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State of Utah

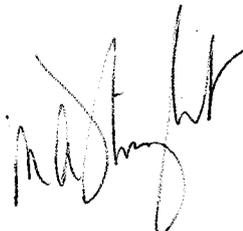
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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February 5, 1998

TO: Mine Permit File

FROM: Mary Ann Wright, Associate Director, Mining 

RE: Analysis and Finding on the Consumer's Canyon Road, Horizon Mining, LLC, Horizon Mine, ACT/007/020, Folder #3, Carbon County, Utah

Following is a finding and analysis of the Consumer's Canyon road leading from County Road #290 to the Horizon Mine, Carbon County, Utah. This analysis and finding takes into account the regulations and policy under the Utah Coal Regulatory Program (UCRP) in regards to the "Permitting of Roads". This document will accompany and become part of the permit findings for the Horizon mine permit issued by the UCRP.

Summary

The Consumer's Canyon Road, leading to the site of coal mining and reclamation operations in Consumer's Canyon is part of the Carbon County road system as a Utah State Class "B" county road. Although recently realigned to improve access to the Horizon Mine, the Consumer's Canyon road is and has historically been dedicated to operation, use and maintenance by the County as a public road. Carbon County plans to maintain the road with public funds as a multiple use, open access, public road not subject to the control of Horizon Mining, LLC ("Horizon") or any other private entity. Carbon County is responsible for the environmental issues relating to the alignment, construction and maintenance of the road. During operation of the Horizon Mine, the Consumer's Canyon Road will remain a public road, allowing access by multiple purpose users up to, and continuing past, the proposed disturbed area boundary (mine surface facilities area). The Consumer's Canyon Road is found under this analysis to be exempt from regulation according to the State of Utah Coal Mining Rules, R645, et seq. and the UDOGM July 3, 1995 policy on roads. The mine road branching off of the Consumer's Canyon Road and entering into the disturbed area will be permitted and maintained by the coal mining company, Horizon, or the Permittee.

Policy

This analysis implements the July 3, 1995, permitting policy on roads (see

Reference #1 of the attached Reference List). In deciding to exempt the Consumer's Canyon road from regulation, DOGM herein makes written findings as to whether:

1. The road was properly acquired by the governmental entity and not deeded to avoid regulation;
2. The road is maintained with public funds or in exchange for taxes or fees,
3. The road was constructed in such a manner similar to other public roads of the same classification; and
4. Impacts from mining on the road are not significant under Utah's definitions for "affected area" and "surface coal mining operations".

Analysis and Findings

The following analysis is made and information is obtained from existing documents (see attached Reference List) and designated in the text as follows:

- (2) Horizon Mining, LLC's Permit Application Package (PAP);
- (3) letter from Denise A. Dragoo, to Mary Ann Wright, UDOGM, January 23, 1998, including attachments noted as (a), (b) and (c);
- (4) Utah R-645 et seq. Coal Mining Rules; and
- (5) December 15, 1997 Interior Board of Land Appeals decision (IBLA 94-366).

Analysis #1:

- The Permit Application Package for the Horizon mine was determined to be complete and a permit was issued on October 10, 1996. The PAP states that the mine's disturbed area will be accessed by the Consumers/Clear Creek Road, a county owned and maintained road extending from Consumers Canyon to Clear Creek. Letters from Carbon County, which are contained in the PAP, also acknowledge that the road is and has historically been a county owned and maintained road and will continue to be so. The letters also discuss realignment of the road to facilitate construction of the mine surface facilities but make it clear that the ownership of the road remains with the county. (2)
- In 1997 Carbon County sought to realign a portion of the Consumer's Canyon Road that accesses the Horizon mine, to enhance public safety and remove a "hairpin

turn” which may present a hazard to coal haul trucks and other heavy traffic using this thoroughfare. Horizon Mining, LLC agreed with the county to undertake at its own expense (similar to paying taxes or road use fees) the costs of contracting K.T.K. Mining and Construction Company to build the realigned portion of the road. Upon completion of the construction, the County agreed to inspect the realignment and dedicate such right of way to public use for operation, use and maintenance as a public road. (3)(c)

- Carbon County Ordinance #259 dated November 5, 1997, confirms that the County owns the realigned portion of Consumer’s Canyon Road, that such realigned portion has been dedicated to operation, use and maintenance by the County as a public road, that the Consumer’s Canyon Road and the realigned parcel are classified as a Class B road constructed and maintained in a manner similar to other Class B road systems within the County and that the road is maintained by the County with public funds as a multiple use, open access, public road not subject to the control of Horizon or any other private entity. (3)(a)
- Through a Reciprocal Grant and Quit Claim deed, Carbon County was granted an easement and right of way, over the realigned parcel by Hidden Splendor Resources, Ltd. (Landowner) and Horizon Mining, LLC. (Lessor). The quit claim deed was issued on December 9, 1997 and recorded on December 29, 1997. In turn, Carbon County deeded to Hidden Splendor Resources, the vacated parcel where the road had previously been. (3)(a)
- The legal description for the realigned right of way is as follows: “a sixty-six (66) foot wide right of way located thirty-three (33) feet on either side of the following described Center Line located within the E1/2SW1/4, Section 17 Township 13 South, Range 8 East, Carbon County, Utah, more particularly described as follows:
BEGINNING AT A POINT ON THE CENTER LINE OF AN EXISTING COUNTY ROAD, SAID POINT BEING 4,755.5 FEET SOUTH AND 2,825.4 FEET WEST OF THE NORTHEAST CORNER OF SECTION 17, TOWNSHIP 13 SOUTH, RANGE 8 EAST, SALT LAKE BASE & MERIDIAN; RUNNING THENCE NORTH 21°35' WEST, 144.8 FEET; THENCE NORTH 30°04' WEST, 158.0 FEET; THENCE NORTH 34°06' WEST, 57.1 FEET; THENCE NORTH 33°36' WEST, 99.0 FEET; THENCE NORTH 34°24' WEST, 71.6 FEET; THENCE NORTH 33°59' WEST, 106.4 FEET; THENCE NORTH 33°33' WEST, 130.8 FEET; THENCE NORTH 22°03' WEST, 136.1 FEET; THENCE NORTH 22°05' WEST, 530.6 FEET; THENCE NORTH 29°01' WEST, 68.4 FEET, MORE OR LESS, TO A POINT ON THE CENTER LINE OF AN EXISTING COUNTY ROAD. (3)(a)

Finding #1:

The road has historically been and continues to be a public road under the jurisdiction of Carbon County. Realignment of the road was done to enhance public safety and remove a “hairpin turn” which may present a hazard to coal haul trucks and other heavy traffic using this thoroughfare. Carbon County owns the realigned portion of Consumer’s Canyon Road through a quit claim deed from Hidden Splendor Resources, LTD. The road was properly acquired by the governmental entity and was not deeded to avoid regulation.

Analysis # 2:

- The Consumer’s Canyon Road and the realigned parcel are classified as a Class B road constructed and maintained in a manner similar to other Class B road systems within the County and the road is maintained by the County with public funds as a multiple use, open access, public road not subject to the control of Horizon or any other private entity. (3)(a)
- Carbon County acquired the right of way to the realigned parcel through a Reciprocal Grant with associated Quit Claim deed and in turn vacated a portion of the Consumers road to Hidden Splendor. In turn Carbon County deeded to Hidden Splendor Resources, the vacated parcel where the road had previously been. Having acquired the right of way Carbon County adopted Ordinance #259 to accept and receive the grant of right of way to the Realigned Parcel and dedicate such right of way to the construction, operation, use and maintenance of a public road. (3)(a)&(b)
- The maintenance for the Consumer’s Canyon road has been and will continue to be performed by Carbon County. The source of funding for the Consumer’s Canyon road maintenance will be public funds. (3)(a)

Finding # 2:

Carbon County has established its jurisdiction over the Consumer’s Canyon Road as a Class B road within the public road system, constructed and maintained in a manner similar to other Class B road systems with the County, maintained by the County with public funds as a multiple use, open-access, public road not subject to the control of Horizon or any other private entity.

Analysis # 3:

- Through Ordinance #259 Carbon County entered a separate agreement with Horizon whereby Horizon contracted at its own expense with K. T. K. Mining & Construction inc. to construct the realigned portion of the Road in accordance with Class B road specifications and alter a stream channel necessitated by the Road realignment. (3)(a)&(c)
- As part of the agreement, KTK Mining and Construction, Inc., was required to prepare and perform all road construction plans and specifications under the direct supervision of a registered professional engineer. The agreement states, "The Supervising engineer shall certify to the Board of County Commissioners that the Road realignment conforms to Class B road specifications and design and construction standards as currently adopted by the American Association of State Highway and Transportation officials; Upon completion of construction of the realigned right of way, Carbon County agrees to inspect the realignment; thereafter, the realignment shall be deemed to have been accepted and the County will dedicate such right of way to public use for operation, use and maintenance as a public road..." (3)(c)

Finding #3:

Carbon County entered an agreement with Horizon whereby Horizon contracted at its own expense with K.T.K. Mining & Construction Inc., to construct the realigned portion of the road. As part of the agreement, a registered professional engineer was required to certify that the road realignment conforms to Class B road specifications and design and construction standards as currently adopted by the American Association of State Highway and Transportation officials. Thus, the road was constructed similar to other public roads of the same classification.

Analysis # 4:

- The Consumer's Canyon road is now and has historically been a county owned and maintained road and will continue to be so. The road is a multiple use, open access, road not subject to the control of Horizon or any other private entity.(3)(a)&(b)

- The Consumer's Canyon Road is made part of the Carbon County road system, and coal mining and reclamation operations will not deny public access to any portion of the road leading to the mine disturbed area boundary. (2) and (3)(a)
- In order for a road to be permitted under the UCRP, the road must meet the test of being a "coal mining and reclamation operation", and fall within the UCRP's definition of "roads." Activities occurring on the Consumers' Canyon Road are similar to activities occurring on public roads of the same classification throughout the State. No coal mining operations are occurring that would require special jurisdiction or regulation of the road under the UCRP. (2), (3)(a) and (4)
- A recent Interior Board of Land Appeals (IBLA) decision states the following, "*We find nothing in section 701(28)(B) of SMCRA, or its legislative history, which expressly provides that transportation facilities, especially ones that carry processed coal to a remote point of sale/use, should generally be considered "surface coal mining operation," subject to regulation under SMCRA... Congress made no specific provision for regulating the transportation of processed coal, even though that activity is itself a "major industrial sector," which encompasses railroads, barges, trucks, and pipelines "that collectively stretch over thousands of miles throughout the nation."... The fact that it did not, strongly indicates that Congress did not intend to regulate the transportation of processed coal under SMCRA, presumably leaving it to regulation pursuant to other Federal and state laws.*" (5)

Finding #4:

The uses of the Consumer's Canyon Road are considerably greater than the narrow, regulated activities of providing access to coal mining and reclamation operations. In addition, the environmental impacts to the Consumer's Canyon Road caused by coal truck traffic will not differ from the environmental impacts of other trucks of similar weight operating on this road. The trucks being used for transporting coal are licensed commercial haulers which are legal to operate on public roads of the same classification throughout the state. The mine is not conducting any surface coal mining operation on the Consumer's Canyon Road that would require any special regulation under SMCRA or the UCRP. Impacts from mining on the road are not significant under Utah's definitions for "affected area" and "surface coal mining operations".

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Conclusion

The Consumer's Canyon County Road leading from the County Road 290 up to the Horizon Mine disturbed area boundary does not need to be permitted under the Utah Coal Regulatory Program.

cc: Denise Dragoo, Van Cott, Bagley, Cornwall & McCarthy
Vicky Bailey, Earthfax Engineering
William Krompel, Carbon County
James Fulton, OSM
Lowell Braxton, Acting Director, DOGM
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REFERENCE LIST

1. July 3, 1995 letter from James W. Carter, Director of Utah Division of Oil, Gas, & Mining to Rick Seibel, Regional Director and to Jim Fulton Denver Field Office Division Chief, U.S. Dept. Of Interior, Office of Surface Mining. RE: Utah Section 733 Letter, Permitting of Roads.
2. Horizon Mining, LLC.'s Permit Application Package (PAP).
3. January 23, 1998 letter and attachments from Denise Dragoo, esq. (Resident Agent for Horizon) to Mary Ann Wright Associate Director of Mining, Utah Division of Oil, Gas, & Mining. RE: Consumer's Canyon Road.
Attachments:
 - a. Carbon County Ordinance #259 dated November 5, 1997.
 - b. Executed and recorded copies of a Reciprocal Grant and Quit Claim Deeds which effect the ownership of the realigned road in Carbon County.
 - c. Agreement between Carbon County and Horizon confirming the County's commitment to pay certain costs associated with realignment of Consumer's Canyon Road.
4. Utah R645 et. seq. Coal Mining Rules, especially definition of the terms "Affected Area", "Coal Mining and Reclamation Operations", and "Road".
5. December 15, 1997 Interior Board of Land Appeals decision (IBLA 94-366) finding that a railroad and pipeline used to transport coal from surface mines are not regulated by the federal Surface Mining Control and Reclamation Act.