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POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

CROWN RESOURCES CORPORATION,

Appellant,

v.

WASHINGTON DEPARTMENT OF
ECOLOGY,

Respondent.

PCHB No. 12-084

SETTLEMENT AGREEMENT AND
CONSENT ORDER

I. INTRODUCTION

This is a Stipulation and Agreed Order (“Agreement”) between Crown Resources Corporation (“Crown”) and the Washington State Department of Ecology (“Ecology”), each of whom is a “Party” and together are the “Parties” to this Agreement. This Agreement provides for the settlement of existing issues involving the Parties concerning the Buckhorn Mountain Mine Site (“Buckhorn Site”), including alleged permit violations, and constitutes an Agreed Order under RCW 90.48.120.

By entering into this Agreement, the parties are settling, *Crown Resources Corporation v. Department of Ecology*, PCHB No. 12-084, Crown’s appeal of a \$395,000 penalty issued by Ecology for alleged violations of Crown’s NPDES permit and RCW 90.48 at the Buckhorn Site (“PCHB Appeal”). In addition, by entering into this Agreement, the Parties agree to several additional binding commitments, including: (1) the process and schedule for issuance of the new NPDES Permit No. WA0052434 (“NPDES Permit Issuance”); (2) an agreement by Crown to reimburse Ecology for the costs of dedicating one full-time and one part-time employee to

1 oversee ongoing permitting and compliance efforts at the Buckhorn Mine pursuant to a cost
2 reimbursement agreement ("Cost Reimbursement Agreement"); (3) a schedule of compliance to
3 be instituted in order to permit Crown to bring the Buckhorn Site into compliance in a timely
4 manner under its current NPDES Permit; and (4) delineation of a dispute resolution process to
5 serve as a tool for resolving disputes that may arise in the implementation of this Agreement or in
6 connection with the new NPDES Permit.

7 **II. PCHB APPEAL NO. 12-084**

8 A. This Agreement resolves all issues and claims by all Parties in *Crown Resources*
9 *Corporation v. Department of Ecology*, PCHB No. 12-084, currently pending before the PCHB
10 and, provided Crown complies with Sections II(C)(1) and (2) of this Agreement, such compliance
11 satisfies and releases Crown and its parents, subsidiaries and affiliated companies from any and
12 all liability under Penalty No. 9245 and matters within the scope of this proceeding.

13 B. Within seven (7) days of execution of this Agreement, the Parties agree to file it with
14 the PCHB and to ask that the appeal be dismissed consistent with its terms.

15 C. Ecology agrees that, in lieu of paying the \$395,000 penalty for alleged NPDES permit
16 non-compliance, Crown shall:

17 1. Pay \$80,000 penalty to Ecology upon execution of this Agreement, and

18 2. Pay \$180,000 to fund supplemental environmental remediation projects within

19 the vicinity of the Buckhorn Site. Crown and Ecology will jointly determine a schedule of

20 projects, based on both Parties' environmental priorities, by September 1, 2013. Projects

21 implemented from September 1, 2013 to September 1, 2016 are eligible for funding. Parties

22 agree to discuss fulfillment of this schedule during regularly scheduled management level

23 meetings detailed in Section V.A of this Agreement and work together in good faith to identify

24 appropriate expenditures. Any disputes related to supplemental environmental projects are

25 subject to Section V of this Agreement, the Dispute Resolution Process. In the event sufficient

26 projects cannot be identified or funded by September 1, 2016, or in the event of a dispute between

27

1 the parties that cannot be resolved pertaining to supplemental environmental projects, Crown will
2 pay any balance remaining of the above specified amount to Ecology as a penalty.

3
4 **III. NEW NPDES PERMIT ISSUANCE TIMELINE**

5 A. The following table summarizes the anticipated timeline for issuance of a new NPDES
6 permit, subject to the diligent efforts of both parties and required public reviews. The parties
7 shall use their best efforts to meet this timeline, but noncompliance with a particular deadline
8 does not constitute a breach of this Agreement. Ecology retains authority at all times to issue a
9 new permit pursuant to applicable law.

Date	Deliverable	Party
07/03/2013	Crown and Ecology file motions to dismiss and settle PCHB case.	Crown/Ecology
07/03/2013	Initiation of three-year Cost Reimbursement Agreement period, including providing first quarterly payment to state General Fund	Crown
07/10/2013	Crown submits remaining deliverables needed for drafting the new NPDES permit	Crown
07/24/2013	Ecology transmits revised draft NPDES permit to Crown for review incorporating previous meeting suggestions and written comments.	Ecology
08/09/2013	Crown returns comments on internal draft NPDES Permit	Crown
08/23/2013	Ecology releases draft NPDES Permit for Public Comment Period	Ecology
09/23/2013	End of Public Comment Period, Ecology incorporates public comments.	Ecology
09/30/2013	Ecology and Crown meet to discuss final permit language	Crown/Ecology
11/01/2013	New NPDES Permit issued by Ecology	Ecology

21
22 **IV. COST REIMBURSEMENT AGREEMENT ("CRA")**

23 A. Parties agree that the Buckhorn Site has resulted in significant costs and staff demands
24 for Ecology.

25 B. Ecology and Crown agree that adequate supervision of the Buckhorn Site and
26 implementation of, and compliance with this Agreement, the current NPDES Permit and
27 development and implementation of the new permit will require one (1) full-time Ecology

1 employee and one part-time Ecology employee to oversee permitting, compliance and
2 correspondence with Crown, as well as other state and federal agencies.

3 C. Parties shall execute a Cost Reimbursement Agreement reflecting the goals of this
4 Settlement Agreement within a reasonable time after the execution of this Settlement Agreement,
5 in order to permit Ecology to continue its monitoring and oversight activities at Buckhorn Mine.
6 Parties agree that time is of the essence in executing such Cost Reimbursement Agreement.

7 D. Under the Cost Reimbursement Agreement, Crown will pay a total of \$588,888.06 to
8 fund the estimated cost of one full-time Ecology employee and one part-time Ecology employee
9 for three (3) years covering June 1, 2013 through May 31, 2016. Crown shall pay the State of
10 Washington \$49,074.00 per quarter, with the first quarterly payment arriving to the State's
11 general fund ("General Fund") by July 12, 2013, and subsequent payments due by September 1,
12 December 1, March 1, and June 1 until the exhaustion of the funds allocated for the purposes in
13 paragraph IV.B above.

14 E. Crown further agrees to pay all reasonable and necessary lab costs associated with
15 Ecology water quality sampling in an amount of up to \$50,000 per year during the three year
16 period.

17

18 **V. COMMUNICATION AND DISPUTE RESOLUTION PROCESS**

19 A. From the effective date of this agreement until active mining operations cease at the
20 current Buckhorn mine site, project management representatives of Ecology and Crown shall
21 meet at least once each month in person or via telephone to discuss progress and to communicate
22 any issues regarding: NDPES Permit Renewal; subsequent compliance with the renewed NPDES
23 Permit; compliance with 2013 Discharge Provisions; compliance with this Agreement, including
24 status of penalty payment; and other issues that may arise between the Parties related to the
25 Buckhorn Site, including but not limited to Crown's compliance with the NPDES Permit,
26 Ecology's monitoring of the Buckhorn Site, or the Parties' timeliness in meeting administrative
27 and regulatory deadlines.

1 B. Both Parties commit to timely acknowledging submittals to and from one another's
2 representatives, and providing timely responses. To facilitate communication and improve
3 turnaround time, Ecology will maintain the following model reciprocal review protocol:

4 1. Within one week of a submittal by Crown of a deliverable document, Ecology
5 will provide a letter acknowledging receipt thereof and describing a timeline for review.

6 2. If Ecology subsequently believes it will not meet its self-imposed timeline,
7 Ecology will provide written notice to Crown describing a revised timeline for response to
8 Crown's submittal.

9 C. Ecology retains full authority to evaluate permit compliance and compliance with this
10 Settlement Agreement and Agreed Order and to issue enforcement orders at any time pursuant to
11 Ch. 90.48 RCW without regard to the dispute resolution process listed below. However, the
12 Parties recognize the potential for more efficiently resolving issues through cooperation and set
13 out the following dispute resolution process as a tool to facilitate resolving future disputes:

14 1. Issue identification and discussion should begin at the primary point of contact
15 level between Ecology employees and Crown employees engaged in the day-to-day mine
16 operations at the Buckhorn Site. Ecology's primary point of contact is the Water Quality
17 Industrial Unit Supervisor, currently Sanjay Barik. Crown's primary point of contact is
18 the site Environmental Manager, currently Gina Myers.

19 2. If, after a good faith effort, resolution of a technical or policy issue cannot be
20 reached among the primary points of contact, Parties should elevate the discussion of that
21 particular issue to the site management level. Ecology's site management level
22 representative is the Water Quality Section Manager, currently Charlie McKinney.
23 Crown's site management level representative is the Mine General Manager, currently
24 Mark Ioli.

25 3. If, after a good faith effort, site management level employees are unable to
26 resolve the dispute, Parties should elevate the issue to each Party's executive management
27 staff. Ecology's executive management representative is the Water Quality Program

1 8. Installation of interception trench below surge pond area to capture interflows
2 discovered in 2012;

3 9. Interflow well IW-12 installation to collect shallow water near surge pond;

4 10. Installation of HDPE liner beneath accessible portions of PAG pile to prevent
5 infiltration of contact meteoric waters;

6 11. Selected grouting of fault structures and surface drill holes within mine
7 workings to reduce inflows;

8 12. HDPE lining of stormwater pond DA-10;

9 13. Geophysical surveys conducted to identify potential areas requiring additional
10 investigation, including but not limited to piping and stormwater conveyance structures;

11 14. Removal of suspect construction rock fill that may have been contributing to
12 poor interflow water quality;

13 15. Routing storm water conveyances to discharge to the water treatment facility;
14 and

15 16. Other source control measures, such as silt fencing, sediment control barriers,
16 and stormwater drains intended to limit the quantity of water coming in contact with
17 industrial rock.

18 B. Crown will undertake additional water quality protection and permit compliance
19 activities in the 2013 and 2014 calendar years, including but not limited to:

20 1. Initiation of a comprehensive stormwater assessment to identify and
21 characterize water quality for the Buckhorn mine area, which is expected to inform Crown
22 on the most appropriate activities for capturing and controlling stormwater that would
23 otherwise have the potential to adversely affect water quality (began January 2013);

24 2. Implementation of capital improvements that will address stormwater source
25 control, which it considers the principle means of ensuring ongoing environmental
26 compliance. Crown's planned activities and their anticipated timelines include:

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1 a. Continued installation of liner beneath the Buckhorn Mountain Site
2 PAG pile, initiated by Crown in 2012 (majority of remaining area to be completed
3 before 2014 Spring Freshet and remainder to be completed by end of 2015);

4 b. Secondary lining of surge pond (target completion by October 2013
5 depending on mine water inundation) and lining of other areas, as appropriate, as
6 identified in the Stormwater Best Management Practice Improvements Plan
7 (Golder).

8 c. Continued investigation and removal of potentially suspect construction
9 fill material as identified by Crown to minimize potential sources of interflow
10 contamination (ongoing);

11 d. Evaluating, in consultation with Ecology, potential use of additional
12 shotcrete and other pH control activities in connection with Crown's
13 Development Rock Management Plan.

14 e. Continued grouting of high-flow areas in the underground mine
15 workings as appropriate (ongoing during 2013-2014 calendar years);

16 f. Continuation of geophysical survey mapping, initiated in October 2012,
17 to identify potential areas of concern during spring runoff (ongoing);

18 g. Investigation of stormwater conveyance network to insure segregation
19 of industrial and non-industrial stormwater (ongoing); and

20 h. Installation of additional piezometers, shallow interflow wells, cut-off
21 trenches, and other containment and collections systems as appropriate and as
22 identified through the above investigations, with particular focus on the area above
23 Gold Bowl Creek where seepage was noted in 2012 and 2013 (ongoing in 2013-
24 2014). Installation of additional monitoring wells or piezometers, and use of tracer
25 studies where needed to better understand flow pathways.

26 i. Increase dewatering wells and/or pumping capacity as needed, as outfall
27 capacity becomes available.

1 C. Under the existing NPDES Permit, Crown may institute adaptive management
2 strategies to address changing site conditions. Ecology agrees to include adaptive management
3 provisions in the new NPDES Permit in order to allow Crown to continue to take preventive
4 measures in reaction to changing site conditions.

5 D. The Parties agree to the following Schedule of Compliance, which will permit Crown
6 to achieve compliance with the existing NPDES Permit conditions and requirements of Ch. 90.48
7 RCW in a timely manner.

8 1. Turbidity at Haul Road:

9 a. Ecology issued a Notice of Violation to Crown on May 2, 2013 for
10 discharge of turbid water from a culvert underneath the Haul Road.

11 b. This haul road represents a challenge for water quality protection due
12 largely to its close proximity to Marias Creek combined with heavy truck traffic.
13 Crown has put a number of improvements in place to reduce sediment production
14 from running surfaces and cut-slopes, and turbidity discharges to the creek.
15 Ecology believes there is still room for improvement as evidenced by the
16 discharge documented by Ecology on March 20, 2013 and that the best approach
17 for achieving full compliance with water quality requirements is for Crown to
18 engage in a comprehensive evaluation and planning process with the U.S. Forest
19 Service that will lead to solutions for the remaining problem areas on the road.
20 Ecology understands that a field tour to inspect and discuss the road will be held
21 on July 2, 2013 between Crown and the USFS. In the interest of problem solving,
22 efficiency and consistency for all parties, Ecology (stormwater/non-point staff)
23 will be included in that tour and discussion. If Crown agrees in good faith to
24 addressing the remaining problem areas on the road, the Parties agree that no
25 further enforcement action is necessary on the incident that led to NOV 9901.

26 2. Arsenic Exceedance in March DMR

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1 a. Crown reported an elevated arsenic sample in its March 2013 DMR for
2 effluent at the Water Treatment Plant.

3 b. Crown reported the event as required on the DMR and initiated sample
4 verification and source investigation. Crown subsequently provided a detailed
5 description of these activities to Ecology. In summary, the sample was corrupted
6 by residual arsenic in storage tank during an atypical startup procedure. The
7 sample was not representative of effluent discharge for the month. Future startup
8 procedures will follow established protocols and the event is not expected to
9 reoccur. The Parties agree that no enforcement action is necessary for this
10 discharge.

11 3. MW 16

12 a. Ecology has verbally stated in the past that exceedances at MW 16
13 could be of concern.

14 b. The Parties agree that MW 16 is inside the capture zone and is not a
15 compliance point for the existing or new NPDES permit. The Parties agree that no
16 enforcement action is necessary to address these alleged exceedances.

17 E. The parties agree that the water quality protection activities and management
18 responses identified above, if fully and adequately implemented, justify Ecology in placing a
19 compliance schedule and interim effluent limits in the new permit. However, the limits in the
20 new permit will be performance based; Crown must implement the activities necessary to meet all
21 future limits and schedules established in the new permit. With respect to known violations that
22 occurred before execution of this Agreement, Ecology agrees that compliance with this
23 Settlement Agreement constitutes an appropriate and reasonable response, and provided that
24 Crown implements the above actions as agreed, Ecology will not undertake additional
25 enforcement actions against Crown for known violations that occurred before execution of this
26 Agreement.

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1 F. The Parties anticipate that the new NPDES Permit will include more stringent effluent
2 limits, capture zone standards and discharge requirements, and that these new standards,
3 particularly background based groundwater standards, have the potential to put Crown into
4 immediate noncompliance when the new permit is issued. The parties agree that the new NPDES
5 permit will contain interim compliance levels and a timeframe in which to bring the Buckhorn
6 Mountain Site into compliance with these new permit terms. If interim limits in the new permit
7 are exceeded, Ecology will exercise its enforcement discretion in responding, taking into
8 consideration Crown's performance in implementing pollution control measure, evidence of data
9 trends showing declining or increasing concentrations in groundwater, and Crown's compliance
10 with all other terms of this Agreement.

11 G. If Ecology identifies new instances of noncompliance with the current or new NPDES
12 permit, or with Ch. 90.48 RCW, it shall first attempt to achieve compliance through open
13 communication, voluntary measures and technical assistance.

14 **VII. OTHER PROVISIONS**

15 A. The Parties do not intend this Agreement to be an admission of any factual or legal
16 issue except as expressly provided herein. Nothing in this Agreement is intended to create a
17 cause of action nor any other rights for any third party not a signatory to this Agreement, nor is
18 any such party be intended to be a third party beneficiary of this Agreement.

19 B. This Agreement and its exhibits comprise the entire Agreement among the Parties with
20 respect to the subject matter of this Agreement. It does not invalidate prior agreements,
21 obligations, or rights among or between any of the Parties except as expressly provided in this
22 Agreement. No amendment, modification, or waiver of any provision of this Agreement, or
23 subsequent agreements, which the Parties have agreed to or negotiated concerning this
24 Agreement, shall go into effect unless set forth in an amendment to this Agreement or by separate
25 written instrument signed hereafter by the Parties to be bound thereby.

26 C. Nothing herein shall be construed to limit Crown's right to appeal orders, decisions,
27 determinations, findings or enforcement actions of Ecology post-dating this Agreement, including

1 but not limited to future NOV's, compliance orders, or permitting decisions made by Ecology or
2 any other agency in connection with the Buckhorn Mine Site.

3 D. This Agreement shall go into effect upon execution by Parties.

4 E. This Agreement may be signed in counterparts. Each signed counterpart shall be
5 deemed an original, and all counterparts together shall constitute one and the same agreement.

6
7 DATED this 29th day of June, 2013.

8
9 Crown Resources Corporation

Washington State Department of Ecology

10
11 _____


By: Kelly Susewind

12 By:

13 Its:

Its: WATER QUALITY
PROGRAM MANAGER

14
15 Crown Resources Corporation

16
17 _____

18 By:

19 Its:

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1 but not limited to future NOV's, compliance orders, or permitting decisions made by Ecology or
2 any other agency in connection with the Buckhorn Mine Site.

3 D. This Agreement shall go into effect upon execution by Parties.

4 E. This Agreement may be signed in counterparts. Each signed counterpart shall be
5 deemed an original, and all counterparts together shall constitute one and the same agreement.

6
7 DATED this 28th day of June, 2013.

8
9 Crown Resources Corporation

Washington State Department of Ecology

10

11 _____

12 By:

By:

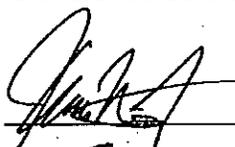
13 Its:

Its:

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15 Crown Resources Corporation

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18 By: *James K. Fowler*

19 Its: *President*

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1 but not limited to future NOV's, compliance orders, or permitting decisions made by Ecology or
2 any other agency in connection with the Buckhorn Mine Site.

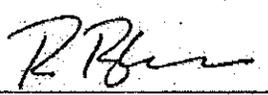
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4 E. This Agreement may be signed in counterparts. Each signed counterpart shall be
5 deemed an original, and all counterparts together shall constitute one and the same agreement.

6
7 DATED this ____ day of June, 2013.

8
9 Crown Resources Corporation

Washington State Department of Ecology

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11 

12 By: *RICK BAKER*
13 Its: *VICE PRESIDENT*

By:
Its:

14
15 Crown Resources Corporation

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17 _____

18 By:

19 Its: