authority, surrender its charter, and dissolve; and

FURTHER RESOLVED, That R. McClements, Jr., President, and J. K. Amsbaugh, Secretary, are hereby authorized to file with the Secretary of the State of Nevada any and all documents necessary or desirable to carry into effect the foregoing resolution, said actions subject to the approval of the shareholders of the corporation; and

FURTHER RESOLVED, That this recommendation and plan for the dissolution of the Corporation be submitted to the sole shareholder of the Corporation for his action thereon.

R. McClements, Jr.

W. C. Keith

F. M. Mayes

September 30, 1975

CS32

CORDERO MINING COMPANY

WRITTEN CONSENT OF SHAREHOLDER

The undersigned, being the sole shareholder of Cordero Mining Company, a Nevada corporation, does hereby adopt, approve and consent to the following resolutions:

WHEREAS, The Board of Directors of this Corporation has recommended its dissolution in the State of Nevada;

NOW, THEREFORE, BE IT RESOLVED, That Cordero Mining Company surrender its charter to the State of Nevada and that it cease to be and exist as a corporation; and

FURTHER RESOLVED, That the Board of Directors of this Corporation is hereby authorized, empowered and directed to do all things necessary and requisite to settle the affairs of the Corporation and carry into effect the foregoing resolution.

SUN OIL COMPANY (DELAWARE)

By W. C. Smith

October 7, 1975
LE/los CS34

70-41

STATE OF NEVADA
DEPARTMENT OF STATE

CERTIFICATE OF DISSOLUTION

I, WM. D. SWACKHAMER, the duly qualified and acting Secretary of State of the State of Nevada, do hereby certify that I am, by the laws of said State, the custodian of the records relating to corporations incorporated under the laws of the State of Nevada, and that I am the proper officer to execute this certificate.

I further certify that CORDERO MINING COMPANY

a corporation duly organized and existing under and by virtue of the laws of the State of Nevada, did, on the 18TH day of NOVEMBER, 19 75, file in the office of Secretary of State a

CERTIFICATE OF DISSOLUTION

dissolving said corporation pursuant to the provisions of Nevada Revised Statutes, 78.580 as amended; that said action has been endorsed on all records of the same, and that said corporation is hereby dissolved.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office, in Carson City, Nevada, this 18TH day of NOVEMBER, A. D. 19 75

Wm. D. Swackhamer
Secretary of State

By

Deputy

Form 55 6

FILED

We, R. McClements, Jr., President; J. K. Amsbaugh, Secretary; and E. S. McLaughlin, Jr., Assistant Treasurer of Cordero Mining Company, a Nevada corporation, do hereby certify that by Written Consent of Shareholder dated October 7, 1975 the following resolutions were duly adopted:

WHEREAS, The Board of Directors of this Corporation has recommended its dissolution in the State of Nevada;

NOW, THEREFORE, BE IT RESOLVED, That Cordero Mining Company surrender its charter to the State of Nevada and that it cease to be and exist as a corporation; and

FURTHER RESOLVED, That the Board of Directors of this Corporation is hereby authorized, empowered and directed to do all things necessary and requisite to settle the affairs of the Corporation and carry into effect the foregoing resolution.

We further certify that the following is a true and correct list of names and residences of the directors and officers of said corporation:

Name	Title	Address
Robert McClements, Jr.	Director Chairman of the Board President	7148 Roundrock Dallas, TX 75240
Wilbur C. Keith	Director Vice President	3854 Caruth Dallas, TX 75225
Fred M. Mayes	Director Vice President	518 Pittman Richardson, TX 75080
Jeffry K. Amsbaugh	Secretary and Treasurer	6849 Vineridge Drive Dallas, TX 75240
Edward S. McLaughlin, Jr.	Assistant Secretary Assistant Treasurer	3548 Villanova Dallas, TX 75225
Peter F. Waitneight	Controller	7011 Cornelia Lane Dallas, TX 75214

R. McClements, Jr., President

J. K. Amsbaugh, Secretary

E. S. McLaughlin, Jr.
Assistant Treasurer

Dallas, Texas

October 10, 1975

CS36 kl

CERTIFICATE OF DISSOLUTION

OF

CORDERO MINING COMPANY

FILED AT THE REQUEST OF

Mrs. J. K. Ewers

240 Radnor - Chester Road

St. Davids, Pennsylvania 19087

NOVEMBER 18, 1975
(DATE)

Wm. D. Swackhamer

WM. D. SWACKHAMER, SECRETARY OF STATE

(BY) DEPUTY SECRETARY OF STATE

NO. 70-41

FILING FEE $ 20.00

134

Sun Company
(Incorporated in New Jersey on May 2, 1901)
↓
Name changed on 12/15/22 to:
↓
Sun Oil Company
↓

Effective 10/25/68, Sun Oil Company merged with Sunray DX Oil Company and Sun Oil was the surviving company.

*Effective 9/30/71, Agreement and Plan of Reorganization

*Effective 09/30/71, Sun Oil Company (a NJ Corporation) merged into Sun Oil Company of Pennsylvania

↓

Sun Oil Company (Pa) (Inc. in PA on 08/04/71)

Name changed on 09/30/71 to:

↓

Sun Oil Company

↓

*Succeeds to the capital stock of Sun Oil Company of Pennsylvania; Sun Oil Company (Delaware); and all of the capital stock of other corporations owned by Sun (NJ)

↓

Name changed on 04/27/76 to:

↓

Sun Company, Inc.

↓

Name changed on 11/06/98 to:

↓

Sunoco, Inc.

Sun Oil Company of Pennsylvania (Inc. in PA on 08/04/71)

*Succeeds to all the remaining assets and liabilities of Sun (NJ) – essentially those of the Products Group of Sun (NJ) - the U.S. and Puerto Rican refining and mktg assets and liabilities, including the Tulsa OK refinery and any owned gas stations.

↓

Name changed on 10/28/81 to:

↓

Sun Refining and Marketing Company

↓

Name changed on 12/31/91 to:

↓

Sun Company, Inc. (R&M)

↓

Name changed on 11/06/98 to:

↓

Sunoco, Inc. (R&M)

Sun Oil Company (Delaware) (Inc. in DE on 08/02/71)

*Succeeds to all group business operations and assets of the North American E&P Group of Sun (NJ) – together with associated rights, privileges and Franchises, including the Sunray DX leases (including all liabilities).

↓

Name changed on 10/29/81 to:

↓

Sun Exploration and Production Company

↓

Effective 12/01/85, U.S. assets transferred to Sun Operating Limited Partnership

↓

Effective 11/01/88, Sun Exploration and Production Company was spun off to the common shareholders of Sun Company, Inc. (a Pennsylvania corporation)

↓

Sun Exploration and Production Company changed its name to Oryx Energy Company on 05/03/89.

On 02/26/99, Oryx was acquired by Kerr-McGee Corporation. (2007 – Kerr McGee acquired by Anadarko)

FINAL RETURN

Form **1120**
Department of the Treasury
Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 1975 or other taxable year beginning ..... , 1975, ending ..... , 19 .....
(PLEASE TYPE OR PRINT)

1975

Check if a—
A Consolidated return ☐
B Personal Holding Co. ☐
C Business Code No. (See page 7 of instructions)
1098

Name
CORDERO MINING COMPANY

Number and street
P.O. Box 2880 - Tax Department

City or town, State, and ZIP code
Dallas, Texas 75221

D Employer identification number
23-0494067

E Date incorporated
March 4, 1941

F Enter total assets from line 14, column (D), Schedule L (See instruction N)
$ -0-

IMPORTANT—Fill in all applicable lines and schedules. If the lines on the schedules are not sufficient, see instruction N.

GROSS INCOME	1 Gross receipts or gross sales.....Less: Returns and allowances.....	1	
	2 Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)	2	
	3 Gross profit	3	
	4 Dividends (Schedule C)	4	
	5 Interest on obligations of the United States and U.S. instrumentalities	5	
	6 Other interest	6	
	7 Gross rents	7	
	8 Gross royalties	8	
	9 (a) Net capital gains (attach separate Schedule D)	9(a)	
	(b) Ordinary gain or (loss) from Part II, Form 4797 (attach Form 4797)	9(b)	
	10 Other income (see instructions—attach schedule)	10	
	11 TOTAL income—Add lines 3 through 10	11	-0-
DEDUCTIONS	12 Compensation of officers (Schedule E)	12	
	13 Salaries and wages (not deducted elsewhere)	13	
	14 Repairs (see instructions)	14	
	15 Bad debts (Schedule F if reserve method is used)	15	
	16 Rents	16	
	17 Taxes (attach schedule)	17	
	18 Interest	18	
	19 Contributions (not over 5% of line 30 adjusted per instructions—attach schedule)	19	
	20 Amortization (attach schedule)	20	
	21 Depreciation (Schedule G)	21	
	22 Depletion	22	
	23 Advertising	23	
	24 Pension, profit-sharing, etc. plans (see instructions) (enter number of plans ▶ .....)	24	
	25 Employee benefit programs (see instructions)	25	
	26 Other deductions (attach schedule)	26	
	27 TOTAL deductions—Add lines 12 through 26	27	
	28 Taxable income before net operating loss deduction and special deductions (line 11 less line 27)	28	
	29 Less: (a) Net operating loss deduction (see instructions—attach schedule) 29(a)		
	(b) Special deductions (Schedule I) 29(b)		
	30 Taxable income (line 28 less line 29)	30	-0-
TAX	31 TOTAL TAX (Schedule J)	31	-0-
	32 Credits: (a) Overpayment from 1974 allowed as a credit		
	(b) 1975 estimated tax payments		
	(c) Less refund of 1975 estimated tax applied for on Form 4466 ( )		
	(d) Tax deposited with Form 7004 (attach copy)		
	(e) Tax deposited with Form 7005 (attach copy)		
	(f) Credit from regulated investment companies (attach Form 2439)		
	(g) U.S. tax on special fuels, nonhighway gas and lubricating oil (attach Form 4136)		
	33 TAX DUE (line 31 less line 32). See instruction G for depositary method of payment	33	
	34 OVERPAYMENT (line 32 less line 31)	34	
	35 Enter amount of line 34 you want: Credited to 1976 estimated tax ▶ Refunded ▶	35	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

The Internal Revenue Service does not require a seal on this form, but if one is used, please place it here.

..... Date ..... Signature of officer ..... Title

CORDERO MINING COMPANY

Schedule L
Comparative Balance Sheet

January 1, 1975 and December 31, 1975

	Beginning of Year	End of Year
ASSETS	-0-	-0-
LIABILITIES	-0-	-0-
STOCKHOLDERS EQUITY	-0-	-0-

CORDERO MINING COMPANY

Schedule M-1
Reconciliation of Income Per Books With Income Per Return

1.	Net income per books	$ -0-
4.	Additional to taxable income	-0-
7.	Deductions from Taxable income	-0-
10.	Income	$ -0-

CORDERO MINING COMPANY

Schedule M-1
Analysis of Unappropriated Retained Earnings Per Books

1.	Balance at beginning of year	$ -0-
2.	Net income per books	-0-
5.	Distributions	-0-
8.	Balance at end of year	$ -0-

CORDERO MINING COMPANY

YEAR ENDED DECEMBER 31, 1975
ADDITIONAL INFORMATION REQUIRED

Check if a --

A. Consolidated Return — Yes___ No___

B. Personal Holding Company — Yes___ No___

C. Business Code No. (See instructions) 1098

D. Employer Identification Number 23-0494067

E. Date Incorporated March 4, 1941

F. Enter Total Assets From Line 14, Column D, Schedule L, (See Instruction R) -0-

G. Did you claim a deduction for expenses connected with:
(1) Entertainment facility (boat, resort, ranch, etc.)? — Yes___ No X
(2) Living accommodations (except for employees on business)? — ___ X
(3) Employees' families at conventions or meetings? — ___ X
(4) Employee or family vacations not reported on Form W-2? — ___ X

H. (1) Did you at the end of the taxable year own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see Sec. 267(c).) — Yes___ No X
If "Yes," attach a schedule showing:
(a) name, address, and identifying number;
(b) percentage owned; and
(c) taxable income or (loss) (e.g., if a Form 1120, from Line 30, Page 1) of such corporation for the taxable year ending with or within your taxable year.

(2) Did any individual, partnership, corporation, estate or trust at the end of the taxable year own, directly or indirectly, 50% or more of your voting stock? (For rules of attribution, see Sec. 267(c).) — Yes X No___
If "Yes:"
(a) Attach a schedule showing name, address, and identifying number. SUN OIL COMPANY/St. Davids, PA/ID# 23-1743282
(b) Enter percentage owned 100%
(c) Was the owner of such voting stock a person other than a U.S. person? — Yes___ No X
If "Yes," enter owner's country ___
(See Instruction T.)

I. Did you ever declare a stock dividend? — Yes___ No X

J. Did you exclude income under Sec. 931? — Yes___ No X

K. Taxable income or (loss) from Line 30, Page 1, Form 1120 for your taxable year beginning in:

1972 (1,670,280), 1973 0, 1974 0

L. Were you a member of a controlled group subject to the provisions of Sec. 1561? Yes ___ No X

If "Yes," check the type of relationship:

(1) parent-subsidiary ___
(2) brother-sister ___
(3) combination of (1) and (2) (See Sec. 1563) ___

M. Refer to Page 7 of instructions and state the principal:

Business activity Mining of Mercury

Product or service Mineral Products

N. Did you file all required Forms 1087, 1096 and 1099? Yes X No ___

O. Were you a U.S. shareholder of any controlled foreign corporation? (See Secs. 951 and 957.) Yes ___ No X

If "Yes," attach Form 3646 for each such corporation.

P. If you are a farmer's cooperative, check type:

Purchasing ___
Marketing ___
Service ___
Other (explain) ___

Q. During this taxable year, did you pay dividends (other than stock dividends and distributions in exchange for stock) in excess of your current and accumulated earnings and profits? (See Sections 301 and 316.) Yes ___ No X

If "Yes," file Schedule A, Form 1096. If this is a consolidated return, answer here for parent corporation and on Form 851, Affiliations Schedule, for each subsidiary.

EDGCOMB LAW GROUP

115 Sansome Street, Suite 700
San Francisco, California 94104
415.399.1943 direct
415.399.1885 fax
dchapman@edgcomb-law.com

July 22, 2010

BY EMAIL & U.S. MAIL
Ross Atkinson
Associate Engineering Geologist
Waste Discharge to Land Unit
Central Valley RWQCB – Sacramento
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

Re: Mt. Diablo Mercury Mine Insurance Policies

Dear Mr. Atkinson:

This letter concerns the Revised Technical Reporting Order R5-2009-0869 issued pursuant to Section 13267 of the California Water Code regarding the Mount Diablo Mine, Contra Costa County ("Rev. Order") concerning the Mt. Diablo Mercury Mine ("Site") issued by the Central Valley Regional Water Quality Control Board ("Regional Board") to Sunoco, Inc., ("Sunoco"), and other alleged dischargers on December 30, 2009.

The purpose of this letter is to bring the Regional Board's attention to historical insurance policies related to the Site that Sunoco has identified.

The Mt. Diablo Quicksilver Co., Ltd. ("MDQ"), owned and leased the Site from 1931-1960. Our research indicates that MDQ held insurance policies through various insurance brokers or insurers. Sunoco respectfully requests that the Regional Board issue subpoenas to the following entities in order to determine whether any insurance policies cover property damage at the Site. We enclose Site-related documents involving these entities.

1. Marsh & McLennan Companies
   1166 Avenue of the Americas
   New York, NY 10036
   Tel.: (212) 345-5000

2. Insurance Services Office, Inc. ("ISO")(successor to Pacific Fire Rating Bureau)[1]
   Insurance Services Office, Inc.
   Newport World Business Center
   545 Washington Blvd
   Jersey City, NJ 07310-1686
   Tel.: (800) 888-4476
   Fax: (201) 748-1472

One of the enclosures is an 11/8/59 check register stub for an Audit Premium payment to Marsh & McLennan Cosgrove & Co., which references **Policy No. 9MLP28596**. Please ensure that the subpoena to Marsh & McLennan specifically references this policy number in addition to a more general search request for any documents related to the Mt. Diablo Quicksilver Co., Ltd.

Please call me or John Edgcomb if you have any questions.

Very truly yours,

David T. Chapman

Enclosures

cc: Victor Izzo, Senior EG, Regional Board
Patrick Pulupa, Esq.

[1] ISO is an organization that collects statistical data, promulgates rating information, develops standard policy forms, and files information with state regulators on behalf of insurance companies that purchase its services.

P. O. Box 153
Clayton, California
July 20, 1954

Pacific Fire Rating Bureau
Merchants Exchange Building
San Francisco, California

and

To Whom It May Concern:

You are hereby informed that, effective today, we have appointed MARSH & McLENNAN to act as our insurance brokers and to represent us in all matters pertaining to insurance on our properties located adjacent to the properties of Mt. Diablo Quicksilver Co., Ltd., approximately 12 miles East of Concord, California, on the Marsh Creek Road, Contra Costa County, near Clayton, California.

This appointment shall remain in full force and effect until you are officially notified in writing to the contrary.

This authority supersedes all other appointments and/or all letters of authorization on record.

FLOMERFELT, ZOLLWALT, LANG,
NICHOLSON and PEARCE

by Victor Blomberg

No 873

10/23 1959

Hazel Blanding

Expense Account

10/20/59 -

22.70

Make No Alteration or Changes on Any Check
If Error is Made, Write New Check

No 874

11/8 1959

Marsh & McLennan

Cosgrove & Co.

Audit Premium

7/12/58 - 7/13/59

9 MLP 23596

1.75

Make No Alteration or Changes on Any Check
If Error is Made, Write New Check

No 875

11/25 1959

R. H. Cranny

County Tax

Collector

1st Instalment

1959 Taxes

209.23

Make No Alteration or Changes on Any Check
If Error is Made, Write New Check

August 14, 1954

Walter F. Busher & Company
155 Montgomery Street
San Francisco 4, California

Gentlemen:

Re: Hartford Steam Boiler Policy CG-5977

This is to acknowledge your letter of August 10, 1954, together with endorsement.

In connection with the change of the name of the assured and in connection with the expiration date, we wish to advise that we strongly expect that a new operator will be on our property by the first of next month. We will delay making any changes at least until then and will advise you further if we wish to renew or change the name of the assured.

Very truly yours,

MT. DIABLO QUICKSILVER CO., LTD.

Harold Blomberg - Secretary

HB

Form 966
(Rev. Nov. 1973)
Department of the Treasury
Internal Revenue Service

Corporate Dissolution or Liquidation

(Required under Section 6043(a) of the Internal Revenue Code)

Please type or print

Name of corporation: CORDERO MINING COMPANY	Employer identification number: 23-0494067
Address (Number and street): P.O. Box 2880 - Tax Dept.	Check type of return: ☒ 1120 ☐ 1120DISC ☐ 1120L ☐ 1120M ☐ 1120S
City or town, State and ZIP code: Dallas, Texas 75221	

1 Date incorporated	2 Place incorporated	3 Type of liquidation
March 4, 1941	Nevada	☒ Complete ☐ Partial

4 Internal Revenue Service Center where last income tax return was filed and taxable year covered thereby
Service Center ▶ Philadelphia, PA Taxable year ▶ 12-31-1972

5 Date of adoption of resolution or plan of dissolution, or complete or partial liquidation	6 Taxable year of final return	7 Total number of shares outstanding at time of adoption of plan or liquidation	
		Common	Preferred
11-18-1975	12-31-1975	1	0

8 Dates of any amendments to plan of dissolution	9 Section of the Code under which the corporation is to be dissolved or liquidated	10 If this return is in respect of an amendment of or supplement to a resolution or plan previously adopted and return has previously been filed in respect of such resolution or plan, give the date such return was filed
None	332	

11. Liquidation Within One Calendar Month.—If the corporation is a domestic corporation, and the plan of liquidation provides for a distribution in complete cancellation or redemption of all the capital stock of the corporation and for the transfer of all the property of the corporation under the liquidation entirely within one calendar month pursuant to section 333, and any shareholder claims the benefit of such section, then the corporation must also submit:

(a) A description of the voting power of each class of stock;

(b) A list of all the shareholders owning stock at the time of the adoption of the plan of liquidation, together with the number of shares of each class of stock owned by each shareholder, the certificate numbers thereof, and the total number of votes to which entitled on the adoption of the plan of liquidation;

(c) A list of all corporate shareholders as of January 1, 1954, together with the number of shares of each class of stock owned by each such shareholder, the certificate numbers thereof, the total number of votes to which entitled on the adoption of the plan of liquidation, and a statement of all changes in ownership of stock by corporate shareholders between January 1, 1954, and the date of the adoption of the plan of liquidation, both dates inclusive; and

(d) A computation as described in section 1.6043-2(b) (following the format in Revenue Procedure 66-10, C.B. 1965-1,738 and Revenue Procedure 67-12, C.B. 1967, 589) of accumulated earnings and profits including all items of income and expense accrued up to the date on which the transfer of all property is completed.

Attach a certified copy of the resolution or plan, together with all amendments or supplements not previously filed.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

If Internal Revenue Service does not require seal on this form, but one is used, please use it here.	Date	Signature of officer	Title
	3-15-1976	E. S. McLaughlin	Asst. Secretary & Asst. Treasurer

Instructions

1. Who must file.—This form must be filed by every corporation that is to be dissolved or whose stock is to be liquidated in whole or in part.

Shareholders electing to be covered under section 333 of the Code must also file Form 964 within 30 days after the date of adoption of the plan of liquidation.

2. When to file.—This form must be filed within 30 days after the adoption of the resolution or plan for or in respect of the dissolution of a corporation or the liquidation in whole or in part of its capital stock. If after the filing of a Form 966 there is an amendment or supplement to the resolution or plan, an additional Form 966 based on the resolution or plan as amended or supplemented must be filed within 30 days after the adoption of such amendment or supplement. A return in respect of an amendment or supplement will be deemed sufficient if it gives the date the prior return was filed and contains a certified copy of such amendment or supplement and all other information required by this form which was not given in such prior return.

3. Where to file.—This form must be filed with the Internal Revenue Service Center with which the corporation is required to file its income tax return.

4. Signature.—The return must be signed either by the president, vice president, treasurer, assistant treasurer or chief accounting officer, or by any other corporate officer (such as tax officer) who is authorized to sign. A receiver, trustee, or assignee must sign any return which he is required to file on behalf of a corporation.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1974—O-537-715—53-0401110

FINAL RETURN

U.S. Corporation Income Tax Return

For calendar year 1972 or fiscal year beginning ____, 19__, and ending ____, 19__

A Consolidated return ☐	Name: CORDERO MINING COMPANY	2 Date incorporated: Dal
B Personal holding co. ☐	Number and street: P.O. Box 2880	
C Business code no. (See page 7 of Instructions.)	City or town, State, and ZIP code: Dallas, Texas 75221	F Enter total assets from line 12, column (D), Schedule L (See instructions) D: $ 100

IMPORTANT—Fill in all applicable lines and schedules. If the lines on the schedules are not sufficient, see instruction N.

GROSS INCOME	1 Gross receipts or gross sales ____ Less: Returns and allowances ____	1	-0-
	2 Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)	2	1,204,450
	3 Gross profit	3	(1,204,450)
	4 Dividends (Schedule C)	4	
	5 Interest on obligations of the United States and U.S. instrumentalities	5	
	6 Other interest	6	44
	7 Gross rents	7	
	8 Gross royalties	8	
	9 (a) Net capital gains—(separate Schedule D)	9(a)	
	(b) Ordinary gain or (loss) from Part II, Form 4797 (attach Form 4797)	9(b)	(170,607)
	10 Other income (see instructions—attach schedule)	10	21,654
	11 TOTAL income—Add lines 3 through 10	11	(1,353,359)
DEDUCTIONS	12 Compensation of officers (Schedule E)	12	
	13 Salaries and wages (not deducted elsewhere)	13	
	14 Repairs (see instructions)	14	
	15 Bad debts (Schedule F if reserve method is used)	15	
	16 Rents	16	145,804
	17 Taxes (attach schedule)	17	13,356
	18 Interest	18	
	19 Contributions (not over 5% of line 28 adjusted per instructions—attach schedule)	19	
	20 Amortization (attach schedule)	20	
	21 Depreciation (Schedule G)	21	13,924
	22 Depletion	22	4,400
	23 Advertising	23	
	24 Pension, profit-sharing, etc. plans (see instructions)	24	31,958
	25 Employee benefit programs (see instructions)	25	7,479
	26 Other deductions (attach schedule)	26	
	27 TOTAL deductions—Add lines 12 through 26	27	216,921
	28 Taxable income before net operating loss deduction and special deductions (line 11 less line 27)	28	(1,570,280)
	29 Less: (a) Net operating loss deduction (see instructions—attach schedule) 29(a) ____		
	(b) Special deductions (Schedule I) 29(b) ____		-
	30 Taxable income (line 28 less line 29)	30	(1,570,280)
TAX	31 TOTAL TAX (Schedule J)	31	-0-
	32 Credits: (a) Overpayment from 1971 allowed as a credit ____		
	(b) 1972 estimated tax payments ____		
	(c) Less refund of 1972 estimated tax applied for on Form 4466 ( )		
	(d) Tax deposited with Form 7004 (attach copy)		
	(e) Tax deposited with Form 7005 (attach copy)		
	(f) Credit from regulated investment companies (attach Form 2439)		
	(g) U.S. tax on special fuels, nonhighway gas and lubricating oil (attach Form 4136)		
	33 TAX DUE (line 31 less line 32). See instruction G for depositary method of payment	33	
	34 OVERPAYMENT (line 32 less line 31)	34	
	35 Enter amount of line 34 you want: Credited to 1973 estimated tax ▶ ____ Refunded ▶	35	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than the taxpayer, his declaration is based on all information of which he has any knowledge.

The Internal Revenue Service does not require a seal on this form, but if one is used, please place it here.

Date ____ Signature of officer ____ Title ____

Date ____ Signature of individual or firm preparing the return ____ Preparer's address ____ Empl. (Coal. or S.S. Sec. No.

CORDERO MINING COMPANY

SCHEDULE L

Comparative Balance Sheets

January 1, 1972 and December 31, 1972

	Beginning of Year		End of Year	
ASSETS				
Cash		$ 92,426		$ 100
Accounts Receivable		446,527		
Loans to Stockholders				
Property, Plant & Equipment	$373,148			
Less: Accumulated Depreciation	113,979	259,169		
Total Assets		$ 798,122		100
LIABILITIES & STOCKHOLDERS EQUITY				
Accounts Payable		$ 46,338		
Capital Stock:				
Common Stock		75,000		$ 100
Retained Earnings		676,784		
Total Liabilities & Stockholders Equity		$ 798,122		$ 100

CORDERO MINING COMPANY

Schedule M-1

Reconciliation of Income Per Books With Income Per Return

For the Year Ended December 31, 1972

NET LOSS PER BOOKS:	$ (1,402,473)
Add:	
Pension costs booked but not paid	6,500
Subtotal	$ (1,395,973)
Deduct:	
Depletion	4,400
Loss on disposition of Power River Properties not recognized for Financial Book Purposes	169,907
Net Loss per tax return	$ (1,570,280)

Schedule M-2

Analysis of Unappropriated Retained Earnings Per Books

Balance at beginning of year			$ 676,784
Add:			
Liabilities Assumed by Sun Oil Co. (Delaware)		$ 5,141,714	
Reduction of Capital Stock		74,900	
Deferred Credits transferred to Sun Oil Co.(Del.)		11,824	5,228,438
SUBTOTAL			$ 5,905,222
Deduct:			
Net loss per books		$ 1,402,473	
Distributions: Cash	$ 1,000		
Stock & other investments	354,138		
Property	4,129,361	4,484,499	
Other decreases:			
Prepaid pension costs transferred to Sun Oil Company (Delaware)		18,250	5,905,222
Balance at end of year			$ -0-

Federal 14.72

CORDERO MINING COMPANY

SCHEDULE L

Comparative Balance Sheets

January 1, 1972 and December 31, 1972

	Beginning of Year		End of Year	
ASSETS				
Cash		$ 92,426		$ 100
Accounts Receivable		446,527		
Loans to Stockholders				
Property, Plant & Equipment	$373,148			
Less: Accumulated Depreciation	113,979	259,169		
Total Assets		$ 798,122		100
LIABILITIES & STOCKHOLDERS EQUITY				
Accounts Payable		$ 46,338		
Capital Stock:				
Common Stock		75,000		$ 100
Retained Earnings		676,784		
Total Liabilities & Stockholders Equity		$ 798,122		$ 100

December 1972

SIXTH: The aggregate number of shares AUTHORIZED, itemized by classes, par value of shares, shares without par value and series, if any, within a class is: **(State as of December 31, 1972).**

NUMBER of shares AUTHORIZED	Class	Series	Par Value Per Share or statement that Shares are without Par Value
1,000	Common		$100.00

SEVENTH: The aggregate number of ISSUED shares, itemized by classes, par value of shares, shares without par value and series, if any, within a class is: **(State as of December 31, 1972).**

NUMBER of shares ISSUED	Class	Series	Par Value Per Share or statement that Shares are without Par Value
1	Common		$100.00

EIGHTH: A statement showing with reasonable detail the assets and liabilities as of **December 31, 1972** or the fiscal year ending..... 1972, is as follows: A balance sheet is preferred and may be attached if this space is not sufficient. General statements declaring the corporation is "solvent" — "assets exceed liabilities" — etc., do not comply with the statute and will not be accepted.

CORDERO MINING COMPANY
Statement of Financial Position
December 31, 1972

ASSETS:		
Notes Receivable	$100.00	
TOTAL ASSETS	$100.00	
STOCKHOLDERS' EQUITY:		
Capital Stock		$100.00
TOTAL STOCKHOLDERS' EQUITY		$100.00

Cordero Mining Company was liquidated 12/31/72.

ROBERT J. LYMAN, State Bar No. 085240
JOHN J. VERBER, State Bar No. 139917
LARSON & BURNHAM
A Professional Corporation
P.O. Box 119
Oakland, CA 94604
Telephone: (510) 444-6800
Facsimile: (510) 835-6666

Attorneys for Cross-Defendant
Sun Company, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

COUNTY OF SANTA CLARA, Plaintiff, v. MYERS INDUSTRIES, INC., et al., Defendants.	No. C-92 20246 JW (PVT) C-93 20521 JW (PVT) (Consolidated) RESPONSES TO FIRST SET OF INTERROGATORIES TO ALL PARTIES
AND RELATED CLAIMS AND ACTIONS	

PROPOUNDING PARTY: COUNTY OF SANTA CLARA, MYERS INDUSTRIES, INC., BUCKHORN, INC., BKHN, INC., SANTA CLARA VALLEY WATER DISTRICT, STATE OF CALIFORNIA, SUN COMPANY, INC. AND NEWSON, INC.

RESPONDING PARTY: SUN COMPANY, INC.

SET NO.: ONE

Your Alleged Predecessor(s)-in-Interest

INTERROGATORY NO. 1: For each person or entity who/which is identified in a Complaint or a Cross-Claim as Your Alleged Predecessor-in-Interest, state whether You deny that the person or entity identified is Your Predecessor-in-

Interest, and if You so deny, state the facts upon which You base Your denial and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 1.: Sun Company, Inc. admits that it is the successor in interest to Cordero Mining Company.

INTERROGATORY NO. 2: For each person or entity who/which is identified in a Complaint or a Cross-Claim as Your Alleged Predecessor-in-Interest, identify all documents constituting any agreements for the purchase, sale, assignment, or gift of assets or stock, or other documents reflecting asset or stock ownership between You, or any entity or person affiliated with You, and the Alleged Predecessor-in-Interest.

RESPONSE TO INTERROGATORY NO. 2.: Cordero Mining Company, a Nevada corporation, was dissolved on November 18, 1975. At the time of the dissolution, a subsidiary of Sun Company, Inc. was the sole shareholder of Cordero Mining Company. This subsidiary was subsequently spun-off to the shareholders of Sun Company, Inc. on November 1, 1988, as part of a corporate restructuring, although Sun Company, Inc. retained responsibility for the liabilities of Cordero Mining Company. Sun Company, Inc. admits that it is the successor in interest to Cordero Mining Company.

You and Your Alleged Predecessor(s)-in-Interest's Legal Relationship to the Property

INTERROGATORY NO. 3: State the dates between which You or Your Alleged Predecessor(s)-in-Interest owned the Property, and for each such period, identify the entity that owned the

Property, the specific Parcel(s) owned, and the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 3.: Neither Sun Company, Inc. or its predecessor-in-interest, Cordero Mining Company, ever owned the property which forms the bases of this action.

INTERROGATORY NO. 4: State the dates during which You or Your Alleged Predecessor(s)-in-Interest leased the Property, and for each such period, identify the entity that leased the Property, the specific Parcel(s) leased, and the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 4.: Cordero Mining Company leased a portion of the New Almaden Mine between 1951 and 1953. This information is based on an October 13, 1953 report by the U.S. Department of Interior, Defense Minerals Exploration Administration entitled "Final Report Contract IDM-E64" by John D. Warne, Mining Engineer, U.S. Bureau of Mines and Earl Pampeyan, Geologist, U.S. Geological Survey, and the "Final Report of Exploration at New Almaden Mine, California" submitted to Cordero Mining Company by Lloyd Staples, Consulting Geologist, and Donald L. Curry, Assistant Resident Geologist, dated April 15, 1953.

INTERROGATORY NO. 5: State the dates during which You or Your Alleged Predecessor(s)-in-Interest held any other possessory interest in the Property (including, but not limited to, licenses, easements or profits à prendre), and for each such period, identify the entity that held the possessory interest, the type of possessory interest held, the specific Parcel(s) held (or to which any right was conveyed) and the

specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 5.: Not applicable.

You and Your Alleged Predecessor(s)-in-Interest's Mining Activity on the Property

INTERROGATORY NO. 6: State the dates during which You or Your Alleged Predecessor(s)-in-Interest conducted any Mining Activity at the Property, and for each such period, identify the entity that conducted the Mining Activity, the specific Parcel(s) at which Mining Activity was conducted, and the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 6.: Cordero Mining Company engaged in exploration activity at the New Almaden Mine beginning on August 15, 1951. This work was completed on March 15, 1953. No other activity was conducted at the property by Cordero Mining Company. This information is based on a report from the U.S. Department of the Interior, Defense Minerals Exploration Administration, entitled "Final Report Contract IDM-E64" authored by John D. Warne, Mining Engineer, U.S. Bureau of Mines and Earl Pampeyan, Geologist, U.S. Geological Survey, dated October 13, 1953, and "Final Report on Exploration at New Almaden Mine, California" submitted to Cordero Mining Company by Lloyd Staples, Consulting Geologist, and Donald L. Curry, Assistant Resident Geologist, dated April 15, 1953.

INTERROGATORY NO. 7: Described in detail each Mining Activity that You or Your Alleged Predecessor(s)-in-Interest

conducted at each Parcel, as identified in Your response to Interrogatory No. 6, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 7.: Exploration for mercury by diamond drilling at the New Almaden Mine was begun August 15, 1953 and completed March 15, 1954. A total of 23 diamond drill holes totaling 7,761 feet were drilled from underground and surface sites. Additionally, 2,745 feet of the Day Tunnel was reopened. No new deposits of mercury were discovered. The exploration project was deemed unsuccessful, exploration was halted and it was determined that no further exploration or development work was warranted.

This information is based upon a report from the U.S. Department of Interior, Defense Minerals Exploration Administration entitled "Final Report Contract IDM-E64" by John D. Warne, Mining Engineer, U.S. Bureau of Mines and Earl Pampeyan, Geologist, U.S. Geological Survey dated October 13, 1953 and a report entitled "Final Report on Exploration at New Almaden Mine, California" submitted to Cordero Mining Company by Lloyd Staples, Consulting Geologist, and Donald L. Curry, Assistant Resident Geologist, dated April 15, 1953.

INTERROGATORY NO. 8: Identify Each Person who has knowledge of each Mining Activity that You described in Your response to Interrogatory No. 7.

RESPONSE TO INTERROGATORY NO. 8.:

1. J. Eldon Gilbert, former General Manager and President of Cordero Mining Company, 1642 Rubenstein Drive, Cardiff by the Sea, California.

2. Lloyd Staples, 3210 Agate Street, Eugene, Oregon 97405, (503) 343-1426 - former geologist Cordero Mining Company.

3. Donald L. Curry, 3251 East Road, No. 96, Clifton, Colorado 81520-7977, (303) 434-4059 - former Assistant Resident Geologist for Cordero Mining Company.

4. John D. Warne, address unknown - former mining engineer U.S. Bureau of Mines.

5. Earl Pampeyan, address unknown - former geologist U.S. Geological Survey.

6. R. F. Johnson, address unknown - U.S. Geological Survey.

INTERROGATORY NO. 9: For each Mining Activity identified in Your response to Interrogatory No. 7, describe in detail the specific practices, methods and pieces of equipment that You or Your Alleged Predecessor(s)-in-Interest used or employed, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 9.: A total of 23 surface and subsurface diamond drill holes were sunk on the property. Boyles Brothers Drilling Company conducted the actual drilling work pursuant to a contract with Cordero Mining Company. The specific practices, methods and pieces of equipment are therefore unknown. Each hole is believed to be less than 2" in diameter.

Additionally, rail and air lines were installed in the Day Tunnel on January 24, 1953 to the drill sites for holes 8, 9 and 10. Please refer to the reports referenced in response to

Interrogatory No. 7 above, copies of which are attached.

INTERROGATORY NO. 10: Identify Each Person who has knowledge of each practice, method, or piece of equipment that You identify in Your response to Interrogatory No. 9.

RESPONSE TO INTERROGATORY NO. 10.:

1. J. Eldon Gilbert, former General Manager and President of Cordero Mining Company, 1642 Rubenstein Drive, Cardiff by the Sea, California.

2. Lloyd Staples, 3210 Agate Street, Eugene, Oregon 97405, (503) 343-1426 - former geologist Cordero Mining Company.

3. Donald L. Curry, 3251 East Road, No. 96, Clifton, Colorado 81520-7977, (303) 434-4059 - former Assistant Resident Geologist for Cordero Mining Company.

4. John D. Warne, address unknown - former mining engineer U.S. Bureau of Mines.

5. Earl Pampeyan, address unknown - former geologist U.S. Geological Survey.

6. R. F. Johnson, address unknown - U.S. Geological Survey.

INTERROGATORY NO. 11: For each Mining Activity identified in Your response to Interrogatory No. 7, state the volume of Mercury produced by You or Your Alleged Predecessor(s)-in-Interest, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 11.: The activities identified in response to Interrogatory No. 7 did not result in the production of any mercury. Cordero's activities were

confined to exploration and did not involve production.

INTERROGATORY NO. 12: Identify Each Person who has knowledge of the volume of Mercury that You identify in Your response to Interrogatory No. 11.

RESPONSE TO INTERROGATORY NO. 12.:

1. J. Eldon Gilbert, former General Manager and President of Cordero Mining Company, 1642 Rubenstein Drive, Cardiff by the Sea, California.

2. Lloyd Staples, 3210 Agate Street, Eugene, Oregon 97405, (503) 343-1426 - former geologist Cordero Mining Company.

3. Donald L. Curry, 3251 East Road, No. 96, Clifton, Colorado 81520-7977, (303) 434-4059 - former Assistant Resident Geologist for Cordero Mining Company.

4. John D. Warne, address unknown - former mining engineer U.S. Bureau of Mines.

5. Earl Pampeyan, address unknown - former geologist U.S. Geological Survey.

6. R. F. Johnson, address unknown - U.S. Geological Survey.

INTERROGATORY NO. 13: For each Mining Activity identified in Your response to Interrogatory No. 7, state the volume of Material mined, Moved or disturbed by You or Your Alleged Predecessor(s)-in-Interest, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 13.: The precise volume of material is unknown at this time. However, relatively little material was disturbed as a result of the 23 exploratory

diamond drill holes.

Material obstructing the opening of the Day Tunnel was necessarily relocated to another area in the mine. The volume of material removed in order to reopen the tunnel is unknown at this time.

INTERROGATORY NO. 14: Identify Each Person who has knowledge of the volume of Material mined, Moved, or disturbed by You or Your Alleged Predecessor(s)-in-Interest in connection with each Mining Activity.

RESPONSE TO INTERROGATORY NO. 14.:

1. J. Eldon Gilbert, former General Manager and President of Cordero Mining Company, 1642 Rubenstein Drive, Cardiff by the Sea, California.

2. Lloyd Staples, 3210 Agate Street, Eugene, Oregon 97405, (503) 343-1426 - former geologist Cordero Mining Company.

3. Donald L. Curry, 3251 East Road, No. 96, Clifton, Colorado 81520-7977, (303) 434-4059 - former Assistant Resident Geologist for Cordero Mining Company.

4. John D. Warne, address unknown - former mining engineer U.S. Bureau of Mines.

5. Earl Pampeyan, address unknown - former geologist U.S. Geological Survey.

6. R. F. Johnson, address unknown - U.S. Geological Survey.

INTERROGATORY NO. 15: For each Mining Activity identified in Your response to Interrogatory No. 7, identify specifically the Parcel(s) or other location(s) of the Property

at which You or Your Alleged Predecessor(s)-in-Interest placed any material that was mined, Moved or distributed, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 15.: All exploration activity was confined to a portion of The Almaden Mine. The precise location of the diamond drill holes is documented in the reports referenced in response to Interrogatory No. 7. It is reasonable to believe that if any core samples were discarded, it would be in the vicinity of the diamond drill hole.

INTERROGATORY NO. 16: Identify Each Person who has knowledge of the Parcel(s) or other location(s) off the Property at which You or Your Alleged Predecessor(s)-in-Interest placed any Material that was mined, Moved or disturbed in connection with each Mining Activity.

RESPONSE TO INTERROGATORY NO. 16.:

1. J. Eldon Gilbert, former General Manager and President of Cordero Mining Company, 1642 Rubenstein Drive, Cardiff by the Sea, California.

2. Lloyd Staples, 3210 Agate Street, Eugene, Oregon 97405, (503) 343-1426 - former geologist Cordero Mining Company.

3. Donald L. Curry, 3251 East Road, No. 96, Clifton, Colorado 81520-7977, (303) 434-4059 - former Assistant Resident Geologist for Cordero Mining Company.

4. John D. Warne, address unknown - former mining engineer U.S. Bureau of Mines.

5. Earl Pampeyan, address unknown - former geologist U.S. Geological Survey.

6. R. F. Johnson, address unknown - U.S. Geological Survey.

INTERROGATORY NO. 17: For each Mining Activity identified in Your response to Interrogatory No. 7, state the Mercury concentration of the Material that was mined, Moved or disturbed, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 17.: The materials disturbed by the diamond drilling and reopening of the Day Tunnel contained only trace amounts of mercury, if any. No new deposits of mercury were discovered and the exploration project was deemed unsuccessful. Please see reports referenced in response to Interrogatory No. 7.

INTERROGATORY NO. 18: Identify Each Person who has knowledge of the Mercury concentration of the Material mined, Moved, or disturbed by You or Your Alleged Predecessor(s)-in-Interest in connection with each Mining Activity.

RESPONSE TO INTERROGATORY NO. 18.:

1. J. Eldon Gilbert, former General Manager and President of Cordero Mining Company, 1642 Rubenstein Drive, Cardiff by the Sea, California.

2. Lloyd Staples, 3210 Agate Street, Eugene, Oregon 97405, (503) 343-1426 - former geologist Cordero Mining Company.

3. Donald L. Curry, 3251 East Road, No. 96, Clifton, Colorado 81520-7977, (303) 434-4059 - former Assistant Resident

Geologist for Cordero Mining Company.

4. John D. Warne, address unknown - former mining engineer U.S. Bureau of Mines.

5. Earl Pampeyan, address unknown - former geologist U.S. Geological Survey.

6. R. F. Johnson, address unknown - U.S. Geological Survey.

You or Your Alleged Predecessor(s)-in-Interest's Development Activity on the Property

INTERROGATORY NO. 19: State the dates during which You or Your Alleged Predecessor(s)-in-Interest conducted any Development Activity at the Property, and for each such period, identify the entity that conducted the Development Activity, the Parcel(s) at which Development Activity was conducted, and the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 19.: Between August 15, 1991 and January 24, 1993, approximately 2,500 feet of rail and air line were installed in the Day Tunnel. Please see reports referenced in response to Interrogatory No. 7.

INTERROGATORY NO. 20: Identify Each Person who has knowledge of the dates during which You or Your Alleged Predecessor(s)-in-Interest conducted any Development Activity at the Property.

RESPONSE TO INTERROGATORY NO. 20.:

1. J. Eldon Gilbert, former General Manager and President of Cordero Mining Company, 1642 Rubenstein Drive, Cardiff by the Sea, California.

2. Lloyd Staples, 3210 Agate Street, Eugene, Oregon 97405, (503) 343-1426 - former geologist Cordero Mining Company.

3. Donald L. Curry, 3251 East Road, No. 96, Clifton, Colorado 81520-7977, (303) 434-4059 - former Assistant Resident Geologist for Cordero Mining Company.

4. John D. Warne, address unknown - former mining engineer U.S. Bureau of Mines.

5. Earl Pampeyan, address unknown - former geologist U.S. Geological Survey.

6. R. F. Johnson, address unknown - U.S. Geological Survey.

INTERROGATORY NO. 21: For each period identified in Your response to Interrogatory No. 19, Identify Each Person who has knowledge concerning the entity that conducted the Development Activity and the Parcel(s) at which Development Activity was conducted.

RESPONSE TO INTERROGATORY NO. 21.: See response to Interrogatory No. 20.

INTERROGATORY NO. 22: Describe in detail each Development Activity that You or Your Alleged Predecessor(s)-in-Interest conducted at each Parcel Identified in Your response to Interrogatory No. 19, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 22.: See response to Interrogatory No. 19.

INTERROGATORY NO. 23: Identify Each Person who has knowledge of any Development Activity that You describe in Your

response to Interrogatory No. 22.

RESPONSE TO INTERROGATORY NO. 23.:

1. J. Eldon Gilbert, former General Manager and President of Cordero Mining Company, 1642 Rubenstein Drive, Cardiff by the Sea, California.

2. Lloyd Staples, 3210 Agate Street, Eugene, Oregon 97405, (503) 343-1426 - former geologist Cordero Mining Company.

3. Donald L. Curry, 3251 East Road, No. 96, Clifton, Colorado 81520-7977, (303) 434-4059 - former Assistant Resident Geologist for Cordero Mining Company.

4. John D. Warne, address unknown - former mining engineer U.S. Bureau of Mines.

5. Earl Pampeyan, address unknown - former geologist U.S. Geological Survey.

6. R. F. Johnson, address unknown - U.S. Geological Survey.

INTERROGATORY NO. 24: For each Development Activity identified in Your response to Interrogatory No. 19, describe in detail the specific practices, methods and pieces of equipment that You or Your Alleged Predecessor(s)-in-Interest used or employed, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 24.: Unknown at this time, discovery is continuing.

INTERROGATORY NO. 25: Identify Each Person who has knowledge of each practice, method, or piece of equipment that You identify in Your response to Interrogatory No. 24.

RESPONSE TO INTERROGATORY NO. 25.: Unknown at this time, discovery is continuing.

INTERROGATORY NO. 26: For each Development Activity identified in Your response to Interrogatory No. 19, state the volume of Material mined, Moved or disturbed by You or Your Alleged Predecessor(s)-in-Interest in connection with the Development Activity, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 26.: The precise volume of material disturbed in connection with laying rail and air lines in the Day Tunnel is unknown, however, given the nature of the activity very little material would have been disturbed.

INTERROGATORY NO. 27: Identify Each Person who has knowledge of the volume of Material mined, Moved or disturbed by You or Your Alleged Predecessor(s)-in-Interest in connection with each Development Activity identified in Your response to Interrogatory No. 19.

RESPONSE TO INTERROGATORY NO. 27.: See response to Interrogatory No. 8.

INTERROGATORY NO. 28: For each Development Activity identified in Your response to Interrogatory No. 19, identify the Parcel(s) or other location(s) off the Property at which You or Your Alleged Predecessor(s)-in-Interest place any Material that was mined, Moved or disturbed, and identify that specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 28.: According to the reports referenced in response to Interrogatory No. 7, the rail

and air lines were installed in the Day Tunnel.

INTERROGATORY NO. 29: Identify Each Person who has knowledge of the Parcel(s) or other location(s) off the Property at which You or Your Alleged Predecessor(s)-in-Interest placed any Material that was mined, Moved or disturbed in connection with each Development Activity identified in Your response to Interrogatory No. 19.

RESPONSE TO INTERROGATORY NO. 29.:

1. Lloyd Staples, 3210 Agate Street, Eugene, Oregon 97405, (503) 343-1426 - former geologist Cordero Mining Company.

2. Donald L. Curry, 3251 East Road, No. 96, Clifton, Colorado 81520-7977, (303) 434-4059 - former Assistant Resident Geologist for Cordero Mining Company.

3. John D. Warne, address unknown - former mining engineer U.S. Bureau of Mines.

4. Earl Pampeyan, address unknown - former geologist U.S. Geological Survey.

5. R. F. Johnson, address unknown - U.S. Geological Survey.

INTERROGATORY NO. 30: For each Development Activity identified in Your response to Interrogatory No. 19, state the Mercury concentration of the Material mined, Moved or disturbed by You or Your Alleged Predecessor(s)-in-Interest, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 30.: Exploration activity conducted by Cordero Mining Company at the property indicated

that production was not economically feasible because of the low mercury concentration contained in the core samples which were removed from the diamond drill holes and tested. The materials disturbed while reopening the Day Tunnel also contained trace amounts of mercury, if any.

INTERROGATORY NO. 31: Identify Each Person who has knowledge concerning the Mercury concentration of the Material mined, Moved or disturbed by You or Your Alleged Predecessor(s)-in-Interest in connection with each Development Activity.

RESPONSE TO INTERROGATORY NO. 31.: See response to Interrogatory No. 8.

Mining Activity and Development Activity by Persons or Entities Other Than You

INTERROGATORY NO. 32: Identify Each Person or entity, other than You or Your Alleged Predecessor(s)-in-Interest, who/which conducted any Mining Activity on any Parcel(s) of the Property at any time during which You or Your Alleged Predecessor(s)-in-Interest owned, leased or held any other possessory interest in that Parcel(s) or the Property, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 32.: The diamond drilling done in conjunction with the exploration activity conducted by Cordero was performed by Boyles Brothers Drilling Company. Please see reports referenced in response to Interrogatory No. 7.

INTERROGATORY NO. 33: Identify Each Person or entity,

other than You or Your Alleged Predecessor(s)-in-Interest, who/which conducted any Development Activity on the Property or any Parcel(s) at any time during which You or Your Alleged Predecessor(s)-in-Interest owned, leased or held any other possessory interest in that Parcel(s) or the Property, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 33.: None.

INTERROGATORY NO. 34: For Each Person or entity identified in Your response to Interrogatory No. 32, identify the nature of the agreement(s) under which that person or entity conducted each Mining Activity, the instrument(s) setting forth the terms of each agreement, the effective dates for each agreement, the specific Parcel(s) subject to the agreement, and any other specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 34.: Boyles Brothers Drilling Company drilled the 23 diamond drill holes pursuant to a contract with Cordero Mining Company. After conducting a diligent search, Sun was unable to locate that agreement, however, limited information is contained in the reports referenced in response to Interrogatory No. 7.

INTERROGATORY NO. 35: For Each Person or entity identified in Your response to Interrogatory No. 33, identify the nature of the agreement(s) under which that person or entity conducted each Development Activity, the instrument(s) setting forth the terms of each agreement, the effective dates for each agreement, the specific Parcel(s) subject to the

Cordero Mining Company. The specific practices, methods and equipment utilized is unknown. After conducting a diligent search, the only information Sun has located regarding this activity is contained in the reports referenced in response to Interrogatory 7.

INTERROGATORY NO. 39: For Each Person or entity identified in Your response to Interrogatory No. 33, describe in detail the specific practices, methods and pieces of equipment used or employed, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 39.: Not applicable.

INTERROGATORY NO. 40: For Each Person or entity identified in Your response to Interrogatory No. 32, state the volume of mercury produced and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 40.: None.

INTERROGATORY NO. 41: For Each Person or entity identified in Your response to Interrogatory No. 33, state the volume of Mercury produced and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 41.: None.

INTERROGATORY NO. 42: For Each Person or entity identified in Your response to Interrogatory No. 32, state the volume of Material minded, Moved or disturbed and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 42.: The precise volume of material disturbed as a result of the 23 diamond drill holes is

unknown. The holes went down as total of 7,761 feet. It is believed that each hole was less than 2" in diameter. Please refer to the reports referenced in response to Interrogatory No. 7.

INTERROGATORY NO. 43: For Each Person or entity identified in Your response to Interrogatory No. 33, state the volume of Material mined, Moved or disturbed and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 43.: Not applicable.

INTERROGATORY NO. 44: For Each Person or entity identified in Your response to Interrogatory No. 32, identify the Parcel(s) or other location(s) off the Property at which any material that was mined, Moved or disturbed was placed, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 44.: The diamond drilling was conducted at the New Almaden Mine. Please refer to the reports referenced in response to Interrogatory No. 7.

INTERROGATORY NO. 45: For Each Person or entity identified in Your response to Interrogatory No. 33, identify the Parcel(s) or other location(s) off the Property at which any Material that was mined, Moved or disturbed was placed, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 45.: Not applicable.

INTERROGATORY NO. 46: For Each Person or entity identified in Your response to Interrogatory No. 32, state the

Mercury concentration of the Material mined, Moved or disturbed and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 46.: The materials disturbed by the diamond drilling conducted by Boyles Brothers, pursuant to a contract with Cordero Mining Company, contained only trace amounts of mercury, if any. No new deposits of mercury were discovered and the exploration project was deemed unsuccessful. Please see reports referenced in response to Interrogatory No. 7.

INTERROGATORY NO. 47: For Each Person or entity identified in Your response to Interrogatory No. 33, state the Mercury concentration of the Material mined, Moved or disturbed and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 47.: Not applicable.

INTERROGATORY NO. 48: For each of Your responses to Interrogatory No. 32 through and including 47, Identify Each Person who has knowledge of the matters described therein.

RESPONSE TO INTERROGATORY NO. 48.:

1. J. Eldon Gilbert, former General Manager and President of Cordero Mining Company, 1642 Rubenstein Drive, Cardiff by the Sea, California.

2. Lloyd Staples, 3210 Agate Street, Eugene, Oregon 97405, (503) 343-1426 - former geologist Cordero Mining Company.

3. Donald L. Curry, 3251 East Road, No. 96, Clifton, Colorado 81520-7977, (303) 434-4059 - former Assistant Resident

Geologist for Cordero Mining Company.

4. John D. Warne, address unknown - former mining engineer U.S. Bureau of Mines.

5. Earl Pampeyan, address unknown - former geologist U.S. Geological Survey.

6. R. F. Johnson, address unknown - U.S. Geological Survey.

Movement of Hazardous Substances By You or Your Alleged Predecessor(s)-in-Interest

INTERROGATORY NO. 49: State the dates during which You or Your Alleged Predecessor(s)-in-Interest moved any Hazardous Substance that originated at the Property, and for each such period, identify the Parcel(s) or other location(s) off the Property to which the Hazardous Substances(s) was Moved and the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 49.: Not applicable.

INTERROGATORY NO. 50: State the volume of Hazardous Substance You or Your Alleged Predecessor(s)-in-Interest moved to each Parcel(s) or other location(s) off the Property identified in Your response to Interrogatory No. 49, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 50.: Not applicable.

INTERROGATORY NO. 51: State the mercury concentration of the Hazardous Substances moved by Your or Your Alleged Predecessor(s)-in-Interest at each Parcel(s) or other location(s) off the Property identified in Your response to

Interrogatory No. 49, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 51.: Not applicable.

INTERROGATORY NO. 52: For each of Your responses to Interrogatory No. 49 through and including 51, Identify Each Person who has knowledge of the matters described in each response.

RESPONSE TO INTERROGATORY NO. 52.: Not applicable.

Profits and Losses

INTERROGATORY NO. 53: State the amount of annual profits and/or losses that You or Your Alleged Predecessor(s)-in-Interest incurred from conducting Mining Activities or Development Activity on the Property. Your answer should specify the costs and revenue data used to calculate profits and losses, whether the profit or loss relates to Development Activity or Mining Activity, and identify the specific documents and other evidence from which such expenses and revenue data was derived.

RESPONSE TO INTERROGATORY NO. 53.: The total cost of the exploration project which commenced in August 1951 and which was completed in March 1953 was $111,503.40. Pursuant to a contract with the Defense Minerals Exploration Administration, the United States government paid 75% of this figure or approximately $83,630. Cordero Mining Company incurred a loss of approximately $28,000 in connection with this exploration project. Please see the reports referenced in response to Interrogatory No. 7.

INTERROGATORY NO. 54: Identify Each Person who has

knowledge concerning the amount of annual profits and/or losses that You or Your Alleged Predecessor(s)-in-Interest incurred from conducting Mining Activities or Development Activities on the Property.

RESPONSE TO INTERROGATORY NO. 54.: Please see response to Interrogatory No. 8.

Sale of Mercury

INTERROGATORY NO. 55: Identify any person or entities who/which purchased any mercury sold by You or Your Alleged Predecessor(s)-in-Interest and the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 55.: Not applicable.

INTERROGATORY NO. 56: Identify Each Person who has knowledge concerning persons or entities identified in Your response to Interrogatory No. 55.

RESPONSE TO INTERROGATORY NO. 56.: Not applicable.

You or Your Alleged Predecessors-in-Interest's Mining Activity or Development Activity Adjacent to the Property

INTERROGATORY NO. 57: State the dates during which You or Your Alleged Predecessor(s)-in-Interest conducted any Mining Activity or Development Activity on any land or bodies of water adjacent to the Property and which involved the movement of Material on to or from the Property, and for each such period, identify the entity that conducted the Mining Activity or Development Activity, the specific location at which each Mining Activity or Development Activity was conducted, and the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 57.: Not applicable.

INTERROGATORY NO. 58: Identify Each Person who has knowledge of the dates during which You or Your Alleged Predecessor(s)-in-Interest conducted any Mining Activity or Development Activity on any land or bodies of water adjacent to the Property and which involved the movement of Material on to or away from the Property.

RESPONSE TO INTERROGATORY NO. 58.: Not applicable.

INTERROGATORY NO. 59: Identify Each Person who has knowledge concerning the entity that conducted the Mining Activity or Development Activity identified in Your response to Interrogatory No. 57, and the specific location at which each Mining Activity or Development Activity was conducted.

RESPONSE TO INTERROGATORY NO. 59.: Not applicable.

INTERROGATORY NO. 60: Describe in detail each Mining Activity or Development Activity that For Each Person or entity identified in Your response to Interrogatory No. 57, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 60.: Not applicable.

INTERROGATORY NO. 61: Identify Each Person who has knowledge concerning each Mining Activity or Development Activity identified in Your response to Interrogatory No. 60.

RESPONSE TO INTERROGATORY NO. 61.: Not applicable.

INTERROGATORY NO. 62: For each Mining Activity or Development Activity identified in Your response to Interrogatory No. 60, identify and describe in detail the specific practices, methods and pieces of equipment that You or

Predecessor(s)-in-Interest placed any Material that was mined, Moved or disturbed in connection with the Activity identified in your response to Interrogatory No. 60, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 66.: Not applicable.

INTERROGATORY NO. 67: Identify Each Person who has knowledge concerning the Parcel(s) or other location(s) off the Property at which You or Your Alleged Predecessor(s)-in-Interest placed any Material that was mined, Moved or disturbed in connection with the Activity identified in Your response to Interrogatory No. 60.

RESPONSE TO INTERROGATORY NO. 67.: Not applicable.

INTERROGATORY NO. 68: For each Mining Activity or Development Activity identified in Your response to Interrogatory No. 60, state the Mercury concentration of the Material mined, Moved or disturbed by You or Your Alleged Predecessor(s)-in-Interest in connection with the Activity identified in Your response to Interrogatory No. 60, and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 68.: Not applicable.

INTERROGATORY NO. 69: Identify Each Person who has knowledge concerning the mercury concentration of the Material mined, Moved or disturbed by You or Your Alleged Predecessor(s)-in-Interest in connection with the Activity identified in Your response to Interrogatory No. 60.

RESPONSE TO INTERROGATORY NO. 69.: Not applicable.

Communications and Transactions

INTERROGATORY NO. 70: Identify and describe in detail each communication between You or Your Alleged Predecessor(s)-in-Interest and any Regulating Authority occurring prior to October 23, 1987, which pertains to any Mining Activity or Development Activity occurring on, or relating to, any Parcel(s), and identify the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 70.: Please reports referenced in response to Interrogatory No. 7.

INTERROGATORY NO. 71: For each Transaction concerning any Parcel(s) to which You or Your Alleged Predecessor(s)-in-Interest, identify the specific Parcel(s) affected, the date(s) of the Transaction, the parties to the transaction, the consideration provided, and the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 71.: Sun Company, Inc.'s predecessor-in-interest, Cordero Mining Company, leased a portion of the New Almaden Mine from approximately 1951 through 1953. This information is based on the 2 reports referenced in response to Interrogatory No. 7. The specific parcel number and exact date of the leasehold are unknown at this time, however, discovery is continuing.

INTERROGATORY NO. 72: Identify Each Person who has knowledge concerning each Transaction identified in Your response to Interrogatory No. 71.

RESPONSE TO INTERROGATORY NO. 72.:

1. Lloyd Staples, 3210 Agate Street, Eugene, Oregon

97405, (503) 343-1426 - former geologist Cordero Mining Company.

2. Donald L. Curry, 3251 East Road, No. 96, Clifton, Colorado 81520-7977, (303) 434-4059 - former Assistant Resident Geologist for Cordero Mining Company.

INTERROGATORY NO. 73: For each Transaction of which you are aware concerning any Parcel(s), identify the specific Parcel(s) affected, the date(s) of the Transaction, the other party(ies) to the transaction, the consideration provided, and the specific documents and other evidence upon which You base Your response.

RESPONSE TO INTERROGATORY NO. 73.: Sun Company, Inc.'s predecessor-in-interest, Cordero Mining Company, leased a portion of the New Almaden Mine between approximately 1951 and 1953. the specific parcel number and the exact dates of the leasehold are unknown at this time. Discovery is continuing.

INTERROGATORY NO. 74: Identify Each Person who has knowledge concerning each Transaction You identify in Your Response to Interrogatory No. 73.

RESPONSE TO INTERROGATORY NO. 74.:

1. Lloyd Staples, 3210 Agate Street, Eugene, Oregon 97405, (503) 343-1426 - former geologist Cordero Mining Company.

2. Donald L. Curry, 3251 East Road, No. 96, Clifton, Colorado 81520-7977, (303) 434-4059 - former Assistant Resident Geologist for Cordero Mining Company.

INTERROGATORY NO. 75: Identify Each Person who has knowledge of any communication (including without limitation,

monitor, clean-up, contain, restore, remove or remediate a release, discharge, spillage, leak, emission and/or disposal of any Hazardous Substances to the soil, surface, or groundwater at the Property.

RESPONSE TO INTERROGATORY NO. 77.: See response to Interrogatory No. 76.

INTERROGATORY NO. 78: For each insurance policy or agreement identified in Your response to Interrogatory No. 76 and 77, sate whether the insurance carrier or entity identified is disputing the policy or agreement's coverage of the claim or claims made by You.

RESPONSE TO INTERROGATORY NO. 78.: See response to Interrogatory No. 76.

INTERROGATORY NO. 79: Identify Each Person who provided information contained in Your answers to these interrogatories, and specify the interrogatory answers to which each such person contributed information.

RESPONSE TO INTERROGATORY NO. 79.: John J. Verber, Larson & Burnham, 1901 Harrison, P. O. Box 119, Oakland, CA 94612, (510) 444-6800, provided information contained in responses to Interrogatories 1 - 75; responses to Interrogatories 76 - 78 were provided by Morton J. Bell, Insurance Department, Sun Company, Inc., 1801 Market Street, Philadelphia, PA 19103.

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Counsel's signature below is solely for preserving objections and is not the signature of a party, officer or agent under Code of Civil Procedure section 2030(g).

DATED: August 30, 1994

LARSON & BURNHAM

By: _____
John J. Verber
Attorneys for Defendant
Sun Company, Inc.

VERIFICATION

[Code Civ. Proc. 446, 2015.5]

I declare under penalty of perjury under the laws of the State of California that I am an officer/agent of a party to the above-entitled matter; that I have read the foregoing document and know its contents, and that it is true and correct of my own knowledge, except as to matters stated upon information and belief, and as to those matters I believe them to be true.

DATED: August 30, 1994 at Philadelphia, Pa.

Joyce C. Wilson
(Signature)

JOYCE C. WILSON
(Type or print name)

Paralegal
(Title, if any)

Re: County of Santa Clara v. Myers, et al.
Court: United States District Court - Northern District
Action No.: C-92 2046 JW (PVT)/C-92 20521 JW (PVT) - Consolidated

Re: County of Santa Clara v. Myers, et al
Court: United States District Court - Northern District
Action No.: C-92 20246 JW PVT/C-92 20521 JW PVT (consolidated)

DECLARATION OF SERVICE BY MAIL

[Federal Rules Civil Procedure, Rule 5]

I declare:

I am over age 18, not a party to this action, and am employed in Alameda County at 1901 Harrison Street, 11th Floor, Oakland, California 94612 (mailing address: Post Office Box 119, Oakland, California 94604).

On September 1, 1994, following ordinary business practices, I placed for collection and mailing at the office of LARSON & BURNHAM, located at 1901 Harrison Street, 11th Floor, Oakland, California 94612, a copy(ies) of the attached:

RESPONSES TO FIRST SET OF INTERROGATORIES TO ALL PARTIES

in a sealed envelope(s), with postage fully prepaid, addressed to:

(SEE ATTACHED LIST)

I am familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the business.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: September 1, 1994

Pat Livingston
PAT LIVINGSTON

Re: County of Santa Clara v. Myers, et al
Court: United States District Court - Northern District
Action No.: C-92 20246 JW PVT/C-92 20521 JW PVT (consolidated)

Plaintiff COUNTY OF SANTA CLARA'S COUNSEL:
Lawrence A. Hobel
Deborah A. Sivas
Nicholas van Aelstyn
Heller, Ehrman, White & McAuliffe
333 Bush Street, Suite 3100
San Francisco, CA 94104

Steven M. Woodside
Ann Miller Ravel
Kathy Kretchmer
Kathryn A. Berry
County of Santa Clara
70 West Hedding St., 9th Flr. East
San Jose, Ca 95110

Defendant MYERS INDUSTRIES, BUCKHORN INC., & BKHN INC.:
Robert D. Wyatt
David D. Cooke
Peter R. Krakaur
Beveridge & Diamond
One Sansome Street, Suite 3400
San Francisco, CA 94104

Defendant Chicago Title Co.:
John W. Fowler, Esq.
Dana M. McRae
McCutchen, Doyle, Brown & Enersen
55 South Market Street, Suite 1500
San Jose, CA 95113

Attorneys for Cross-Defendant
SANTA CLARA VALLEY WATER DISTRICT and J. Robert Roll:
Kevin T. Haroff
Robert L. Falk
Morrison & Foerster
345 California Street
San Francisco, CA 94101

General Counsel:
Anthony C. Bennetti
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

DECLARATION OF SERVICE BY MAIL

Re: County of Santa Clara v. Myers, et al
Court: United States District Court - Northern District
Action No.: C-92 20246 JW PVT/C-92 20521 JW PVT (consolidated)

Newson, Inc.:
Charles E. Padgett, Esq.
Secretary, Newson, Inc.
c/o Fahnestock & Company, Inc.
110 Wall Street
New York, NY 10005

DECLARATION OF SERVICE BY MAIL

LAW OFFICES
BEVERIDGE & DIAMOND
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION
SUITE 3400
ONE SANSOME STREET
SAN FRANCISCO, CA 94104-4438
(415) 397-0100
TELECOPIER (415) 397-4238

PETER R KRAKAUR

BEVERIDGE & DIAMOND, P.C.
SUITE 700
1350 I STREET, N.W.
WASHINGTON, D.C. 20005-3311
(202) 789-6000

40TH FLOOR
437 MADISON AVENUE
NEW YORK, N.Y. 10022-7380
(212) 702-5400

BEVERIDGE & DIAMOND
ONE BRIDGE PLAZA
FORT LEE, N.J. 07024-7502
(201) 585-6162

June 4, 1993

John J. Verber, Esq.
Larson & Burnham
1901 Harrison Street
11th Floor
Oakland, California 94612

Re: County of Santa Clara v. Myers Industries, Inc., et al., No. C-92 20246 JW (PVT);

State of California v. BKHN Inc. and the County of Santa Clara, No. C-92 20521 JW (PVT)

(Consolidated)

Dear John:

This letter follows our telephone conversation earlier today regarding Sun Company, Inc.'s ("Sun") status.

Based on my telephone conversation with you last week, we understood that Sun would send us a letter that would clearly identify the entity or entities that are responsible for the liabilities of Cordero Mining Company ("Cordero"), a former Nevada corporation, at the Almaden site as alleged. We are in receipt of a letter from Sun dated June 3, 1993 which states "Sun (or certain of its subsidiaries) not Oryx Energy Company, is responsible for the liabilities, if any, of the Cordero Mining Company ("Cordero"), a former Nevada corporation, at the Almaden Quicksilver County Park." (emphasis added). As discussed, the letter from Sun which was supposed to clarify its position regarding the proper party, instead introduces a new ambiguity on the issue. If Sun is responsible, a letter from Sun should so state without a qualification suggesting that one of its subsidiaries may be responsible instead. Alternatively, if Sun and a subsidiary are both responsible, a letter should clearly identify Sun and the subsidiary as the entities responsible. If Sun refuses to provide the information, we will be left with little choice but to join Sun as a cross-defendant and to conduct discovery regarding the various corporate relationships of Sun's subsidiaries.

RECEIVED

As you are aware, we request this clarification because we intend to amend our cross-claims to name the Sun-related entity as a cross-defendant and to dismiss Oryx. Please appreciate that our request is intended to avoid any questions down the road as to which Sun entity(ies) is(are) the proper defendant(s) in the case. Unfortunately, as it stands now the identity of the Sun entity(ies) responsible for Cordero's activities as alleged is unclear.

We understand that Sun has conducted some initial investigation into Cordero's activities at the site which indicate that Cordero may have conducted only exploratory activities for mercury at the site, rather than mercury production. We understand further that Sun believes liability attaches only for mercury production, rather than mercury mining activities or operations, and, thus, requests that it not be joined or that it be dismissed if we are provided with declarations from former Cordero employees indicating that Cordero did not produce mercury at the site. Sun indicated that it may file a Rule 11 motion if we do not agree to a dismissal or non-joinder of Sun if we are provided with that information.

As you are aware, the allegations in the complaints in these consolidated cases are not limited to mercury production, but refer generally to "mercury mining operations" or "mercury mining activities." (See e.g. County's First Amended Complaint, ¶¶ 5-9, 12-13; State's Complaint, ¶¶ 4, 6). The amended cross-claims, in turn, include allegations that essentially mirror the complaints, namely that Cordero "leased the Property or portions thereof, and/or conducted and/or permitted mercury mining activities at the Property of portions thereof." (Amended Cross-claim of BKHN, ¶ 8). Simply put, at this juncture, we do not believe there is any basis for Sun's interpretation of the complaints limiting liability to mercury production. Moreover, even assuming that Sun's recent research and interpretation of the complaints is correct (i.e., that Cordero conducted only exploratory work and liability attached only to mercury production)[1/], Sun (or a Sun-related entity) is a proper cross-defendant for the liabilities of Cordero as alleged because Cordero is alleged to be a lessee of the site, which itself can lead to liability under section 107(a)(2) of CERCLA.

Please be advised that we intend to join Sun (and/or the Sun-related entity identified by Sun) as a cross-defendant and that we will not dismiss that cross-defendant on the basis of

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1/ Of course, we do not admit that Sun's research or interpretation is correct.

statements that Cordero conducted only mercury exploratory activities at the site. In addition, if Sun makes a Rule 11 motion on the grounds we have discussed, please be advised that we will move for sanctions as well.

After you have had an opportunity to consider this, please contact us to discuss and to let us know whether Sun will provide a letter clarifying whether Sun and/or a related entity is responsible for Cordero as alleged.

Very truly yours

Peter R. Krakaur

Peter R. Krakaur

PRK:phb

0996\2346\ltr\2346prk.235

93-156
Corresp.

LAW OFFICES OF
LARSON & BURNHAM
A PROFESSIONAL CORPORATION
1901 HARRISON STREET, 11TH FLOOR
OAKLAND, CALIFORNIA 94612
TELEPHONE: (510) 444-6800

Please reply to:
POST OFFICE BOX 119
OAKLAND, CALIFORNIA 94604-9918
TELECOPIER NUMBER: (510) 835-6666

DAVID O. LARSON
GREGORY DAVID BROWN
ROBERT J. LYMAN
SCOTT G. FITCH
RALPH A. ZAPPALA
PETER DIXON
SUSAN THOMAS FELDSTED
GARY R. SELVIN
ROBERT A. FORD
MICHAEL R. REYNOLDS
CLARK J. BURNHAM
GEORGE J. ZIRER
ERIC R. HAAS
STEVEN M. HARDEN
MONICA DELL'OSSO*
JEFFERY G. BARRY
PATRICK McCARTHY
R. WAYNE GOODROE
DAVID R. PIRELLI

A.J. MOORE, JR. (1918-1994)

JAMES H. HIGGS (OF COUNSEL)*

*Certified Specialist, Probate, Estate Planning and Trust Law
The State Bar of California Board of Legal Specialization

CHRISTOPHER L. AGUILAR
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PAUL D. CALEO
VERA O. DE MARTINI
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PELAYO A. LLAMAS, JR.
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WALTER G. RORDÓN
MAI SHARIF SHIVER
DANIEL L. SULLIVAN, JR.
ANJALI TALWAR
SHAWN A. TOLMER
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DAVID H. WATERS
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CHRISTOPHER J. CONNELL
JACQUELINE d'SOUZA
WILLIAM J. DUKE
RICHARD J. FINN
DOUGLAS S. FREE
JENNIFER B. GIESELER
DENISE A. HARRISON-SMITH
THELA WILEY JAMES-RICHERT
JANE KELLY
STEVEN N. LaPEDIS
FRANK C. LUZZI
ROBERT M. MALTZ
YICHIEH MAYHOMICHAUS
STEVEN A. NIELSEN
MICHAEL WORTH REYNOLDS
STEPHEN C. ROWELL
SUSAN E. SHANHOLTZ
BRYAN K. STANFIELD
MARK J. SWEENEY
DARRELL T. THOMPSON
MICHAEL B. TREPPA
CHRISTOPHER A. VIADRO
DAVID B. WEBSTER
DARRYL M. YEE
BARRY ZOLLER

July 22, 1993

The Honorable James Ware
Judge of the United States District Court
Northern District of California
280 S. 1st Street
San Jose, CA 95113

RECEIVED
JUL 26 1993
R. W. WILLIAMS

Re: County of Santa Clara v. Myers, et al.
USDC-ND Action No. C-91 20246 JW (PVT)
and C-91 10521 JW (PVT) (Consolidated)

Dear Judge Ware:

This office represents Sun Company, Inc. (Sun) in the above-referenced matter. Sun was just recently brought into this action by way of BKHN Inc.'s cross-claim. Sun is responsible for the liabilities, if any, of Cordero Mining Company, arising out of its activities at the Almaden Quick Silver County Park.

During the course of my investigation into Cordero's activities at the site, I had occasion to speak with J. Eldon Gilbert, the former President of Cordero Mining Company. Mr. Gilbert informed me that he is in very poor health. In order to preserve Mr. Gilbert's testimony, we would like to take Mr. Gilbert's deposition as soon as possible. Unfortunately, discovery is currently stayed in this action.

Consequently, I respectfully request that you sign the enclosed Stipulation and Order Re Discovery authorizing the parties to proceed with Mr. Gilbert's deposition. Mr. Gilbert has suggested July 29, 1993 for his deposition and has graciously agreed to make his home available for the deposition. This date is acceptable to counsel for the various parties.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

LARSON & BURNHAM

John J. Verber

JJV:pl
Enclosures
cc: All Counsel
115180

ROBERT D. WYATT - Bar No. 73240
DAVID D. COOKE - Bar No. 94939
PETER R. KRAKAUR - Bar No. 143621
BEVERIDGE & DIAMOND
One Sansome Street, Suite 3400
San Francisco, CA 94104
Telephone: (415) 397-0100

Attorneys for Defendants,
Counterclaimants, and Cross-Claimants
MYERS INDUSTRIES, INC.,
BUCKHORN INC., BKHN INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

COUNTY OF SANTA CLARA, Plaintiff, vs. MYERS INDUSTRIES, INC., et al., Defendants.	No. C-92 20246 JW (PVT) C-92 20521 JW (PVT) (Consolidated) SECOND AMENDED CROSS-CLAIM OF MYERS INDUSTRIES, INC., BUCKHORN INC., and BKHN INC.
MYERS INDUSTRIES, INC.; BUCKHORN INC.; BKHN INC., Cross-Claimants, vs. CHICAGO TITLE INSURANCE COMPANY; SUN COMPANY, INC.; NEWSON, INC.; SANTA CLARA VALLEY WATER DISTRICT, Cross-Defendants.	
AND RELATED CLAIMS AND ACTIONS	

Cross-claimants MYERS INDUSTRIES, INC., BUCKHORN, INC., AND BKHN, INC. (collectively referred to herein as "CROSS-CLAIMANTS"), and each of them, for their second amended cross-claims in these consolidated cases, allege against cross-defendants, and each of them, as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over these cross-claims pursuant to: section 113(b) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9613(b), and 28 U.S.C. § 1331, pursuant to the principles of pendent jurisdiction and of supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

2. Venue is proper in this District under 42 U.S.C. § 9613(b) and 28 U.S.C. section 1391(b) in that (a) a substantial part of the events giving rise to the claims asserted herein occurred in this District, and (b) the property that is the subject of this action is situated in this District.

PARTIES

3. Cross-claimant BKHN, INC. ("BKHN") is a corporation organized under the laws of the State of Ohio, and is the successor in interest by merger agreement to New Idria, Inc., a former Nevada corporation, f/k/a New Idria Mining & Chemical Company ("NIMCC"). In or about November 1968, NIMCC purchased parcels ("Parcels") of real property located in Santa Clara County, California which lie within the current boundaries of real property currently known as the Almaden Quicksilver County Park ("PROPERTY"). Between in or about July 1973 and in or

about June 1975, NIMCC sold its Parcels to plaintiff County of Santa Clara ("COUNTY").

4. Cross-claimant BUCKHORN, INC. ("BUCKHORN") is a corporation organized under the laws of the State of Delaware.

5. Cross-claimant MYERS INDUSTRIES, INC. ("MYERS") is a corporation organized under the laws of the State of Ohio.

6. Plaintiff COUNTY is the current owner of the PROPERTY. The COUNTY filed this action, No. C-92 20246 JW (PVT), against CROSS-CLAIMANTS and others seeking to recover its alleged costs and damages associated with the investigation and remediation of the alleged release and/or threatened release of hazardous substances, including mercury at the PROPERTY. The State of California ("STATE"), on behalf of the California Department of Toxic Substances Control ("DTSC"), filed an action, No. C-92 20521 JW (PVT), against the COUNTY and BKHN seeking to recover the STATE's alleged oversight and remedial action costs associated with the PROPERTY. The STATE's action has been consolidated with the COUNTY's action. The COUNTY's complaint in action No. C-92 20246 JW (PVT) ("the County Action") shall be referred to herein as "the County Complaint." The STATE's complaint in action No. C-92 20521 JW (PVT) ("The State Action") shall be referred to herein as "the State Complaint."

7. CROSS-CLAIMANTS are informed and believe, and thereon allege, that cross-defendant CHICAGO TITLE INSURANCE COMPANY ("CTIC"), is or at all relevant times herein was, a Missouri corporation, and is the successor by merger to Ticor Title Insurance Company of California ("Ticor"). CROSS-CLAIMANTS are

further informed and believe, and thereon allege, that CTIC is the successor to, or otherwise responsible for the liabilities of, California Pacific Title Insurance Company ("California Pacific").

8. CROSS-CLAIMANTS are informed and believe, and thereon allege, that California Pacific owned the PROPERTY or portions thereof when mercury mining operations were conducted and/or during the disposal of hazardous substances, including mercury, from in or about 1960 until in or about 1968.

9. CROSS-CLAIMANTS are informed and believe, and thereon allege, that CORDERO MINING COMPANY ("Cordero") is or was a Nevada Corporation doing business in California. CROSS-CLAIMANTS are further informed and believe, and thereon allege, that from in or about 1951 and through in or about 1953, Cordero leased the PROPERTY or portions thereof, and/or conducted and/or permitted mercury mining activities at the Property or portions thereof.

10. CROSS-CLAIMANTS are informed and believe, and thereon allege, that the activities, acts and/or omissions of Cordero at the PROPERTY or portions thereof caused, permitted, or contributed to the release or threatened release of hazardous substances, including mercury at the PROPERTY or portions thereof.

11. CROSS-CLAIMANTS are informed and believe, and thereon allege, that cross-defendant SUN COMPANY, INC. ("SUN") is, and was at relevant times herein, a Pennsylvania corporation authorized to do and doing business in California. CROSS-CLAIMANTS are further informed and believe, and thereon allege,

that SUN is the successor to and/or otherwise responsible for any and all liabilities of Cordero arising from or related to Cordero's acts or omissions at the PROPERTY.

12. CROSS-CLAIMANTS are informed and believe, and thereon allege, that the claims alleged herein against cross-defendant SUN arise out of the same transactions and occurrences that are the subject matter of the State Complaint, the County Complaint, and Counterclaims related thereto in that the acts and/or omissions of Cordero caused some or all of the conditions at the PROPERTY that are the subject of those complaints and counterclaims and in that SUN is responsible for Cordero's liabilities as alleged herein.

13. CROSS-CLAIMANTS are informed and believe, and thereon allege, that New Almaden Corporation ("New Almaden Corp.") was a Delaware corporation formed in or about March 1940 and did business in the State of California. CROSS-CLAIMANTS are further informed and believe, and thereon allege, that New Almaden Corp. leased the PROPERTY or portions thereof, and conducted and/or permitted mercury mining activities at the PROPERTY or portions thereof from in or about May 1940 to in or about November 1945. CROSS-CLAIMANTS are further informed and believe, and thereon allege, that New Almaden Corp.'s acts and/or omissions at the PROPERTY or portions thereof caused, permitted and/or contributed to the release or threatened release of hazardous substances, including mercury at the PROPERTY or portions thereof.

14. CROSS-CLAIMANTS are informed and believe, and thereon allege, that W.H. Newbold's Sons & Co. ("Newbold Partnership"),

is or was a partnership established in or about 1844 in the State of Pennsylvania, and at all relevant times herein did business in the State of California. CROSS-CLAIMANTS are further informed and believe, and thereon allege, that the Newbold Partnership promoted, formed, underwrote, incorporated, and/or arranged for the incorporation in the State of Delaware the New Almaden Corp. for the purposes of conducting mining activities at the PROPERTY or portions thereof.

15. CROSS-CLAIMANTS are informed and believe, and thereon allege, that at all times herein mentioned there existed a unity of interest and ownership between the Newbold Partnership and New Almaden Corp. such that any individuality and separateness between them ceased to exist. CROSS-CLAIMANTS are further informed and believe, and thereon allege, that New Almaden Corp. was a mere shell, instrumentality, and conduit through which the Newbold Partnership carried on its mining activities at the PROPERTY or portions thereof.

16. CROSS-CLAIMANTS are informed and believe, and thereon allege, that the Newbold Partnership was at all times relevant herein, the alter ego of the New Almaden Corp. in that (1) the Newbold Partnership completely influenced, controlled, dominated, governed, managed, directed and/or operated New Almaden Corp.; (2) the Newbold Partnership directed, authorized, and/or controlled the acts, including without limitation mercury mining activities, of the New Almaden Corp. at the PROPERTY of portions thereof; (3) some or all of the officers, directors, and/or partners of the Newbold Partnership were the principals, partners, officers, and/or directors of

New Almaden Corp.; and/or (4) the Newbold Partnership received distributions, royalties, and or other payments from New Almaden Corp. resulting from New Almaden Corp.'s mining activities at the PROPERTY or portions thereof. CROSS-CLAIMANTS are further informed and believe, and thereon allege, that by virtue of the distributions and activities alleged herein, the Newbold Partnership is the successor to all of the liabilities of New Almaden Corp., including liabilities associated with the PROPERTY.

17. CROSS-CLAIMANTS are informed and believe, and thereon allege, that the activities, acts and/or omissions of New Almaden Corp. caused some or all of the conditions at the PROPERTY that are the subject of the State Complaint, the County Complaint, and Counterclaims related thereto.

18. CROSS-CLAIMANTS are informed and believe, and thereon allege, that adherence to the fiction of the separate existence of New Almaden Corp. as an entity distinct from the Newbold Partnership under the circumstances would permit an abuse of the corporate privilege and would sanction fraud and/or promote injustice in that New Almaden Corp. was responsible for some or all of the costs and damages alleged in the Complaint and related Counterclaim and in that the Newbold Partnership is responsible for the liabilities of the Newbold Partnership as alleged therein.

19. CROSS-CLAIMANTS are informed and believe, and thereon allege, that cross-defendant NEWSON, INC. ("NEWSON"), f/k/a/ W.H. Newbold's Son & Company, Inc., is or was at relevant times herein was a Pennsylvania corporation. CROSS-CLAIMANTS are

further informed and believe, and thereon allege, that NEWSON is the successor to and/or is otherwise responsible for the liabilities of the Newbold Partnership, including liabilities of New Almaden Corp. resulting from, caused by, or associated with mercury mining and related activities at the PROPERTY or portions thereof.

20. CROSS-CLAIMANTS are informed and believe, and thereon allege, that the claims alleged herein against cross-defendant NEWSON arise out of the same transactions and occurrences that are the subject of the State Complaint, the County Complaint, and Counterclaims related thereto in that New Almaden Corp. caused some or all of the conditions at the PROPERTY that are the subject those complaints and counterclaims and in that NEWSON is responsible or otherwise liable for the liabilities of New Almaden Corp. and/or the Newbold Partnership as alleged herein.

21. CROSS-CLAIMANTS are informed and believe, and thereon allege, that cross-defendant Santa Clara Valley Water District ("DISTRICT") is a special district created in 1951 under the Santa Clara County Flood Control and Water Conservation District Act, Stats. 1951, ch. 1405, p. 3337. CROSS-CLAIMANTS are further informed and believe, and thereon allege, that the DISTRICT is the successor-in-interest to the Santa Clara Valley Water Conservation District ("SCVWCD"), a special district created by the Water Conservation Act of 1931, Uncodified Acts, Act 9127c, now codified at Water Code §§ 74031 et seq. The DISTRICT can be sue and be sued on its own name. (Water Code § 74640).

22. CROSS-CLAIMANTS are informed and believe, and thereon allege, that (a) in or about 1935, the SCVWCD built and maintained roads at the PROPERTY; and (b) commencing in or about 1935, and continuing thereafter, SCVWCD constructed and maintained the Almaden and Guadalupe reservoirs on adjacent property. CROSS-CLAIMANTS are further informed and believe, and thereon allege, that the activities of the SCVWCD at the PROPERTY caused or contributed to the release or threatened release of hazardous substances, including but not limited to mercury, at the PROPERTY that are the subject of the State Complaint, the County Complaint, and Counterclaims related thereto. CROSS-CLAIMANTS are further informed and believe, and thereon allege, that some or all of the costs allegedly incurred by COUNTY for which recovery and a declaration of liability is sought in the Complaint, were caused, in whole or in part, by the acts or omissions of the SCVWCD in constructing and maintaining said reservoirs.

23. CROSS-CLAIMANTS are informed and believe, and thereon allege, that the claims alleged herein against the DISTRICT arise out of the same transactions and occurrences that are the subject of the State Complaint, the County Complaint, and Counterclaims related thereto.

24. CROSS-CLAIMANTS presented a claim ("Claim") to the DISTRICT under section 910 of the California Government Code and under section 74645 of the California Water Code on or about July 21, 1992, for all costs and damages that CROSS-CLAIMANTS have incurred and will incur for the environmental investigation and cleanup at the PROPERTY in relation to the

lawsuit filed by plaintiff COUNTY. On or about September 16, 1992, BKHN presented to the DISTRICT "BKHN Inc.'s Amended Claim Presented To The Santa Clara Valley Water District," ("Amended Claim") amending BKHN's claim against the DISTRICT to include the costs and damages associated with the State Complaint.

25. CROSS-CLAIMANTS are informed and believe, and thereon allege, that the DISTRICT failed to act on the Claim within period provided under the Government Code, and that the Claim is deemed denied by the DISTRICT.

26. Cross-defendants CTIC, SUN, NEWSON, and DISTRICT shall collectively be referred to herein as "the CROSS-DEFENDANTS."

27. CROSS-CLAIMANTS are informed and believe, and thereon allege, that the issues of law and fact concerning the liability of the CROSS-DEFENDANTS, and each of them, for the costs and damages alleged by the CROSS-CLAIMANTS are common to the issues of law and fact arising from the complaints and counterclaims in these consolidated cases.

ALLEGATIONS REGARDING THE HISTORY AND INVESTIGATION OF THE ALMADEN QUICKSILVER COUNTY PARK

28. CROSS-CLAIMANTS are informed and believe, and thereon allege, that in or about 1845, mercury and mercury-containing ore were discovered in the New Almaden District of California, in areas located within what would later become the geographical boundaries of County of Santa Clara, California. CROSS-CLAIMANTS are further informed and believe, and thereon allege, that mercury mining activities soon commenced in or about that year at the New Almaden Mines, and that mining and

related operations continued at the New Almaden Mines for many decades thereafter.

29. CROSS-CLAIMANTS are informed and believe, and thereon allege, that the New Almaden Mines currently lie within the boundaries of the PROPERTY.

30. On or about October 23, 1987, pursuant to California H & S Code sections 205 and 206, and to California's Carpenter-Pressley-Tanner Hazardous Substance Account Act ("HSAA"), H & S Code §§ 25300 et seq., DTSC, f/k/a Department of Health Services, issued a Remedial Action Order ("RAO") to the COUNTY and BKHN, alleging that the PROPERTY's soil and surface waters are contaminated with mercury at levels above applicable regulatory standards and that the COUNTY and BKHN are "responsible persons or parties as defined by [ ] Section[s] 25319, 25360, and 25385.1(g)" of the HSAA, for the remediation of the PROPERTY.

31. The liability of any person or entity for the costs and expenditures associated with the investigation and cleanup of hazardous substances, including mercury, at the PROPERTY is governed by Sections 25360, 25361, 25362, and 25363 of the HSAA, including, without limitation, the apportioned liability provisions of Section 25363(a)-(c).

FIRST CLAIM FOR RELIEF
(Equitable Indemnity Under State Law)

32. CROSS-CLAIMANTS re-allege and incorporate herein by reference each and every allegation set forth in paragraphs 1-31.

33. The COUNTY has filed the County Action against CROSS-CLAIMANTS, and each of them, and others, including certain CROSS-DEFENDANTS, seeking relief relating to its alleged costs and damages associated with the past and future investigation and cleanup of the alleged release and/or threatened release of hazardous substances, including mercury, at the PROPERTY. The STATE has filed the State Action against BKHN and the COUNTY is seeking recovery of alleged costs associated with the past and future investigation and cleanup of the alleged release and/or threatened release of hazardous substances, including mercury at the PROPERTY. CROSS-CLAIMANTS have denied liability for any of the COUNTY's alleged costs and damages. BKHN has denied liability for any of the STATE's alleged costs. However, in the event that any party to these consolidated cases should establish any liability on the part of CROSS-CLAIMANTS, or any of them, which liability is expressly denied, CROSS-CLAIMANTS or some of them, may be obligated to pay sums in excess of their equitable share of liability, if any. In that event, CROSS-CLAIMANTS or some of them would be entitled to recover some or all of such costs from the CROSS-DEFENDANTS, and each of them, based on the fault respectively attributable to the CROSS-DEFENDANTS, and each of them. CROSS-CLAIMANTS, and each of them, request an adjudication and determination of the respective proportions or percentages of fault, if any, on the part of the CROSS-CLAIMANTS, or any of them, and on the part of the CROSS-DEFENDANTS, and each of them.

WHEREFORE, CROSS-CLAIMANTS, and each of them, pray for judgment against the CROSS-DEFENDANTS, and each of them, in the County Action as set forth below; and,

WHEREFORE, BKHN prays for judgment against the CROSS-DEFENDANTS, and each of them, in the State Action as set forth below.

SECOND CLAIM FOR RELIEF
(Declaratory Relief Under State Law)

34. CROSS-CLAIMANTS re-allege and incorporate herein by reference each and every allegation set forth in paragraphs 1-33.

35. An actual controversy now exists among CROSS-CLAIMANTS and the CROSS-DEFENDANTS, and each of them, in that CROSS-CLAIMANTS, on the one hand, contend that the CROSS-DEFENDANTS, and each of them, are liable to CROSS-CLAIMANTS for removal and remedial action costs associated with the alleged release and/or threatened release of hazardous substances, including mercury, at the PROPERTY which CROSS-CLAIMANTS have incurred, may incur in the future and/or may be held liable for in the County Action; whereas CROSS-CLAIMANTS are informed and believe, and thereon allege, that the CROSS-DEFENDANTS, and each of them, on the other hand, deny that they are liable for any such costs.

36. An actual controversy now exists among BKHN and the CROSS-DEFENDANTS, and each of them, in that BKHN, on the one hand, contends that the CROSS-DEFENDANTS, and each of them, are liable to BKHN for removal and remedial action costs associated with the alleged release and/or threatened release of hazardous

substances, including mercury, at the PROPERTY which BKHN has incurred, may incur in the future and/or may be held liable for in the State Action; whereas BKHN is informed and believes, and thereon alleges, that the CROSS-DEFENDANTS, and each of them, on the other hand, deny that they are liable for any such costs.

37. CROSS-CLAIMANTS, and each of them, desire a determination of the respective rights, duties, and liabilities of CROSS-CLAIMANTS, the CROSS-DEFENDANTS, and each of them, with respect to the removal and remedial action costs and obligations claimed herein and in the complaints and counterclaims, as well as their rights, duties, and liabilities for such costs and obligations in the future. Such a declaration is necessary and appropriate at this time to avoid a multiplicity of actions and to effectuate a just and speedy resolution of the issues and liabilities alleged herein.

38. Pursuant to Section 1060 of the California Code of Civil Procedure, and/or to Section 25360.4(c) of the HSAA, CROSS-CLAIMANTS, and each of them, are entitled to a declaration of the parties' respective rights and duties as more fully described herein.

WHEREFORE, CROSS-CLAIMANTS, and each of them, pray for judgment against the CROSS-DEFENDANTS, and each of them, in the County Action as set forth below; and,

WHEREFORE, BKHN prays for judgment against the CROSS-DEFENDANTS, and each of them, in the State Action as set forth below.

THIRD CLAIM FOR RELIEF
(Declaratory Relief Under Federal Law)

39. CROSS-CLAIMANTS re-allege and incorporate herein by reference each and every allegation set forth in paragraphs 1-38.

40. An actual controversy now exists between CROSS-CLAIMANTS and the CROSS-DEFENDANTS, and each of them, in that CROSS-CLAIMANTS, on the one hand, contend that the CROSS-DEFENDANTS, and each of them, are liable to CROSS-CLAIMANTS, and each of them, for removal and remedial action costs associated with the alleged release and/or threatened release of hazardous substances, including mercury at the PROPERTY which CROSS-CLAIMANTS have incurred and may incur in the future and/or may be held liable for in the County Action; whereas CROSS-CLAIMANTS are informed and believe, and thereon allege, that the CROSS-DEFENDANTS, and each of them, on the other hand, deny that they are liable for any such costs.

41. An actual controversy now exists among BKHN and the CROSS-DEFENDANTS, and each of them, in that BKHN, on the one hand, contends that the CROSS-DEFENDANTS, and each of them, are liable to BKHN for removal and remedial action costs associated with the alleged release and/or threatened release of hazardous substances, including mercury, at the PROPERTY which BKHN has incurred, may incur in the future and/or may be held liable for in the State Action; whereas BKHN is informed and believes, and thereon alleges, that the CROSS-DEFENDANTS, and each of them, on the other hand, deny that they are liable for any such costs.

42. CROSS-CLAIMANTS, and each of them, desire a determination of the respective rights, duties, and liabilities of CROSS-CLAIMANTS, the CROSS-DEFENDANTS, and each of them, with respect to the removal and remedial action costs and obligations claimed herein and in the complaints and counterclaims, as well as their rights, duties, and liabilities for such costs and obligations in the future. Such a declaration is necessary and appropriate at this time to avoid a multiplicity of actions and to effectuate a just and speedy resolution of the issues and liabilities alleged herein.

43. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and/or to 28 U.S.C. §§ 2201 and 2202, CROSS-CLAIMANTS, and each of them, are entitled to a declaration of the parties' respective rights and duties as more fully described herein.

WHEREFORE, CROSS-CLAIMANTS, and each of them, pray for judgment against the CROSS-DEFENDANTS, and each of them, in the County Action as set forth below; and

WHEREFORE, BKHN prays for judgment against the CROSS-DEFENDANTS, and each of them, in the State Action as set forth below.

FOURTH CLAIM FOR RELIEF
(Contribution and/or Indemnity under the HSAA)
(By BKHN Only)

44. BKHN re-alleges and incorporates herein by reference each and every allegation set forth in paragraphs 1-43.

45. BKHN has incurred and paid removal and remedial action costs for the PROPERTY in accordance with the HSAA and/or CERCLA, including, but not limited to, the costs of

complying with the RAO to investigate and remediate the alleged mercury contamination at the PROPERTY. BKHN is informed and believes, and thereon alleges, that it will incur additional removal and remedial action costs to investigate and remediate the alleged mercury contamination at the PROPERTY.

46. Cross-defendants CTIC, SUN, and NEWSON, and each of them, are persons who are liable under the HSAA and/or CERCLA for removal and remedial action costs associated with the PROPERTY in that each of them (1) owned the PROPERTY or portions thereof at the time of disposal or release of hazardous substances, including mercury at the PROPERTY; and/or (2) operated the PROPERTY or portions thereof, at the time of a disposal or release of hazardous substances, including mercury, at the PROPERTY; and/or (3) arranged for the disposal or release of hazardous substances, including mercury, at the PROPERTY.

47. BKHN is informed and believes, and thereon alleges, that cross-defendant DISTRICT, as successor in interest to the SCVWCD, is a person who is liable under the HSAA and/or CERCLA for removal and remedial action costs associated with the PROPERTY in that the SCVWCD built and maintained roads at the PROPERTY, and, by virtue thereof, operated the PROPERTY or portions thereof, at the time of a disposal or release of hazardous substances, including mercury, at the PROPERTY, and/or arranged for the disposal or release of hazardous substances, including mercury, at the PROPERTY.

48. The CROSS-DEFENDANTS, and each of them, have not had, and are not currently having, their liability discharged under the HSAA.

49. Pursuant to Section 25363(e) of the HSAA, H & S Code § 25363(e), BKHN is entitled to statutory contribution and/or indemnity from the CROSS-DEFENDANTS, and each of them, for all costs incurred and to be incurred to investigate and/or remediate the alleged mercury contamination at the PROPERTY that are in excess of BKHN's equitably allocated share of the removal and remedial action costs at the PROPERTY, if any, based on the actions of NIMCC.

WHEREFORE, BKHN prays for judgment in the State Action and in the County Action against the CROSS-DEFENDANTS, and each of them, as set forth below.

FIFTH CLAIM FOR RELIEF
(Contribution Under CERCLA § 113(f)(1), 42 U.S.C. § 9613(f)(1))
(By BKHN Only)

50. BKHN re-alleges and incorporates herein by reference each and every allegation set forth in paragraphs 1-49.

51. The PROPERTY is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

52. The CROSS-DEFENDANTS, and each of them, are "persons" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

53. Cross-defendants CTIC, SUN, and NEWSON, and each of them, are persons who are liable or potentially liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), because they (1) owned the PROPERTY or portions thereof at the time of disposal

or release of hazardous substances, including mercury at the PROPERTY; and/or (2) operated the PROPERTY or portions thereof, at the time of a disposal or release of hazardous substances, including mercury at the PROPERTY; and/or (3) arranged for the disposal or release of hazardous substances, including mercury at the PROPERTY.

54. BKHN is informed and believes, and thereon alleges, that Cross-defendant DISTRICT, as successor-in-interest to SCVWCD, is a person who is liable or potentially liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), because the SCVWCD built and maintained roads at the PROPERTY, and, by virtue thereof, operated the PROPERTY or portions thereof, at the time of a disposal or release of hazardous substances, including mercury, at the PROPERTY, and/or arranged for the disposal or release of hazardous substances, including mercury, at the PROPERTY.

55. In the event that BKHN is held liable for any amount in excess of its equitably allocated share of the removal or remedial action costs associated with the PROPERTY, if any, the CROSS-DEFENDANTS, and each of them, are liable to BKHN for any such excess amount under the statutory right to contribution, based on equitable factors as the court determines are appropriate, on those provided under § 113(f)(1) of CERCLA, 42 U.S.C. § 9613, or otherwise under the federal common law of contribution.

WHEREFORE, BKHN prays for judgment in the State Action and in the County Action against the CROSS-DEFENDANTS, and each of them, as set forth below.

SIXTH CLAIM FOR RELIEF
(State Law Contribution)
(By BKHN Only)

56. BKHN re-alleges and incorporates herein by reference each and every allegation set forth in paragraphs 1-55.

57. BKHN has incurred removal and remedial action costs associated with the PROPERTY in accordance with the HSAA or CERCLA beyond its proportionate share. BKHN is informed and believes, and thereon alleges, that it will incur additional removal and remedial action costs for the PROPERTY in accordance with the HSAA or CERCLA beyond its proportionate share.

58. BKHN is informed and believes, and thereon alleges, that in the event that BKHN is deemed to be liable for removal and remedial action costs incurred and to be incurred for the PROPERTY, the CROSS-DEFENDANTS, and each of them, would also be liable for such costs because they are liable for such costs under the HSAA. BKHN is further informed and believes, and thereon alleges, that it would be entitled to contribution for all costs which it each has incurred and will incur beyond its proportionate share, if any, based on the actions of NIMCC, from the CROSS-DEFENDANTS, and each of them.

WHEREFORE, BKHN prays for judgment in the State Action and in the County Action against the CROSS-DEFENDANTS, and each of them, as set forth below.

PRAYER

WHEREFORE, CROSS-CLAIMANTS, and each of them, pray:

1. That CROSS-CLAIMANTS, and each of them, may have a declaration of the respective proportion or percentage of fault, if any, of the CROSS-CLAIMANTS, the CROSS-DEFENDANTS, and each of them, and all other parties to these consolidated cases, for the release or threatened release of hazardous substances, including mercury at the PROPERTY; and, if any judgment is entered in favor of either plaintiff in the State Action or the County Action against any CROSS-CLAIMANT as defendant therein, then, that judgment together with interest and costs, be entered in favor of CROSS-CLAIMANTS, and each of them, and against the CROSS-DEFENDANTS, and each of them, for indemnity and/or contribution, requiring them to pay CROSS-CLAIMANTS that proportion or percentage of any such judgment that is attributable to the proportion or percentage of assessed or assessable against said CROSS-CLAIMANTS that is not equitably attributable to them based on the alleged actions or omissions of NIMCC; and otherwise to indemnify and exonerate CROSS-CLAIMANTS, and each of them, against all such liability.

2. That in the event that any party to the State Action and/or the County Action should establish any liability on the part of CROSS-CLAIMANTS, or any of them, the Court find that on the basis of equitable indemnity, the CROSS-DEFENDANTS, and each of them, are obligated to pay all costs and damages resulting from the investigation or remediation of the PROPERTY that represent a proportion or percentage of fault not

attributable to any act or omission of the CROSS-CLAIMANTS, any of them, or of any person or corporation for whose liabilities they may be responsible.

3. That CROSS-CLAIMANTS, and each of them, may have a declaration of the respective rights, duties, and obligations, if any, of the CROSS-CLAIMANTS and the CROSS-DEFENDANTS, and each of them, for the removal and remedial action costs and obligations claimed herein, as well as their rights, duties, and liabilities for such costs and obligations in the future.

4. For costs of suit incurred in the prosecution of this Cross-claim.

5. For reasonable attorneys fees as may be permitted by statute or common law.

6. For interest on sums recoverable in this action.

7. For such other further relief as the Court may deem proper.

WHEREFORE, in addition, BKHN prays for:

1. For contribution and/or indemnity from the CROSS-DEFENDANTS, and each of them, under Section 25363 of the HSAA.

2. For contribution from the CROSS-DEFENDANTS, and each of them, under Section 113(f) of CERCLA.

3. For contribution from the CROSS-DEFENDANTS, and each of them, under State common law.

DATED: June 16, 1993

ROBERT D. WYATT
DAVID D. COOKE
PETER R. KRAKAUR
BEVERIDGE & DIAMOND

By Peter R. Krakaur
Peter R. Krakaur

Attorneys for Defendants, Counterclaimants, Cross-Claimants, MYERS INDUSTRIES, INC., BUCKHORN INC., and BKHN INC.

Re: In the Matter of the Claim of Sun Company, Inc.

DECLARATION OF SERVICE BY MAIL

[Code Civ. Proc. §§ 1013a(3), 2015.5]

I declare:

I am over age 18, not a party to this action, and am employed in Alameda County at 1901 Harrison Street, 11th Floor, Oakland, California 94612 (mailing address: Post Office Box 119, Oakland, California 94604).

On July 6, 1993, following ordinary business practices, I placed for collection and mailing at the office of LARSON & BURNHAM, located at 1901 Harrison Street, 11th Floor, Oakland, California 94612, a copy(ies) of the attached:

CLAIM AGAINST PUBLIC ENTITY

in a sealed envelope(s), with postage fully prepaid, addressed to:

Clerk of the Board of Supervisors
County of Santa Clara
70 West Hedding, 10th Floor, East Wing
San Jose, CA 95110

I am familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: July 6, 1993

Barbara Miller

Barbara Miller

93-126 Pleadings

RECEIVED
JUL 14 1993
R. W. WILLIAMS

ROBERT J. LYMAN, State Bar No. 085240
JOHN J. VERBER, State Bar No. 139917
LARSON & BURNHAM
A Professional Corporation
P.O. Box 119
Oakland, CA 94604
Telephone: (510) 444-6800
Facsimile: (510) 835-6666

Attorneys for Cross-Defendant
SUN COMPANY, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

COUNTY OF SANTA CLARA,

Plaintiff,

v.

MYERS INDUSTRIES, INC., et al.,

Defendants.
/

MYERS INDUSTRIES, INC.; BUCKHORN INC.; BKHN INC.,

Cross-Claimants,

v.

CHICAGO TITLE INSURANCE COMPANY; SUN COMPANY, INC.; NEWSON, INC.; SANTA CLARA VALLEY WATER DISTRICT,

Cross-Defendants.
/

AND RELATED CLAIMS AND ACTIONS
/

///

No. C-92 20246 JW (PVT)
C-92 20521 JW (PVT)
(Consolidated)

ANSWER TO SECOND AMENDED CROSS-CLAIM, COUNTER CLAIMS, AND CROSS-CLAIMS OF SUN COMPANY, INC.

[JURY TRIAL DEMANDED]

Defendant, Sun Company, Inc. ("Sun"), answers the second amended cross-claim of Myers Industries, Inc., Buckhorn, Inc., and BKHN, Inc. as follows:

I. JURISDICTION AND REVENUE

1. Sun admits that this court has jurisdiction over the allegations asserted in the cross-claim.

2. Sun admits that venue is proper.

A. Parties.

3. Sun is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 3 through 8 of the second amended cross-claim and, therefore, denies said allegations.

4. Answering paragraph 9, Sun admits that Cordero Mining Company ("Cordero") is or was a Nevada Corporation doing business in California. Sun denies the remaining allegations of paragraph 9.

5. Sun denies the allegations contained in paragraph 10.

6. Sun admits the allegations contained in paragraph 11.

7. Sun denies the allegations contained in paragraph 12.

8. Sun is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 13 through 25 of the second amended cross-claim and, therefore, denies said allegations.

9. Paragraph 26 contains no allegations and no response is required.

10. To the extent the allegations in paragraph 27 state legal conclusions, it requires no response; however, if an

answer is deemed required, Sun is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies said allegations.

B. **Allegations Regarding The History and Investigation Of the Alameda Quicksilver County Park.**

11. Sun is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 28 through 30 of the second amended cross-claim and, therefore, denies said allegations.

12. Paragraph 31 contains no allegations and no response is required, however, if an answer is deemed required, Sun is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the second amended cross-claim and, therefore, denies said allegations.

II. FIRST CLAIM FOR RELIEF (Equitable Indemnity Under State Law)

13. Answering paragraph 32, Sun incorporates its admissions and denials pleaded in response to paragraph 1 through 31, inclusive.

14. Answering paragraph 33, Sun admits that the County of Santa Clara ("County") and State of California ("State") have filed actions. Sun is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 33 of the second amended cross-claim and, therefore, denies said allegations.

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SECOND CLAIM FOR RELIEF
(Declaratory Relief Under State Law)

15. Answering paragraph 34, Sun incorporates its admissions and denials pleaded in response to paragraphs 1 through 33, inclusive.

16. Answering paragraph 35, Sun admits that an actual controversy exists between cross-claimants and Sun regarding liability to cross-claimants for removal and remedial action costs associated with the investigation and clean up of the property. Sun further admits that it denies liability for any such costs. Sun is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 insofar as they pertain to other parties and, therefore, denies said allegation.

17. Answering paragraph 36, Sun admits that an actual controversy exists between BKHN and Sun regarding liability to cross-claimants for removal and remedial action costs associated with the investigation and clean up of the property. Sun further admits that it denies liability for any such costs. Sun is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 36 insofar as they pertain to the other parties and, therefore, denies said allegations.

18. Sun is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the second amended cross-claim and, therefore, denies said allegations.

///

19. Answering paragraph 38, Sun is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the second amended cross-claim and, therefore, denies said allegations.

THIRD CLAIM FOR RELIEF
(Declaratory Relief Under Federal Law)

20. Answering paragraph 39, Sun incorporates its admissions and denials pleaded in response to paragraphs 1 through 38, inclusive.

21. Answering paragraph 40, Sun admits an actual controversy now exists between cross-claimants and cross-defendants regarding liability for removal and remedial action costs at the property, but denies that it is liable for any remedial or response costs incurred or to be incurred by cross-claimants or for which cross-claimants may be liable. Sun is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 40 of the second amended cross-claim and, therefore, denies said allegations.

22. Answering paragraph 41, Sun admits that an actual controversy exists between BKHN and Sun regarding liability to BKHN for removal and remedial action costs associated with this property, but denies that it is liable for any remedial or response costs incurred or to be incurred by BKHN or for which BKHN may be liable. Sun is without knowledge or information sufficient to form a belief as to the truth and the remaining allegations contained in paragraph 41 of the second amended cross-claim and, therefore, denies said allegations.