WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality / Land Quality Division (WyDEQ/LQD) and Calvin Michaels (CM) enter into this Settlement Agreement to fully and finally resolve without litigation the violations alleged in the **Notice of Violation (NOV), Docket Number 4487-09**. The NOV alleges: (1) CM failed to adequately salvage topsoil and subsoil as required by WyDEQ/LQD NonCoal Rules and Regulations, Chapter 10, Section 4(b), (2) Topsoil stockpiles were found to be unsigned, and (3) encroachment of buffer zones established between mining and topsoil stockpiles. These violations are located in NE 1/4 NW 1/4 of Section 34, Township 52N, Range 97W of Big Horn County and within the boundaries of WyDEQ/LQD Limited Mining Operation No. 1391ET.

W.S. § 35-11-901(a)(ii) authorizes the WyDEQ/LQD to negotiate a stipulated settlement, including payment of a penalty, in lieu of litigation. To that end, CM and the WyDEQ/LQD hereby stipulate and agree as follows:

1. The WyDEQ/LQD, pursuant to W.S. § 35-11-104, is a department in the executive branch of Wyoming State Government and is principally situated in Cheyenne, Wyoming. The WyDEQ is the agency principally responsible for administering the Wyoming Environmental Quality Act, including all provisions of the WyDEQ/LQD Noncoal Rules and Regulations.

2. At certain locations along the pit highwall, excavation had intercepted the topsoil stockpile to the point where topsoil was and continues to be lost into the pit. CM will pull back the stockpile away from the highwall face using a trackhoe to establish a buffer zone a minimum of eight feet in width.

3. CM shall perform additional topsoil/subsoil salvage at the site to the satisfaction of the WyDEQ/LQD Inspector.

4. CM shall push material from the existing pit floor against the west pit endwall to establish a final reclaimed slope at this location.

5. CM shall remove all equipment that is currently stored on native land.

6. CM shall contact the WyDEQ/LQD District II Office to inspect work associated Items 2 through 5 within 10 days after completion. Work items 2 through 5 must be accomplished within 90 days of CM's signing of this Settlement Agreement.

7. For all future operations, CM agrees to maintain a minimum buffer width of eight (8)-feet between the edge of the highwall and the topsoil/subsoil to prevent slumpage and loss.

8. This signed Settlement Agreement, additional salvage of topsoil/subsoil, establish and maintain a buffer zone between the highwall and topsoil, and placement of fill against the north endwall to establish the reclaimed slope shall constitute full satisfaction and resolution of all claims by the WyDEQ/LQD against CM based on the violations as specified in the NOV and Order, Docket No, 4487-09. Contingent upon CM's compliance with the terms of this Settlement Agreement, the WyDEQ/LQD will refrain from taking further enforcement action against CM for these particular violations cited in the this Settlement Agreement. Through this Settlement Agreement, the parties intend to resolve with prejudice all allegations that were asserted in NOV Docket No. 4487-09.

9. CM waives any statute of limitations which may apply to an enforcement action by the WyDEQ/LQD involving specific matters described in the NOV and Order, Docket No. 4487-09 in the event that CM fails to fulfill its obligations under this Settlement Agreement.

10. Nothing in this Settlement Agreement precludes the WyDEQ/LQD from taking additional enforcement action, including the issuance of a Notice of Violation, Order, and/or pursuing additional penalties should CM violate the Wyoming Environmental Quality Act or applicable WyDEQ/LQD Rules and Regulations in the future.

11. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.

12. Not withstanding any other language in the Settlement Agreement, the State of Wyoming, and the WyDEQ do not waive Sovereign Immunity by entering into this Settlement

Agreement with CM and specifically retain all immunity and defenses available as sovereigns under State and Federal law.

13. Each party shall bear its own attorney fees and costs, if any, incurred through the date of this Settlement Agreement is signed by both parties.

14. This Settlement Agreement is binding upon CM, its successors and assignees, and upon the WyDEQ/LQD.

15. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

For: **CALVIN MICHAELS**

Signed: _____ Date: 5-13-09

Typed: Calvin Michaels

Title: Owner Operator

For: **WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY**

_____ Date: 5/18/09
John V. Corra, Director
Wyoming Department of Environmental Quality

_____ Date: May 18, 2009
Donald R. McKenzie, Administrator
Land Quality Division

Cc: Becky Brosius, WyDEQ/LQD Cheyenne
Mark Moxley, WyDEQ/LQD Lander
Docket No. **4487-09**