

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION  
SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF  
ORDER R5-2017-9001 FOR SUNOCO, INC.  
IN THE MATTER OF

THE MOUNT DIABLO MERCURY MINE  
CONTRA COSTA COUNTY

This Settlement Agreement and Stipulation for entry of Regional Board Order ("Stipulated Order" or "Order") is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region ("Central Valley Water Board" or "Board"), on behalf of the Central Valley Water Board Prosecution Team ("Prosecution Team"), and Sunoco, Inc. ("Sunoco") (collectively known as the "Parties") and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

**Recitals**

1. This Stipulated Order concerns the Mount Diablo Mercury Mine located on the northeast slope of Mount Diablo in Contra Costa County, California ("Mine Site"). 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 Central Valley Water Board contends that acid mine drainage containing contaminants, including but not limited to elevated levels of mercury and other metals, is being discharged from the Mine Site to Horse Creek, My Creek, and Dunn Creeks ("Creeks"), which are tributaries to Marsh Creek that drains to the San Joaquin River and Marsh Creek Reservoir.
3. On 10 October 2014, the Central Valley Water Board issued Cleanup and Abatement Order ("CAO") R5-2014-0124 to a number of parties, including Jack and Carolyn Wessman, the Bradley Mining Co., the U.S. Department of Interior, Sunoco, Mt. Diablo Quicksilver Co., Ltd., and the California Department of Parks and Recreation pursuant to Water Code Sections 13304 and 13267. Named parties were identified as the current or former owners or operators at the Mine Site.
4. This Stipulated Order resolves only the liability of Sunoco, as further defined herein, and not any other party named in CAO R5-2014-0124, which remains in full force and effect for parties that did not petition CAO R5-2014-0124.
5. At a 10 October 2014 hearing, the Central Valley Water Board found Sunoco liable for the cleanup of the Mine Site. Because Sunoco never leased, owned, nor operated the Mine Site, the Board found Sunoco liable based on its alleged corporate relationship to the Cordero Mining Company of Nevada ("Cordero").

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Specifically that, "Sunoco, Inc. expressly or impliedly assumed the liabilities of Cordero Mining Company." (Finding No. 17 of CAO R5-2014-0124). Sunoco disputed this finding before the Board at the 10 October 2014 hearing and in written submittals, arguing that: as the former shareholder of a dissolved corporation, Sunoco cannot be held responsible for Cordero's alleged discharges; Sunoco is not the corporate successor to Cordero; and, in any event, because Cordero is, at most, responsible for less than 5% of the mine waste, Cordero should not be held jointly and severally liable for the investigation and remediation costs.

6. Following the issuance of CAO R5-2014-0124, Sunoco submitted a water quality petition to the State Water Resources Control Board consistent with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 et seq. On 1 January 2016, Sunoco's water quality petition was dismissed by operation of law in accordance with California Code of Regulations, title 23, section 2050.5. Sunoco subsequently filed a petition for administrative mandamus with the Sacramento County Superior Court. (Sunoco, Inc. v. Central Valley Regional Water Quality Control Board (Sacramento County Sup. Ct., Case No. 34-2016080002282).)
7. On 22 September 2016, the Sacramento Superior Court issued a ruling that "the evidence in the record is insufficient to hold Sunoco liable based on a theory of corporate successor liability" and remanded the CAO R5-2014-0124 to the Central Valley Water Board for further hearing and apportionment, if necessary and/or possible ("Remand Order").
8. Following the Remand Order, the Central Valley Water Board set the matter for a hearing consistent with the Remand Order. The Remand Order did not modify any aspects of the CAO not related to Sunoco.
9. Subsequently, representatives from the Central Valley Water Board, the Prosecution Team, and Sunoco discussed resolution of the matter without a hearing and, on 13 January 2017, Central Valley Water Board representatives proposed that Sunoco construct a drainage system at the Mine Site in exchange for a full release and covenant not to sue from the Board. Specifically, that Sunoco design and construct a drainage system to capture and divert mining water that discharges from the travertine springs to an infiltration gallery, infiltrating the mining water back into the ground, preventing loading into the Lower Pond.
10. On 19 January 2017, a settlement teleconference was held, and following the exchange of confidential settlement communications, the Parties came to an agreement regarding the work to be performed by Sunoco, memorialized herein and in Attachment A, in exchange for the Release described herein.

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11. Attachment A sets forth the proposed scope of work contemplated by the Parties. This scope of work does not require Sunoco to complete all work contemplated by CAO R5-2014-0124.
12. The Parties jointly requested that the Central Valley Water Board remove the hearing to consider amendments to the CAO from calendar pending the drafting and approval of this Stipulated Order.

### Settlement

13. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without further evidentiary hearings, administrative or civil litigation and by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. The Prosecution Team believes that the resolution of this matter is fair and reasonable, and provides sufficient protection to the environment and general public. This Stipulated Order therefore fulfills the Prosecution Team's enforcement objectives and is in the best interests of the public.
14. To resolve any and all remaining liability Sunoco could have now or in the future pertaining to the Mine Site, by consent and without further administrative proceedings, and in exchange for the Release described herein, the Parties have agreed to have Sunoco complete the scope of work described in Attachment A, with a maximum expenditure from this point forward of \$200,000. Consistent with the Release provisions described herein, Sunoco will not be responsible for any further work needed under CAO R5-2014-0124.

### Stipulations and Release

The Parties stipulate to the following:

1. **Scope of Work.** Sunoco hereby agrees to perform the work set forth in the Attachment A scope of work. This work will be overseen and approved by the Central Valley Water Board and Prosecution Team staff.
2. **Release.** In exchange for Sunoco completing the scope of work described in Attachment A, the Prosecution Team and Board by adopting this Stipulated Order agree as follows:
  - a. **Release:** The Central Valley Water Board hereby releases and covenants not to sue, to the maximum extent permitted by law, Sunoco, as well as all of its directors, officers, employees, partners, insurers, parents, affiliates, successors and predecessors in interest, and agents (collectively "Sunoco") from and for any past, present, or future claims, actions, orders, demands, enforcement actions or other civil or

administrative proceedings, including without limitation, any investigation, monitoring or remediation requirements, related to or arising from the Environmental Conditions attributable to the Mine Site (collectively, the "Released Claims"). For purposes of this Stipulated Order:

- i. "Environmental Conditions" shall mean all conditions of pollution or nuisance at, under, originating or migrating from the Site, including but not limited to the presence or migration of total dissolved solids, sulfate, inorganic mercury, organic mercury, chromium, copper, nickel, zinc, Mining Waste as it is defined in Water Code § 13050(a)(1), any hazardous substance originating from Mining Waste, and conditions of pollution or nuisance in offsite sediments, groundwater, or surface water.
  - ii. "Released Claims" shall include, but are not limited to, any past, present or future claims under local, state or federal statute or the common law, claims for natural resource damages, claims under the United States Code, including the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), claims under the California Codes, including the Water Code, and/or claims under other applicable laws, regulations, ordinances, or civil, judicial or administrative authorities, related to the handling, release, presence, migration, investigation, cleanup, containment or maintenance of the Environmental Conditions attributable to the Mine Site.
- b. Contribution Protection: This Stipulated Order resolves Sunoco's liability with regard to the Released Claims in their entirety and the Prosecution Team and Board by adopting this Stipulated Order expressly agree and affirm that Sunoco is entitled to protection against claims for contribution by any other parties, including but not limited to future owners and/or developers of the Mine Site, to the maximum extent authorized by state, federal or common law for all matters covered under the Stipulated Order, including California Civil Code section 877, 42 U.S.C. § 9613(f)(2), and any other applicable law.
- c. Future O&M: The Regional Board shall not seek to hold Sunoco liable or otherwise responsible for any additional work related to the Mine Site outside of the performance of the work described in Attachment A, as agreed upon in this Stipulated Order. Sunoco's obligation under the scope of work set forth in Attachment A will not include post-completion removal, response, operation and/or maintenance with respect to any portion of the Mine Site, including but not limited to any investigation, sampling, or remediation work necessitated by water overflowing, seeping, and/or migrating from the water diversion and/or infiltration

galleries described in Attachment A (collectively "O&M"). Upon completion of the scope of work described in Attachment A, Sunoco shall have no additional responsibilities associated with the Site and the Central Valley Water Board expressly releases and indemnifies Sunoco from liability associated with future O&M.

- d. Cost Cap: Sunoco's obligation under this Agreement is to solely perform the scope of work described in Attachment A, subject to approval by the Prosecution Team staff, up to a maximum of \$200,000.
- e. Superior Court Ruling: Consistent with the September 22, 2016, Ruling on Submitted Matter In Re: Sunoco, Inc. v. Central Valley Regional Water Quality Control Board, Case No. 34-2016-80002282, the Board shall not hereafter raise a corporate successor liability argument against Sunoco for the historical acts of the Cordero Mining Company of Nevada.
- f. Cleanup and Abatement Order: Upon approval of this Stipulated Order by the Central Valley Water Board or its delegee, Sunoco shall be removed from Cleanup and Abatement Order R5-2014-0124. The Central Valley Water Board or Advisory Team may take steps to effectuate such removal, including an addendum to CAO R5-2014-0124. Notwithstanding this Stipulated Order, it is the intention of the Parties to have CAO R5-2015-0124 remain in full force and effect after resolving Sunoco's liability for conduct alleged therein.
- g. Limit of Release: This Release and Covenant Not to Sue shall not impair the Regional Board's ability to take action against any party unrelated to Sunoco, relating to the investigation, cleanup, or cost of investigation or cleanup of the Environmental Conditions attributable to the Mine Site. This Release is consistent with the goals and purposes of the Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.).

**3. Party Contacts for Communications related to Stipulated Order:**

For the Central Valley Water Board:

Andrew Altevogt  
Assistant Executive Officer  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670  
(916) 464-3291

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Julie Macedo – Senior Staff Counsel  
Office of Enforcement  
State Water Resources Control Board  
801 K Street, Suite 2300  
Sacramento, CA 95814  
(916) 323-6847

For Sunoco:

Kevin Dunleavy – Chief Counsel  
Sunoco Inc.  
3801 West Chester Pike  
Newtown Square, PA 19073  
(215) 977-6273

- 4.e **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
- 5.e **Matters Addressed by Stipulation:** Upon the Central Valley Water Board's, or its delegee's, adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of any potential violations resulting from Cordero's or Sunoco's activities at the Mt. Diablo Mercury Mine Site. The provisions of this Section are expressly conditioned on the completion or good faith expenditure of the funds expected to be necessary to complete the work described in Attachment A.
- 6.e **Public Notice:** Sunoco understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. Comments made by the public may be rebutted by the Prosecution Team, Sunoco, the Parties jointly, or the Advisory Team prior to the consideration of this Stipulated Order.
- 7.e **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Valley Water Board's adoption of the Stipulated Order by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

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8. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Team or Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.
9. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
10. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Valley Water Board.
11. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board for a hearing consistent with the Superior Court's Remand Order. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:
  - a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing in this matter; or
  - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
12. **Waiver of Hearing:** Sunoco has been informed of the rights provided by CWC section 13323(b), and hereby waives its right to a hearing before the Central Valley Water Board prior to the adoption of the Stipulated Order.

13. **Waiver of Right to Petition:** Sunoco hereby waives its right to petition the Central Valley Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
14. **Covenant Not to Sue:** Sunoco covenants not to sue or pursue any administrative or civil claim(s) against the Central Valley Water Board, or its members, employees, representatives, agents, or attorneys arising out of or relating to this Stipulated Order or CAO R5-2014-0124.
15. **Central Valley Water Board is Not Liable:** Except as expressly set forth herein, neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Sunoco, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.
16. **Authority to Bind:** Pursuant to Water Code section 13300 *et seq.*, the Central Valley Water Board has authority to release and covenant not to sue or assert claims for environmental investigation or remediation or other related claims against potentially responsible parties if such agreements are sufficiently in the public interest to warrant expending the public resources necessary to reach such agreement. Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
17. **No Third Party Beneficiaries.** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
18. **CEQA.** The granting of a Covenant Not to Sue does not constitute a "project" as defined by Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378(a). Thus, this action is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code §21000 *et seq.*).
19. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Order.
20. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.



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**IT IS SO STIPULATED.**

California Regional Water Quality Control Board Prosecution Team  
Central Valley Region

By: Andrew Altevogt  
Andrew Altevogt,  
Assistant Executive Officer

Date: 5/8/17

Sunoco, Inc.

By: Boyd E. Foster  
BOYD E. FOSTER, EVD

Date: May 8, 2017

## ATTACHMENT A – SCOPE OF WORK

The scope of work consists of constructing a **groundwater interception trench** to capture surface seepages observed within the mining waste deposits upslope of the Lower Pond, then conveying this seepage water by gravity in a **conveyance pipe** to an **infiltration gallery**. Construction details for each of these elements and some assumptions regarding construction are summarized below.

**Groundwater interception trench:** A 3 foot-wide by 5 foot-deep “French drain”, 180 feet long. Top of gravel and up-hill facing side of trench lined with permeable geotextile fabric. Down-hill facing side and bottom of trench lined with non-permeable HDPE sheeting. Two 4-inch diameter perforated HDPE pipelines (capped at the end) will be placed in bottom of the trench, and the lower 3 feet of trench will be filled with washed  $\frac{3}{4}$ -inch pea gravel. The top of the trench will be capped with 12-inches native backfill. Trench and perforated pipe sloped to drain toward the north end of the trench to connect with the non-perforated conveyance pipe.

Install a 4-inch diameter PVC (or HDPE) sampling pipe at the north end of the trench for future water level and water quality samples. The sampling pipe will be completed from the bottom of the interception trench to three feet above native ground level. The bottom of the sampling pipe will be capped and perforated across the bottom three feet.

**Conveyance piping:** 18-in wide by a minimum 2-foot deep trench with two four-inch diameter SDR 17 HDPE non-perforated conveyance piping not more than 300 feet long. Individual shutoff valves will be installed at the beginning of the conveyance piping.

**Infiltration Gallery:** One 3-foot wide by approximately 5-foot deep trench will be excavated in the selected infiltration area, as determined by field review with Water Board staff. 300 linear feet of 34-inch wide Quick 4 High Capacity chambers<sup>1</sup> will be assembled in the bottom of each trench, and connected to the 4-inch diameter conveyance piping. The trenches will be backfilled with native soils.

Assumptions regarding construction:

1. The location where the interception trench, the conveyance pipe, and the infiltration gallery are on approximate 2H:1V and steeper slopes.

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<sup>1</sup> <https://infiltratorwater.com/products-solutions/chambers/quick-4-series>

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2. It is presumed that a Contra Costa County grading permit will likely be required for implementation of the interceptor trench design. If the proposed area exceeds one acre, a construction storm water permit will be required from the State Water Resources Control Board; however, at this time, such a permit is not expected. All disturbed soils will need to be stabilized using a minimum of seed and straw mulch.
3. It is anticipated that construction will be completed in the dryer summer months; therefore dust control will be required.
4. Neither SGI engineering nor Sunoco guarantee the effectiveness or long term viability of the system.
5. Neither SGI engineering nor Sunoco have performed an analysis of the hydrology of the subsurface where the galleries will be installed and, as such, neither SGI engineering nor Sunoco shall be responsible for the fate and transport of water exiting the galleries.

Following this scope of work, Sunoco's consultants shall prepare a Work Plan to design and build the interceptor trench/ infiltration gallery. A site plan and an infiltration field detail sheet shall be prepared and included as part of the Work Plan. The Work Plan shall be reviewed and approved by Water Board staff. This work plan would be similar to the work plan submitted by Stevens Ferrone & Bailey Engineering Company for the Dunn Creek Bank Emergency Stabilization in December 2015.

### Order of the Central Valley Water Board

1. In adopting this Stipulated Order, the Central Valley Water Board or its delegee has considered, where applicable, each of the factors prescribed in CWC sections 13304 and 13327. The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations concerning the Discharger discussed herein or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public, including but not limited to the Remand Order and previous actions of this Board.
2. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. As such, the Central Valley Water Board finds that issuance of this Order is not considered subject to the provisions of the California Environmental Quality Act (CEQA) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code 21065, 21080(a); 15060(c)(2),(3); 150378(a), Title 14, of the California Code of Regulations). In addition, the Central Valley Water Board finds that issuance of this Order is also exempt from the provisions of CEQA in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations as an enforcement action by a regulatory agency and there are no exceptions that would preclude the use of this exemption.
3. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Central Valley Water Board.

Pursuant to Government Code section 11415.60, **IT IS HEREBY ORDERED** by the California Regional Water Quality Control Board, Central Valley Region.

By:   
Adam Laputz,  
Assistant Executive Officer

Date: 6-19-17