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Attorneys for Petitioner, Kennametal Inc.

BEFORE THE

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of Kennametal Inc.'s Petition for Review of Action by the Regional Water Quality Control Board Central Valley Region in Adopting Order No. R5-2013-0701 and Companion Request for Stay	PETITION FOR REVIEW AND REQUEST FOR STAY; PRELIMINARY POINTS AND AUTHORITIES IN SUPPORT OF PETITION AND REQUEST (WATER CODE SECTIONS 13320 AND 13321)

Petitioner, Kennametal Inc. ("Petitioner"), hereby petitions the State Water Resources Control Board ("Board") pursuant to Water Code section 13320 and California Code of Regulations, Title 23, section 2050, for review of Regional Water Quality Control Board Central Valley Region ("RWQCB") Cleanup and Abatement Order No. R5-2013-0701 (the "Order") issued by the Executive Officer on April 16, 2013 for the Mount Diablo Mercury Mine in Contra Costa County. In the Order, Petitioner was improperly named a Discharger and Petitioner requests removal of Petitioner's name from the Order. Furthermore, Petitioner requests a hearing on this matter and a stay of the Order pursuant to 23 CCR § 2053. While Petitioner believes there is sufficient information contained within the record to support its position that it should not be named by the RWQCB in the Order (and insufficient information in the record for

the RWQCB to have issued Order No. R5-2013-0701 to Petitioner), by separate letter Petitioner will also be requesting the Board to issue a subpoena pursuant to 23 CCR § 649.6 so that additional information may be discovered that could assist with resolution of this issue. To the extent that supplemental evidence is discovered, Petitioner shall seek to introduce this information into the record pursuant to 23 CCR § 2050.6.

1) Petitioner

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2) Action to be Reviewed

Order No. R5-2013-0701 (A copy is attached as Exhibit A.)

3) Date of Action

16 April 2013

4) Reason the Action Was Inappropriate or Improper

The RWQCB abused its discretion in naming Petitioner in the Order because its action is not supported by the record, was arbitrary and capricious and was not supported by law or policy. California Water Code section 13267(b) states, in pertinent part, that the RWQCB's authority to issue an order is limited to "...any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region..." Kennametal is not a discharger because it has never discharged any waste in the region, never operated the mine, and never had any interest in the mine. The RWQCB alleges that the Petitioner's subsidiary, Nevada Scheelite Corporation, operated the mine in 1956-1958. This allegation is based mainly on a document alleged to be minutes of the Mt. Diablo Quicksilver Co., Ltd. This allegation has been refuted by Petitioner.

5) Petitioner is Aggrieved

Neither Nevada Scheelite Corporation nor Petitioner ever operated the Mount Diablo Mercury Mine nor did they ever hold any interest in the mine, yet Order No. R5-2013-0701 requires Petitioner to "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." Kennametal is aggrieved because it is being ordered to implement remedial actions for which it has no liability.

6) Requested Action of Petitioner

Petitioner requests removal of its name as a Discharger from Order R5-2013-0701.

7) Statement of Points and Authorities

The RWQCB cites as authority for its Order Sections 13304(a) and 13267 of the California Water Code but has provided no substantive evidence that either Petitioner or Nevada Scheelite Corporation discharged waste into the waters of the state or within its region.

8) Petition Sent to RWQCB and Other Interested Parties

A copy of this petition has been sent via United States mail to the RWQCB and other interested parties at the addresses listed below:

Ms. Pamela C. Creedon
Executive Officer
Regional Water Quality
Control Board
11020 Sun Center Dr.
Rancho Cordova, CA 95670

Kathryn Tobias
Senior Staff Counsel
California Dept. of Parks and Recreation
1416 9th Street, 14th Floor
P.O. Box 942896
Sacramento, CA 94296

Jon K. Wactor
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Patricia S. Port, Environmental Offices
U.S. Dept. of Interior – Regional
Jackson Center One
1111 Jackson Street, Suite 520
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Jack and Caroly Wessman
P.O. Box 949
Clayton, CA 94517

Adam Baas
Edgecomb Law Group
115 Sansome Street, Ste 700
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9) Substantive Issues Raised Before RWQCB

A. The evidence so heavily relied upon by the RWQCB (Exhibit B) is of questionable merit. It is one page, alleged to be from the minute book of the Directors of the Mt. Diablo Quicksilver Co., Ltd. for March 25, 1956. It is not even complete minutes of the meeting, is not signed, and is not approved. No independent evidence has been proferred to authenticate the partial minutes. The partial minutes purport to approve the assignment of Mt. Diablo Quicksilver Co.'s lease from Cordero Mining Company to "Nevada – Scheelite Corporation." No copy of the lease or the assignment has been produced. Nowhere does it state what property was under lease. According to the minutes, the lease assignment was signed on February 28, 1956. The statement that a lease was assigned on February 28, 1956 is contradicted by other information in the record. On February 28, 1956, the date the lease was purportedly signed, mining engineer Benjamin Sheahan from the Defense Minerals Exploration Administration ("DMEA") visited the Mt. Diablo mine site and spoke with Mr. Vic Blomberg (Mr. Blomberg was one of the directors listed in the partial minutes of March 25, 1956, and president according to other documents). According to Mr. Sheahan's Interior Report (Exhibit C), the mine was closed and had been since December 1955 because of flooding and Mr. Blomberg told him that the owners were still trying to find someone to lease the mine.

The partial minutes also refer to amendments agreed to by "Nevada Scheelite, Inc."[1] The amendments agreed to by Nevada Scheelite, Inc. were supposedly outlined in the minutes from January 27, 1956. The RWQCB did not produce these minutes or those amendments. The partial minutes further note that these provisions "would be modified slightly", suggesting that there had yet to be an agreement to terms since this modification was prospective.

There are numerous other items of inconsistency and uncertainty to suggest that even if the partial minutes are authentic, the agreements referenced in those minutes do not exist or are not accurately described. For example, the partial minutes indicate that the Mt. Diablo Quicksilver Co., Ltd. executed an assignment of the Cordero Mining Co. lease to the Nevada Scheelite Corporation on February 28, 1956 yet the Board of Directors did not authorize this

[1] As noted in prior correspondence, Nevada Scheelite, Inc. was a company that was dissolved in 1951.

assignment until March 25, 1956. Furthermore, according to these meeting minutes, the Company is to have executed this assignment without information about the financial viability of the company with whom it was authorizing the assignment, which it did not learn about until the meeting of March 25, 1956.

B. Petitioner provided comments to the SWRCB pursuant to a draft version of the petitioned Order on October 10, 2012. (Attached as Exhibit D and incorporated herein by reference.) This letter also enclosed a DVD of George Heideman's deposition. The SWRCB responded with correspondence on November 21, 2012, requesting additional information to allow full evaluation of the claims. The additional requests were regarding "Nevada Scheelite's shutdown of its mining operations in Nevada in 1956 and its dissolution in April 1957" and information that Nevada Scheelite only mined tungsten ore at a single mine in Rawhide, Nevada. Petitioner responded on November 25, 2012 (attached as Exhibit E and incorporated herein by reference).

The SWRCB responded on January 11, 2013 (Exhibit F) by rejecting Mr. Heideman's testimony in favor of the "minutes" referred to above and an alleged "contract" between Tide Water Associates Oil Company and Nevada Scheelite Corporation. In fact, the document referred to (Exhibit G) was a letter dated April 18, 1956 and sent to Nevada Scheelite Corporation c/o Cordero Mining Corporation in Clayton, California to the attention of John Gomes. It is an offer to deliver fuel, not a contract. There is no evidence of any acceptance of this offer. The letter from Ms. Benedict also refers to minutes of April 28, 1956, but these have never been produced. The Board completely ignores all the testimony and evidence that Nevada Scheelite Corporation had only one asset, a Nevada tungsten mine, and would have no reason to operate a mercury mine in California.

C. The RWQCB Order alleges that the Nevada Scheelite Corporation operated the mine in 1956. However, the RWQCB inspected the mine twice in 1956 and did not mention Nevada Scheelite Corporation in its own inspections report.[2] On March 26, 1956, Regional

[2] Only one of the two inspections had an associated inspection report. The other inspection produced only sample results.

Board[3] staff Inerfield conducted a sampling event of the mine drainage yet the Board's files provide no inspection report for the event where one would expect a change in operator to be noted (sample results attached as Exhibit H). On July 12, 1956 the mine was again inspected, this time by L.E. Trumbull (attached as Exhibit I). Accompanying Regional Board staff on the inspection was Vic Blomberg, President of Mt. Diablo Quicksilver, Ltd. Again, no mention was made of a change in operator of the mine.

Of the eight inspections by the RWQCB from July 18, 1955 to June 30, 1958, the RWQCB referenced Vic Blomberg in every inspection report and Vic Blomberg was the only person referenced with regard to operation or ownership of the mine in those inspections reports until the June 30, 1958 report when it noted that the mine was currently leased to Mr. John Johnson.

Petitioner certifies that each of these issues set forth in this Petition were presented to either the RWQCB or SWRCB, prior to adoption of Order R5-2013-0701.

10) Potential for Abeyance

Notwithstanding the vital importance of the issues contained herein, Petitioner may be willing to allow the Petition to be held in abeyance pursuant to 23 Cal. Code of Regs § 2050.5(d) to allow time for Petition to attempt to resolve its concerns with the RWQCB and to allow time to conduct discovery pursuant to SWRCB issued subpoenas.

11) Request for Stay

Pursuant to Water Code section 13321 and 23 Cal. Code of Regs § 2053, Petitioner requests an immediate stay of Order No. R5-2013-0701 as it applies to Petitioner.

A. Petitioner Will Suffer Substantial Harm If Stay Not Granted

The adopted Order, R5-2013-0701, includes two immediate deadlines that would require the Petitioner to cooperate with other parties as if it were liable. By 30 June 2013, the Petitioner is ordered to "form a respondent 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."

[3] Petitioner uses Regional Board and RWQCB to refer to both the current office as well as its predecessor, the Regional Water Pollution Control Board.

Petitioner will suffer substantial harm because the Order requires that it expend funds to meet with other Dischargers to discuss management and funding of remedial actions or independently implement the remedial actions for which it has no responsibility.

By 1 October 2013, the Petitioner is ordered to submit a Work Plan and Time Schedule to close the mine tailings and waste rock piles by 31 December 2015. Since the Board has up to 270 days to review an action upon a petition, again, Petitioner will suffer substantial harm by having to expend resources to develop a work plan and time schedule, and implement the work plan for which it has no liability. It is Petitioner's belief that in order to complete the remedial actions by 31 December 2015, action will have to be taken immediately while the Board may still be considering the Petition.

B. No Other Person Or the Public Interest Will Suffer Substantial Harm if Stay is Granted.

1. No other person, or the public interest will suffer substantial harm if the stay is granted since there are still other Dischargers that have also been ordered to implement the Order. These are the same Dischargers that have implemented virtually all, if not all, of the required remediation activities to date without the Petitioner's contribution and Petitioner has no reason to believe the Order would not be implemented if the stay is granted.

2. The site poses no imminent or substantial risk of harm to people or the environment. Past actions by the property owner pursuant to a 1978 Cleanup and Abatement Order and by Sunoco in response to a 2008 Unilateral Administrative Order for the Performance of Removal by USEPA have addressed the immediate concerns. Since then, there has been ongoing monitoring of the property and nearby streams, and Sunoco has submitted a Site Remediation Work Plan on May 8, 2012. Therefore no harm will result from staying the Order as to only the Petitioner pending resolution of the Petition.

C. There Are Substantial Questions of Fact or Law Regarding the Disputed Action.

See Sections 4) and 9).

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D. Petitioner Declares Under Penalty of Perjury That the Facts Are As Alleged

Included with this request for stay is the declaration of Staci P. Miller, under penalty of perjury, as to the facts alleged in this request for stay (attached as Exhibit J).

Dated: May 16, 2013

Respectfully submitted,

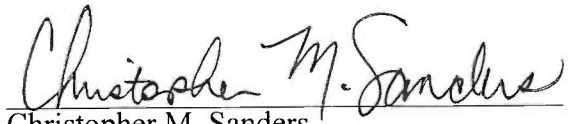

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EXHIBIT A

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2013-0701

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., Kennametal Inc. and the California Department of Parks and Recreation (hereafter collectively referred to as Dischargers) pursuant to California Water Code section 13303 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 CWC section 13267, which authorizes the Executive Officer to issue Orders requiring the submittal of technical reports, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer.

The Executive Officer finds:

BACKGROUND

1. The Mount Diablo Mercury Mine (Mine Site) is an inactive mercury mine. The Mine is located on the northeast slope of Mount Diablo in Contra Costa County. The Mine 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 Francisco Bay.

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 an impaired water bodies because of high aqueous concentrations of mercury and metals.

5. It is the policy of the State Water 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 section 106.3 of the Water Code.

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 are 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 Administer 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. Sunoco Inc. is a named Discharger in this Order.

18. Nevada Scheelite Corporation, a subsidiary of Kennametal Inc., leased from Mount Diablo Quicksilver and operated the mine in 1956. Minutes of a 25 March 1956 Mount Diablo Quicksilver Co Directors' Meeting with managers representing Nevada Scheelite Corporation discuss Nevada Scheelite's lease and operations at the mine. Nevada Scheelite apparently operated an unidentified part to the mine from 1956 to 1958. At one point, downstream landowners objected to Nevada Scheelite's discharge of acid mine drainage and that part of the operation was suspended. The amount of production for this

period is uncertain. At the time of Nevada Scheelite's lease, it was a wholly owned subsidiary of Kennametal Inc. with its headquarters in Latrobe Pennsylvania. Because of its ownership and control of Nevada Scheelite, Kennametal Inc. is named a Discharger in this Order.

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, 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 domestic, municipal, industrial and agricultural supply.

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 CWC 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 CWC section 13050, subdivision (q)(1).

33. Because the site contains mining waste as described in CWC 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 CWC section 13050, subdivision (1). 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. CWC section 13304(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 CWC 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 CWC 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. CWC 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 Findings Nos. 5 – 14, 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. 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. CWC 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 you, which may include the imposition of administrative civil liability pursuant to CWC 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 California 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 entry 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 HSC 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 30 June 2013**, 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 the **30 June 2013** 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 1 October 2013,** 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 2015,** 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 Section 13304(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 Office or her delegate 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 CWC 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.

This Order is effective upon the date of signature.

Order by:

Original signed by

PAMELA C. CREEDON, Executive Officer

16 April 2013

(Date)

EXHIBIT B

MINUTES

DIRECTORS' MEETING - MARCH 25, 1956

Mt. Diablo Quicksilver Co., Ltd.

A meeting of the directors of the Mt. Diablo Quicksilver Co., Ltd. was held at its office on the mine property near Clayton, California on March 25, 1956.

Present: Vic Blomberg, P. W. Cox, G. L. Henry, A. E. Moni, Dorothy Lanning and Harold Blomberg.

The minutes of the previous directors' meeting dated January 29, 1956, were read and approved.

V. Blomberg reported that he had met with the officials of Black Mammoth Consolidated Mining Co. to come to a working agreement with our company. However, it appeared that Black Mammoth would not be able to come to the property and start operating and developing immediately, which would be necessary in order to take advantage the high flow of water in the lower streams for purposes of dewatering the mine shaft and underground tunnels. It was Black Mammoth's suggestion that an agreement be reached with Nevada Scheelite Corporation to start work on the property on a participating arrangement with them.

Accordingly our company, on February 28, 1956, executed an assignment of the Cordero Mining Co. lease to Nevada-Scheelite Corporation. After discussion, it was moved by P. W. Cox and seconded by A. E. Moni, that the Board approve the assignment of our lease agreement with Cordero Mining Co. to the Nevada-Scheelite Corporation. Motion was unanimously approved.

V. Blomberg introduced Mr. Ray Henricksen and Mr. John M. Gomes, representing Nevada Scheelite Corporation. These men reported that they had been forced to halt pumping operations from the underground areas by our downstream neighbors. Complaints had been filed regarding excess salt and iron in the waters flowing from the mine. Mr. Henrickson stated that his company would do everything possible to solve the problem, but that it appeared that certain of the downstream group were on the verge of starting suit, and that his company would not want to be involved in such trouble.

Mr. Henricksen reported on the history and financial worth of Nevada Scheelite Corporation. He stated that this company is a wholly-owned subsidiary of Kennametal Inc., with head offices in Labrobe, Pennsylvania. According to reports on file this company's present net earnings exceeded $80,000.00 per month. After some discussion, Mr. Henricksen and Mr. Gomes were excused from the meeting.

The Secretary reported that he had received financial statements of Kennametal, Inc., and that the company appeared to be in excellent financial position.

The President reported that Nevada Scheelite, Inc. have agreed to our amendments outlined in our minutes of January 29, 1956, after they had been on the property ninety days, except for the provision for working a minimum of 120 shifts per month, which provision would be modified slightly.

Discussion followed regarding plans for holding the annual stockholders' meeting in April, 1956. The Board discussed the practicability of holding a meeting on a Saturday rather than on a Sunday. It was felt that since a number of stockholders have objected to holding a business meeting on Sundays, we should consider holding our coming meeting on a Saturday.

Dorothy Lanning moved, seconded by A. E. Moni, that the regular meeting of stockholders be held at this office on Saturday, April 28, 1956, for the purpose of electing directors for the ensuing year and to transact any other business as may properly come before such meeting; the meeting would be called to order at 1:00 p.m.

EXHIBIT C

INTERIM REPORT

RECEIVED
MAR 12 1956

Docket No.: DMEA-2448 (Mercury) March 6, 1956

Name and address of operator: John L. Jonas and John E. Johnson, co-partners., Assignees for Ronnie B. Smith
166 Los Robles Drive
Burlingame, California

Name and location of property: Mt. Diablo Quicksilver Mine
Contra Costa County, California

Contract No.: Idm-E544

INTRODUCTION

Pursuant to the Operating Committee's, DMEA, request of February 13, 1956, for information regarding equipment and supplies and for information regarding exploration work conducted by Cordero Mining Company, the property was inspected February 28, 1956 by B. H. Sheahan and Walter Bank of the Bureau of Mines. Recent exploration operations were discussed with Mr. H. A. Peterson, who was foreman for Cordero Mining Company and with Mr. Vic Blomberg, a resident stockholder at the Mt. Diablo Quicksilver mine.

A conference was held with Mr. Roscoe M. Smith of the Geological Survey, who had interviewed both Messrs. S. H. Williston, president and J. Eldon Gilbert, manager of Cordero Mining Co.

The property was idle when inspected. Water from intense rain storms during December 1955 increased the flow of underground water which flooded the mine to the 130-foot level. No work was done

EXHIBIT
A
11-2-11

after this period, and negotiations are now being made by the owners to interest either Sonoma Quicksilver Mining Company or Nevada Scheelite Corporation in the mine.

STATEMENT OF OPERATIONS

Cordero Mining Company expended over $60,000 on their exploration operation. The main shaft was dewatered and reconditioned, and 1,017 feet of drifts and crosscuts were driven on the 300-foot level. A connection with old workings was made by raising about 15 feet to an old incline winze. The existing furnace plant was repaired, and a trestle was constructed from the shaft to the ore bin. Most of the drifts were timbered.

Sample S-430, taken from the dump and believed to represent the approximate grade of the material, contained 2.6 lbs. mercury per ton. Sample S-431, taken from the last few tons deposited on the end of the dump, contained 3.5 lbs. mercury per ton.

Water from the 300 level was pumped to the surface and conveyed through two transite pipe lines to land northwest of the mine. Both the water line and ventilation tube are disconnected at this time. New equipment installed by the Cordero Mining Company included a 330 cfm air compressor, a ventilation blower, a pump, pipe lines, two mine cars and an air receiver. Mine timber was the main supply item at the property and was more than equivalent to the amount when the property was previously inspected April 4, 1955.

The Cordero Mining Company reached the objective and target of the work, originally planned by contract Idm-E544.

CONCLUSIONS

There is now sufficient information compiled to prepare a final report on the property. The ore body discovered by Cordero Mining Company in the target area was not large enough to encourage them to continue operations. It is not known when the mine will be reopened, but it will require at least three months time to dewater the mine and reopen workings.

Mr. Roscoe Smith had interviewed S. H. Williston and J. Eldon Gilbert, Cordero Mining Company on February 27, 1956 and makes the following comments:

"Cordero explored the target area without DMEA participation. A few small showings of cinnabar and a few tons of ore averaging 3 to 10 pounds per ton were discovered.

"The accompanying map was prepared by Wisser and Cox, consulting geologists, 55 New Montgomery Street, San Francisco, for Cordero. Reserves were not calculated in tons but the map reveals that the ore bodies are too small to interest Cordero. The mine is now closed and has filled with water.

"Judging from the ore occurrences shown on the map, a few hundred tons of ore containing from 3 to 10 pounds of quicksilver per ton is indicated above the 360-foot level in the winze area. Wisser

and Cox recommended additional exploration to the west and also to the east along the main shear zone. Edgar Bailey recommends exploration along the hanging wall contact to the east in the area where a 40° dip is shown. Cordero Mining Co. has no plans to continue exploration at the property or to mine the ore showings that were found. They report that Sonoma Quicksilver Mining Co. and Nevada Scheelite Corp. are both interested in obtaining a lease on the property and are now negotiating for it. from whom?

"Mr. Williston reported that the Cordero Mining Co. did not use materials or supplies that were the property of Jonas and Johnson. All materials and supplies that were on the property at the time Cordero entered the premises are still there, although some may have disappeared earlier. According to Williston, the lease that Jonas and Johnson had with the Mt. Diablo Mining Co. provided that Jonas and Johnson had 90 days in which to remove all of their equipment and supplies from the property after work had been stopped. After the 90-day period had expired, and after the Government had been asked to remove the equipment but failed to do so, Cordero repaired and used the hoist. Jonas and Johnson locked the hoist house sometime during the course of Cordero's work, Cordero removed the locks.

"Prior to entering the premises, Cordero Mining Co. employed an independent machinery company to appraise the equipment

owned jointly by the Government, Jonas and Johnson, and Ronnie B. Smith. The total appraisal was $2,600.

"The work done under the DMEA contract (see map) did not discover any ore nor did it reach the target area. The work done by Cordero Mining Co. explored the target area with a number of crosscuts and with several test holes drilled from the crosscuts, and significant ore bodies were not discovered. Inasmuch as a lien against this property would discourage any operator from additional exploration and because the work with Government funds did not find any ore, I recommend that no certification be issued. Edgar Bailey concurs in this recommendation.

"A major contribution to the value of the property was the discovery by Cordero Mining Co. of a means for disposing of acid mine waters to the satisfaction of the State Water Polution Board."

Benjamin H. Sheahan
Mining Engineer

EXHIBIT D

not Bustle

October 10, 2012

Anna Kathryn Benedict
Senior Staff Counsel
State Water Resources Board
Office of Enforcement
P.O. Box 100
Sacramento, CA 75812-0100

Re: Draft Cleanup and Abatement Order for the Mt. Diablo Mine

Dear Ms. Benedict:

Your letter of September 12, 2012 enclosing the above-captioned draft Order requested "comments or concerns with respect to the parties named in the order." This office represents Kennametal Inc., one of the parties named in the order.

Kennametal should not be named in the order because it is not a Discharger. Neither it, nor any predecessors, ever owned or operated the Mt. Diablo mine. Five sentences in paragraph 17 of the "Background" section of the Order constitute the entire claim by the Board that Kennametal is a Discharger. None of the claims are true and have been refuted. I will address each one in turn.

1. "The Nevada Scheelite Company, a subsidiary of Kennametal Inc., leased from Mount Diablo Quicksilver Co. and operated the mine in 1956." There is not now, and as far as the records show, never has been any entity called Nevada Scheelite Company. Kennametal never had a subsidiary by that name. Therefore it could not have leased or operated the mine.

2. "Minutes of a March 25, 1956 Mount Diablo Quicksilver Co. directors' meeting with managers representing Nevada Scheelite Corporation (Nevada Scheelite) discuss Nevada Scheelite's lease and operations at the mine."

Nevada Scheelite Corporation was a wholly owned subsidiary that was in existence from 1951 to 1957 and engaged in the mining of tungsten ore in Rawhide, Nevada. It never owned, operated or leased a mercury mine anywhere. It never owned, leased or operated a mine anywhere but Rawhide, Nevada. It never had any agreement with Mount Diablo Quicksilver Co. No lease or assignment of lease has been produced. The "managers" referred to in the minutes were never officers of Nevada Scheelite Corporation and had no authority to represent it in any matter. No one was ever authorized by Nevada Scheelite Corporation to negotiate any lease of a

mine in 1956. All these statements are backed by the sworn testimony of the Treasurer of Nevada Scheelite Corporation in 1956 from his deposition on November 2, 2011.

3. "Nevada Scheelite apparently operated an unidentified part to the mine from 1956 to 1958." Apparently to whom? Based on what evidence? Nevada Scheelite Corporation shut down its mining operation in Nevada in 1956 and was dissolved in April 1957.

4. "At the time of Nevada Scheelite's lease, it was a wholly owned subsidiary of Kennametal Inc., with lead offices in Latrobe, Pennsylvania." There is no lease and the sworn testimony of the then Treasurer of the company is that there never could have been such a lease because the company mined only tungsten ore only in Nevada and had no use for mercury.

5. "Because of its ownership and control of Nevada Scheelite, Kennametal Inc. is named a Discharger in this Order." Ownership and control of Nevada Scheelite Corporation does not make Kennametal a Discharger because Nevada Scheelite Corporation was never a Discharger.

Please find enclosed a CD of the video deposition of Mr. Heiderman. Please remove Kennametal's name from the Order.

Very truly yours,

Robert W. Thomson

RWT/dmt

cc: Michelle Keating
Staci Miller

Michelle R. Keating
Assistant General Counsel-Communications
Kennametal Inc.
1600 Technology Way
P.O. Box 231
Latrobe, PA 15650

Staci P. Miller
Corporate Environmental Manager
Kennametal Inc.
1600 Technology Way
P.O. Box 231
Latrobe, PA 15650-0231

EXHIBIT E

(Mt. Diablo) F

Babst | Calland
Attorneys at Law

Robert W. Thomson
Attorney at Law
T 412.394.5656
rthomson@babstcalland.com

November 25, 2012

Anna Kathryn Benedict
Senior Staff Counsel
State Water Resources Board
Office of Enforcement
P.O. Box 100
Sacramento, CA 75812-0100

Re: Mt. Diablo Mercury Mine

Dear Ms. Benedict:

In response to your letter of November 21, 2012, I refer first to the deposition testimony of George Heideman given under oath on November 2, 2011. He was the Treasurer of Nevada Scheelite Corporation and testified that the only asset of the corporation was the tungsten mine in Rawhide, Nevada:

> Q: Did Nevada Scheelite Corporation have any other assets or operations besides the mine in Rawhide?
>
> A: No.
>
> Q: So it was a one-mine operation?
>
> A: That's correct.
>
> (Transcript p. 31, lines 16-20).

Mr. Heideman also testified that the Rawhide mine was closed and the corporation dissolved in 1957 because the government stopped buying ore:

> Q: So it's your testimony that all of the ore that was mined from the mine in Rawhide was sold to the U.S. Government?
>
> A: Yes.
>
> Q: When the U.S. Government stopped buying that ore, the mine was closed?
>
> A: Yes.
>
> (Transcript p. 31, lines 9-15).

Q: Why was Nevada Scheelite Corporation dissolved?

A: Because the U.S. Government stopped stockpiling of rare minerals and that was the only customer that Nevada Scheelite's mine at Rawhide had.

(Transcript p. 21. Line 10-14).

Mr. Heideman further testified that after the mine was closed and the corporation dissolved in 1957, Kennametal kept the mine closed:

Q: And when Nevada Scheelite Corporation was dissolved in 1957, what happened to its assets?

A: They were taken over by Kennametal.

Q: And what assets did it have in 1957 that you can remember?

A: I have no specific recollection. They would have been minor, other than the mine.

Q: What happened --- did Nevada Scheelite Corporation own the mine in Rawhide?

A: Yes.

Q: And what happened to the mine? Was it sold off?

A: It was just closed down.

(Transcript, pg. 32, lines 9-21).

As further documentation of Mr. Heideman's testimony, I am enclosing three documents:

1. Certificate of Dissolution dated April 9, 1957 from the State of Nevada Department of State.

2. Termination Agreement dated August 21, 1957 but effective as of February 28, 1957 terminating the last contract between Nevada Scheelite Corporation and the Defense Minerals Exploration Administration.

3. A letter dated September 18, 1966 to a mine royalty holder urging him to consider an offer from Union Carbide to do some exploratory mining in the old Nevada Scheelite Corporation mine. The letter refers to the completion of the DMEA work in 1957 and states that the mine remains closed as of 1966.

I trust this information is helpful to you in resolving this issue. While it is always difficult to prove a negative, the fact that Nevada Scheelite Corporation was dissolved shortly after the Rawhide tungsten mine was closed is a strong indication that the mine was the company's only asset.

Let me know if you need any additional information.

Very truly yours,

Robert W. Thomson

RWT/dmt
Enclosures

cc: Michelle Keating (w/encl.)
Staci Miller (w/encl.)

STATE OF NEVADA

DEPARTMENT OF STATE

CERTIFICATE OF DISSOLUTION

I, JOHN KOONTZ, the duly elected, 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

NEVADA SCHEELITE CORP.

a corporation duly organized and existing under and by virtue of the laws of the State of Nevada, did, on the 9TH day of APRIL, 19 57, file in the office of Secretary of State a

CERTIFICATE OF DISSOLUTION

dissolving said corporation pursuant to the provisions of Section 64, Chapter 177, Statutes of Nevada 1925; 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 the State of Nevada, at my office in Carson City, Nevada, this 9TH day of APRIL, 1957.

SEAL

John Koontz

Secretary of State

DISSOLVED APR 9 1957

By _____

Deputy Secretary of State

Form 938
1478

Operator's copy

TERMINATION AGREEMENT

It is agreed this 21st day of August, 1957, between the United States of America, acting through the Department of the Interior, Defense Minerals Exploration Administration (hereinafter called the "Government") and Kennametal Inc., Assignee (hereinafter called the "Operator"), parties to Exploration Project Contract No. Idm-3361 (Docket No. DMEA-4165), dated May 31, 1956 (hereinafter called the "Contract"), that:

1. Effective February 28, 1957, the Contract and all obligations of the parties thereunder, except as otherwise herein expressly provided, are hereby terminated.

2. The Government shall contribute only to the fixed unit costs of work performed prior to February 28, 1957.

3. The Operator shall promptly perform all winding-up and settlement actions provided for in the Contract, including the rendering of the final report and final account.

4. The Operator hereby releases and agrees to save the Government harmless from all claims or demands under or arising out of said Contract, except as otherwise provided for in this termination agreement.

5. All rights of the Government provided for in the Contract with respect to certification of discovery or development, percentage royalty and liens for its payment, records, and audits, and all rights of the Government to recover any overpayment, are preserved.

IN WITNESS WHEREOF, these parties have executed this agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By Frank E. Johnson
Acting Administrator, Defense Minerals Exploration Administration

KENNAMETAL INC., Assignee

By E. M. Colwell

Title assistant Secretary

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

September 18, 1[illegible]

[illegible]

Our conversation over the phone on the 16th disappointed me because I had hoped all the royalty owners would take a realistic view. I believe you are intelligent enough to understand that there is not any more flexibility in Union Carbide's position. I think your clients should equally intelligent in reaching a decision when they understand the background. I shall try to outline the way it looks to me.

The general tungsten market is as favorable as any time during the past ten years. Current price on the London Metal Exchange is $40 per unit, which is distorted to a degree by the fact that the American U.S.A. stockpile is offering unlisted concentrate at a lower price of $40. When a penalty for impurities is included this means we can buy 65% WO3 concentrates at 37 dollars per unit. As a matter of fact we have been taught recently on the world market at that price also.

Three years ago it bought as low as $5.60 per unit plus tariff. The reason the price is high now is obvious. You can see yourself what would happen if the U.S.A. situation cooled off? A reason for it that tungsten from commercial sources is not being offered in quantity. Ordinarily the largest part of the world supply would come from China. Recently, perhaps on account of the bad relations with Russia, they have not offered tungsten either directly or through Hong Kong.

The U.S.A. stockpile has enough tungsten to run [illegible] all U.S.A. needs at 1966 rate of consumption for at least sixteen years! New sources of supply are coming into production, stimulated by present price. So my conclusion is that this is as good a time to lease our mine as we will have.

II

The condition of our mine is not good enough for Kennametal to operate successfully. We have about fifty thousand units of ore inferred from the exploration program we completed in 1957. Incidentally, we still owe U.S.A. about $27,000 which will have to be paid from production from the mine.

[illegible] exploration [illegible] necessary to develop
[illegible] properties [illegible] money to put the mine [illegible] while spending
[illegible] near [illegible] Freedonia. Union Carbide
is offering to spend from $[illegible],500,000 to $20,000,000
on a milling program. [illegible] more than one year
[illegible] expect to [illegible] the results. [illegible]
[illegible] to [illegible] at [illegible]
[illegible]

They made [illegible] and assessments on the
[illegible] first level [illegible] enough to be a [illegible] drill
stations each. From these they would [illegible] diamond
drill holes both vertically and horizontally. We think
there is a good chance they will develop 200,000 ounces
[illegible]. For comparison, the mine has only produced one [illegible]
[illegible] and fifty thousand [illegible] so far so be new.

Our mill is [illegible] at present. In any case
[illegible] not large enough. [illegible] propose to build a
[illegible]-200 ton per day mill [illegible] they find enough ore.
[illegible] would have to develop [illegible] shafts, winzes, and
[illegible] places to [illegible] ore. They figure it [illegible]
[illegible] these $300,000 [illegible] mine. A 200 [illegible]
mill [illegible] a most [illegible]. [illegible] or more if they did
not already have [illegible] crushers, tailings, etc.
[illegible] costs at Nevada Consolidated have been high
as you know [illegible], however are [illegible] on the [illegible] mill, are
all [illegible] and be [illegible] finished. Lumber costs are
high [illegible] costs are [illegible] lower for labor and supplies
but nevertheless I think [illegible] per at least $24 per ton
[illegible] be [illegible] toward the [illegible]. To figure out
costs would be $26 per unit of concentrates.

III

From Dal. & Carbide's [illegible] it is interesting
that they are using similar figures. They estimate $14
per ton mine cost, plus $2.50 [illegible]. Then they add
[illegible] costs and [illegible] to Pioneer, and
[illegible] $20 per unit cost.

This property is [illegible] one from their
point of view. Even as the [illegible] mine is already
[illegible] about 40,000 units per month.

So it is a marginal proposition if they figure
a likely $30 per unit selling price on the average over
[illegible] life. [illegible] than [illegible] 200,000 units.

[illegible]

[illegible] 25 grs. [illegible] 35% in [illegible] heads. [illegible] explain [illegible] of [illegible] practical mining.

[illegible] 400 [illegible] 150 [illegible] and [illegible] to [illegible] [illegible] investment.

[illegible] the royalty schedule. One point they [illegible] they cannot go above that they are paying [illegible]. Regardless of the [illegible] they are the [illegible] [illegible] They should remember [illegible] the competitions [illegible].

Free Economics: [illegible] we are not going to gain much [illegible] the program continues beyond 500,000 units. [illegible] will cost us $370,000 [illegible] refining operation. We would get some benefit by being [illegible] However, if we get $1.50 per unit on 300,000 units [illegible] $500,000. [illegible] what we want. [illegible] look they royalty schedule [illegible] we [illegible] [illegible] building [illegible] for [illegible] of [illegible] the market price so we calculate [illegible] we really get less than $1.50 per unit. The reason [illegible] you could have 50¢ instead of ½ of the actual [illegible] by U.S. is that [illegible] realizes the trouble it [illegible] for [illegible] royalty [illegible] to understand [illegible] basis, [illegible] to believe the sampling at the mine [illegible] features of the royalty [illegible] that it will be figured [illegible] program [illegible] at the [illegible] will instead of [illegible] [illegible] 100% of [illegible] of [illegible] perhaps only [illegible] after [illegible]

Free Economics: [illegible] might be better [illegible] holding the mine without operating. While [illegible] for us [illegible] some future time of [illegible]. However, we do not like being a dog in the [illegible] and realize the economic good to be achieved from [illegible]. Also we will benefit from any future royalties [illegible] normal practice to [illegible] a probable [illegible] of 50% [illegible] by drill.

Another advantage to be derived from the U.S. program is information that they find, which could be

[illegible] though it might not be enough to [illegible] consumption and pressure, it [illegible] make off your royalty position [illegible] to Mr. You would be better off of course [illegible] to sell your royalties from a large operation [illegible] company [illegible] than to wait for a [illegible] small production by Kennecott at some unknown [illegible] indefinite future.

V

From a royalty holder's standpoint it would [illegible] [illegible] unlikely [illegible] realistic attempts to obtain [illegible] before then [illegible] either nothing or a [illegible] possibly greater [illegible] of either nothing or a much smaller pie.

It seems [illegible] to me in a smaller part [illegible] royalty. [illegible] [illegible] making any more [illegible] therefore Kennecott [illegible] [illegible] Even if [illegible] 200 acres, Kennecott should [illegible] another [illegible] acres. Whereas the present [illegible] holdings [illegible] reserve [illegible] [illegible] 3000.00 [illegible] miles.

[illegible] Kennecott [illegible] [illegible] for future royalty [illegible] for present [illegible] [illegible] that even though [illegible] [illegible] that at that date [illegible] may have to renegotiate [illegible] if market [illegible] low.

VI

In any case, Kennecott feels that this [illegible] in all the traffic will bear. It is like [illegible] who came to the bank [illegible] far a land-out. The [illegible] of the house not only gave his [illegible] [illegible] but [illegible] found some old bottles, liquor which had been hidden [illegible] old [illegible]. She gave the group a drink and [illegible] [illegible] enthusiastically, saying [illegible] "I'm going to [illegible] by [illegible] mistaken. He called it terrible. [illegible] you say it is just right?"

"Why, [illegible] that's simple. If it had been any better you wouldn't have given it to me, and if it had been any worse I wouldn't drink it."

So we think [illegible] proposition is just right--- [illegible] reason, it's the only proposition we have. We won't be too disappointed if you kill the deal. At any rate you will hear no [illegible] complaint if we continue to sit on the claims as an insurance against future [illegible].

Please present my [illegible] which is as bad as usual [illegible] by this [illegible] which is at least as [illegible] as the ranch.

Sincerely,

EXHIBIT F

CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

January 11, 2013

VIA EMAIL AND U.S. MAIL

Robert W. Thomson
Babst Calland
Two Gateway Center
Pittsburgh, Pennsylvania 15222
rthomson@babstcalland.com

RE: DRAFT CLEANUP AND ABATEMENT ORDER FOR THE MOUNT DIABLO MERCURY MINE LOCATED IN CONTRA COSTA COUNTY – RESPONSE TO KENNEMETAL, INC. COMMENTS

Mr. Thomson:

Thank you for the additional information regarding your client, Kennemetal, Inc. I have reviewed the information provided, including the testimony of Mr. George Heideman, taken on November 2, 2011. However, at this time, based on the information available Kennemetal, Inc. will be named in the above-related order based on the work performed at the site by its wholly-owned subsidiary, Nevada Sheelite Company.

At the time of his deposition, Mr. Heideman was 99 years old and admitted he was not involved in the day-to-day operations at Nevada Sheelite Company and that he did not have any regular contact with those at the mine. He testified that others, such as Ernest Colwell, were in charge at the mine and would have made decisions on contracts, such as the Tide Water Contract. He believes that he would have been told of any decisions related to the Site, but admitted it was possible he was not informed or involved in decisions regarding the mine.

Mr. Heideman does admit that Nevada Sheelite Corporation was a wholly-owned subsidiary of Kennemetal, Inc. and that the corporation was dissolved in 1957.

As you are aware, this office has meeting minutes from the Mouth Diablo Quicksilver Co. director's meeting dated March 25, 1956 and April 28, 1956 and a contract between Tide Associated Oil Co. to Mr. John Gomes of Nevada Sheelite Corporation that offers

to provide delivery of various petroleum products to the Site over the next year at the listed prices, which is consistent with Nevada Sheelite operating at the Site.

Based on the documentation available and Mr. Heideman's acknowledgement that day-to-day operations were conducted by others without his involvement or input, the Central Valley Water Board will be naming Kennemetal, Inc.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Anna Kathryn Benedict

Anna Kathryn Benedict
Senior Staff Counsel
Office of Enforcement

cc: (Via email only)

Central Valley Region Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

Pamela Creedon
Executive Officer
Pamela.Creedon@waterboards.ca.gov

Clean up and Compliance Branch
Ross Atkinson
Ross.Atkinson@waterboards.ca.gov

Victor Izzo
Victor.Izzo@waterboards.ca.gov

Robert Busby
Robert.Busby@waterboards.ca.gov

State Water Resources Control Board
Office of Enforcement

Julie Macedo
Senior Staff Counsel
jmacedo@waterboards.ca.gov

EXHIBIT G

File: 7.01 N - RLO

TIDE WATER ASSOCIATED OIL COMPANY
Alameda, California

April 18, 1956

Nevada Scheelite Corporation
c/o Cordero Mining Corporation
Clayton, California

Attention: Mr. John Comas

Gentlemen:

We are pleased to offer herein delivery of the following products, F.O.B. your plant, Clayton, California, during the year ending April 30, 1957, and continuing thereafter, subject to cancellation on ninety days written notice, at prices posted by Seller at time and place as applicable to four hundred gallon deliveries, less:

Product	Discount Per Gallon	Method of Delivery
Gasoline	$.01	Tank Truck
Motor Diesel Fuel	.02	Truck & Trailer
Automatic Burner Oil	.02	Truck & Trailer

For information only, Seller's prices per gallon to Buyer on this basis, as of date hereof, are:

Product	Price Per Gallon*	Method of Delivery
"Flying "A" Gasoline	$.239	Tank Truck
"Flying "A" Ethyl	.269	Tank Truck
Motor Diesel Fuel	.112	Truck & Trailer
Automatic Burner Oil	.112	Truck & Trailer

*Gasoline prices include present State Motor Vehicle Fuel and Federal Excise taxes. Any other taxes are excluded from the above prices and if applicable will be payable by Buyer.

If this proposal has your approval, please so indicate on or before April 30, 1956, and we will forward contract for your signature.

Yours very truly,

TIDE WATER ASSOCIATED OIL COMPANY
Original Signed
A. H. Zinkand

A. H. Zinkand
Oakland Zone Supervisor

RLO/jm

CHS-01049

EXHIBIT H

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

QUALITY OF WATER BRANCH
2520 Marconi Avenue
Sacramento 21, California

May 10, 1956

Col. Joseph S. Gorlinski
Regional Water Pollution
Control Board No. 5
608 13th Street
Sacramento 14, California

Attention: A. J. Inerfield

Dear Col. Gorlinski:

Transmitted herewith is one analytical statement, in duplicate, of water sample submitted by Mr. Carnahan and Mr. Inerfield.

Very truly yours,

I. W. Walling

I. W. Walling
District Chemist

QW-E(SAC) Rev.

U. S. GEOLOGICAL SURVEY, WATER RESOURCES DIVISION

(Field Data)

County: Contra Costa
Sample No: none Region No: 5
Location No:
Location: Mt. Diablo Mine

Source: Dunn Creek.
Stream Miles:
Drainage Basin: San Joaquin R. (504)
Point of Coll: Below mine at outlet of mine pond.

Investigation: Mt. Diablo

Gage Ht ..... Disch: .....
Temp: ..... D.O: ..... ppm
pH: .....
Coll by: Carnahan & Inerfield.
Agency: WPCB #5
Date: 3-26-56 Time: 2:00 PST

Type of Waste: Mine drainage.
Treatment: none
Receiving Water: Marsh Creek
Loc. of Disch:
Remarks: Appear: Clear.

Quality of Water Branch

ANALYTICAL STATEMENT

SURFACE WATER—WASTE

Lab. No. 18682
Analyst Eddie Fong
Date completed 4/24/56
Checked by H.O. Smith
Date transmitted 5/3/56

Specific conductance: (micromhos at 25°C) 1370
Total Dissolved Solids ..... TAF .....
Sum 827 TAF 1.12
Ignition loss .....
Percent Sodium 31
Total Iron (Fe) .....
Color ..... pH 8.0
Turbidity 20
Hardness as $CaCO_3$: N. C. 348 Total 471
Remarks:

	Parts Per Million	Equivalents Per Million	%r
SiO_2	12		
Fe	0.08		
Ca	87	4.34	
Mg	62	5.08	
Na	100	4.35	
K	2.6	0.07	
Cation Totals:		13.84	
CO_3	0	0.00	
HCO_3	150	2.46	
SO_4	257	5.35	
Cl	215	6.06	
F	0.2	0.01	
NO_3	4.0	0.06	
B	13		
Anion Totals:		13.94 lg	

UNPUBLISHED RECORDS, SUBJECT TO REVISION GPO 970702 COPIED FROM ORIGINAL RECORD

Analysis by USGS, Water Resources Division, Quality of Water Branch, Sacramento, California.

SURFACE WATER

Region .....

Drainage Basin .....

Major Stream .....

Tributary .....

Stream Mile .....

WASTE WATER

Region .....

County .....

Receiving waters .....

Discharging Agency .....

DWR Location No. T ____ N/S R ____ E/W

Section and Lot ..... B & M

Type of waste .....

Treatment .....

Compiled by ....., 19.....

GPO 970702

RECEIVED

MAY 11 1956

REGIONAL WATER POLLUTION
CONTROL BOARD
CENTRAL VALLEY REGION

EXHIBIT I

JULY 16, 1956

MR. VIC BLOMBERG
MT. DIABLO MINE
CLAYTON, CALIFORNIA

DEAR MR. BLOMBERG:

ON JULY 12, 1956, MR. TRUMBULL OF THIS OFFICE INSPECTED THE DISCHARGE FROM THE MT. DIABLO MINE. THIS INSPECTION WAS MADE IN ACCORD WITH OUR PROGRAM OF ROUTINE CHECKING FOR COMPLIANCE WITH THE BOARD'S REQUIREMENTS.

ATTACHED FOR YOUR INFORMATION IS A COPY OF MR. TRUMBULL'S REPORT.

VERY TRULY YOURS,

JOSEPH H. KORLINSKI
COLONEL USA, (RET.)
EXECUTIVE OFFICER

CC: COUNTY HL. DEPT.
STATE HL. DEPT.
Dept. of Fish & Game
Dept. of Water Resources

MEMORANDUM

TO: COL. J. S. GORLINSKI
FROM: L. E. TRUMBULL
SUBJECT: REQUIREMENTS CHECKING, MT. DIABLO MINE

ON JULY 12, 1956 I VISITED THE MT. DIABLO MINE TO ASCERTAIN COMPLIANCE OF THE DISCHARGE WITH THE BOARD'S REQUIREMENTS. INSPECTION WAS MADE IN COMPANY WITH MR. VIC BLOMBERG.

MR. BLOMBERG REPORTS MINE PUMPS WERE FLOODED DURING THE WINTER. REPLACEMENT PUMPS WERE READY TO OPERATE IN MARCH, BUT A SHORT PERIOD OF OPERATION INDICATED SEVERE NUISANCE WAS BEING CREATED IN MARSH CREEK. PUMPING WAS STOPPED IN MARCH, 1956, AND NO FURTHER PUMPING HAS BEEN DONE THIS YEAR. MINE THUS HAS NOT BEEN OPERATED THIS YEAR, OTHER THAN THE SHORT PUMPING PERIOD SAID TO BE ABOUT 2 DAYS DURATION.

DUNN CREEK ABOVE THE MINE IS DRY. SPRINGS IN THE MINE AREA CONTRIBUTE SEEPAGE WHICH ARE SO SMALL IN VOLUME THAT DIVERSION CHANNEL AROUND LOWER POND IS DRY. SEEPAGE FROM POND AND SPRING ON HILLSIDE BELOW POND COMBINE TO GIVE A TRICKLE (ABOUT $\frac{1}{4}$ GPM) UNDER COUNTY ROAD BRIDGE ABOUT 300 YARDS BELOW THE POND. MARSH CREEK IS DRY AT CONFLUENCE WITH DUNN CREEK. MARSH CREEK AT SUNSHINE CAMP, ABOUT $\frac{1}{4}$ MILE BELOW CONFLUENCE, HAD NO FLOW, BUT STAGNANT POOLS WERE IN EVIDENCE. MARSH CREEK BELOW MARSH CREEK SPRINGS RESORT, ABOUT 1 MILE BELOW THE CONFLUENCE OF DUNN CREEK, WAS RUNNING ABOUT 15 TO 20 GPM. FLOW AT THIS POINT IS MAINLY CONTRIBUTED BY SPRING AND WELL WATER USED IN SWIMMING POOLS AT THE RESORT. WATER IS CLEAR AT THIS POINT.

MY INSPECTION INDICATES THE DISCHARGE FROM THE MT. DIABLO MINE IS CURRENTLY MEETING THE BOARD'S REQUIREMENTS.

NOTE ON CARD: MEETING REQUIREMENTS.

EXHIBIT J

ELLISON, SCHNEIDER & HARRIS, L.L.P.
Christopher M. Sanders [SBN 195990]
2600 Capitol Avenue, Suite 400
Sacramento, California 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512

BABST CALLLAND CLEMENTS AND ZOMNIR, P.C.
Robert W. Thomson
Two Gateway Center, 6th Floor
Pittsburgh, Pennsylvania 15222
Telephone: (412) 394-5656
Facsimile: (412) 394-6576

Attorneys for Petitioner, Kennametal Inc.

BEFORE THE

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of Kennametal Inc.'s Petition for Review of Action by the Regional Water Quality Control Board Central Valley Region in Adopting Order No. R5-2013-0701 and Companion Request for Stay	DECLARATION OF STACI P. MILLER IN SUPPORT OF REQUEST FOR STAY [Concurrently filed with Petition for Review and Request for Stay]

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DECLARATION OF STACI P. MILLER

I, Staci P. Miller, declare:

1. I am Global Director, Environmental Health and Safety for Kennametal Inc. I have immediate responsibility over the Regional Water Quality Control Board's claim of Kennametal Inc.'s involvement with the Mt. Diablo Mercury Mine.

2. I have personal knowledge of the facts below, and if called upon to do so, I could competently testify thereto before the State Water Resources Control Board or a court of law.

3. I attest to the facts as stated in sections 4, 9 and 11 of the Petition for Review and Request for Stay. I further attest that Petitioner will suffer substantial harm if the stay is not granted, no other person nor the public will suffer substantial harm if the stay is granted and that there are substantial questions of fact or law regarding the disputed action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 15th day of May 2013 at Latrobe, Pennsylvania.

Staci P. Miller

Staci P. Miller