

State of California

*file*  
**Department of Justice**  
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**M e m o r a n d u m**

*WSW/PWM*

To : Gary Carlton  
Water Quality Control Board  
Central Valley Region

Date: September 2, 1999

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Frances McChesney  
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State Water Resources Control Board

From : *Tracy L. Winsor*  
Tracy L. Winsor  
Deputy Attorney General  
Natural Resources Law Section  
Office of the Attorney General - Sacramento

Subject : CVRWQCB v. Cedar Point Properties, Inc.

*(one copy is for your file.)*

Enclosed please find two copies of the Settlement Agreement along with the following documents:

1. Stipulated Injunction;
2. Notice of Boards' Interest in Timber Harvest, etc; and
3. Order Staying Litigation.

Please sign one Settlement Agreement and forward it back to my office. Please fax me a copy of the signature or call me to let me know you've signed so I can get it in the overnight mail to the defendants.

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

TW:dm  
Enc.

## SETTLEMENT AGREEMENT

### I PARTIES

This Settlement Agreement ("Agreement") is made and entered into, effective upon the date of execution by the last signatory hereto, by Plaintiffs People ex rel. State Water Resources Control Board ("State Board"), Central Valley Regional Water Quality Control Board ("Regional Board") (collectively, "Boards"), and defendants Cedar Point Properties, Inc., a California Corporation (hereinafter "Corporation"), and Daniel R. Kennedy, individually (collectively, "Defendants"). Any reference to "Parties" in this Agreement is to the plaintiffs and defendants as set forth above.

### II BACKGROUND AND PURPOSE

A. This matter involves a dispute over legal responsibility for clean up, remediation, and abatement activities at a certain property in Plumas County. The property in question is Plumas County Assessor's Parcel Numbers 009-080-01, 009-090-01, and 009-100-09 (hereinafter "Walker Mine Property," or "property".) The property is in central Plumas County about 24 miles north of Portola in Sections 19, 29, 30, 31, and 32, T25N, R12E, and in Sections 5,6,7, and 8, T24N, R12E, MDB& M. The main tunnel, or "portal," to a 782-acre inactive underground copper mine commonly known as the Walker Mine is on one of the three parcels. The Boards contend that the tunnels and workings of the Walker Mine extend underneath all three parcels. The Defendants dispute this claim.

B. Discharges of heavy metals from the Walker Mine Property have been and continue to be a source of significant pollution and threat of pollution to the waters of the State of California.

C. In the 1980's, after litigation with the prior property owners and pursuant to its authority provided in the California Water Code, the Regional Board undertook certain clean up, remediation, and abatement activity at the Walker Mine Property. As part of those efforts, the Regional Board installed a concrete seal in the main adit of the Walker Mine, approximately 1/2 mile underground from the portal. The mine seal has been effective in minimizing the discharge of pollutants from the portal. However, due to seepage of water into the tunnel in front of the mine seal, some discharge continues from the portal. Discharges also continue to be a problem both from piles of mine tailings near the portal, and from a settling pond also near the portal.

D. To address ongoing discharge problems, in June, 1997 the Regional Board adopted an Operations and Maintenance Plan ("OMP"), to be implemented at the Walker Mine Property, as funding permitted. The OMP describes maintenance of existing remedial structures on the Walker Mine Property and monitoring of the concrete mine seal and surface waters on the property. Since its adoption, the Regional Board has proceeded to implement various aspects of the OMP at the property.

E. In May, 1997, based on the Walker Mine Property prior owner's failure to pay property taxes, the Plumas County Treasurer/Tax Collector noticed a sale of the Walker Mine Property. Daniel R. Kennedy attended the May 1997 tax sale and successfully bid on the Walker Mine Property. The Board and Daniel R. Kennedy disagree as to the capacity in which Daniel R. Kennedy attended the May 1997 tax sale and bid on the Walker Mine Property.

F. After the May 1997 tax sale, Daniel R. Kennedy incorporated the Corporation. The Corporation took legal title to the Walker Mine Property. Daniel R. Kennedy became the President of the Corporation.

G. On or about September 1, 1997, Daniel R. Kennedy and the Corporation entered into a contract for sale of the timber rights on the Walker Mine Property to Daniel R. Kennedy. The Boards challenge the validity of this contract.

H. The California Water Code provides that upon order of the Regional Board, a discharger shall clean up and abate any discharge or threat of discharge of pollutants into the Waters of the State of California. On or about October 7, 1997, the Regional Board, through its Executive Officer, issued Clean Up and Abatement Order No. 97-715 (Order No. 97-715) to Cedar Point Properties as the property owner of record of the Walker Mine Property. Order No. 97-715 directed Cedar Point Properties to 1) prevent additional releases of waste from the Walker Mine Property to surface waters, 2) provide continuous operations and maintenance of existing remedial structures, 3) complete specified tasks according to a designated time schedule, including submitting a completed National Pollutant Discharge Elimination System ("NPDES") permit application, providing technical reports, and implementing best management practices, 4) reimburse the Regional Board for reasonable costs associated with oversight and remedial activities, 5) grant reasonable site access to the Regional Board and its agents, 6) design and implement surface water diversions to minimize surface water runoff into Walker Mine, and 7) continue sampling, monitoring, and remediation efforts.

I. The California Water Code provides that the Regional Board shall recover its reasonable costs of clean up, remediation, and abatement activity from any responsible party. (Cal. Water Code § 13304.) The California Water Code also provides that costs of clean up, remediation, and abatement activity constitute a lien on the affected property and the Regional Board may record a lien on the affected property for the amount of costs incurred. (*Ibid.*) On or

about March 13, 1998, the Regional Board recorded a lien in the amount of \$238,334 on the Walker Mine Property ("the Lien"). The Regional Board served notice of the Lien on Cedar Point Properties as property owner of record.

J. On or about July 6, 1998, the Boards filed a civil complaint against Defendants, namely, Plumas County Superior Court Case No. 19897. The Boards' complaint contains seven causes of action, as follows: 1) the First Cause of Action seeks injunctive relief, to gain Defendants' compliance with Cleanup and Abatement Order No. 97-715; 2) the Second Cause of Action seeks a determination that the Lien extends to the timber on the Walker Mine Property, foreclosure of the Lien, and a money judgment for additional cleanup and abatement costs incurred to the date of judgment; 3) the Third Cause of Action seeks in the alternative to void a fraudulent transfer of timber rights from the Corporation to Daniel R. Kennedy or a third party; 4) the Fourth Cause of Action seeks individual liability against Daniel R. Kennedy for clean up and abatement for his acts and omissions as controlling agent of the Corporation; 5) the Fifth Cause of Action seeks, in the alternative, an order piercing the corporate veil, finding the Corporation is merely the "alter ego" of Daniel R. Kennedy and holding Daniel R. Kennedy individually liable for clean up and abatement at the Walker Mine Property; and 6) the Sixth Cause of Action seeks injunctive relief ordering that proceeds of any timber harvest performed at the Walker Mine Property be escrowed and paid out according to a Court ordered formula; 7) the Seventh Cause of Action seeks civil penalties and injunctive relief for failure to submit a completed NPDES permit application and report of waste discharge.

K. The Defendants answered the Boards' complaint separately. Daniel R. Kennedy denied any responsibility for clean up activity at the property. The Corporation acknowledged

that a condition of pollution and nuisance exists on the Walker Mine Property, but maintained that said condition only emanated from one parcel of the Walker Mine Property. The Corporation maintained that it was not responsible to pay the Lien.

L. In February, 1999, the Corporation filed a Cross-Complaint against the Boards, alleging that the Lien, and the Boards' Complaint for cost recovery, constituted a taking of its property without just compensation. The Boards demurred to the Corporation's cross-complaint and the demurrer was sustained with leave to amend. The Corporation did not amend its cross-complaint.

M. At its July 28, 1999 meeting, as authorized by the Federal Water Pollution Control Act and the California Water Code, the Regional Board adopted NPDES permit number CA0084531 (Order No. 99-110), and Cease and Desist Order Number 99-111 which contain, respectively, effluent limits and receiving water limits for discharges from the Walker Mine Property, and a timetable for implementing certain activities to abate the discharges from the Walker Mine Property. Cedar Point Properties, Inc., as property owner of record, is the discharger named in the NPDES permit and Cease and Desist Order.

N. The Parties contemplate that this Agreement will be incorporated by reference into an order of the Plumas County Superior Court staying this litigation pending completion of the timber harvest. This Agreement contemplates that the Plumas County Superior Court will retain jurisdiction over this matter to enforce any disputes that may arise regarding terms or implementation of this Agreement or any other matter respecting this Agreement. In the event at least fifty percent (50%) of the Boards' lien is repaid within six (6) months of completion of the harvest, or January 1, 2001, whichever is sooner, as outlined more fully below, the Parties

contemplate that a Stipulated Judgment shall be entered accordingly in this action releasing Daniel R. Kennedy in his individual capacity. In any event, and regardless of timber harvest proceeds, or any other matter, the Corporation is now and will remain responsible for clean up, remediation and abatement activity at the Walker Mine Property. This Agreement shall not be construed to preclude the Boards or any State or Federal agency from taking any appropriate action, administrative, judicial, or otherwise against the Corporation to enforce compliance with applicable laws.

### III CONSIDERATION

Plumas County Superior Court Case No. 19897 involves litigation of claims which are contested. In the interest of avoiding the cost, difficulty, and uncertainty associated with litigating Plumas County Superior Court Case No. 19897, the Parties have negotiated this Agreement. The Parties believe that sufficient proceeds will be generated from the timber harvest to pay off the Lien in full. If there are sufficient timber harvest proceeds to pay one hundred percent (100%), (\$238,334), of the Lien, then the entire Lien will be paid out of the timber harvest proceeds. This Agreement shall not be construed, however, to prevent the Boards from seeking repayment of any portion of the Lien which is not paid by timber harvest proceeds, from any appropriate source or entity. The Boards' release of Daniel R. Kennedy in his individual capacity, as outlined below, is conditioned upon payment of at least fifty percent (50%) (\$119,167) of the Lien within a reasonable period of time, not to exceed six (6) months after completion of harvest, or January 1, 2001, whichever is sooner. In the event that timber harvest proceeds are sufficient to pay off at least fifty percent (50%) (\$119,167) of the Boards' lien, as stated above, the Boards agree to release and settle their claims against Daniel R. Kennedy as

outlined more fully below. However, if timber harvest proceeds are not sufficient to satisfy fifty percent (50%) of the lien, and, should fifty percent (50%) of the Lien not be paid off in a timely manner, then Daniel R. Kennedy will not be released from liability. Under these circumstances, the Boards may seek recovery of the balance due to satisfy the full Lien, from Daniel R. Kennedy, or any other parties, and Daniel R. Kennedy will have the right to dispute any such claim to recovery of the full Lien from him.

Provided that at least fifty percent (50%) of the Lien is timely paid off with timber harvest proceeds or otherwise, the Boards contemplate that the Agreement will be a complete and final resolution of all liability for all claims, differences, and disputes between the Boards and Daniel R. Kennedy individually pertaining to the Walker Mine Property. The Corporation will gain money from the timber harvest to apply towards its legal obligation to clean up, remediate, and abate the discharges from the Walker Mine Property. The Agreement does not purport to release the Corporation from any liability for any claim, difference, or dispute pertaining to the Walker Mine Property or any other matter, or to shield the Corporation from any action the Boards may later take if the Corporation fails to comply with its obligation to clean up, remediate, and abate the condition of pollution and nuisance emanating from the Walker Mine Property. However, if the Lien is entirely reimbursed with the proceeds of the timber harvest as contemplated by this Agreement, the Boards will file an appropriate notice releasing the Lien, or any portion of the Lien which is reimbursed.

#### IV REGIONAL BOARD ACTIVITY AT SITE NOT AFFECTED

Nothing in this Agreement shall be construed to prevent the Regional Board from undertaking any activity authorized by law at the Walker Mine Property, or from seeking cost

recovery for such activity from the Corporation, or any other potentially responsible party, for any such activity. In the event a Stipulated Judgment is entered releasing Daniel R. Kennedy from liability as a result of this Agreement, the Boards will no longer consider Daniel R. Kennedy to be a potentially responsible party.

#### V RESCISSION OF TIMBERING AGREEMENT

The Corporation and Daniel R. Kennedy intend by executing this Agreement to supersede and render null and void the September 1, 1997 "Timber Purchase Agreement," executed by Daniel Kennedy as Buyer, and Andrew Cardin on behalf of Cedar Point Properties, Inc., as Seller. Daniel R. Kennedy and the Corporation agree that after execution this Agreement will represent the sole understanding regarding distribution of timber harvest proceeds between and among themselves and any other party, whether or not a party to this litigation.

#### VI INJUNCTION

A. Corporate Commitment to Clean Up: The Corporation acknowledges that it is required by law to abate the discharges from the Walker Mine Property, and to comply with Cleanup and Abatement Order No. 97-715, NPDES permit number CA0084531 (Order No. 99-110), and Cease and Desist Order Number 99-111. The Corporation agrees that an injunction may enter ordering it to comply with these documents, subject to the appeal rights available to the Corporation with respect to such documents.

B. Distribution of Timber Harvest Proceeds: Subject to the formula for distribution of timber harvest proceeds set forth below, the Parties agree that the Defendants may harvest the timber on the Walker Mine Property. Demands on the account, and distribution of timber proceeds shall be made in the order in which items payable from the account are set forth below

in subparagraphs 1 through 7. The Defendants agree that an injunction may enter ordering that the proceeds of sale of any timber harvested from the Walker Mine Property be distributed in the manner contemplated in this Agreement, and forbidding distribution of proceeds in any other manner except as agreed upon by the Parties and/or authorized by the Court.

1. Direct Payment to Logger(s): The mills shall pay the loggers directly out of the timber harvest proceeds, pursuant to the terms of the timber harvesting contract discussed below. The Corporation will contract to harvest timber from the property using a bid method to select one or more loggers, as necessary. A minimum of two bids for each logging contract to be awarded will be deemed acceptable. No bid shall be accepted from any person or entity with a financial or familial connection to Daniel Kennedy, Andrew Cardin, or the Corporation. There will be one or more contracts with the logger, as necessary, and one or more contracts with the mill or mills to which the timber is sold. All such contracts will be subject to review and approval by the Boards, and shall be sent to the attention of Phil Nemir, at P.O. Box 1717, Susanville, CA 96130 for review, with a copy to the attention of Patrick Morris at 3443 Routier Rd., Ste. A, Sacramento CA 95827. The Boards shall have ten business days to approve or disapprove such contract(s) from the date of receipt. The contract(s) with the mills shall provide for payment of proceeds directly to the logger(s), subject to the following hold back provision. A minimum of seven dollars (\$7.00) per thousand board feet logged shall be held back from payment until such time as all legal requirements under the Timber Harvest Plan (THP), including but not limited to the California Water Code, Forest Practice Act (Pub. Res. Code §§ 4511-4612), Forest Practice Rules (Title 14, Cal. Code Regs. §§ 895-1115.4), and the logging contract are satisfied. The hold back monies shall be deposited in the escrow account with the

remaining proceeds of the timber harvest, as specified below, and shall be released upon demand and documentation verifying completion of all legal requirements, above, by Board staff. The Boards will serve a copy of the injunction and order and a notice of the Boards' interest in the timber on the logger and the mills. The injunction and order will be circulated to the Defendants for approval as to form prior to submission to the Court. The Defendants may review and comment on the Boards' notice to the logger and the mills before the Boards serve the notice on the mills.

2. Escrow of Remaining Proceeds: The mills shall pay all remaining proceeds directly to an account created or accounts created at Mid Valley Title and Escrow Company. The remainder of proceeds shall be deposited in this account to be distributed only upon the written consent of the Boards, or an order of the Plumas County Superior Court. When the escrow account is opened the Mid Valley Title and Escrow Company will be instructed not to disburse any funds until it receives instructions from the Boards or a Court order authorizing payment. Any fees relating to the escrow account shall be paid by the Corporation and not the Boards.

3. Timber Sale Preparation/Administration: Fifteen percent (15%) of net harvest proceeds ("net" shall be defined as contracted delivered log price less contracted logging cost, times volume removed), shall be distributed from the escrow account to pay for fees and costs associated with sales preparation and harvest administration. As net revenues are received, Daniel R. Kennedy may make a demand upon the escrow account for this fifteen percent (15%) sum.

4. Yield Taxes: The Corporation shall make a demand upon the escrow account for yield taxes when the amount of said taxes is known, and shall provide appropriate documentation

for said demand. The check for the yield taxes shall be made out in the appropriate sum to the State Board of Equalization, unless the Corporation provides appropriate documentation that it has already paid said taxes. Income taxes shall not be considered as an item payable from the escrow account.

5. United States Forest Service Road Use Fees/California Department of Fish & Game Fees: The Corporation shall make a demand upon the escrow account for any United States Forest Service road use fees and California Department of Fish & Game Fees, and shall provide appropriate documentation for said demand(s). A check for such fees shall be made out to the United States Forest Service and to the California Department of Fish & Game, respectively, unless the Corporation provides appropriate documentation that it has already paid said fees.

6. Repayment of the Lien: The Lien shall be repaid in the recorded amount of two hundred thirty-eight thousand, three hundred thirty four dollars (\$238,334). The State Board shall make a demand upon the escrow account for said payment. The sum shall be deposited in the State Water Pollution Cleanup and Abatement Account CA69. Upon receipt of the monies contemplated in this Paragraph, the State Board shall file a notice releasing the Lien. In the event that less than one hundred percent (100%) of the lien is repaid, the State Board shall file a notice releasing any portion of the Lien which is repaid.

7. Balance of Harvest Proceeds: After items 1 through 6 above, have been paid, there will be a balance of proceeds remaining. Part of this balance will be the hold back money (\$7.00 per thousand board feet) which the logger will be entitled to make a demand for upon satisfaction and appropriate documentation showing completion of all rules and regulations and requirements

pertaining to the timber harvest and the logging contract. Out of the remaining balance of harvest proceeds, fifty percent (50%) shall be released to Daniel R. Kennedy upon demand and approval by the Boards. The remaining fifty percent (50%) of the balance of harvest proceeds shall remain in the escrow account, to be used by the Corporation for remedial activities at the property upon demand and approval by the Boards. "Remedial activities" shall be defined as but not necessarily limited to remedial items set forth in NPDES permit number CA0084531 (Order No. 99-110), Cease and Desist Order Number 99-111, any approved work plan or plans submitted pursuant thereto, and the like. Demands for consultant and attorney fees, prospective from the date of the agreement and relating to approved remedial activities as defined above may be submitted, will also be subject to approval by the Boards. The NPDES permit fee is not a remedial activity and will not be considered an item payable from the account. Any dispute regarding the Corporation's use or non-use of the remaining funds in the balance of the proceeds shall be resolved by way of motion to the Plumas County Superior Court. In such a motion, the Boards and the Corporation shall have the right to request the Court to compel or prevent distributions of the remaining balance.

C. Period for Review and Approval or Disapproval of Demands on Account: The Boards shall have a period of eight business days to review, and to approve or disapprove a demand made by the Defendants for payment from the account. In the event a demand is approved, the Boards shall have an additional two business days to send written authorization to the Defendants and Mid Valley Title Company. Such authorization may be sent by facsimile. In the event Defendants make a demand for payment and the Boards fail to notify of approval or disapproval within ten business days, the demand shall be considered disapproved.

D. The Lien: The Regional Board represents and warrants it will not make a demand on the escrow account until the demands in sub-paragraphs 1 through 5 above have been paid. At such time as the demands for matters in sub-paragraphs 1 through 5, above, have been paid from the escrow account, the Regional Board shall be entitled to make a demand on the account for payment of the Lien. At that time, the Regional Board will submit escrow instructions to the escrow agent authorizing release of that payment.

E. Person Authorized to Approve Disbursements: The person authorized to approve disbursements in writing on behalf of the Boards is Gary Carlton, the Regional Board's Executive Officer. Unless Executive Officer Carlton otherwise so approves in a writing served on Defendants and the escrow agent, no other person, with the exception of the Court, shall have the authority to authorize disbursements from the escrow account.

#### VII DOCUMENTS PERTAINING TO HARVEST; ACCOUNTING

Defendants shall notify Patrick Morris at (916) 255-3121 and Phil Nemir by telephone at (530) 257-2294 at least one week before the harvest that they are prepared to begin. Defendants shall provide the Boards copies of all documents pertaining to the timber harvest. Copies of the accounting from the mill, and any weight tags, scale tickets, trip tickets, demands for payment, invoices, checks, correspondence regarding payment of the logger or demands for payment from the logger, shall be provided to the Boards bimonthly, and with any demand(s) for payment by Defendants from the escrow account that fall in between such accountings. One copy shall be sent to the attention of Patrick Morris, CVRWQCB, 3443 Routier Rd., Ste. A, Sacramento, CA 95827-3098. A second copy shall be sent to the attention of Phil Nemir, P.O. Box 1717, Susanville, CA 96130. The Boards shall have the right to request and receive documentation for

any matter relating to the harvest.

#### VIII CORPORATION EXPRESSLY RESPONSIBLE FOR COMPLIANCE

By the terms of this agreement, Cedar Point Properties, Inc., expressly acknowledges that it is responsible for clean up, remediation, and abatement activities at the Walker Mine Property. Nothing in this Agreement shall be interpreted to release the Corporation from compliance with any State or Federal law. In addition, nothing in this Agreement shall be interpreted to bar the Boards, or any other State or Federal Agency, from taking any appropriate action against the Corporation which is authorized by law, whether administrative, judicial, or otherwise, including, but not limited to, seeking penalties, damages, injunctive relief, obtaining and enforcing judgments, or any other relief authorized by law.

#### IX CONDITIONAL RELEASE ONLY AS TO DANIEL R. KENNEDY, INDIVIDUALLY

This Agreement shall not be construed to release Daniel R. Kennedy from liability for any matter other than liability relating to Plumas County Superior Court Case No. 19897. The Parties expect there will be sufficient funds from the timber harvest to pay off one hundred percent (100%) of the Lien. The Boards' release of Daniel R. Kennedy as outlined below, is expressly conditioned upon payment of at least fifty percent (50%) of the Lien, with the expectation that such payment shall come from the timber harvest proceeds, but if harvest proceeds are insufficient, Daniel R. Kennedy shall have six (6) months from completion of harvest, or until January 1, 2001, to pay any amount which remains owing to make up the difference between timber harvest proceeds and fifty percent (50%) of the Lien.

A. Effect of Failure to Timely Satisfy At Least Fifty Percent of the Lien: In the event that fifty percent (50%) of the Lien is not satisfied within six (6) months of completion of the

harvest, or January 1, 2001, whichever is sooner, Daniel R. Kennedy shall not be released from liability respecting Plumas County Superior Court No. 19897, except that a release will be filed for any portion of the Lien which is actually paid off. In the event that fifty percent (50%) of the Lien is not timely paid off, the releases contemplated by this Agreement as to Daniel R. Kennedy shall be of no force and effect; and the Boards will be free to pursue Daniel R. Kennedy for liability respecting the Walker Mine Property in this or any other forum in any action, for any matter authorized by law. In the releases contemplated herein do not take effect, Daniel R. Kennedy shall not be prejudiced in his right to dispute any and all claims against him personally.

B. Release Contemplated Upon Timely Payment of At Least Fifty Percent of Boards'

Lien: As to Daniel R. Kennedy only, this Agreement, and the releases contained hereafter, involve the settlement of claims which are contested, and nothing contained in this Agreement shall be construed as an admission by Daniel R. Kennedy of any fault, wrongdoing, and/or liability of any kind to the Boards, or any other person or entity with respect to the Walker Mine Property or Plumas County Superior Court Case No. 19897.

C. Civil Code Section 1542: Except as otherwise set forth in this Agreement, the Boards and Daniel R. Kennedy warrant, represent, and acknowledge that, in the event that fifty percent (50%) of the Boards' lien is timely paid off as contemplated by this Agreement, the Agreement shall act as a complete bar to every claim, demand and cause of action arising from the Plumas County Superior Court No. 19897. The Boards acknowledge that they have been advised by their counsel in the execution of this Agreement and that they are familiar with the provisions of California Civil Code section 1542 which provides:

A general release does not extend to claims which the creditor does not know or suspect

to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

WAIVER: Provided that at least fifty percent (50%) of the Boards' lien is timely paid off as set forth in this Agreement, both the Boards and Daniel R. Kennedy agree that entry of a Stipulated Judgment according to this Agreement, will waive and relinquish any right or benefit they may have against one another under section 1542 of the California Civil Code concerning Plumas County Superior Court Case No. 19897.

D. Mutual Covenant Not to Sue: Provided that at least fifty percent (50%) of the Boards' lien is timely paid off as contemplated by this Agreement, and a Stipulated Judgment is entered as contemplated by this Agreement; except to enforce this Agreement, the Boards and Daniel R. Kennedy agree not to sue, make any claim or commence, maintain or prosecute any action under state or federal law against one another, to the extent such action arises from acts or omissions regarding Plumas County Superior Court Case No. 19897.

#### XI AGREEMENT INTERPRETATION, VENUE, GOVERNING LAW

The Parties worked together with their respective counsel to produce the terms of this agreement and in the event of a dispute hereunder, this Agreement shall not be interpreted for or against either party hereto on the ground that any such party drafted or caused to be drafted this Agreement or any part hereof. With respect to any suit, action or proceeding arising out of or relating to this Agreement, or other documentation related hereto, the parties submit to the jurisdiction and venue of the Plumas County Superior Court. The Agreement shall be construed and governed by the laws of the State of California.

#### XII BREACH OF AGREEMENT BY PADDING LOGGING COSTS

In the event that the Boards later discover, and the Court rules, that the Defendants intentionally inflated the logging costs with or without the participation of any third party, the release of Daniel R. Kennedy contemplated by this Agreement shall be null and void. In this situation, the Boards shall be entitled to pursue Daniel R. Kennedy for liability any amount remaining due on the Lien and any matter arising from the Walker Mine Property or alleged in Plumas County Superior Court Case No. 19897. Any claim brought under this section shall be subject to the limitations period set forth in the California Code of Civil Procedure, section 338(d).

### XIII ATTORNEYS' FEES

The parties agree to bear their own attorneys' fees and costs incurred with respect to Plumas County Superior Court Case No. 19897. However, if after execution of this Agreement, any party to this Agreement brings an action at law, or in equity, to enforce this Agreement, or to interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and any other appropriate relief.

### XIV AUTHORITY TO EXECUTE AGREEMENT

The person executing this Agreement on behalf of each party represents and warrants that: (a) each is authorized by their respective entity to execute this Agreement; and (b) each is acting within the scope of his or her authority as officers or duly authorized representatives of his or her respective entity. These representations and warranties are in addition to, and not in derogation of, all representations and warranties implied by law.

### XV COUNTERPARTS

This Agreement may be executed in several counterparts, and all counterparts so executed

shall constitute one agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the original counterpart.

#### XVI INTEGRATION

The foregoing constitutes the entire agreement between the Parties and may not be modified, amended, or waived, except in writing duly executed by both Parties

#### XVII AGREEMENT DOES NOT BIND ANY OTHER AGENCY

This Agreement is made and entered into by and on behalf of the Boards only. Except as expressly provided in this Agreement, nothing in this Agreement is intended nor shall it be construed to preclude the Attorney General from exercising his or her authority as an independent Constitutional officer under any law, statute, or regulation. Furthermore, except as expressly provided in this Agreement, nothing in this Agreement is intended nor shall it be construed to preclude any state or federal agency, department, board or entity from exercising its authority under any law, statute, or regulation.

#### XVIII UNFORSEEN EVENTS

The release of Daniel R. Kennedy contemplated by this Agreement is conditional. The conditionality of the release shall not be subject to any defenses such as impossibility of performance, and the like. Thus, regardless of any natural disaster, act of God, warfare, or any other occurrence, unless the Boards receive payment of at least fifty percent (50%) of the Boards' lien within six (6) months of completion of harvest, or January 1, 2001, whichever is sooner, the release contemplated by this Agreement shall have no force and effect.

Dated: \_\_\_\_\_

State of California Regional Water Quality  
Control Board, Central Valley Region

By: \_\_\_\_\_  
GARY M. CARLTON, Executive Officer

Dated: \_\_\_\_\_

State of California Water Resources Control  
Board

By: \_\_\_\_\_  
FRANCES McCHESNEY, Senior Staff  
Counsel

Dated: \_\_\_\_\_

CEDAR POINT PROPERTIES, INC.

By: \_\_\_\_\_  
ANDREW CARDIN, Chief Financial  
Officer

Dated: \_\_\_\_\_

\_\_\_\_\_  
DANIEL R. KENNEDY, Individually