

# SETTLEMENT AGREEMENT

## RECITALS

Northern California River Watch, a California corporation (“RIVER WATCH”) and Pacific Lumber Company, a California corporation (“PACIFIC LUMBER”) enter into this agreement to settle (“Settlement Agreement”) as follows:

WHEREAS, RIVER WATCH and PACIFIC LUMBER, to the extent allowable under law, the State Bar of California and American Bar Association rules on behalf of themselves, their successors and assigns, and their past, present and future members, officers, directors, shareholders, principals, agents, representatives, insurers, indemnitors, indemnities, sureties, and attorneys (collectively hereafter, “Parties”) enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below.

WHEREAS, on or about February 1, 2006, RIVER WATCH sent a letter to PACIFIC LUMBER captioned *Notice of Violations and Intent to File Suit under Resource Conservation and Recovery Act* (“Notice”), a copy of which letter is attached as **Exhibit A**. PACIFIC LUMBER owns and operates a building which, in part, once housed a garage and gasoline service station facility (“Facility”) which was identified in the Notice. RIVER WATCH alleged in the Notice that PACIFIC LUMBER was in violation of the federal Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901, et seq. and the California State Underground Storage of Hazardous Substance Account Act, California Health & Safety Code § 25280, et seq.

WHEREAS, RIVER WATCH contends PACIFIC LUMBER discharged petroleum products and chemicals associated with such products (“petroleum hydrocarbons”) into the soil and groundwater at or near the Facility and violated various environmental and operational laws, including but not limited to RCRA and associated regulations, by allegedly failing to comply with various reporting, release prevention, monitoring, and remediation regulations, directives, and guidelines, and by creating or allowing contaminants to remain in the soil and groundwater in such a manner so as to create an imminent and substantial endangerment to health and/or the environment.

WHEREAS, on or about June 2, 2006, RIVER WATCH filed an action in federal court, entitled *Northern California River Watch, a non-profit Corporation vs. Pacific Lumber Company, Inc. et al*, U.S. District Court Case No. C06 3556 MMC (“Action”) to compel PACIFIC LUMBER’s compliance with the provisions of RCRA.

WHEREAS, on November 21, 2006, the Parties and their counsel participated in a mediation before William L. Nagle, and at that time agreed to a settlement in principle to resolve all of their disputes, the terms of which are set forth herein.

NOW, THEREFORE, in consideration of the terms and covenants of this Settlement Agreement including those set forth in the Recitals, the Parties hereto agree as follows:

## **TERMS OF SETTLEMENT**

### **1. PROJECTS**

Unless otherwise stated herein, PACIFIC LUMBER shall perform the below specified projects (“Projects”) at the Facility to the satisfaction of the applicable, regulatory oversight agencies. With the exception of any documents which are made available on Geo Tracker, PACIFIC LUMBER shall provide RIVER WATCH with copies of written materials and documents concerning the Projects which are submitted to the applicable, regulatory oversight agencies, including quarterly monitoring reports for a minimum of two (2) years. PACIFIC LUMBER reserves the right to determine, in its discretion, who will perform the work described herein, including another entity or contractor.

#### **a. Conduit Study**

PACIFIC LUMBER shall perform a conduit study to address concerns with respect to potential, preferential pathways. The conduit study shall include a survey of man-made utility and service trenches within the area of known impact, and an evaluation of means by which these structures may act as preferential pathways for petroleum hydrocarbon migration. PACIFIC LUMBER will identify all known trenches. The trench’s path, depth, width, materials of construction and other physical characteristics will be examined. If any preferential pathway is discovered which has the potential to contribute to the migration of petroleum hydrocarbons, PACIFIC LUMBER will sample to determine if pollutants have migrated along that pathway. If pollutants are found, PACIFIC LUMBER will take appropriate action as directed by the oversight agency to prevent further plume migration via one or more of such pathways.

#### **b. Sewer Lateral Testing**

PACIFIC LUMBER shall take two (2) samples in the sanitary, sewer lateral line leading from any bathroom at the Facility. The sampling point shall be the on-site, sewer clean-out or other designated site likely to be determinant of contamination. The samples shall be collected during the first and third quarter groundwater sampling events, which will coincide with the minimum and maximum groundwater elevations (as determined by the historical groundwater data). The collected samples shall be analyzed for petroleum hydrocarbons. No drilling into the sewer line trench shall be required. If sewer laterals are impacted at any location at the Facility, appropriate action as directed by the oversight agency shall be taken to prevent contaminant migration via any of the laterals.

#### **c. Lateral and Vertical Delineation**

PACIFIC LUMBER shall adequately characterize the lateral and vertical extent of contamination at the Facility in accordance with industry standards, including the installation of additional monitoring wells as necessary. Characterization shall include a geological study to determine the proximity of the nearest aquifer, if any, below the unconfined aquifer in which the

plume has been identified. Characterization shall also include estimate of the total mass of petroleum hydrocarbons released, and mass still remaining in the soils.

**d. Log Pond Monitoring Well**

PACIFIC LUMBER shall install a monitoring well between the western plume front and the log pond proximate to the pond at the Facility for the purposes of determining if contaminants have reached or threaten the pond.

**e. Remediation**

PACIFIC LUMBER shall actively remediate contamination at the Facility in accordance with industry standards and to the satisfaction of the oversight agency. Only a “no further action” letter from the oversight agency shall satisfy the requirements of this section.

**2. MEET AND CONFER**

In the event RIVER WATCH contends the Facility is not being adequately investigated or remediated, or that PACIFIC LUMBER has otherwise allegedly violated the law with regard to the Facility, RIVER WATCH shall inform PACIFIC LUMBER in writing, detailing the basis of its contentions and specifying the action it asserts should be taken. PACIFIC LUMBER may agree to perform the actions requested by RIVER WATCH, which shall fully resolve the matter, provided the actions are proactively commenced and are completed to the satisfaction of the oversight agency.

Should PACIFIC LUMBER not agree to perform the actions requested by RIVER WATCH, PACIFIC LUMBER shall so notify RIVER WATCH in writing, providing the reason(s) for said disagreement. Said notification shall be provided to RIVER WATCH within thirty (30) days of PACIFIC LUMBER’s receipt of any written notice from RIVER WATCH.

If RIVER WATCH does not agree with PACIFIC LUMBER’s reasoning, RIVER WATCH shall notify PACIFIC LUMBER within thirty (30) days of PACIFIC LUMBER’s response, that RIVER WATCH shall meet and confer as to the contentions made by RIVER WATCH and PACIFIC LUMBER’s responses thereto.

PACIFIC LUMBER may elect to seek the input and/or approval of the applicable oversight agency with respect to RIVER WATCH’s contentions and requests for action. If the applicable oversight agency determines in writing, that the actions requested by RIVER WATCH are not necessary or that the allegations otherwise do not warrant action, then the matter shall be considered resolved.

If any matter remains unresolved between the Parties, the dispute shall be governed by Section 3 below (“Disputes”). Regardless as to whether or not PACIFIC LUMBER and RIVER WATCH are able to reach an agreement concerning RIVER WATCH’s contentions, RIVER WATCH cannot and shall not seek or recover any penalties for any alleged violations, attorneys’ fees and costs, expert fees and costs, or any other costs or damages.

### **3. DISPUTES**

#### **a. All Disputes Subject to Arbitration**

All disputes under or concerning this Settlement Agreement shall be resolved pursuant to arbitration, including but not limited to the interpretation or enforcement of this Settlement Agreement, disputes with respect to Projects under Section 1 above, and allegations by RIVER WATCH pursuant to Section 2 above.

#### **b. Choice of Arbitrator**

The Parties agree to arbitrate any matter before William L. Nagle, or, in the event he is unable to serve as arbitrator due to a conflict or is otherwise unavailable, then before another arbitrator agreeable to the Parties (hereafter, the "Arbitrator"). Penalties or damages cannot be assessed by the Arbitrator. The Parties shall bear their own attorney fees and costs and expert fees and costs incurred in connection with all disputes under or pertaining to this Settlement Agreement, including but not limited to, arbitration, investigation, and meet and confer. The Arbitrator can award his or her costs for arbitration at his or her discretion.

#### **c. Limits on Authority of Arbitrator**

With respect to Disputes pursuant to Section 2, the Arbitrator shall only have authority to order additional work and may only order PACIFIC LUMBER to perform such additional work if RIVER WATCH demonstrates either a violation pursuant to 42 U.S.C. § 6972(a)(1)(A), or that releases of petroleum hydrocarbons at the Facility pose an imminent and substantial endangerment to health or the environment pursuant to 42 U.S.C. § 6972(a)(1)(B). Should the applicable oversight agency make a formal finding that no further action is required, and/or determines that PACIFIC LUMBER is adequately investigating and remediating the Facility, and is substantially complying with such requirements, such formal findings shall be determinative as to any claims asserted by RIVER WATCH under this Settlement Agreement and the Arbitrator shall dismiss the claim.

#### **d. Conditions Precedent to Arbitration**

Prior to seeking arbitration the Parties must follow the notification, meet and confer protocols described in Section 2.

### **4. NO WAIVER**

Nothing contained herein shall be construed as waiving any rights or defenses which PACIFIC LUMBER has or may have, or as creating any rights, claims or causes of action in favor of RIVER WATCH. By execution of this Settlement Agreement, PACIFIC LUMBER does not waive its rights to contest any agency actions and shall retain any and all rights to seek recovery of costs and/or contribution for costs incurred in the performance of investigation and remediation, or otherwise bring an action against alleged responsible parties with respect to the investigation and remediation of the Facility.

## **5. NO ADMISSION**

By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of RCRA or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law; nor shall compliance with the Settlement Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing contained in this Settlement Agreement shall constitute or be construed, considered, offered or admitted, in whole or in part, as evidence of an admission or evidence of fault, wrongdoing, liability or violation by PACIFIC LUMBER in any administrative or judicial proceeding or litigation in any court, agency or other forum whatsoever. PACIFIC LUMBER does not admit that RIVER WATCH has a right to any form of penalty, attorneys' fees or costs, projects in lieu of penalties, or any form of injunctive relief related to the causes of action alleged in the Notice and the Action.

## **6. RELEASE**

As of the Effective Date of this Settlement Agreement (as defined in Section 13 below), RIVER WATCH hereby fully releases and forever discharges PACIFIC LUMBER from any and all known and unknown rights, claims, actions, damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and fees, costs, and expenses (including without limitation RIVER WATCH's attorneys' fees, expert expenses, and litigation expenses) ("Claims") related to or arising out of the Claims, causes of action and alleged violations of law asserted or which could have been asserted in the Action.(the "Released Claims").

### **a. Section 1542 of the Civil Code of the State of California Release**

The Parties have been fully advised of the contents of Section 1542 of the Civil Code of the State of California. RIVER WATCH acknowledges that the Released Claims as defined in Section 6 above may include unknown Claims and waives Section 1542 as to any such unknown Claims. Section 1542 reads as follows:

*A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.*

RIVER WATCH acknowledges and understands the significance and consequence of this specific waiver of Civil Code Section 1542.

### **b. Claims Covered**

This Settlement Agreement is a final and binding resolution between the Parties for any and all claims arising out of or related to any alleged discharge or release of any gasoline, petroleum, petroleum product, hazardous substance, and/or waste, including but not limited to constituents,

additives, oxygenates, byproducts, contaminants, impurities, and/or degradation products thereof, that have spilled, leaked or otherwise emanated at, on or from the Facility, including without limitation, all claims with respect to the continued presence or migration of gasoline, petroleum, petroleum products, hazardous substance, and/or waste, and constituents, additives, oxygenates, byproducts, contaminants, impurities, and/or degradation products thereof, on, in or to the soil and/or groundwater and/or the waters of the State. The claims include, but are not limited to, claims under RCRA, Proposition 65, California's Unfair Competition Act, and California Fish and Game Code § 5650 arising out of any alleged discharge or release of any gasoline, petroleum, petroleum product, hazardous substance, and/or waste which has spilled, leaked, or otherwise emanated from the Facility, including, without limitation, all claims with respect to the continued presence and/or migration of gasoline, petroleum, petroleum products, hazardous substance, and/or waste, or constituents, additives, oxygenates, byproducts, contaminants, impurities, and/or degradation products thereof, on, in or to the soil and/or groundwater and/or the waters of the State.

## **7. FORCE MAJEURE**

PACIFIC LUMBER shall not be in default or breach of this Settlement Agreement by reason of any event which constitutes a force majeure. For the purposes of this Settlement Agreement, a force majeure is defined as any event arising from causes beyond the control of PACIFIC LUMBER, or its contractors, subcontractors, or consultants which delays or prevents performance, including without limitation, acts of God, acts of war or war-like operations, acts of terrorism, acts of public enemies, riot, insurrection, fire, explosion, changes in law or regulatory requirements, or other causes beyond PACIFIC LUMBER's reasonable control. Neither economic hardship nor increased costs shall constitute a force majeure.

## **8. SETTLEMENT PAYMENT**

Within fifteen (15) days after execution of this Settlement Agreement by all Parties, PACIFIC LUMBER shall pay a total sum of Twenty Thousand Dollars (\$20,000.00) for attorneys' fees and costs. The check shall be made payable to "Northern California River Watch" and shall be sent to the address of Jack Silver as set forth in Section 16. RIVER WATCH will supply PACIFIC LUMBER with its federal tax identification number for purposes of issuing the check under this Settlement Agreement.

## **9. MEDIATION COSTS**

PACIFIC LUMBER shall pay the full costs of the mediation held on November 21, 2006 before William L. Nagle.

## **10. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,

negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

#### **11. EFFECTIVE DATE**

The "Effective Date" specified in this Settlement Agreement is the date on which the Settlement Agreement is executed by all Parties.

#### **12. INTERPRETATION**

The language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. This Settlement Agreement shall be construed in accordance with and governed by the laws of the State of California.

#### **13. MODIFICATION OF SETTLEMENT AGREEMENT**

This Settlement Agreement may only be modified in a writing signed by all Parties hereto.

#### **14. APPLICATION OF SETTLEMENT AGREEMENT**

This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of the Parties, their successors and assigns. Neither Party may assign its interest in the Settlement Agreement.

#### **15. NOTIFICATION REQUIREMENTS**

Any notice or certification required or permitted hereunder shall be effective only if in writing and delivered in person or sent by fax, certified mail return receipt requested, or traceable overnight delivery service, to the following designees:

**For RIVER WATCH:**

Jack Silver, Esquire  
Law Office of Jack Silver  
Post Office Box 5469  
Santa Rosa, CA 95402-5469  
Fax: (707) 528-8675

**For PACIFIC LUMBER:**

Frank Shaw Bacik, Esq.  
Vice President and General Counsel  
The Pacific Lumber Company  
125 Main Street  
P.O. Box 37  
Scotia, CA 95565  
Fax: (707) 764-4131

Any party may change its designee(s) listed above by providing written notice of such change pursuant to this paragraph.

## **16. VALIDITY**

Should any provision of this Settlement Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall remain in full force if the legal substance of the settlement that this Settlement Agreement contemplates is not affected in any manner adverse to any party.

## **17. ADVICE OF COUNSEL**

The undersigned Parties acknowledge they have been advised and are aware of their right to be represented by counsel in the negotiation and preparation of this Settlement Agreement. The Parties have discussed this Settlement Agreement with the counsel of their choice, have read the Settlement Agreement, are fully aware of its contents and of its legal effect. The Parties acknowledge that the preceding paragraphs recite the sole consideration for this Settlement Agreement, that the agreements and understandings between the Parties to this Settlement Agreement are embodied and expressed herein, and, that each party enters into this Settlement Agreement freely, without coercion, and based on the each's own judgment and not in reliance on any representations or promises made by the other party, other than those contained herein.

## **18. AUTHORITY TO ENTER INTO SETTLEMENT AGREEMENT**

The Parties represent that their respective signatories to this Settlement Agreement are fully authorized by the party he or she represents to enter into this Settlement Agreement on behalf of the party represented and legally to bind that party.

## **19. EXECUTION IN COUNTERPARTS**

This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute one and the same document.

Dated: January 16, 2007

NORTHERN CALIFORNIA RIVER WATCH

By: Robert W Rawson

Title: Vice president Board of Directors

Dated: January 16, 2007

THE PACIFIC LUMBER COMPANY

By: \_\_\_\_\_  
FRANK SHAW BACIK  
Vice President and General Counsel

APPROVED AS FORM:

Dated: January 16, 2007

LAW OFFICE OF JACK SILVER

By: Jack Silver  
JACK SILVER

Attorneys for  
NORTHERN CALIFORNIA RIVER WATCH

Dated: January \_\_\_\_\_, 2007

MORRISON & FOERSTER LLP

By: \_\_\_\_\_  
CHRISTOPHER J. CARR  
Attorneys for  
THE PACIFIC LUMBER COMPANY

Dated: January \_\_\_\_, 2007

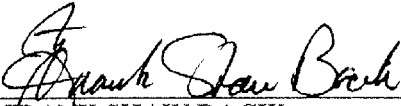
NORTHERN CALIFORNIA RIVER WATCH

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: January 12, 2007

THE PACIFIC LUMBER COMPANY

By:   
FRANK SHAW BACK  
Vice President and General Counsel

APPROVED AS FORM:

Dated: January \_\_\_\_, 2007

LAW OFFICE OF JACK SILVER

By: \_\_\_\_\_  
JACK SILVER

Attorneys for  
NORTHERN CALIFORNIA RIVER WATCH

Dated: January \_\_\_\_, 2007

MORRISON & FOERSTER LLP

By: \_\_\_\_\_  
CHRISTOPHER J. CARR

Attorneys for  
THE PACIFIC LUMBER COMPANY

Dated: January \_\_\_\_, 2007

NORTHERN CALIFORNIA RIVER WATCH

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: January \_\_\_\_, 2007

THE PACIFIC LUMBER COMPANY

By: \_\_\_\_\_

FRANK SHAW BACIK  
Vice President and General Counsel

APPROVED AS FORM:

Dated: January \_\_\_\_, 2007

LAW OFFICE OF JACK SILVER

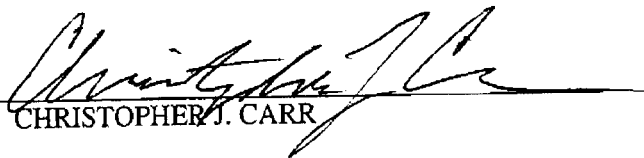
By: \_\_\_\_\_

JACK SILVER

Attorneys for  
NORTHERN CALIFORNIA RIVER WATCH

Dated: January 12, 2007

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By:   
CHRISTOPHER J. CARR

Attorneys for  
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