

**RESPONSE TO MOUNT DIABLO MERCURY MINE  
COMMENTS ON THE TENTATIVE SETTLEMENT AGREEMENT BETWEEN  
SUNOCO INC. AND THE CENTRAL VALLEY WATER BOARD**

Comments on the Tentative Settlement Agreement between Sunoco Inc. and the Central Valley Water Board were received from the following agencies and individuals:

- EPA, LT Gary Riley, Environmental Engineer
- Jack Wessman, Property Owner
- Save Mount Diablo, Juan Pablo Galvan, Land Use Manager

**EPA COMMENT 1**

*EPA agrees that the proposed drainage system to capture and divert water from the Travertine Spring area away from the Lower Pond can improve site conditions by reducing the amount of water that contacts with mine waste. In addition, the diversion of water may reduce the volume of water entering (and transport of contaminants to) the lower pond.*

**Response:** Comment noted.

**EPA COMMENT 2**

*This work is of a scope considerably narrower than that proposed in the Site Remediation Work Plan (SGI, 2015) prepared as required under the RWQCB's October 10, 2014 Reconsideration of Cleanup and Abatement Order No. R5-2013-0701, to Order No. R5-2014-0124 for Mount Diablo Mercury Mine.*

**Response:** The scope of work included in the tentative Settlement Agreement is reduced from what was proposed in the 2015 Site Remediation Work Plan. Cleanup and Abatement Order (CAO) R5-2014-0124 remains in full force and effect; the result of the Settlement Agreement is to release Sunoco as a responsible party under the CAO, but other parties remain liable to complete the workplan. The goal of the Prosecution Team staff was to use the Settlement Agreement to further the goals of protecting water quality and reducing metal concentration in the Lower Pond while other responsible parties carry out the remaining work items required under the CAO.

The settlement reached required Sunoco to design and construct a drainage system to capture and divert mining water that discharges from the travertine springs area to the Lower Pond. The Stipulated Order describes Sunoco's remaining obligations at the site, is consistent with court rulings regarding Sunoco's petition, and reduces the concentrations of mercury and other metals accumulating in the Lower Pond.

**EPA COMMENT 3**

*In response to a Unilateral Administrative Order for the Performance of Removal Action from EPA, Sunoco conducted a time-critical stabilization of the southeastern wall of the Lower Pond's impoundment in 2008 and 2009 to prevent further erosion during periods of high flow in Dunn Creek. This work was documented in the report titled "Final Summary Report for Removal Action to Stabilize the Impoundment Berm" (SGI, 2009). While it was slowed considerably, erosion continued over the following years and by 2015 necessitated urgent repairs to prevent failure. Additional work was performed by Sunoco in 2016 to re-*

*stabilize this area. This experience indicates that – while the stabilization has been successful – it requires periodic inspection, maintenance, and repair to remain effective. EPA notes this work is outside the scope of the Tentative Settlement Agreement and Stipulated Order. We are concerned that if this settlement constitutes the entire amount of remediation work to be performed at the Mount Diablo Mercury Mine by Sunoco, the site may continue to pose a threat of release of hazardous substances from the impoundment [emphasis added].*

**Response:** The Tentative Settlement Agreement offers Sunoco a full release and covenant not to sue in exchange for Sunoco designing and constructing a drainage system to capture and divert mining water that discharges from the travertine springs area to the Lower Pond. This work will reduce the volume of water collecting in the Lower Pond and therefore, reduce the potential for catastrophic release of water and sediment from the Lower Pond in case it fails. The Lower Pond will continue to contain mercury and other metals in dissolved and precipitated forms that may pose a threat of release if the impoundment would fail. Sunoco would not be required to maintain the southeastern wall of the Lower Pond's impoundment or the newly constructed groundwater interceptor trench, conveyance piping, or infiltration gallery.

While the completion of the workplan embodied in the Settlement Agreement may signal an end of Sunoco's work at the Mt. Diablo site, it does not mean the remediation work is complete. The other responsible parties need to discuss how to best fulfill the remaining obligations under the 2015 Work Plan, or develop a revised work plan to address ongoing site conditions.

#### **Jack Wessman COMMENT 1**

*Upon advice of counsel, we cannot agree with the plan to release Sunoco of their proven responsibility to the mining site located on Morgan Territory Road. Sunoco, a proven responsible party, has an obligation to remedy the problem they helped create. Their site plan, if accepted carte blanc by the Central Valley Water Board, would release Sunoco forever and saddle us, the owners and non-miners, with a remediatory gimmick with absolutely no guarantee of any kind of sustainability or efficacy. Meanwhile, that Sunoco company, with a net worth of \$30 billion whose president receives over \$6,000,000 per year and employs over 19,000 people, would be free of future peril forever, at the paltry cost of a mere \$200,000, is ridiculous.*

*We, the current owners and non-miners, have spent over \$100,000.00 at the Board's insistence, simply to obtain a worthless "Mining Exemption" regardless of the fact that we the owners have never mined the site. We have exhausted our retirement funds and our children's college funds to the tune of more than \$350,000.00.*

*For over 43 years we have cooperated with the State Department of Water Resources in their attempt to "remediate" the site here at the Mt. Diablo Mines. In 43 years however, absolutely nothing has been accomplished by the Board, despite the \$1,000,000.00 grant earmarked for this purpose several years ago by the state. We on the other hand; have capped most of the mine tailings with over 53,000 tons of clean fill and prevented that rainfall which once drenched those rocks and boulders from leaching contaminants into the water shed, we have diverted most of that rainfall by building up the low side of the tailings with said clean fill and compacting it, directing the site runoff through large culverts into 3 settlement ponds as well. We cannot stop the mineral springs, neither can the Board.*

*We, the owners and non-miners, are the only innocent owners of an abandoned mercury mine*

*in the State of California who have continually attempted to, and been successful in, improving the mine site run-off. All without any help whatsoever from the Central Valley Regional Water Quality Board, or any other governing entity for that matter. Furthermore, if Sunoco claims the extent of their mining and therefore their liability to fall within the two percentile range for remediation of the site, we beg the evidence be considered that our activities here at the Mt. Diablo Mines constitutes a total of 0.00% of the damage done and therefore the extent of our liability must be 0.00%.*

**Response:** Water Code section 13304 permits owners of contaminated property to be named as responsible parties to cleanup and abatement orders. The Prosecution Team staff diligently pursued all available solvent entities, including former mining companies, when issuing the CAO. The Settlement Agreement reflects a negotiated agreement with one party that successfully petitioned the order.

### **Jack Wessman COMMENT 2**

*Marty, now that you and the Persecution Team intend to release Sunoco, the last "Responsible Party" free of obligation, what is next?*

**Response:**

The Central Valley Water Board plans to continue to pursue Responsible Parties historically involved with the Mount Diablo Mercury Mine in an effort to clean up the waste and abate the effects of the waste. The Lower Pond currently comprises the highest potential for a catastrophic discharge to Dunn Creek, Marsh Creek, and the San Joaquin Delta. If discharges to the Lower Pond can be reduced, pond sediments could more easily be removed and stabilized in an area that will not discharge to Dunn Creek.

### **Save Mount Diablo COMMENT 1**

*Save Mount Diablo (SMD) is a non-profit conservation organization founded in 1971 which acquires land for addition to parks on and around Mount Diablo and monitors land use planning which might affect protected lands. We build trails, restore habitat, and are involved in environmental education. In 1971 there was just one park on Mount Diablo totaling 6,778 acres; today there are almost 50 parks and preserves around Mount Diablo totaling 110,000 acres. We include more than 8,000 donors and supporters.*

*Thank you for the opportunity to comment on the Tentative Settlement Agreement and Stipulation for Entry of Order R5-2017 for Sunoco Inc. (TSASE) in the matter of the Mount Diablo Mercury Mine (Mine). Save Mount Diablo has followed the progress of CAO R5- 2014-0124, the subsequent petition, and court ruling on the matter.*

*We understand that due to the ruling of the Sacramento Superior Court, Sunoco cannot be held liable for cleanup of the Mine based on a theory of corporate successor liability.*

*However, our concern is that the maximum expenditure point for Sunoco of \$200,000 is insufficient to perform enough work to make significant progress in Mine cleanup. We understand that the scope of work described in Attachment A of the TSASE is the only activity the \$200,000 is designed to achieve, but given that of the five parties still subject to CAO R5-2014-0124 (not including Sunoco), three of them have no remaining assets to perform Mine cleanup, the work that Sunoco performs may be the only significant 'bite at the apple' to come for some time.*

*We encourage Sunoco and the Central Valley Regional Water Quality Control Board to consider if a more ambitious scope of work and larger spending limit, or at least a larger spending limit, is possible to achieve greater reductions in existing and future contamination.*

**Response:** The Settlement Agreement reflects a negotiated agreement with one party that successfully petitioned the order. At this point, the Board may reject the Stipulated Order. In that event, the Prosecution Team and Sunoco will proceed to a contested hearing to consider the issues that the Sacramento County Superior Court required when it ordered reconsideration, including whether Sunoco has any liability for any further expenditures at this site. However, such a hearing would divert the \$200,000 agreed upon for the drainage system to legal resources to defend a hearing. Based on the ruling of the Sacramento Superior Court, it is the Prosecution Team's position that the Settlement Agreement is in the best interests of the public and that other responsible parties are capable of completing remaining required under the CAO, which will remain in full force and effect even after Sunoco is released.