



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
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December 8, 1997

Denise A. Dragoo, Resident Agent
Van Cott, Bagley, Cornwall, & McCarthy
50 South Main Street, Suite 1600
Salt Lake City, Utah 84111-1495

Re: Permit Findings for the Consumers Road, Horizon Coal Company, Horizon Mine, ACT/007/020, Folder #3, Carbon County, Utah

Dear Ms. Dragoo:

As you are aware, recent Oversight review in Utah has focused on the "Permitting of Coal Mine Access and Haul Roads". At the Horizon Mine, one road was investigated because relocation and reconstruction of the road coincided with construction of the mine facilities. The road in question is known as part of the Consumers Road and is approximately 1200 feet long and runs from County Road 290 to the Horizon Mine site. During the permitting of the mine The Division of Oil, Gas, & Mining chose not to permit this section of road, however the rationale for this decision was not provided as part of the permitting record.

The Oversight review concluded that specific findings need to be made for this section of road in order to determine whether or not the road needs to be permitted. The Division requires additional information from Horizon Coal Company in order to make the required findings.

In a letter dated July 3, 1995, Division Director James W. Carter spelled out Utah's policy with regard to permitting of public roads. The letter states, "... a multiple use, open access public road, may not be required to be permitted if a) it was properly acquired by the governmental entity (not deeded to avoid regulation), b) it is maintained with public funds or in exchange for taxes or fees, c) it was constructed in a manner similar to other public roads of the same classification, and d) impacts from mining are not significant under the definition of "affected area" and "surface coal mining operations.

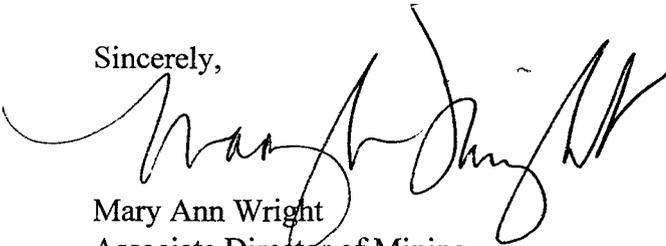
Information needed by the Division includes that necessary to complete the findings for b, c, and d above. A copy of the July 3, 1995 policy letter is enclosed for your information and direction in completing the demonstrations. Please provide the necessary demonstrations to the

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Division within 45 days of receipt of this letter, so that we can make the necessary findings and complete the Oversight requirements.

Thank you for your help. If you have any questions, please call me or Daron Haddock, Permit Supervisor.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mary Ann Wright', written in a cursive style.

Mary Ann Wright
Associate Director of Mining

tat
Enclosure
cc: Henry Austin, OSM
Vicky Bailey, EarthFax
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July 3, 1995

Rick Seibel, Regional Director
Jim Fulton, Denver Field Office Division Chief
U. S. Department of the Interior
Office of Surface Mining, Western Support Center
1999 Broadway, Suite 3320
Denver, Colorado 80202-5733

Re: Utah Section 733 Letter; Permitting of Roads

Gentlemen:

In light of the discussions and correspondence between the Division of Oil, Gas and Mining and the Office of Surface Mining ("OSM") since the informal conference in this matter, I am writing to clarify Utah's policy with regard to the permitting of public roads which may be used for, or related in some way to, coal mining and reclamation activities. Aside from the present disagreement regarding permitting road policy, the Utah Act and implementing regulations are approved by OSM and have been determined to be no less stringent than those of SMCRA. 30 U.S.C. § 1255.

Utah acknowledges that, under its approved definition of "affected area," there exists no blanket exemption from regulation for public roads. Utah recognizes, therefore, that some public roads may be subject to the permitting requirements of the Utah Act. Utah believes, however, that it is best suited to interpret its program, and to decide whether a particular road falls within the definition of "affected area." Since there is little substantive guidance in this area, the State will interpret its program by reference to such authorities as the court's decision *In Re Permanent (Flannery)* as well as conflicting IBLA decisions, such as *Harman Mining* and *W. E. Carter*.

Coal mining permits are required for all roads (public or private) that are constructed, reconstructed or used exclusively for coal mining and reclamation activities. Utah fully recognizes that the quantity of public use of a road is not the exclusive consideration to determine whether it is exempt from regulation. As a result, upon a finding by the State that a road is a bona-fide public road as defined by the approved regulations, Utah will rely on the definition of "surface coal mining operations" under U.C.A. § 40-10-3(18), 30 U.S.C. § 1291(28) and "affected area," U.A.C. Rule R645-100-

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200 and 30 C.F.R. §701.5, to determine whether an exemption from regulation is in order. If the operator can demonstrate to the satisfaction of the Utah regulatory authority that a particular road is not included in the definition of "surface coal mining operations," as explained in the pertinent preambles to the publication of the implementing federal rules and as interpreted by the courts, then Utah will not regulate the road.

Thus, a public road which was not constructed, reconstructed or used exclusively for coal mining and reclamation activities; i.e., a multiple use, open access public road, may not be required to be permitted if a) it was properly acquired by the governmental entity (not deeded to avoid regulation), b) it is maintained with public funds or in exchange for taxes or fees, c) it was constructed in a manner similar to other public roads of the same classification, and d) impacts from mining are not significant under the definition of "affected area" and "surface coal mining operations."

Utah recognizes that arrangements sometimes exist between coal companies and the entities which govern public roads used by such companies, whereby maintenance of the road is done in part by the coal companies. Utah believes that such arrangements are not the most important focus of inquiry; rather, coal mining usage and the associated impacts of such usage are the critical area of focus. A public road maintained by a coal operator or permittee should be examined as to:

1. whether the maintenance is occasioned primarily by the environmental impacts of coal mining operations on the road;
2. whether the maintenance is routine and similar to that which would be performed by the county or land management authority absent the agreement of the permittee or operator to do it; and
3. whether the maintenance agreement with the public entity is an arms-length arrangement, such that the essence of the requirement that maintenance be carried out with public funds is met.

For example, if a public land management agency stipulates that, as a condition of a special use permit, the permittee is responsible for maintenance of certain existing roads used by the operator, the fact that such roads are not maintained with public funds for the duration of the operation would not automatically subject those roads to regulation if the effect of mining use on them is relatively slight. Similarly, if state or local governments or public land management agencies require mine operators to construct road improvements or contribute road maintenance funds or services as a

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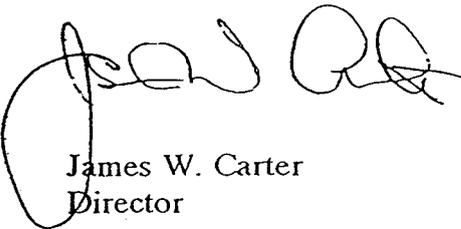
prerequisite for granting the permits and approvals necessary for the mining operation, the stipulation does not, by itself, render all such existing roads subject to regulation under SMCRA.

Utah believes that it, as the regulatory authority, is in the best position to make such determinations, and will decide, based upon these factors, whether such roads are public and whether the coal mining usage and impacts fall within the Utah program definitions of "surface coal mining operations" and "affected area."

We believe that this clarification addresses all of OSM's concerns while allowing the state of Utah to exercise its discretion in interpreting and administering its approved regulatory program. I trust this clarification will provide the basis for OSM to determine that Utah's implementation of its regulatory program is no less effective than the federal program, and that OSM may find the inquiry of the Section 733 letter satisfactorily answered.

We look forward to resolution of this issue and a continuing productive partnership with OSM in implementing Utah's coal regulatory program

Very truly yours,



James W. Carter
Director

jbe

cc: R. Uram, Director
Office of Surface Mining
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