

PWM

(ENDORSED)

1 PETTIT & MARTIN  
2 JOHN P. MACMEEKEN  
3 A. ROBERT ROSIN  
4 101 California Street, 35th Floor  
5 San Francisco, California 94111  
6 Telephone: (415) 434-4000

7 Attorneys for Defendant  
8 Calicopia Corporation

**FILED**

JAN 02 1991

WARREN SLOCUM, County Clerk  
By LORNA SANDBERG  
DEPUTY CLERK

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN MATEO

11 THE PEOPLE OF THE STATE OF )  
12 CALIFORNIA, )

No. 340529

13 Plaintiff, )

JUDGMENT PURSUANT TO  
STIPULATION

14 v. )

15 ANNE BENJAMIN BARRY, WALTER F. )  
16 PETTIT, and ROBERT H. GOLDIE, )  
17 in their capacity as co- )  
18 executors of the Estate of )  
19 Robert R. Barry and in their )  
20 capacity as co-trustees of )  
21 the Trust of Robert R. Barry, )  
22 CALICOPIA CORPORATION, ANNE )  
23 BENJAMIN BARRY, in her )  
24 personal capacity, HENRY ROGER )  
25 BARRY, and CYNTHIA BARRY )  
26 BIDWELL, )

27 Defendants. )  
28

29 The above-entitled action came on regularly before the  
30 Honorable V. Gene McDonald sitting without a jury, on the JAN 02 1991  
31 ~~day of December, 1990,~~ following conferences between the Court  
32 and counsel on August 10, 1990, August 21, 1990, August 22,  
33 1990, October 31, 1990, and November 29, 1990. The Plaintiff,  
34 People of the State of California by and through the Regional

1 Water Quality Control Board, Central Valley Region (hereinafter  
2 "Board") appeared through John K. Van de Kamp, Attorney General  
3 for the State of California, R. H. Connett, Assistant Attorney  
4 General, and Edna Walz and Allen R. Crown, Deputy Attorneys  
5 General. Defendants Anne Benjamin (Rogers) Barry, Walter F.  
6 Pettit and Robert H. Goldie, in their capacity as co-executors  
7 of the Estate of Robert R. Barry, Deceased (hereinafter  
8 "Executors"), and in their capacity as co-trustees of the Trust  
9 of Robert R. Barry (hereinafter "Trustees"), and Defendant Anne  
10 Benjamin (Rogers) Barry (hereinafter "Barry"), in her personal  
11 capacity, appeared through Kenneth Drexler and Drexler and  
12 Leach; Defendants Calicopia Corporation, a Nevada corporation  
13 (hereinafter "Calicopia"), Cynthia B. Bidwell (hereinafter  
14 "Bidwell") and Henry Rogers Barry (hereinafter "Rogers"),  
15 appeared through Pettit & Martin, John P. Macmeeken, and A.  
16 Robert Rosin.

17 The action relates to water quality and related  
18 environmental problems at that certain property situated in the  
19 County of Plumas, State of California, consisting of patented  
20 and lode mining claims recorded in the name of and assessed to  
21 Calicopia, known as the Walker Mine and described more  
22 particularly in Exhibit A hereto (hereinafter, "the Property");

23 It appearing that the parties have entered into a  
24 Settlement Agreement which is intended as a complete disposition  
25 of this pending action, and good cause appearing therefor:

26 IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

27 1. That Plaintiff State of California by and through  
28 the Regional Water Quality Control Board, Central Valley Region,

1 have judgment against defendants Executors, Trustees, Calicopia,  
2 Barry, Rogers, and Bidwell, jointly and severally in the amount  
3 of One Million Dollars (\$1,000,000.00) plus interest at the rate  
4 earned by defendants from October 31, 1990, until the date of  
5 entry of this Judgment. Within five (5) days immediately after  
6 the entry of this Judgment, defendants shall pay said total cash  
7 sum in lawful money of the United States to the Board for the  
8 State Water Pollution Cleanup and Abatement Account.

9           2. The Board's agent for receipt of money,  
10 documents, or notice as provided in Paragraphs 1, 3, and 4 of  
11 this decree shall be Ms. Elizabeth Jennings, Esq., at State  
12 Water Resources Control Board, Office of the Chief Counsel, 901  
13 P St, Room 411-A, Sacramento, California 95814. The Board shall  
14 provide written notice of any change in its agent for these  
15 purposes.

16           3. Within five (5) days of the entry of this  
17 Judgment, Calicopia, Trustees, and Barry shall deliver to the  
18 Board their negotiable promissory note, executed by each and all  
19 of them, jointly, as makers, in the form attached as Exhibit B  
20 hereto, in the principal sum of Three Hundred Thousand Dollars  
21 (\$300,000.00), lawful money of the United States of America, to  
22 be paid eighteen (18) months after the entry of this Judgment.  
23 Said negotiable promissory note shall be secured by a deed of  
24 trust, in the form set forth in Exhibit C hereto, upon the real  
25 property of the Trustees at 155 Wildwood Way, Woodside,  
26 California 94062. Defendants shall not incur or permit the  
27 incurring of any further encumbrances or liens prior to five (5)  
28

1 days after delivery to the Board of the deed of trust on the  
2 property.

3 4. Within five (5) days of the entry of this  
4 Judgment, Calicopia shall deliver to the Board its irrevocable  
5 assignment of its right to receive the sum of Two Hundred  
6 Thousand Dollars (\$200,000.00), lawful money of the United  
7 States of America, of principal payments in accordance with that  
8 certain promissory note of Robert E. Sutton dated May, 1990, and  
9 which has not since that date been transferred or paid in whole  
10 or in part; a copy thereof is attached hereto as Exhibit D.  
11 Calicopia shall also simultaneously assign to the State Water  
12 Resources Control Board for the Cleanup and Abatement Account a  
13 two-thirds (2/3rds) interest in all security now and hereafter  
14 held by Calicopia for said note, including without limitation  
15 that note dated April 26, 1990, and attached hereto as  
16 Exhibit E, made by Jaw-Min Chang and Bih-Yueh Tzeng Chang in the  
17 principal amount of Four Hundred Thousand Dollars (\$400,000)  
18 payable to the order of Robert E. Sutton and that Assignment of  
19 Deed of Trust, recorded in Book 1648, page 67 of Official  
20 Records of Imperial County. Said assignments shall be in the  
21 form set forth in Exhibit F, hereto. Said assignment shall be  
22 without recourse against defendants. Calicopia shall give  
23 prompt notice of all payments, presentments, notices and  
24 defaults which may occur with respect to said promissory note.  
25 Defendants shall not incur or permit the incurring of any lien  
26 or encumbrance prior to five (5) days after delivery to the  
27 Board of the assignment on the note and the deed of trust on the  
28 property.

1           5. Defendants Calicopia, Executors, Trustees, Barry,  
2 Bidwell and Rogers, their respective heirs, successors, assigns,  
3 officers, directors, employees, attorneys, agents,  
4 representatives, and each of them, are released, remised and  
5 forever discharged by the Board of and from all causes of  
6 action, claims, liabilities, demands and costs, of every kind  
7 and character, relating to regulatory provisions over which the  
8 Board has enforcement authority, arising out of or occasioned by  
9 any act or omission pertaining or related to the Property, which  
10 occurred up to and including August 22, 1990, including, without  
11 limitation, all claims which were or could have been asserted in  
12 this Action.

13           6. The defendants, their heirs (including any person  
14 who would be a defendant's heir had the defendant died  
15 intestate), and any State or Federal agency to which they may  
16 next convey the Property shall have no future liability to the  
17 Board under regulatory provisions over which the Board has  
18 enforcement authority by reason of the state or condition of the  
19 Property as of August 22, 1990, or by reason of any omission of  
20 any of defendants or any such State or Federal agency after that  
21 date with respect to said condition of the Property. Nothing  
22 herein contained shall release defendants or such transferees or  
23 any of them from any liability arising out of acts hereafter  
24 performed by them upon the Property.

25           7. Defendants Calicopia, Executors, Trustees, Barry,  
26 Bidwell and Rogers, their respective heirs, successors, assigns,  
27 officers, directors, employees, attorneys, agents,  
28 representatives, and each of them, are released, remised and

1 forever discharged by the Attorney General from any action for  
2 common law nuisance or pollution arising out of or occasioned by  
3 any act or omission pertaining or related to the Property, which  
4 occurred up to and including August 22, 1990.

5           8. The defendants, their heirs (including any person  
6 who would be a defendant's heir had the defendant died  
7 intestate), and any State or Federal agency to which they may  
8 next convey the Property shall have no future liability to the  
9 Attorney General for common law nuisance or pollution by reason  
10 of the state or condition of the Property as of August 22, 1990,  
11 or by reason of any omission of any of defendants or any such  
12 State or Federal agency after that date with respect to said  
13 condition of the Property. Nothing herein contained shall  
14 release defendants or such transferees or any of them from any  
15 liability arising out of acts hereafter performed by them upon  
16 the Property.

17           9. The Board and its agents shall have the right at  
18 all times to enter upon the Property to investigate  
19 environmental conditions thereon, to monitor discharges and  
20 water quality, and to conduct such remedial activities as it  
21 deems necessary or desirable for purposes of water quality  
22 control. It shall not commit waste, nor except as provided in  
23 Paragraph 11 of this Judgment, suffer or permit any lien to be  
24 imposed upon the Property by reason of any act or omission by it  
25 on or pertaining to the Property. The term "waste" as used in  
26 this paragraph shall not include anything which results from any  
27 approach to "abating a condition of pollution or nuisance" which  
28 is not unreasonable. "Abating a condition of pollution or

1 nuisance" shall include, but not be limited to, remedial  
2 activities, monitoring, investigating environmental conditions,  
3 and conducting feasibility studies. The Board shall indemnify,  
4 save, and hold harmless defendants and each of them from any  
5 loss, liability, or damages occasioned by or arising out of any  
6 act or omission of the Board upon the Property pursuant to any  
7 right granted to it hereunder.

8           10. Upon payment in accordance with Paragraph 1 of  
9 this Judgment, the present Lien for Abatement of Pollution at  
10 Nonoperating Industrial Location, recorded by The Board on  
11 January 28, 1988, in Volume 475, page 92 of Official Records of  
12 Plumas County, shall be discharged, and the Board shall  
13 forthwith record in the Office of the Recorder of Plumas County  
14 a release of lien in the form attached hereto as Exhibit G.

15           11. All costs which are not unreasonable costs  
16 incurred by the Board in abating any condition of pollution or  
17 nuisance upon the Property shall entitle the Board to a lien  
18 upon the Property, notice of which shall be recorded with the  
19 Recorder of Plumas County. "Abating a condition of pollution or  
20 nuisance" shall have the same meaning as that term is defined in  
21 Paragraph 9 of this Judgment. Such lien shall have the same  
22 force, effect, and priority as if it had been a judgment lien  
23 imposed upon real property which was not exempt from execution,  
24 except that it shall attach only to the Property, and shall  
25 continue for 10 years from the time of the recording of such  
26 notice unless sooner released or otherwise discharged. Should  
27 the Board record any notices of lien pursuant to this paragraph  
28 which affect the Property, or any part thereof, upon the request

1 of any of the defendants, the Board shall provide a written  
2 itemization of the expenses incurred by the Board which give  
3 rise to its lien. The lien created by this paragraph shall be  
4 co-extensive with the ownership interest of defendants or any of  
5 them in the Property.

6           12. In the event there exists a lien as contemplated  
7 in Paragraph 11, and timber, trees, or rights thereto are sold,  
8 transferred, or hypothecated, the amount of the proceeds which  
9 shall be applied to the lien shall be reduced by the following  
10 deductions: a) liability insurance premiums for the Property  
11 actually paid for the year by the legal owner, in an amount up  
12 to \$5,000; and b) any direct costs actually paid by the legal  
13 owner of the property for the harvesting and by any compensation  
14 actually paid by the legal owner to the forester to supervise  
15 the harvesting, to the extent that these costs are reasonable  
16 and customary. Calicopia shall keep, and upon the request of  
17 the Board, shall produce its records relating to costs.

18           13. The respective parties hereto shall have no  
19 responsibility for the property of any other person upon the  
20 Property. No party hereto shall be deemed an insurer, bailee or  
21 custodian of any property of any other person upon the Property.

22           14. The respective parties hereto recognize that  
23 trespassing is a problem of the Property and that persons  
24 trespassing upon the Property can suffer serious injury and  
25 significant property damage. The Board and Calicopia shall  
26 cooperate in locking gates and doors, and shall discuss other  
27 security problems or measures as necessary in an attempt to  
28 resolve those between themselves. The Board and Calicopia shall



1 advise each other generally about activities to be undertaken on  
2 the Property, and shall communicate as necessary to attempt to  
3 avoid interference with the activities of the Board or  
4 Calicopia. The Board shall endeavor in the exercise of its  
5 authorized rights and privileges hereunder, not to unreasonably  
6 intrude upon and interfere with any lawful use and employment of  
7 the Property. Defendants shall cooperate with the Board to the  
8 end that the lawful activities of any of them on the Property do  
9 not intrude unreasonably upon or interfere with the rights of  
10 the Board under this Judgment.

11           15. The respective parties shall each bear their own  
12 costs and attorneys' fees incurred in connection with this  
13 Action.

14           16. Upon payment in accordance with Paragraph 1 of  
15 this Judgment and the execution and delivery of the promissory  
16 note and deed of trust in accordance with Paragraph 2 of this  
17 Judgment, and delivery of the assignment and assignment of the  
18 security in accordance with Paragraph 3, the Board shall file in  
19 the Estate of Robert R. Barry, Deceased, written notice of the  
20 withdrawal of its creditor's claim on file therein. Thereafter,  
21 Executors may petition the Court for and secure the issuance of  
22 decrees of partial or final distribution.

23           17. This Court reserves jurisdiction over the  
24 respective parties to this Action in order that it may upon  
25 motion resolve any controversy that may arise as to the rights  
26 and obligations of the respective parties under this Judgment,  
27 and to issue any orders as may be necessary to enforce them.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

18. The parties hereto have entered into a valid and subsisting Settlement Agreement which is hereby approved by the Court.

DATED: JAN 02 1991

V. GENE McDONALD  

---

JUDGE OF THE SUPERIOR COURT

79740