

File Copy ACT/007/016
Copy to Barbara Roberts
Jim Smith
Don Daniel



Beaver Creek Coal Company
P.O. Box AU
Price, Utah 84501
Telephone 801 637-5050

0065

January 26, 1984

RECEIVED
FEB 14 1984

Mr. Ronald W. Daniels
Deputy Director
Utah Division of Oil, Gas & Mining
4241 State Office Bldg.
Salt Lake City, Utah 84114

RE: Public Use of Roads; **DIVISION OF OIL, GAS & MINING**
Gordon Creek Road

Dear Mr. Daniels:

Based on a review of your criteria for defining public roads, Beaver Creek Coal Co. does hereby request that the Gordon Creek road remain classified as a public road and therefore be exempted from meeting Class I Haul Road Standards. The basis for this request is that the Gordon Creek Road does in fact meet each of the criteria for a public road. The following is an explanation of how each of the criterion are met, supported by attached documentation:

"A public road is one which:"

- (1) "is classified as a public use road by the subject public body;"
The attached letter from Carbon County will verify that the Gordon Creek Road is a public use road. (Exhibit A).
- (2) "is constructed similarly to similarly classified roads;"
The attached Exhibit A will also verify an opinion by the County that the Gordon Creek Road is constructed similarly to other public use (county) roads.
- (3) "is publicly funded:"
 - (a) "is literally constructed and/or maintained by the public body; or
 - (b) there is, at the public body's insistence, a construction and maintenance agreement with the operator wherein the public body retains control, over the construction and/or maintenance and some public funds are expended through the exercise of that control."

Attached Exhibit B is a maintenance agreement between Beaver Creek Coal Co. and Carbon County, wherein it shows that Beaver Creek will maintain the Gordon Creek Road, the county will provide some public funds (material), and the county will retain control of the road.

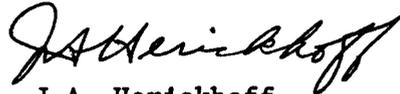
- (4) "has substantial (more than incidental) public use:
(a) is, in fact, used by the public for access, and
(b) the operator does not deny year round public access; and
(c) has access to sites beyond permit area."

Exhibit C is a list of regular users of the Gordon Creek Road. Many of these people use the Gordon Creek Road to access rangeland and cabin sites in the Beaver Creek area, which is beyond our permit area. In addition, Beaver Creek Coal Co. does not restrict travel on any portion of the public use portion of the road at any time during the year. Locked gates are maintained only at our permit boundaries which are private property, and do not affect general public use of the Gordon Creek Road.

It is our hope that the above explanation and attached documentation is adequate to show that the Gordon Creek Road should remain designated as a public road.

If you have any questions, or need any further information, please let me know.

Respectfully,



J.A. Herickhoff
President

cc: R.D. Robison
J.S. Voorhees
D.W. Guy
File:

JAH/cn

EXHIBIT A



CARBON COUNTY

PRICE, UTAH 84501

February 8, 1984

J. A. Herickhoff, President
Beaver Creek Coal Company
P. O. Box 1378
Price, Utah 84501

Dear Mr. Herickhoff:

In compliance with Mr. Guy's request, we have searched County records, and have determined that the Gordon Creek Road, located northwest of Price, has been in existence as a public use road for over fifty years.

Prior to 1930 the road was used primarily by livestockmen, recreationists, timber removal and by the residents of Pleasant Valley to commute to Price. In the 1930's various companies began coal mining operations, and coal transportation became another significant use of the Gordon Creek Road in addition to the uses outlined above.

The first 13.3 miles of the Gordon Creek Road was originally designated U-139 and was owned and maintained by the State of Utah. In a County Commission meeting on March 5, 1975, Carbon County agreed to accept ownership of the road from the State of Utah. Carbon County has, since that time, performed maintenance work on the Gordon Creek Road. As development of the coal mining properties progressed in the area, we have allowed the mining companies to assume road maintenance responsibilities on the lower 13.3 miles of road, with the County retaining oversight authority and supervision to assure that the Gordon Creek Road would have free access to and use by the public.

At the present time, the Gordon Creek Road provides the main access to the Gordon Creek and Beaver Creek areas, and is used extensively by business, government agencies, livestock owners and the citizenry at large.

Sincerely yours,
BOARD OF CARBON COUNTY COMMISSIONERS

Lee Semken, Chairman

Floyd Marx, Commissioner

Guido Rachiele, Commissioner

EXHIBIT B

A G R E E M E N T

THIS AGREEMENT MADE AND ENTERED INTO THIS 3rd DAY OF JULY, 1975, BY AND BETWEEN CARBON COUNTY, A BODY POLITIC, HEREINAFTER REFERRED TO AS THE "COUNTY", AND SWISHER COAL COMPANY, A CORPORATION HAVING ITS PRINCIPAL OFFICE AT 349 CRESTVIEW DRIVE, PRICE, UTAH, HEREINAFTER REFERRED TO AS "SWISHER",

WHEREAS, THE COUNTY OWNS AND MAINTAINS A PUBLIC ROAD IN THE GORDON CREEK AREA OF CARBON COUNTY, UTAH, SAID ROAD BEING FORMERLY KNOWN AS STATE HIGHWAY NO. 139; AND

WHEREAS, SWISHER OPERATES AN EXTENSIVE COAL MINE OPERATION IN SAID GORDON CREEK AREA INCLUDING THE OPERATION OF LARGE OFF-HIGHWAY COAL TRUCKS OVER THE WESTERN PORTION OF SAID PUBLIC ROAD; AND

WHEREAS, THE COUNTY AND SWISHER ARE DESIROUS OF ENTERING INTO AN AGREEMENT WHEREBY SWISHER WOULD HAVE UNLIMITED USE OF SAID ROAD FOR ITS COAL MINE OPERATION;

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

1. SWISHER SHALL HAVE THE RIGHT TO USE SAID ROAD IN ITS COAL MINE OPERATION WITHOUT ANY RESTRICTION BY THE COUNTY AS TO WEIGHT, SIZE OF VEHICLES OR WITH RESPECT TO TYPE OF USE, PROVIDED THAT SUCH USE IS REASONABLE AND PRUDENT.
2. SAID ROAD BEGINS AT THE WEST BOUNDARY OF STATE HIGHWAY 50 AND 6 AND PROCEEDS WESTERLY THEREFROM A DISTANCE OF APPROXIMATELY 12.05 MILES TO A POINT FORMERLY REFERRED TO AS STATE MILE-POST NO. -0-.
3. DURING THE LIFE OF THIS AGREEMENT SWISHER SHALL:
 - (A) MAINTAIN THE PRESENT EXISTING BLACKTOP ON SAID ROAD IN A STATE OF REPAIR EQUAL TO THE CONDITION OF SAID BLACKTOP AT THE DATE OF THIS AGREEMENT.
 - (B) MAINTAIN THE PRESENT EXISTING GRAVEL PORTION OF SAID ROAD IN A STATE OF REASONABLE REPAIR.
 - (C) REMOVE ALL SNOWFALL FROM SAID ROAD WITHIN A REASONABLE TIME AFTER THE ACCUMULATION THEREOF.
 - (D) COMPLY WITH ALL REASONABLE REQUESTS OF THE COUNTY WITH RESPECT TO IMPLEMENTATION OF NECESSARY SAFETY FEATURES ON SAID ROAD.

- (E) CAUSE ITS INSURANCE CARRIER TO ISSUE A CERTIFICATE OF LIABILITY INSURANCE COVERING SWISHER'S USE OF SAID ROAD SHOWING THE COUNTY AS A CO-INSURED WITH RESPECT TO LIABILITY. SAID POLICY SHALL BE IN AN AMOUNT NOT LESS THAN \$ 250,000 SINGLE LIMIT COVERAGE. SAID CERTIFICATE SHALL NOT BE TERMINATED BY SAID INSURANCE CARRIER EXCEPT UPON ITS GIVING THIRTY (30) DAYS PRIOR WRITTEN NOTICE TO THE COUNTY.
- (F) INDEMNIFY AND HOLD THE COUNTY HARMLESS ON ACCOUNT OF ANY AND ALL LIABILITY ARISING OUT OF SWISHER'S USE OF SAID ROAD.
- (G) NOT RESTRICT IN ANY WAY WHATSOEVER THE PUBLIC'S USE OF SAID ROAD.

4. THE TERM OF THIS AGREEMENT SHALL BE SO LONG AS SWISHER OR ITS SUCCESSORS OR ASSIGNS PRODUCES COAL FROM THE GORDON CREEK AREA.

5. IF THE PARTIES ARE UNABLE TO AGREE AS TO ANY OF THE TERMS OF THIS AGREEMENT, ANY SUCH DISAGREEMENT SHALL BE SUBMITTED TO ARBITRATION AND THE DECISION OF THE ARBITRATOR SHALL BE FINAL AND CONCLUSIVE AS TO EACH OF THE PARTIES AND EACH SHALL ABIDE BY HIS DECISION. FOR PURPOSES OF THIS ARBITRATION PROVISION, IT IS AGREED THAT THE DISTRICT JUDGE OF THE SEVENTH JUDICIAL DISTRICT, STATE OF UTAH, OR HIS NOMINEE, SHALL ACT AS ARBITRATOR HEREUNDER.

6. THIS AGREEMENT SHALL BE BINDING UPON THE SUCCESSORS AND ASSIGNS OF SWISHER.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS TO THIS INSTRUMENT AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.

CARBON COUNTY, A BODY POLITIC

BY *Beidi Kachela*
COMMISSIONER

BY *Shirley Boyer*
COMMISSIONER

BY *James P. Simon*
COMMISSIONER

SWISHER COAL COMPANY, A CORPORATION

BY *Ua Swisher*
ITS PRESIDENT

AMENDMENT TO AGREEMENT

THIS AMENDMENT TO AGREEMENT MADE AND ENTERED INTO THIS 18 DAY OF AUGUST, 1975 BY AND BETWEEN CARBON COUNTY, A BODY POLITIC, HEREINAFTER REFERRED TO AS "COUNTY", AND SWISHER COAL COMPANY, A CORPORATION HAVING ITS PRINCIPAL OFFICE AT 349 CRESTVIEW DRIVE, PRICE, UTAH, HEREINAFTER REFERRED TO AS "SWISHER",

WHEREAS, ON JULY 3, 1975 THE PARTIES ENTERED INTO THAT CERTAIN AGREEMENT DATED JULY 3, 1975, A COPY OF WHICH IS HERE-
UNTO ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF; AND

WHEREAS, THE PARTIES HERETO NOW DESIRE TO AMEND A CERTAIN PROVISION IN SAID AGREEMENT;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. PARAGRAPH 4 OF SAID AGREEMENT IS HEREBY AMENDED TO READ AS FOLLOWS: "THE TERM OF THIS AGREEMENT SHALL BE SO LONG AS SWISHER OR ITS SUCCESSORS OR ASSIGNS PRODUCES COAL FROM THE GORDON CREEK AREA, OR FOR A PERIOD OF FIFTY (50) YEARS CALCULATED FROM JULY 3, 1975, WHICHEVER EVENT OCCURS FIRST. IT IS FURTHER AGREED THAT IF THE FIFTY (50) YEAR PERIOD EXPIRES AND COAL IS STILL BEING PRODUCED BY SWISHER OR ITS SUCCESSORS OR ASSIGNS FROM THE GORDON CREEK AREA THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR AN ADDITIONAL FIFTY (50) YEAR PERIOD, OR SO LONG AS SWISHER OR ITS SUCCESSORS OR ASSIGNS PRODUCES COAL FROM THE GORDON CREEK AREA, WHICHEVER EVENT OCCURS FIRST".

2. IT IS AGREED BETWEEN THE PARTIES THAT THE FOREGOING FIFTY (50) YEAR PERIOD IS INSERTED AS AN AMENDMENT IN ORDER TO CONFORM WITH THE LEGAL REQUIREMENTS OF UTAH CODE ANNOTATED 17-5-39.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS TO THIS INSTRUMENT AS TO THE DAY AND YEAR FIRST ABOVE WRITTEN.

8-19-75

Executed copy of
this amendment sent
to Max Robb

CARBON COUNTY, A BODY POLITIC

BY *Jude Kachula*
COMMISSIONER

BY *William J. Hester*
COMMISSIONER

BY *James P. Lewis*
COMMISSIONER

SWISHER COAL COMPANY, A CORPORATION

BY *Wm Swisher*
ITS PRESIDENT

SECOND AMENDMENT TO AGREEMENT

THIS SECOND AMENDMENT TO AGREEMENT ("SECOND AMENDMENT") MADE AND ENTERED INTO THIS 25th DAY OF NOVEMBER, 1981 BY AND BETWEEN CARBON COUNTY, A BODY CORPORATE AND POLITIC ("COUNTY") AND BEAVER CREEK COAL COMPANY, A CORPORATION, FORMERLY KNOWN AS SWISHER COAL COMPANY ("BEAVER CREEK"),

WITNESSETH:

WHEREAS, THE PARTIES ENTERED INTO THAT CERTAIN AGREEMENT DATED JULY 3, 1975 ("AGREEMENT"); AND

WHEREAS, THE AGREEMENT WAS AMENDED BY THE PARTIES BY THAT CERTAIN AMENDMENT TO AGREEMENT DATED AUGUST 18, 1975 ("FIRST AMENDMENT"); AND

WHEREAS, THE PARTIES DESIRE TO FURTHER AMEND THE AGREEMENT;

NOW, THEREFORE IT IS AGREED AS FOLLOWS:

1. DURING THE LIFE OF THE AGREEMENT THE COUNTY SHALL:

A. FURNISH AND DELIVER AS NECESSARY ALL PIT RUN GRAVEL NECESSARY TO MAINTAIN THE ROAD; AND

B. FURNISH AND DELIVER, AS NECESSARY, CRUSHED GRAVEL IN AN AMOUNT NOT TO EXCEED 500 TONS PER YEAR.

2. EXCEPT AS HEREIN AMENDED, ALL OTHER TERMS, CONDITIONS AND COVENANTS OF THE AGREEMENT AND FIRST AMENDMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

CARBON COUNTY

BY Lee Sander
CHAIRMAN-CARBON
COUNTY COMMISSION

BEAVER CREEK COAL COMPANY

BY _____



CARBON COUNTY

PRICE, UTAH
November 20, 1975

Swisher Coal Company
Professional Building
Price, Utah 84501

Gentlemen:

On July 3, 1975, Carbon County entered into that certain "Agreement" with Swisher Coal Company covering a road in Gordon Creek area, formerly known as State Highway No. 139. Said Agreement was amended by that certain "Amendment to Agreement" dated August 18, 1975.

In Commission Meetings prior to November 20, 1975, we have orally agreed with you that the unlimited use of said roadway by any other coal operator will be subject to their satisfactorily working out with you, in advance, an equitable pro-rata share of your cost of maintenance of said road. In addition such unlimited use by another coal operator shall not materially interfere with your use.

The purpose of this letter is to confirm in writing the above oral agreement with you.

Sincerely,

Carbon County,
a body politic

By

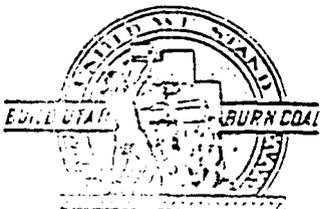
David Kachinski

Commissioner

[Signature]

Commissioner

Commissioner



MAX ROBB
PRESIDENT

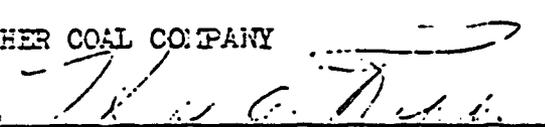
NOVEMBER 21,
1975

CARBON COUNTY COMMISSION
COURT HOUSE BUILDING
PRICE, UTAH 84501

IN RESPONSE TO YOUR REQUEST PLEASE BE ADVISED THAT AS A CONDITION TO YOUR SIGNING THAT CERTAIN LETTER TO SWISHER COAL COMPANY DATED NOVEMBER 20, 1975, OUR COMPANY NOW AGREES THAT IT WILL NOT WRONGFULLY WITHHOLD PERMISSION FROM ANY COAL OPERATOR TO HAVE UNLIMITED USE OF THE GORDON CREEK ROAD SO LONG AS SUCH OPERATOR REASONABLY COMPLIES WITH THE INTENT AND REQUIREMENTS OF THE SECOND PARAGRAPH OF YOUR LETTER.

SINCERELY,

SWISHER COAL COMPANY

BY 

ITS PRESIDENT

HERALD N. JENSEN
JAMES T. JENSEN
MICHAEL J. VAN WAGENEN

JENSEN LAW OFFICES

190 NORTH CARBON AVENUE

PRICE, UTAH 84501

(801) 637-1542

11:15
9-9-81

April 30, 1981

Carbon County Commissioners
County Court House
Price, Utah 84501

Re: County Road Agreement with Swisher Coal Company

On July 3, 1975 Carbon County entered into an agreement with Swisher Coal Company concerning the county road in Gordon Creek. This agreement was amended on August 18, 1975. The agreement requires Swisher, now known as Beaver Creek Coal Company, to maintain the road, including removal of snow.

Beaver Creek's operations have changed substantially and it no longer operates 100 ton coal haulers on the road. In addition, portions of the road are now used by other companies, the State of Utah, and the public in general.

Request is made that the County consider terminating, or in the alternative, modifying the agreement so that in the future Beaver Creek would be responsible for the following with respect to the Gordon Creek Road:

1. Furnish equipment and manpower for removal of snow on the entire road;
2. Furnish a motor grader and operator, as necessary, to grade and maintain the graveled portion of the road; and
3. Furnish and deliver, as necessary, crushed gravel in excess of 750 tons per year.

If any other business entity uses any portion of the road on a regular basis, it would be expected to reach an agreement with Beaver Creek to share, on a pro-rata basis, in the above expenses.

Beaver Creek's obligation would terminate when it no longer mines coal or regularly uses the road in the Gordon Creek area.

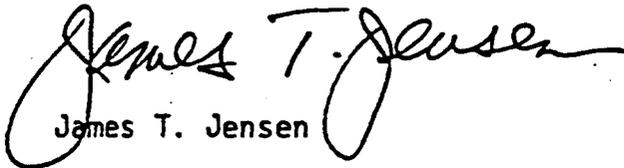
Carbon County would be responsible for the following with respect to the Gordon Creek Road:

Page 2

April 24, 1981

1. Maintain the blacktop portion of the road, except for snow removal;
2. Furnish and deliver, as necessary, pit run gravel; and
3. Furnish and deliver, as necessary, crushed gravel in an amount not to exceed 750 tons per year.

Your consideration of the above proposal will be appreciated. Beaver Creek will be available to meet with you at any time to further discuss this matter and to work out any other details.



James T. Jensen

JTJ:bmo

cc: Beaver Creek Coal Company
Attn: Max A. Robb

r/3

JENSEN LAW OFFICES

190 NORTH CARBON AVENUE
PRICE, UTAH 84501

(801) 637-1542

THERALD N. JENSEN
JAMES T. JENSEN
MICHAEL J. VAN WAGENEN

October 29, 1981

Carbon County Commissioners
County Court House
Price, Utah 84501

Re: County Road Agreement With Swisher Coal Company

This letter will confirm the conversation which Max Robb of Beaver Creek Coal Company, formerly known as Swisher Coal Company, and I had with the County Commission on October 28, 1981.

In addition to the proposal of Beaver Creek to the County set forth in my letter of April 30, 1981, Beaver Creek is also willing to furnish and apply magnesium chloride upon the Gordon Creek Road as required on an annual basis.

Max and I look forward to meeting with you on November 12, 1981 at 1:00 p.m. to finalize this matter.

James T. Jensen

JTJ:bmo

cc: Beaver Creek Coal Co.
Attn: Max A. Robb

D/5-R/17

Note: At Nov. 25 meeting, Commissioners agreed to items 2 & 3, but restricted amount to sections.

Carbon County

JENSEN LAW OFFICES

THERALD N. JENSEN
JAMES T. JENSEN
MICHAEL J. VAN WAGENEN

190 NORTH CARBON AVENUE
PRICE, UTAH 84501

(801) 637-1542

January 7, 1982

Carbon County Commissioners
County Courthouse Building
Price, Utah 84501

Attention: Lee Semken

Enclosed is the County's fully executed copy of Second Amendment to Agreement dated November 25, 1981 by and between Carbon County and Beaver Creek Coal Company. I assume that you will deliver this document to the County Clerk for appropriate filing.

James T. Jensen
James T. Jensen

JTJ:jcr

Encl.

cc: Beaver Creek Coal Company
P. O. Box AU
Price, Utah 84501
Attn: Max Robb

EXHIBIT C

EXHIBIT C

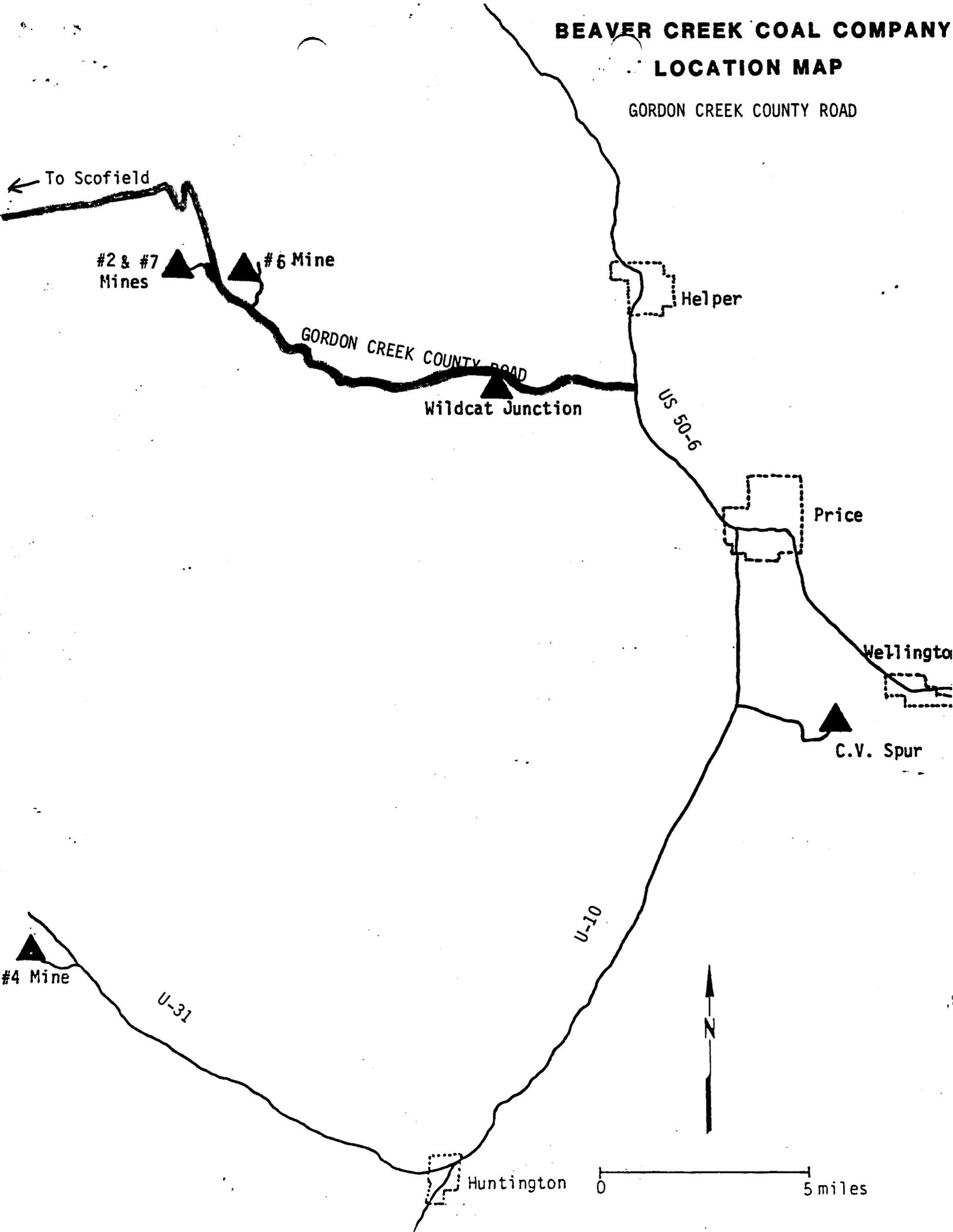
Regular Users of Gordon Creek Road

Calvin K. Jacob & Sons
Ted Pierce
Movell Jewkes
Steve Stamatakis
Helper Associates
Wasatch Coal Co.
Blazon Coal
Utah Power & Light
Utah Division of Wildlife Resources
Carbon County
Bureau of Land Management
Beaver Creek Coal Company
Tower Resources
Savage Brothers
H.E. Lowdermilk Co.
Dick Lee
Bob Finney
Utah Railway
Mountain Homes in Beaver Creek
Sportsmen/Recreationists
General Public

EXHIBIT D

BEAVER CREEK COAL COMPANY LOCATION MAP

GORDON CREEK COUNTY ROAD



To Scofield

#2 & #7 Mines

#6 Mine

GORDON CREEK COUNTY ROAD

Wildcat Junction

US 50-6

Helper

Price

Wellington

C.V. Spur

#4 Mine

U-31

U-10

Huntington

0 5 miles

