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5 Attorneys for Designated Party  
6 SUNOCO, INC.

7  
8 CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD  
9 STATE OF CALIFORNIA

10  
11 In the Matter of:

12  
13 RECONSIDERATION OF CLEANUP  
AND ABATEMENT ORDER R5-2013-  
14 0701, MOUNT DIABLO MINE,  
15 CONTRA COSTA COUNTY, DATED  
16 APRIL 16, 2013

**DECLARATION OF JOHN D.  
EDGCOMB IN SUPPORT OF  
SUNOCO, INC.'S OPPOSITION  
TO THE PROSECUTION TEAM'S  
MOTION IN LIMINE**

17  
18 Hearing Date: June 4/5, 2014

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20  
21 I, the undersigned John D. Edgcomb, declare as follows:

22 1. I am an attorney admitted to practice law in the State of  
23 California and am a Partner at the Edgcomb Law Group ("ELG"). ELG is counsel  
24 for Designated Party Sunoco, Inc. ("Sunoco") in connection with the Central Valley  
25 Regional Water Quality Control Board's ("Regional Board") Reconsideration of  
26 Cleanup and Abatement Order No. R5-2013-0701, issued on April 16, 2013  
27 ("CAO"). I am aware that the reconsideration hearing is currently scheduled for  
28 June 4/5, 2014.

1           2.     I have personal knowledge of the facts set forth herein or am  
2 familiar with such facts from: 1) my personal involvement in this matter; or 2) my  
3 review of the files and records obtained from public agencies and other public  
4 sources of information.

5           3.     On January 20, 2012, in advance of an in-person meeting to  
6 discuss, in part, Sunoco's alleged liability for the mercury contamination associated  
7 with the Mount Diablo Mercury Mine site, Contra Costa County, California  
8 ("Site"), I sent a letter to State Water Resources Control Board ("State Board"),  
9 Senior Staff Counsel, Julie Macedo, Esq., with a courtesy copy to Regional Board  
10 representative Victor Izzo, *et al.* Attached hereto as **Exhibit 1** is a true and correct  
11 copy of the January 20, 2012, letter ("Letter").

12           4.     The Letter set forth, among others things, Sunoco's corporate  
13 law argument that there "is no legal basis for the Regional Board to ... attribute  
14 Cordero liability at the Site, if any, to Sunoco" because "a former shareholder  
15 cannot be held liable for Cordero's Site actions..." ("Sunoco's Corporate Law  
16 Argument"). Sunoco's Corporate Law Argument was support by the following  
17 facts:

18                   Cordero was organized under Nevada law on March 4,  
19                   1941. Cordero briefly leased the Site and conducted  
20                   limited operations there between late 1954 and early  
21                   1956. Effective as of November 18, 1975, long after  
22                   Cordero operations at the Site were completed, Cordero  
23                   was dissolved as a corporate entity, as acknowledged by  
24                   the Nevada Secretary of State. It is our understanding  
25                   that Cordero was a wholly-owned subsidiary of Sun Oil  
26                   Company (Delaware) when Cordero dissolved in 1975.

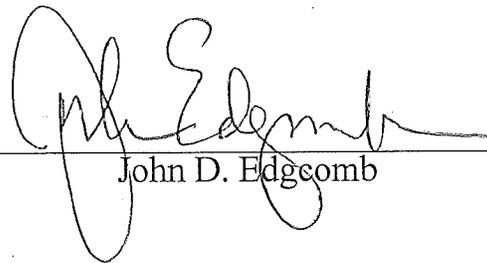
27           5.     On January 24, 2012, I participated in an in-person meeting with  
28 representatives from the State Board Office of Enforcement, the Regional Board,  
and Sunoco at the Regional Board's offices in Rancho Cordero, California (the

1 “Meeting”). Present at that Meeting were, among others, Ms. Macedo and Mr.  
2 Izzo.

3 6. During the Meeting, Ms. Macedo responded to the Letter. My  
4 understanding from Ms. Macedo’s response was that: the State and Regional  
5 Boards rejected Sunoco’s Corporate Law Argument; the State Board has a long  
6 history of rejecting such arguments; and Ms. Macedo was confident that Sunoco’s  
7 anticipated petition for review and rescission of the CAO to the State Board would  
8 be denied.

9  
10 I declare under penalty of perjury under the laws of the State of California  
11 and the United States of America that the foregoing is true and correct.

12  
13 Executed this 24th day of March, 2014 in San Francisco, California,

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16 By:   
17 John D. Edgcomb  
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# Exhibit 1

## EDGCOMB LAW GROUP

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415.399.1885 fax  
jedgcomb@edgcomb-law.com

January 20, 2012

### BY EMAIL & U.S. MAIL

Julie Macedo, Esq.  
State Water Resources Control Board  
Senior Staff Counsel, Office of Enforcement  
1001 "I" Street, 16th Floor  
P.O. Box 100  
Sacramento, CA 95814

Dear Ms. Macedo:

In advance of the January 24, 2012 meeting between Sunoco, Inc. (R&M) ("Sunoco") and the Central Valley Regional Water Quality Control Board ("Regional Board") concerning the December 7, 2011 *Additional Characterization Report, Mount Diablo Mercury Mine* ("Site") prepared by Sunoco's consultant SGI, we are bringing to your attention another issue we would like to discuss at that meeting.

Specifically, our ongoing investigation into the corporate relationship between Cordero Mining Company ("Cordero") and Sunoco has determined there is no legal basis for the Regional Board to pursue Site related claims against Cordero, or to attribute Cordero liability at the Site, if any, to Sunoco.

The relevant background facts may be summarized as follows. Cordero was organized under Nevada law on March 4, 1941. Cordero briefly leased the Site and conducted limited operations there between late 1954 and early 1956. Effective as of November 18, 1975, long after Cordero operations at the Site were completed, Cordero was dissolved as a corporate entity, as acknowledged by the Nevada Secretary of State. It is our understanding that Cordero was a wholly-owned subsidiary of Sun Oil Company (Delaware) when Cordero dissolved in 1975.

Nevada law governs the capacity of Cordero, and its former shareholder, to be pursued for Cordero's Site actions. The California Corporations Code does not apply to foreign entities such as Cordero (a dissolved Nevada corporation). *See Cal. Corp. Code § 162* ("Corporation," unless otherwise expressly provided, refers only to a corporation organized under this division or a corporation subject to this division under the provisions of subdivision (a) of Section 102.")

Julie Macedo, Esq.  
State Water Resources Control Board  
Re: Sunoco Non-Liability  
January 20, 2012

Nevada's corporate capacity statute provides that claims against a dissolved corporation relating to pre-dissolution acts survive only for a period of two years following the date of dissolution. NRS 78.595 ("The dissolution of a corporation does not impair any remedy or cause of action available to or against it or its directors, officers or shareholders arising before its dissolution and commenced within two years after the date of the dissolution.") Further, effective June 16, 2011, Section 15 of Nevada Senate Bill 405 enacted a provision reaffirming the limited liability of stockholders of a dissolved corporation:

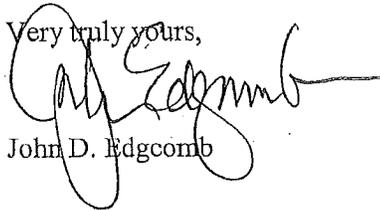
"2. A stockholder of a corporation dissolved pursuant to an NRS 78.580 or whose period of corporate existence has expired, the assets of which were distributed pursuant to an NRS 78.590, is not liable for any claim against the corporation on which an action, suit or proceeding is not begun before the expiration of the period described in NRS 78.585."

As noted above, Cordero was dissolved as of November 18, 1975 and lacked the capacity to be sued two years later (November 18, 1977). Therefore, Cordero cannot be a liable party in regards to the Site. For the same reason, and also pursuant to Section 15 of Nevada Senate Bill 405, a former shareholder of Cordero cannot be held liable for Cordero's Site actions either.

A recent decision by the United States District Court for the District of Nevada, *Assurance Co. of Am. v. Campbell Concrete of Nev., Inc.*, 2011 U.S. Dist. LEXIS 145845 (D. Nev. Dec. 19, 2011), supports the non-liability under Nevada law of Cordero's former shareholder with respect to claims arising post-dissolution as well. *See Assurance, supra* (applying Nevada law, grants motion to dismiss filed by defendant shareholder of a dissolved Nevada corporation against which post-dissolution claims had been filed).

We look forward to discussing with you the technical and legal issues related to the Site on January 24, 2012. Please let us know if you have any questions regarding the above in advance of the meeting.

Very truly yours,



John D. Edgcomb

cc (via email only):

V. Izzo  
J. Freudenberg  
S. Cullinan  
B. Morse