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CC: Steve C.
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State of Utah

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

Department of
Environmental Quality

William J. Sinclair
Acting Executive Director

DIVISION OF WATER QUALITY
Walter L. Baker, P.E.
Director

June 3, 2009

CERTIFIED MAIL
(Return Receipt Requested)

P. Bruce Hill, President & CEO
David Shaver, Resident Agent
West Ridge Resources, Inc.
P.O. Box 910
East Carbon, UT 84520

Dear Mr. Hill and Mr. Shaver:

Subject: Proposed Settlement Agreement, Docket No. I09-01, West Ridge Resources, Inc.
West Ridge Mine Facility, UPDES Permit No. UT0025640

Enclosed are two (2) originals of the proposed Settlement Agreement (SA) and the associated penalty calculations and justifications between the Utah Water Quality Board and **West Ridge Resources, Inc.** resolving the Notice of Violation and Order, **DOCKET NO. I09-01**, issued on **February 10, 2009**. Please review the SA and if you find it acceptable, sign both originals, do not date them, and return them both to this office within ten (10) days of receipt. However, if you wish to discuss this matter further, please contact our office to arrange a meeting. After you have returned the signed SA, we are required to public notice it for thirty (30) days. If there are no significant changes necessary as a result of the public comment period, the Executive Secretary will sign and date the SA and return one fully executed original to you.

If you have any questions or want to arrange a meeting please contact Jeff Studenka at (801) 538-6779. Your continued cooperation in resolving this matter is appreciated.

Sincerely,

Mike Herkimer, Manager
UPDES IES Section

Enclosures

cc: Amy Clark, EPA Region 8 ENF
Fred Nelson, Assistant Attorney General
Bill Sinclair, DEQ EDO
Daron Haddock, DOGM

UTAH WATER QUALITY BOARD

**IN THE MATTER OF
WEST RIDGE RESOURCES, INC.
794 North "C" Canyon Road, PO Box 910
East Carbon, Utah 84520**

**DOCKET NUMBER I09-01
SETTLEMENT AGREEMENT

UPDES PERMIT NO. UT0025640**

This **SETTLEMENT AGREEMENT** (hereinafter "**AGREEMENT**") is between **WEST RIDGE RESOURCES, INC.** (hereinafter "**WEST RIDGE**") and the **UTAH WATER QUALITY BOARD** (hereinafter the "**BOARD**"), concerning violations of the *Utah Water Quality Act* (the *Act*), *Utah Code Annotated*, and the *Utah Administrative Code*.

1. The **BOARD** has authority to administer the *Utah Water Quality Act, as amended 1953*, (hereinafter the "**ACT**").
2. The **BOARD** has been delegated authority by the U.S. Environmental Protection Agency (EPA) to administer the *National Pollutant Discharge Elimination System (NPDES)* permit program under the *Federal Clean Water Act (CWA)*.
3. The parties now desire to resolve this matter fully without further administrative proceedings except to the extent provided herein by entering into this **AGREEMENT**. Entering into this **AGREEMENT** is not an admission of liability or factual allegation set out in the **NOTICE**, nor is it an admission of or an agreement to any disputed facts or disputed legal theories, nor is it an admission of any violation of any law, rule, regulation or permit by **WEST RIDGE**. By entering into this **AGREEMENT**, **WEST RIDGE** withdraws its request for a hearing before the **BOARD**.
4. The **EXECUTIVE SECRETARY** of the **BOARD** (hereinafter the "**EXECUTIVE SECRETARY**") will administer the terms and provisions of this **AGREEMENT**.
5. This **AGREEMENT** resolves the **NOTICE OF VIOLATION** and **ORDER**, Docket Number I09-01 (hereinafter the "**NOTICE**") issued to **WEST RIDGE** on February 10, 2009, by the **BOARD**. It does not in any way relieve **WEST RIDGE** from any other obligation imposed under the Act or any other State or Federal laws.
6. This **AGREEMENT** takes into account good faith efforts by **WEST RIDGE** to resolve the violations cited in said **NOTICE**. The **BOARD** acknowledges that in response to inspections and receipt of the **NOTICE OF VIOLATION**, **WEST RIDGE** has investigated the violations and communicated cooperatively with Utah Division of Water Quality representatives.
7. In resolution of said **NOTICE** referenced in Paragraph 5 of this **AGREEMENT**, **WEST RIDGE** agrees to pay a total penalty amount of \$25,077.00 as allocated below. The penalty has been determined using the *Penalty Criteria for Civil Settlement Negotiations, Utah Administrative Code ("UAC") R317-1-9* which considers such factors as the nature, severity

and extent of the violations, history of noncompliance, degree of willfulness and/or negligence, good faith efforts to comply, and economic benefit.

- A. **WEST RIDGE** agrees to remit \$25,077.00 within 30 days of the effective date of this **AGREEMENT** by check made payable to the State of Utah delivered or mailed to the Division of Water Quality, Department of Environmental Quality, 288 North 1460 West, P.O. Box 144870, Salt Lake City, Utah 84114-4870.
 - B. **WEST RIDGE** agrees not to deduct or otherwise attempt to obtain a tax benefit from the total penalty amount.
8. Nothing contained in this **AGREEMENT** shall preclude the **BOARD** from taking additional actions to include additional penalties against **WEST RIDGE** for permit violations not resolved by this **AGREEMENT**.
9. If an agreement between **WEST RIDGE** and the **EXECUTIVE SECRETARY** cannot be reached in a dispute arising under any provision of this **AGREEMENT**, **WEST RIDGE** or the **EXECUTIVE SECRETARY** may commence a proceeding with the **BOARD** under the *Administrative Procedures Act* to resolve the dispute. A final decision in any adjudicative proceeding shall be subject to judicial review under applicable state law.
10. Nothing in this **AGREEMENT** shall constitute a waiver by **WEST RIDGE** to raise in defense any legal or factual contention for future allegations of noncompliance.
11. Nothing in this **AGREEMENT** shall constitute or be considered as a release from any claims, to include natural resource damage claims, cause of action, or demand in law or equity which the **STATE** may have against **WEST RIDGE**, or any other person, firm, partnership or corporation for any liability arising out of or relating in any way to the release of pollutants to waters of the State.

AGREED to this _____ day of _____, 2009.

WEST RIDGE RESOURCES, INC.

UTAH WATER QUALITY BOARD

By _____
Authorized Agent

By _____
Executive Secretary

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR
WEST RIDGE RESOURCES, INC., SETTLEMENT AGREEMENT DOCKET NO. I09-01**

Infractions of the Utah Water Quality Act are penalized up to \$10,000/day/violation for civil penalties (\$25,000/day/violation for criminal) according to guidelines established in the penalty policy (*Utah Administrative Code R317-1-9*).

WEST RIDGE Statutory Maximum of \$10,000/violation/day for 227 days with 1 violation = \$2,270,000.00

The principles that apply in the penalty policy are:

- 1) Penalties should be based on the nature and extent of the violation;
- 2) Penalties should at a minimum, recover the economic benefit of noncompliance;
- 3) Penalties should be large enough to deter noncompliance; and
- 4) Penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

To determine a civil penalty the State will consider:

- 1) the magnitude of the violations;
- 2) the degree of actual environmental harm or the potential for such harm created by the violations;
- 3) response and/or investigative costs incurred by the State or others;
- 4) any economic advantage the violator may have gained through noncompliance;
- 5) recidivism of the violator;
- 6) good faith efforts of the violator;
- 7) ability of the violator to pay; and
- 8) the possible deterrent effect of a penalty to prevent future violations.

In the case of negotiated adjustments to penalties, arguments must be based on the considerations above.

Civil penalties for settlement purposes should be calculated based on the following formula:

CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

Penalties are grouped in four main categories:

- A. \$7,000 to \$10,000 per day. Violations with high impact on public health and the environment.
- B. \$2,000 to \$7,000 per day. Major violations of the Utah Water Quality Act, associated regulations, permits or orders.
- C. \$500 to \$2,000 per day. Significant violations of the Utah Water Quality Act, associated regulations, permits or orders.
- D. Up to \$500 per day. Minor violations of the Utah Water Quality Act, regulations, permits or orders.

Penalties are established within the penalty ranges shown above, based on the following criteria:

- History of compliance or non-compliance,
- Degree of willfulness or negligence, and
- Good faith efforts to comply.

Adjustments to the civil penalty include:

- The economic benefit gained as a result of non-compliance,
- Investigative costs incurred by the State and/or other governmental level,
- Documented monetary costs associated with environmental damage.

PENALTY - The penalty for WEST RIDGE has been calculated as follows:

Gravity Component:

The gravity component of the penalty is based on the following citations:

1. *UCA 19-5-107(1)(a)* for a discharge of pollutants unlawfully, which constitutes a menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water, or to place or cause to be placed any wastes in a location where there is probable cause to believe it will cause pollution.
2. *UAC R317-8-4.1(1)(a)* for not complying with all conditions of UPDES permit # UT0025640.
3. *Part I.D* of UPDES Permit # UT0025640 for failure to comply with effluent limits.

VIOLATIONS: Total Iron + Total Suspended Solids (TSS) Effluent Limitations Exceedences

Total iron effluent concentrations exceeded the permit limitation of 1.3 mg/L as reported below, which triggered EPA's Significant Non-Compliance Policy (SNC) for Chronic Violations (i.e., min. 4 of previous 6 mos. exceeded is the trigger). TSS effluent concentrations exceeded the monthly average limitation of 25 mg/L as reported below, which also triggered EPA's SNC Policy for Chronic Violations. Effluent samples not meeting permit requirements, as reported by WEST RIDGE on 2008-09 Discharge Monitoring Reports (DMRs) for outfall 002 and which triggered SNC and the NOV, are summarized in the following table:

Month & Year	Total Iron (mg/L)	TSS (mg/L)
February 2008	1.46	103
May 2008	1.314	no exceedence
July 2008	no exceedence	27
September 2008	1.361	26
October 2008	no exceedence	29
December 2008	1.531	45
January 2009	1.824	53
½ February 2009	1.478	no exceedence
½ March 2009	1.423	no exceedence
½ April 2009	1.629	41
May 2009	2.07	82

The elevated concentrations in both total iron and TSS have happened in conjunction with one another as a result of coal fines being discharged via Outfall 001. The coal fines include both TSS and iron particulates. Therefore,

in an effort to resolve the violations expeditiously and realizing the single source for both violations, plus the fact that the TSS exceedences are generally below the daily maximum permit limit of 70 mg/L (with the two exceptions as indicated above), only the total iron violations have been used to calculate the Gravity Component of the penalty amount.

[(Feb. + May + Sept. + Dec. 2008) + (Jan. + ½ Feb. + ½ March + ½ April + May 2009)] = 227 days total out of compliance for total iron since the last NOV in 2007. The ½ (half) months of Feb, March, and April 2009 are a result of two sampling events for each month (one sample compliant and the other non-complaint). These permit exceedences were placed into Category D for minor permit excursions, with a penalty range up to \$500/day/violation, per UAC R317-1-8. The rationale for selecting Category D is that all but one of the monthly total iron violations listed above are considered minor excursions of permit limits (<40% exceedence). Therefore, in further effort to resolve the violations expeditiously, all violations were included in Category D for the penalty calculation as further resolution incentive. Mitigation considerations are subdivided into three equal categories (1/3 each for History of Compliance, Degree of Negligence, and Degree of Cooperation) and include full level of cooperation by WEST RIDGE personnel (resulting in \$167/day/violation decrease), non-negligence by WEST RIDGE personnel as they were actively trying to better control the total iron in the discharge (also resulting in \$167/day/violation decrease), and partial consideration for compliance history. Partial consideration for compliance history is based on the fact that 9 months out of the previous 19 months of mine water discharge via outfall 002 were non-compliant for total iron, or ~47% of the time since the previous NOV in 2007 (Docket No. I07-14). Therefore a partial credit of 53% was applied to the remaining 1/3 of \$166/day/violation, leaving an adjusted gravity amount of \$78/day/violation.

\$78/day/violation x 1 violation x 227 days = \$17,706.00 Total Category D Penalty

Economic Benefit Justification:

Economic benefit associated with WEST RIDGE was calculated based on; 1) Capital investment delayed; 2) Delayed expenditures, and; 3) Expenses not incurred. Avoided and delayed expenses are based on a survey of recent construction, engineering and/or product costs as appropriate. The field entries for the Environmental Protection Agency (EPA) economic benefit model (BEN) were provided by WEST RIDGE for the following categories, as appropriate:

Capital Investment:	This part of the calculation includes pollution items that were not bought to avoid the discharge such as silt fencing, gravel socks, etc.
Expenditures:	This part of the calculation includes costs of items such as inspections, monitoring, and record keeping set up that were delayed.
O & M Costs:	Avoided operation and maintenance costs were used in the economic benefit calculation.

The economic benefit calculation was done with the current BEN program provided by the EPA. A copy of the BEN calculations is attached herein. The calculation was based on a 5 month delay; this is the period of time from the December 2008 exceedence until a follow-up determination was made, via sampling results, which confirmed the site back in compliance in May 2009. The penalty for the economic benefit portion of non-compliance is **\$7,371.00** as calculated.

TOTAL PENALTY AMOUNT: \$17,706.00 + \$7,371.00 = \$25,077.00

Run Name = Iron/TSS	
Present Values as of Noncompliance Date (NCD),	01-Dec-2008
A) On-Time Capital & One-Time Costs	\$208,883
B) Delay Capital & One-Time Costs	\$201,866
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$7,017
E) Final Econ. Ben. at Penalty Payment Date,	
15-Jun-2009	\$7,371
<i>C-Corporation w/ UT tax rates</i>	
Discount/Compound Rate	9.6%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	01-Apr-2009
Capital Investment:	
Cost Estimate	\$294,600
Cost Estimate Date	31-May-2009
Cost Index for Inflation	PCI
Consider Future Replacement (Useful Life)	y (15)
One-Time, Nondepreciable Expenditure:	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Tax Deductible?	N/A
Annually Recurring Costs:	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
User-Customized Specific Cost Estimates:	
On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

