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# VanCott

THE LAW OFFICES OF  
VAN COTT, BAGLEY, CORNWALL & MCCARTHY

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Salt Lake City, Utah 84145-0340  
Telephone (801) 532-3333  
Facsimile (801) 534-0058

ACT/00/020 # 2

DATE \_\_\_\_\_  
TIME \_\_\_\_\_  
OPERATOR \_\_\_\_\_

To Pamela G - Litti  
~~Barbara Kissel~~

Telecopy No. 359-3940

Confirmation No. 538-5268

From Denise Dragon

Re See Ratification & Consent Agreement  
at p. 3 of Assignment

Total Pages (including this page) \_\_\_\_\_

Date \_\_\_\_\_

Client Horizon Coal  
Corp

Client/Matter Nos. 27197.57919

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COPY

Entry No. 5765  
 Indexed \_\_\_\_\_  
 Abstracted \_\_\_\_\_  
 Regd. Fee 26.00

FILED AND RECORDED FOR  
 Geoscout Title  
 Nov 27 10 32 AM '96  
 BOOK 381 RECORDS  
 PAGE 317-325  
 ANN E. O'BRIEN  
 COUNTY CLERK

## ASSIGNMENT

This Assignment is made and entered into by and between MOUNTAIN COAL COMPANY, a Delaware corporation ("MCC"), and HORIZON COAL CORPORATION, a Virginia corporation ("Horizon").

## RECITALS

1. By Water Rights Lease and Sale Agreement between MCC and E.E. Peirce, dated April 7, 1993 ("Agreement"), copy of which is attached hereto as Exhibit A and made a part hereof for all purposes, MCC acquired certain rights and interests related to the "Sweet's Canyon Pond."

2. MCC has agreed to assign the said Agreement and also other rights held by MCC for use by Horizon in connection with operations at the Horizon Mines in Carbon County, Utah on the terms and conditions hereinafter set forth.

## ARTICLE I

FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) and other valuable consideration paid by Horizon to MCC, receipt whereof is hereby acknowledged, and for and in consideration of Horizon's covenants and agreements hereinafter set forth, MCC does hereby:

1. Assign, transfer and convey to Horizon all of its right, title and interest in and to the Agreement which includes but is not limited to the following:

(a) The right to use that certain facility known as Sweet's Canyon Pond situated in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 17, Township 13 South, Range 8 East, SLM, Carbon County, Utah; and

(b) The lease ("Lease") of one (1) acre-foot of water in the Gordon Creek area (Water User's Claim #91-4956, formerly part of Water User's Claim #91-750 as described in Quitclaim Deed from Orlin Ross Fausett, Grantor, to E.E. Peirce, *et al.*, Grantees, dated July 12, 1993, recorded in Book 331, Page 627, records of Carbon County, Utah), to supplement the water supply to the Sweet's Canyon Pond, if necessary;

EXCEPTING AND RESERVING to MCC, however, the right to take water from Sweet's Canyon Pond sufficient to continue and complete reclaiming certain disturbed lands described in and subject to all terms and conditions of the said Agreement in a quantity not exceeding one (1) acre foot per year.

2. Assign all of its right, title and interest in and to its Application For a Dam Not Requiring Submission of Formal Plans under Section 73-5A-202 ("Dam Application") filed

with the Utah State Engineer under date of June 16, 1994, copy of which is attached hereto as Exhibit B.

3. MCC represents that, to the best of its knowledge:
  - (a) MCC has complied with all terms of the Agreement, the Lease and the Dam Application, all of which are in good standing as of the date of this Assignment.
  - (b) MCC is in compliance with all laws, rules and regulations of the State of Utah and its regulatory agencies having jurisdiction in connection with its use of Sweet's Canyon Pond and water rights related thereto.
  - (c) MCC has full right and authority to execute and deliver this Assignment.
  - (d) MCC hereby agrees to cooperate fully and to sign any additional documentation required for Horizon to exercise the rights hereby assigned relative to Sweet's Canyon Pond, the Lease and the Dam Application.

## ARTICLE II

In consideration of said Assignment, Horizon covenants and agrees:

1. To maintain the Agreement, Sweet's Canyon Pond and the Lease in accordance with all terms and conditions of the contracts relating to same described above.
2. To maintain rights granted under the Dam Application in accordance with rules and regulations of the Utah State Engineer, and to comply with all other applicable laws, rules and regulations of the State of Utah and its regulatory agencies having jurisdiction in connection with Horizon's use of Sweet's Canyon Pond and water rights related thereto.
3. Upon conclusion of its Horizon Mines operations in the area and cessation of Horizon's use of Sweet's Canyon Pond and the water covered by the Lease, Horizon will proceed with any required reclamation necessary or appropriate to intended post-mining use of Sweet's Canyon Pond as a private fish pond.
4. Horizon agrees to indemnify and hold MCC harmless from any liability arising out of Horizon's use of Sweet's Canyon Pond and exercise of the rights acquired under the Agreement and Dam Application.

## ARTICLE III

The parties mutually covenant and agree:

1. All notices shall be given to the parties hereto in writing, effective upon receipt, and shall be mailed, postage prepaid, to the parties at the following addresses which may be changed from time to time:

Horizon Coal Corporation  
P.O. Box 2560  
Wise, VA 24293  
Attention: Richard Gilliam, President

Mountain Coal Company  
P.O. Box 591  
Somerset, CO 81434  
Attention: Eugene DiClaudio, President

2. Each and every clause, condition, covenant and agreement of this Assignment shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

3. This Assignment shall be effective upon execution of the Ratification and Consent by the successors in interest to E.E. Peirce as set out below.

DATED this 12th day of June, 1996.

MOUNTAIN COAL COMPANY

By: Eugene DiClaudio  
Eugene DiClaudio, President

HORIZON COAL CORPORATION

By: Richard Gilliam  
Richard Gilliam, President

#### RATIFICATION AND CONSENT

For and in consideration of the sum of One Thousand Eight Hundred and no/100 Dollars (\$1,800) paid by Horizon and other valuable consideration, the receipt of which is hereby acknowledged, the undersigned, as successors in interest to E.E. Peirce, deceased, hereby: (a) ratify and adopt the described Agreement on the Sweet's Canyon Pond to the same extent and in the same manner and for the same purposes and effects as though we, the undersigned, had originally executed the described Agreement; (b) confirm the same as being valid and subsisting as of this date; (c) consent to the above Assignment by MCC to Horizon; and (d) further, to effectuate the purposes hereof, the undersigned do hereby lease unto said Horizon, its assigns and successors in interest, the Sweet's Canyon Pond and the right to make use of the same and the described water right in connection with the Horizon Mines operations

under the terms, provisions and covenants contained and set forth in said Agreement and the Assignment.

Horizon agrees:

(a) to pay to the undersigned the sum of One Thousand Eight Hundred Dollars (\$1,800) annually on or before each anniversary of the effective date of this Ratification and Consent; and

(b) to continue to provide a quantity of power from Horizon's power station (formerly owned by MCC) to Agnes Peirce's trailer located near the premises necessary for housekeeping purposes;

subject to the terms and provisions of the Agreement, the Assignment and this Ratification and Consent so long as Horizon requires the rights thereunder for its Horizon Mines operations. Upon thirty (30) days notice, Horizon may terminate its use to the pond and its obligation to furnish power under this Ratification and Consent at any time, except liability on account of any obligation assumed by Horizon under the Agreement and under the Assignment or incurred and owing at the time of such termination, including, specifically, its reclamation obligations.

EXECUTED and effective this 18th day of June, 1996.

Agnes K Peirce  
Agnes K. Peirce

Address:

3432 So 500 E  
Peirce, UT 84501

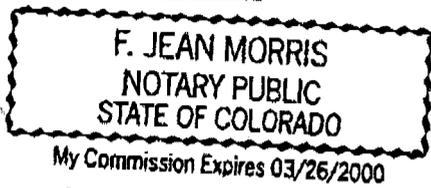
Billy Troy Kennick  
Billy Troy Kennick

Address:

6638 South 5420 West  
West Jordan, UT 84084

STATE OF Colorado )  
COUNTY OF Deeta )ss.

The foregoing Assignment was acknowledged before me this 12<sup>th</sup> day of June, 1996 by Eugene DiClaudio, the President of MOUNTAIN COAL COMPANY.



F. Jean Morris  
NOTARY PUBLIC  
My Commission Expires: March 26, 2000

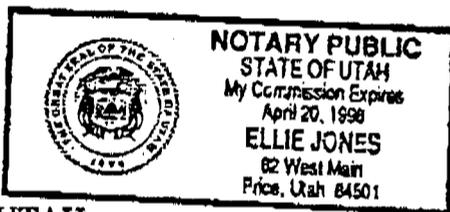
STATE OF Virginia )  
COUNTY OF Wise )ss.

The foregoing Assignment was acknowledged before me this 18<sup>th</sup> day of June, 1996 by Richard Gilliam, the President of HORIZON COAL CORPORATION.

Kaylene R. Addington  
NOTARY PUBLIC  
My Commission Expires: June 30, 1998

STATE OF UTAH )  
COUNTY OF Carbon )ss.

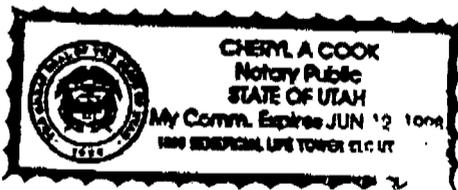
The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of June, 1996 by Agnes K. Peirce.



Ellie Jones  
NOTARY PUBLIC  
My Commission Expires: 4.20.98

STATE OF UTAH )  
COUNTY OF Salt Lake )ss.

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of June, 1996 by Billy Troy Kennick.



Cheryl A. Cook  
NOTARY PUBLIC  
My Commission Expires: 10/12/98

1747.03  
1747forms@uncountal.com

Exhibit "A"

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WATER RIGHTS LEASE  
AND  
SALE AGREEMENT

THIS AGREEMENT is entered into as of 7<sup>th</sup> day of ~~March~~ <sup>APRIL</sup>, 1993 between E.E. PEIRCE, P.O. Box 591, Somerset, Colorado 81434 and MOUNTAIN COAL COMPANY, a Delaware corporation, ("MCC"), P.O. Box 591, Utah.

## RECITALS

MCC is in the process of reclaiming certain disturbed lands related to the Gordon Creek Nos. 2/7/8 Mines in Carbon County, Utah and in relation to those mines is responsible for the "Sweet's Canyon Pond" which is proposed to be left as a permanent topographical feature. MCC would be responsible for the pond for approximately ten years after the reclamation work is complete and thereafter until MCC's reclamation bond posted for the Gordon Creek Nos. 2/7/8 Mines with the Utah Division of Oil, Gas and Minerals ("DOG M") is released. Thereafter the pond would revert to Peirce.

During the period for which MCC would be responsible for the pond, MCC would be required to provide water to supplement the pond losses due to evaporation. A State Water Engineer has estimated that at least one acre foot of water be allocated to the pond for this purpose.

Peirce proposes to purchase two acres of ground in the lower Gordon Creek area, which land has one acre foot of water associated with it.

MCC desires that Peirce lease the one acre foot of water to MCC with complete usage right of that water for a period of at least ten years and until the MCC reclamation bond is released by DOGM.

In exchange Peirce desires assignment of five (5) shares of MCC's Price River water rights.

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WATER RIGHTS LEASE AND SALE AGREEMENT

LEASE and SALE AGREEMENT

IN CONSIDERATION of the mutual benefits to be derived, the parties agree as follow:

1. Peirce shall acquire and lease to MCC one acre foot of water in the lower Gordon Creek area which can be used to supplement the Sweet's Canyon Pond. The lease shall be paid up for a period of ten years and for so long thereafter as necessary until MCC's reclamation bond for the Gordon Creek No. 2/7/8 Mines is fully released by the DOGM. The lease shall be in the form attached as Exhibit A.
2. In full payment for this lease, MCC shall assign to Peirce five (5) shares of MCC's Price River water rights. The assignment of the Price River water rights shall be in the form of Exhibit B.
3. The parties shall execute such further documents and take such further actions as may be necessary or appropriate to complete the lease and the sale under this agreement.
4. Closing is expected to be complete by April 9, 1993. Either party may terminate this agreement if closing is not completed by that date due to reasons beyond the control of the terminating party.

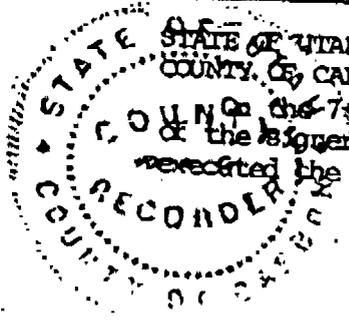
EXECUTED as of the date first stated above.

MOUNTAIN COAL COMPANY

E.E. PEIRCE

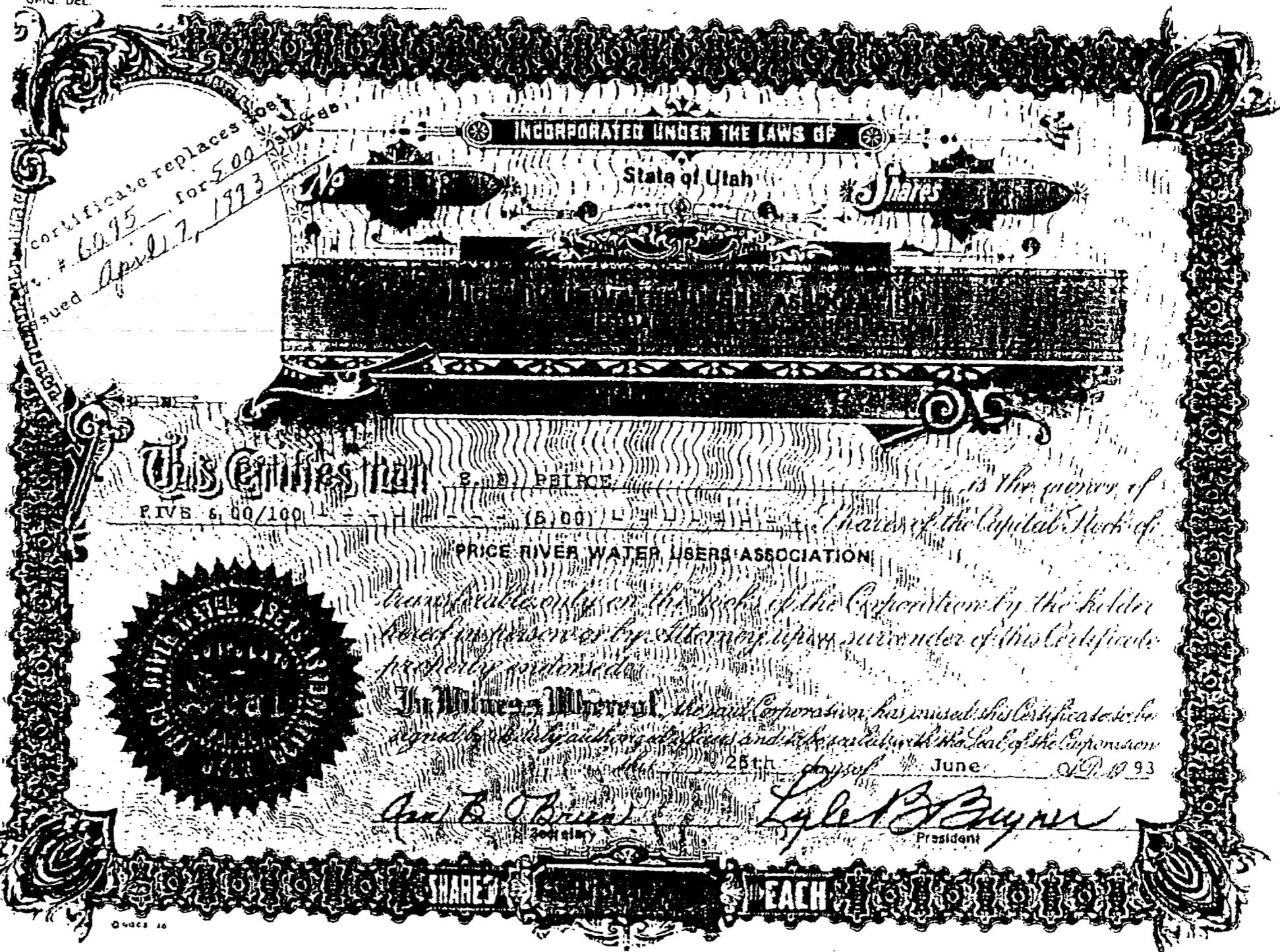
By: A. E. De lauder

E E Peirce



STATE OF UTAH )  
 COUNTY OF CARBON ) ss  
 On the 7th day of April, 1993 personally appeared before me, E. E. PEIRCE, one of the signers of the foregoing instrument who duly acknowledged to me that he executed the same.

Ann B. O'Brien  
 Ann B. O'Brien  
 Carbon County Recorder



*certificate replaces No. # 6095 for \$5.00 issued April 7, 1993*

INCORPORATED UNDER THE LAWS OF

State of Utah

Shares

This Certifies that

E. D. BELICE

FIVE & 00/100

(5.00)

is the owner of  
Shares of the Capital Stock of

PRICE RIVER WATER USERS ASSOCIATION

transferable only on the books of the Corporation by the holder  
or his assignee or by Attorney upon surrender of this certificate  
properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be  
signed by its duly authorized officers and its seal to be hereunto set on this  
25th day of June A.D. 1993



*Ann B. Brown*  
Secretary

*Lyle B. Byrner*  
President

SHARES EACH

SENT BY: VANCOTT BAGLEY 3 : 6-27-97 : 11:48AM : VANCOTT BAGLEY-35933940 : # 9/11

Form R-69  
3/92

EXHIBIT 8

APPLICATION FOR A DAM NOT REQUIRING  
SUBMISSION OF FORMAL PLANS  
UNDER SECTION 73-5A-202

Application No. \_\_\_\_\_  
Received \_\_\_\_\_  
Entered \_\_\_\_\_

STATE OF UTAH

The following application is submitted pursuant to Section 73-5a-204 for a dam meeting the exclusion under Section 73-5a-202(1) (dam under 20 acre-feet not constituting a threat to human life) or the waiver under Section 73-5a-202(3) (dams over 20 acre-feet not constituting a threat to human life or property not held by the owner of the dam).

1. APPLICANT INFORMATION

Name(s): MOUNTAIN COAL COMPANY  
Address: P.O. Box 591  
City: SOMERSET State: Colo. Zip Code: 81434

2. PURPOSE OF DAM

Stock Pond \_\_\_\_\_ Regulating Res. \_\_\_\_\_ Diversion Dam \_\_\_\_\_  
Irrigation \_\_\_\_\_ Debris Basin \_\_\_\_\_ Flood Control \_\_\_\_\_  
Sedimentation \_\_\_\_\_ Tailings Pond \_\_\_\_\_ Recreation \_\_\_\_\_  
Other (describe): SNIBET'S CANYON POND - WATER TRUCK FILL / PRIVATE FISH POND.

3. LOCATION OF DAM

County: CARBON Quarter/Quarter (i.e. NESW): SWSW Section: 17  
Township: 13 SOUTH Range: 8 EAST Base & Meridian: S.L.B. & M.

4. PROPOSED DAM

Dam Height (vertical distance): 8.0 feet  
Crest Length (length of top of dam): 440 feet  
Crest Width (width of top of dam): 4.0 feet  
Upstream slope: 1 vertical on 2 horizontal  
Downstream slope: 1 vertical on 2 horizontal  
Water surface area at spillway crest: 0.44 acres  
Reservoir capacity at spillway crest: 2.00 ac-ft.  
Type of dam (i.e. earthfill, concrete, etc.): EARTHFILL - APPROXIMATELY 40% OF POND IS INCISED.

5. PROPOSED OUTLET (N/A)

Inside diameter: \_\_\_\_\_ inches Length: \_\_\_\_\_ feet  
Type of pipe (i.e. concrete, steel, etc.): \_\_\_\_\_  
Type of gate or valve: \_\_\_\_\_  
Location of gate (upstream, downstream, center, etc.): \_\_\_\_\_

6. PROPOSED SPILLWAY

Crest Length (width of bottom of spillway): 8.0 feet  
Depth (from bottom of spillway to top of dam): 3.0 feet  
Type (i.e. earth channel, pipe, etc.): RIP-RAPPED EARTH CHANNEL.  
Control (i.e. gates, flashboards, etc.): OPEN CHANNEL SPILLWAY.

7. WATER RIGHTS

Describe (see instructions): WATER RIGHT OWNED BY E.E. PEIRCE AND BILL KENNICK. RIGHTS LEASED TO MOUNTAIN COAL COMPANY DURING RECLAMATION BOND LIABILITY PERIOD.

Dam Application # \_\_\_\_\_

8. COMMENTS

SWIFT'S CANYON POND, PREVIOUSLY USED FOR WATER TRUCK FILL-UP, WILL BE LEFT AS A PERMANENT POND FOR USE AS A PRIVATE FISH POND.

9. PLANS

Attach plans sketches or diagrams to clarify the information given on this application.

The undersigned acknowledge they have read the instructions included with this application, and are aware no construction is to begin until this application has been approved by the Utah State Engineer.

6/16/94  
Date

[Signature]  
Signature of Applicant

Water Rights in Order By \_\_\_\_\_ Date \_\_\_\_\_  
 Area Engineer's Hazard Rating \_\_\_\_\_  
 Reviewed by Dam Safety By \_\_\_\_\_ Date \_\_\_\_\_  
 Comments \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Date of Approval \_\_\_\_\_

Robert L. Morgan, P.E.  
State Engineer