

# Snell & Wilmer

L.L.P.  
LAW OFFICES

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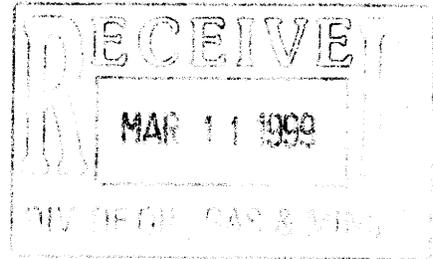
## CONFIRMATION OF FACSIMILE

SALT LAKE CITY, UTAH  
PHOENIX, ARIZONA  
TUCSON, ARIZONA  
IRVINE, CALIFORNIA

Denise A. Dragoo (801) 237-1998  
Internet: ddragoo@swlaw.com

March 9, 1999

Ms. Pamela Grubaugh-Littig  
Permit Supervisor  
Utah Division of Oil, Gas & Mining  
1594 West North Temple  
P.O. Box 145801  
Salt Lake City, Utah 84114-5801



**RE: Incidental Boundary Change, Horizon Mint Permit ACT/007/020 #2**

Dear Ms. Grubaugh-Littig:

As we have discussed, Horizon Mining, LLC ("Horizon"), is proposing to submit an Incidental Boundary Change for the Horizon Mine involving approximately 46 acres within Federal Coal Lease UTU-74804, issued September 1, 1998, enclosed. By letter dated February 23, 1999, you suggest that this change may require federal mining plan approval due to Horizon's entry into "leased federal coal for the first time". 30 CFR 746.18(d)(4). However, Horizon is currently mining federal coal under a right of way issued by the Bureau of Land Management ("BLM") and is not mining within the leasehold area "for the first time." Therefore, Horizon meets the criteria for an Incidental Boundary Change.

Under the terms of Mine Permit ACT/007/020, and federal coal right of way UTU-73227 ("ROW"), enclosed, Horizon has operated within a coal tunnel right of way on the following described federal mineral estate:

Township 13 South, Range 8 East, SLBM

Section 8: SW1/4NW1/4SW1/4SE1/4,  
W1/2SW1/4SW1/4SE1/4;  
Section 17: W1/2W1/2SE1/4NE1/4.

The ROW was issued to Horizon by the BLM effective April 23, 1996. The ROW stipulations specifically require that Horizon "shall operate and maintain the facilities, improvements and structures within this right of way in strict conformity with its mine permit plan (Utah Division of Oil, Gas & Mining No. PRO-007/020). When approved, this permit is made part of the grant." Exhibit A, Stipulations, ¶ 1. Mine Permit ACT/007/020 was issued effective October 26, 1996, for "the permit area of Horizon No. 1 Mine and the federal coal right of way" . . . *Id.* at 1. Upon approval, Mine Permit No. ACT/007/020 was made a part of the grant of right

Ms. Pamela Grubaugh-Littig

March 9, 1999

Page 2

of way. ¶ 1, ROW Stipulations. Horizon's operations within the ROW have been proceeding under the supervision of the BLM authorized officer, Steven Falk. In October, 1997, Horizon reviewed the approved mine plan with Mr. Falk during a pre-mining conference. Letter dated October 24, 1997, enclosed.

Effective September 1, 1998, Federal Coal Lease UTU-74804 was issued to Horizon on the following lands:

Township 13 South, Range 8 East, SLBM

Section 6: SESW, S2SE, NWSE;  
Section 7: Lots 1-3, E2, E2W2;  
Section 8: ~~SENE~~, NWNW, S2NW, N2SW,  
*SWNE* SWSW, W2SE;  
Section 17: N2NW, SWNE;  
Section 18: NENE.

*Corrected  
2/10/99  
by letter*

This leasehold encompasses federal lands mined by Horizon under the ROW. Therefore, Horizon's proposed operations under the Incidental Boundary Change are not proceeding into leased federal coal lands "for the first time" under 30 CFR 746.18(d)(4).

Consistent with this clarification, Horizon will submit the proposed Incidental Boundary Change for the Division's review and approval this week.

Please let me know if you have further questions concerning this matter.

Very truly yours,



Denise A. Dragoo

DAD:jmc:79162

cc: Steven Falk, BLM  
Larry Jones  
Mark Wayment  
Earthfax Engineering

**WHITE OAK MINING & CONSTRUCTION CO., INC.**

**SCOFIELD ROUTE  
P.O. BOX 60  
HELPER, UTAH 84526**

**PHONE: (801) 637-9200**

**FAX: (801) 448-9456**

October 24, 1997

Denise A. Dragoo  
Attorney at Law  
Suite 1600  
50 South Main Street  
Salt Lake City, Utah 84144

RE: Horizon Mining, LLC  
Right of Way UTU-73227

Dear Ms. Dragoo:

This letter is to inform you that a pre-mining conference was held with Steve Falk of the Bureau of Land Management (BLM) and the technical services team from White Oak on Thursday October 23, 1997. A mine map was also given to Mr. Falk showing the projected mining plan for Horizon. An approved mine plan is available for BLM to review during construction, operation, and termination of the right of way.

Thank you for your attention to this matter. Should you have any questions, please feel free to call me or Garin Harada at (801) 637-9200.

Sincerely,



Mark Wayment  
Manager, Technical Services

cc: Steve Falk  
Larry Jones  
J.R. King



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Utah State Office  
P.O. Box 45155  
Salt Lake City, UT 84145-0155

*Recvd:*  
8/27/98

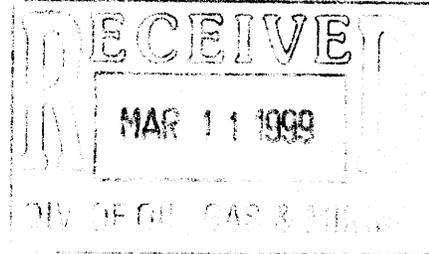
In Reply Refer To:  
3425  
UTU-74804  
(UT-932)

AUG 25 1998

CERTIFIED MAIL--Return Receipt Requested

DECISION

Horizon Mining, LLC	:	Coal Lease
c/o Denise A. Dragoo, Esq.	:	UTU-74804
Van Cott, Bagley, Cornwall & McCarthy	:	
P.O. Box 45340	:	
Salt Lake City, Utah 84145-0340	:	



Lease Issued  
Bond Accepted

Pursuant to the lease by application sale held May 14, 1998, the bid of Horizon Mining, LLC for the Beaver Creek Tract, assigned serial no. UTU-74804, was determined to be the acceptable high bid. Satisfactory evidence of the qualifications and holdings of Horizon Mining, LLC has been submitted; therefore, coal lease UTU-74804 is hereby issued effective September 1, 1998.

A surety bond of \$257,000 was filed in this office August 21, 1998. The name of the surety is Frontier Insurance Company, and the surety bond no. is 125429. The bond is hereby accepted, as of the date of filing.

*Robert Lopez*  
Robert Lopez  
Group Leader,  
Minerals Adjudication Group

Enclosure  
Coal Lease UTU-74804

cc: Horizon Mining, LLC (w/encl)  
P.O. Box 599  
Helper, Utah 84526

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

Serial Number

UTU-74804

COAL LEASE

PART I. LEASE RIGHTS GRANTED

This lease, entered into by and between the UNITED STATES OF AMERICA, hereinafter called lessor, through the Bureau of Land Management, and  
(Name and Address)

Horizon Mining, LLC  
P.O. Box 599  
Helper, Utah 84526

hereinafter called lessee, is effective (date) SEP 1 1998 for a period of 20 years and for so long thereafter as coal is produced in commercial quantities from the leased lands, subject to readjustment of lease terms at the end of the 20th lease year and each 10-year period thereafter.

Sec. 1. This lease is issued pursuant and subject to the terms and provisions of the:

- Mineral Lands Leasing Act of 1920, Act of February 25, 1920, as amended, 41 Stat. 437, 30 U.S.C. 181-287, hereinafter referred to as the Act;
- Mineral Leasing Act for Acquired Lands, Act of August 7, 1947, 61 Stat. 913, 30 U.S.C. 351-359;

and to the regulations and formal orders of the Secretary of the Interior which are now or hereafter in force, when not inconsistent with the express and specific provisions herein.

Sec. 2. Lessor, in consideration of any bonuses, rents, and royalties to be paid, and the conditions and covenants to be observed as herein set forth, hereby grants and leases to lessee the exclusive right and privilege to drill for, mine, extract, remove, or otherwise process and dispose of the coal deposits in, upon, or under the following described lands:

T. 13 S., R. 8 E., 1LM, UT  
Sec. 6, SESW, S2SE, NWSE;  
Sec. 7, lots 1-3, E2, E2W2;  
Sec. 8, SWNE, NWNW, S2NW,  
N2SW, SWSW, W2SE;  
Sec. 17, N2NW, SWNE;  
Sec. 18, NENE.

UTAH STATE OFFICE  
RECEIVED  
ACQUISITION  
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DEPT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

containing 1,288.49 acres, more or less, together with the right to construct such works, buildings, plants, structures, equipment and appliances and the right to use such on-lease rights-of-way which may be necessary and convenient in the exercise of the rights and privileges granted, subject to the conditions herein provided.

PART II. TERMS AND CONDITIONS

Sec. 1. (a) RENTAL RATE - Lessee shall pay lessor rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of \$ 3.00/acre for each lease year.

(b) RENTAL CREDITS - Rental shall not be credited against either production or advance royalties for any year.

Sec. 2. (a) PRODUCTION ROYALTIES - The royalty shall be 8 percent of the value of the coal as set forth in the regulations. Royalties are due to lessor the final day of the month succeeding the calendar month in which the royalty obligation accrues.

(b) ADVANCE ROYALTIES - Upon request by the lessee, the authorized officer may accept, for a total of not more than 10 years, the payment of advance royalties in lieu of continued operation, consistent with the regulations. The advance royalty shall be based on a percent of the value of a minimum number of tons determined in the manner established by the advance royalty regulations in effect at the time the lessee requests approval to pay advance royalties in lieu of continued operation.

Sec. 3. BONDS - Lessee shall maintain in the proper office a lease bond in the amount of \$ 257,000. The authorized officer may require an increase in this amount when additional coverage is determined appropriate.

Sec. 4. DILIGENCE - This lease is subject to the conditions of diligent development and continued operation, except that these conditions are excused when operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The lessor, in the public interest, may suspend the condition of continued operation upon payment of advance royalties in accordance with the regulations in existence at the time of the suspension. Lessee's failure to produce coal in commercial quantities at the end of 10 years shall terminate the lease. Lessee shall submit an operation and reclamation plan pursuant to Section 7 of the Act not later than 3 years after lease issuance.

The lessor reserves the power to assent to or order the suspension of the terms and conditions of this lease in accordance with, inter alia, Section 39 of the Mineral Leasing Act, 30 U.S.C. 209.

Sec. 5. LOGICAL MINING UNIT (LMU) - Either upon approval by the lessor of the lessee's application or at the direction of the lessor, this lease shall become an LMU or part of an LMU, subject to the provisions set forth in the regulations.

The stipulations established in an LMU approval in effect at the time of LMU approval will supersede the relevant inconsistent terms of this lease so long as the lease remains committed to the LMU. If the LMU of which this lease is a part is dissolved, the lease shall then be subject to the lease terms which would have been applied if the lease had not been included in an LMU.

Sec. 6. DOCUMENTS, EVIDENCE AND INSPECTION - At such times and in such form as lessor may prescribe, lessee shall furnish detailed statements showing the amounts and quality of all products removed and sold from the lease, the proceeds therefrom, and the amount used for production purposes or unavoidably lost.

Lessee shall keep open at all reasonable times for the inspection of any duly authorized officer of lessor, the leased premises and all surface and underground improvements, works, machinery, ore stockpiles, equipment, and all books, accounts, maps, and records relative to operations, surveys, or investigations on or under the leased lands.

Lessee shall allow lessor access to and copying of documents reasonably necessary to verify lessee compliance with terms and conditions of the lease.

While this lease remains in effect, information obtained under this section shall be closed to inspection by the public in accordance with the Freedom of Information Act (5 U.S.C. 552).

Sec. 7. DAMAGES TO PROPERTY AND CONDUCT OF OPERATIONS - Lessee shall comply at its own expense with all reasonable orders of the Secretary, respecting diligent operations, prevention of waste, and protection of other resources.

Lessee shall not conduct exploration operations, other than casual use, without an approved exploration plan. All exploration plans prior to the commencement of mining operations within an approved mining permit area shall be submitted to the authorized officer.

Lessee shall carry on all operations in accordance with approved methods and practices as provided in the operating regulations, having due regard for the prevention of injury to life, health, or property, and prevention of waste, damage or degradation to any land, air, water, cultural, biological, visual, and other resources, including mineral deposits and formations of mineral deposits not leased hereunder, and to other land uses or users. Lessee shall take measures deemed necessary by lessor to accomplish the intent of this lease term. Such measures may include, but are not limited to, modification to proposed siting or design of facilities, timing of operations, and specification of interim and final reclamation procedures. Lessor reserves to itself the right to lease, sell, or otherwise dispose of the surface or other mineral deposits in the lands and the right to continue existing uses and to authorize future uses upon or in the leased lands, including issuing leases for mineral deposits not covered hereunder and approving easements or rights-of-way. Lessor shall condition such uses to prevent unnecessary or unreasonable interference with rights of lessee as may be consistent with concepts of multiple use and multiple mineral development.

Sec. 8. PROTECTION OF DIVERSE INTERESTS, AND EQUAL OPPORTUNITY - Lessee shall: pay when due all taxes legally assessed and levied under the laws of the State or the United States; accord all employees complete freedom of purchase; pay all wages at least twice each month in lawful money of the United States; maintain a safe working environment in accordance with standard industry practices; restrict the workday to not more than 8 hours in any one day for underground workers, except in emergencies; and take measures necessary to protect the health and safety of the public. No person under the age of 16 years shall be employed in any mine below the surface. To the extent that laws of the State in which the lands are situated are more restrictive than the provisions in this paragraph, then the State laws apply.

Lessee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor. Neither lessee nor lessee's subcontractors shall maintain segregated facilities.

Sec. 15. SPECIAL STIPULATIONS -

This coal lease is subject to termination if the lessee is determined at the time of issuance to be in noncompliance with Section 2(a)2(A) of the Mineral Leasing Act.

Sec. 9. (a) TRANSFER

- This lease may be transferred in whole or in part to any person, association or corporation qualified to hold such lease interest.
- This lease may be transferred in whole or in part to another public body or to a person who will mine the coal on behalf of, and for the use of, the public body or to a person who for the limited purpose of creating a security interest in favor of a lender agrees to be obligated to mine the coal on behalf of the public body.
- This lease may only be transferred in whole or in part to another small business qualified under 13 CFR 121.

Transfers of record title, working or royalty interest *must* be approved in accordance with the regulations.

(b) RELINQUISHMENT - The lessee may relinquish in writing at any time all rights under this lease or any portion thereof as provided in the regulations. Upon lessor's acceptance of the relinquishment, lessee shall be relieved of all future obligations under the lease or the relinquished portion thereof, whichever is applicable.

Sec. 10. DELIVERY OF PREMISES, REMOVAL OF MACHINERY, EQUIPMENT, ETC. - At such time as all portions of this lease are returned to lessor, lessee shall deliver up to lessor the land leased, underground timbering, and such other supports and structures necessary for the preservation of the mine workings on the leased premises or deposits and place all workings in condition for suspension or abandonment. Within 180 days thereof, lessee shall remove from the premises all other structures, machinery, equipment, tools, and materials that it elects to or as required by the authorized officer. Any such structures, machinery, equipment, tools, and materials remaining on the leased lands beyond 180 days, or approved extension thereof, shall become the property of the lessor, but lessee shall either remove any or all such property or shall continue to be liable for the cost of removal and disposal in the amount actually incurred by the lessor. If the surface is owned by third parties, lessor shall waive the requirement for removal, provided the third parties do not object to such waiver. Lessee shall, prior to the termination of bond liability or at any other time when required and in accordance with all applicable laws and regulations, reclaim all lands the surface of which has been disturbed, dispose of all debris or solid waste, repair the offsite and onsite damage caused by lessee's activity or activities incidental thereto, and reclaim access roads or trails.

Sec. 11. PROCEEDINGS IN CASE OF DEFAULT - If lessee fails to comply with applicable laws, existing regulations, or the terms, conditions and stipulations of this lease, and the noncompliance continues for 30 days after written notice thereof, this lease shall be subject to cancellation by the lessor only by judicial proceedings. This provision shall not be construed to prevent the exercise by lessor of any other legal and equitable remedy, including waiver of the default. Any such remedy or waiver shall not prevent later cancellation for the same default occurring at any other time.

Sec. 12. HEIRS AND SUCCESSORS-IN-INTEREST - Each obligation of this lease shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 13. INDEMNIFICATION - Lessee shall indemnify and hold harmless the United States from any and all claims arising out of the lessee's activities and operations under this lease.

Sec. 14. SPECIAL STATUTES - This lease is subject to the Clean Water Act (33 U.S.C. 1252 et. seq.), the Clean Air Act (42 U.S.C. 4274 et. seq.), and to all other applicable laws pertaining to exploration activities, mining operations and reclamation, including the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et. seq.).

# SEE ATTACHED STIPULATIONS

THE UNITED STATES OF AMERICA

Horizon Mining, LLC  
Company or Lessee Name

[Signature]  
(Signature of Lessee)

Manager  
(Title)

7-25-98  
(Date)

By

[Signature]  
(Signature)

Group Leader  
Minerals Adjudication Group

AUG 25 1998  
(Date)

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

This form does not constitute an information collection as defined by 44 U.S.C. 3502 and therefore does not require OMB approval.

## BLM STIPULATIONS

The following stipulations made part of this lease may be waived or amended with the mutual consent of the lessor and lessee.

1. In accordance with Sec. 523(b) of the "Surface Mining Control and Reclamation Act of 1977," surface mining and reclamation operations conducted on this lease are to conform with the requirements of this act and are subject to compliance with Office of Surface Mining regulations, or as applicable, a Utah program equivalent approved under cooperative agreement in accordance with Sec. 523(c). The United States Government does not warrant that the entire tract will be susceptible to mining.

2. The permitting of any mining operations on the lease will be subject to the possible designation of any portion of the lease as unsuitable for some or all kinds of surface mining under the regulations of the Department under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) in effect at the time of action on the mine plan permit.

3. Before undertaking activities that may disturb the surface of previously undisturbed leased lands, the lessee may be required to conduct a cultural resource inventory of the areas to be disturbed. These studies shall be conducted by qualified professional cultural resource specialists and a report prepared itemizing the findings. A plan will then be submitted making recommendations for the protection of, or measures to be taken to mitigate impacts for identified cultural resources.

If significant cultural resources are discovered during operations under this lease, the lessee shall immediately bring them to the attention of the authorized officer who shall evaluate or have evaluated such discoveries and, within 5 working days, shall notify the lessee what action shall be taken with respect to such discoveries.

The cost of conducting the inventory, preparing reports, and carrying out necessary protective mitigating measures shall be borne by the lessee.

4. Before undertaking activities that may disturb the surface of previously undisturbed leased lands, the lessee may be required to conduct a paleontological appraisal of the areas to be disturbed. The appraisal shall be conducted by qualified paleontologists and a report prepared itemizing the findings. A plan will then be submitted making recommendations for the protection of, or measures to be taken to mitigate impacts for identified paleontological resources.

If paleontological remains (fossils) of significant scientific interest are discovered during operations under this lease, the lessee shall immediately bring them to the attention of the authorized officer who shall evaluate or have evaluated such discoveries brought to his attention and, within 5 working days, shall notify the lessee what action shall be taken with respect to such discoveries. Paleontological remains of significant scientific interest do not include leaves, ferns, or dinosaur tracks commonly encountered during underground mining operations.

The cost of conducting the inventory, preparing reports, and carrying out necessary protective mitigating measures shall be borne by the lessee. The cost of salvage of paleontological remains (fossils) shall be borne by the United States.

5. If there is reason to believe that threatened or endangered (T&E) species of plants or animals, or migratory species of high Federal interest occur in the area, the lessee shall be required to conduct an intensive field inventory of the area to be disturbed and/or impacted. A listing of migratory birds of high Federal interest in Federal coal producing regions is published by the Fish and Wildlife Service, Migratory Bird Management Office, Washington, D.C. The inventory shall be conducted by qualified specialist and a report of findings will be prepared. A plan will be prepared making recommendations for the protection of these species or action necessary to mitigate the disturbance.

The cost of conducting the inventory, preparing reports, and carrying out necessary protective mitigating measures shall be borne by the lessee.

6. The lessee shall be required to perform a study to secure adequate baseline data to quantify the existing surface resources on and adjacent to the lease area. Existing data may be used if such data is adequate for the intended purposes. The study shall be adequate to locate, quantify, and demonstrate the inter relationship of the geology, topography, surface hydrology, vegetation, and wildlife. Baseline data will be established so that future programs of observation can be incorporated at regular intervals for comparison.

7. Powerlines on the lease area used in conjunction with the mining of coal from this lease shall be constructed so as to provide adequate protection for raptors and other large birds. When feasible, powerlines will be located at least 100 yards from public roads.

8. The lessee shall provide for the suppression and control of fugitive dust on haul roads and at coal handling and storage facilities on the lease area. The migration of road surfacing and subsurface materials into streams and water courses shall be prevented.

9. The lessee shall be required to establish a monitoring system to locate, measure, and quantify the progressive and final effects of underground mining activities on the topographic surface, underground and surface hydrology and vegetation. The monitoring system shall utilize techniques which will provide a continuing record of change over time and an analytical method for location and measurement of a number of points over the lease area. The monitoring shall incorporate and be an extension of the baseline data.

10. Except at specifically approved locations, underground mining operations shall be conducted in such a manner so as to prevent surface subsidence that would: 1) cause the creation of hazardous conditions such as potential escarpment failure and landslides, 2) cause damage to existing surface structures, or 3) damage or alter the flow of perennial streams.

11. In order to avoid surface disturbance on steep canyon slopes and to satisfy the need for surface access, all surface breakouts for ventilation tunnels shall be constructed from inside the mine, except at specifically approved locations.

12. Support facilities, structures, equipment, and similar developments will be removed from the lease area within 2 years after the final termination of use of such facilities. This provision shall apply unless the requirement of Section 10 of the lease form is applicable. Disturbed areas and those areas occupied by such facilities will be stabilized and rehabilitated, drainages reestablished, and the areas returned to a premining land use.

13. Notwithstanding the approval of a resource recovery and protection plan by the BLM, lessor reserves the right to seek damages against the operator/lessee in the event (i) the operator/lessee fails to achieve maximum economic recovery [as defined at 43 CFR §3480.0-5(21)] of the recoverable coal reserves or (ii) the operator/lessee is determined to have caused a wasting of recoverable coal reserves. Damages shall be measured on the basis of the royalty that would have been payable on the wasted or unrecovered coal.

The parties recognize that under an approved R2P2, conditions may require a modification by the operator/lessee of that plan. In the event a coal bed or portion thereof is not to be mined or is rendered unminable by the operation, the operator shall submit appropriate justification to obtain approval by the AO to leave such reserves unmined. Upon approval by the AO, such coal beds or portions thereof shall not be subject to damages as described above. Further, nothing in this section shall prevent the operator/lessee from exercising its right to relinquish all or a portion of the lease as authorized by statute and regulation.

In the event the AO determines that the R2P2 as approved will not attain MER as the result of changed conditions, the AO will give proper notice to the operator/lessee as required under applicable regulations. The AO will order a modification if necessary, identifying additional reserves to be mined in order to attain MER. Upon a final administrative or judicial ruling upholding such an ordered modification, any reserves left unmined (wasted) under that plan will be subject to damages as described in the first paragraph under this section.

Subject to the right to appeal hereinafter set forth, payment of the value of the royalty on such unmined recoverable coal reserves shall become due and payable upon determination by the AO that the coal reserves have been rendered unminable or at such time that the lessee has demonstrated an unwillingness to extract the coal.

The BLM may enforce this provision either by issuing a written decision requiring payment of the MMS demand for such royalties, or by issuing a notice of non-compliance. A decision or notice of non-compliance issued by the lessor that payment is due under this stipulation is appealable as allowed by law.

14. **WASTE CERTIFICATION:** The lessee shall provide on a yearly basis and prior to lease relinquishment, certification to the lessor that, based upon a complete search of all the operator's records for the mine and upon their knowledge of past operations, there has been no **hazardous substances** per (40 CFR 302.4) or **used oil** as per Utah State Management Rule R-315-15, deposited within the lease, either on the surface or underground, or that all remedial action necessary has been taken to protect human health and the environment with respect to any such substances remaining on the property. The back-up documentation to be provided shall be described by the lessor prior to the first certification and shall include all documentation applicable to the Emergency Planning and Community Right-to-know Act (EPCRA, Public Law 99-499), Title III of the Superfund Amendments and Reauthorization Act of 1986 or equivalent.

15. **UNDERGROUND INSPECTION:** All safe and accessible areas shall be inspected prior to being sealed. The lessee shall notify the Authorized Officer in writing 30 days prior to the sealing of any areas in the mine and state the reason for closure. Prior to seals being put in place, the lessee shall inspect the area and document any equipment/machinery, hazardous substances, and used oil that is to be left underground. The Authorized Officer may participate in this inspection. The purpose of this inspection will be: (1) to provide documentation for compliance with 42 U.S.C. 9620 section 120(h) and State Management Rule R-315-15, and to assure that certification will be meaningful at the time of lease relinquishment, (2) to document the inspection with a mine map showing location of equipment/machinery (model, type of fluid, amount remaining, batteries etc.) that is proposed to be left underground. In addition, these items will be photographed at the lessee's expense and shall be submitted to the Authorized Officer as part of the certification. The abandonment of any equipment/machinery shall be on a case by case basis and shall not be accomplished unless the Authorized Officer has granted a written approval.

FORM 2800-14  
(August 1985)

Issuing Office  
Moab District  
Price River Resource Area

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
RIGHT-OF-WAY  
SERIAL NUMBER UTU-73227

- 
1. A right-of-way is hereby granted pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).
  2. Nature of Interest:
    - a. By this instrument, the holder:

Horizon Coal Corporation  
P. O. Box 2560  
Wise, Virginia 24293

receives a right to construct, operate, maintain and terminate a coal tunnel right-of-way through the following described Federal mineral estate:

Salt Lake Meridian, Utah  
T. 13 S., R. 8 E.,  
sec. 8, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
sec. 17, W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ .
    - b. The right-of-way granted herein contains 17.5 acres, more or less.
    - c. This instrument shall terminate (20) years from its effective date unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.

- d. This instrument may be renewed. If renewed, the right-of-way or permit shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.
- e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration or prior termination of the grant.

3. Rental:

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer, unless specifically exempted from such payment by regulation. Provided, however, the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

4. Terms and Conditions:

- a. This grant or permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations, part 2800.
- b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within 90 days, or otherwise disposed of as provided in paragraph (4)(d), or as directed by the authorized officer.
- c. Each grant issued for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The stipulations, plans, maps, or designs set forth in Exhibit A and B dated JAN 22 1996, attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.
- e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant or permit shall constitute grounds for suspension or termination thereof.

- f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.
- g. Ninety (90) days prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a joint inspection of the right-of-way area. This inspection will be held to agree to an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities and equipment. The authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities.

IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant or permit.

HORIZON COAL CORPORATION BY:

Bill Gilliam

(Signature of Holder)

Penelope J. Darr

(Signature of Authorized Officer)

PRESIDENT

(Title)

Area Manager

(Title)

4/2/96

(Date)

April 23, 1996

(Effective Date of Grant)

JAN 22 1996

2890  
UTU-73227  
(UT-066)

**EXHIBIT A  
STIPULATIONS**

1. The holder shall operate, and maintain the facilities, improvements, and structures within this right-of-way in strict conformity with its mine permit plan (Utah Division of Oil Gas and Mining No. PRO/007/020). When approved this permit is made part of the grant. Any relocation, additional construction, or use that is not in accord with the approved permit shall not be initiated without the prior written approval of the authorized officer. A copy of the complete right-of-way grant, including all stipulations and approved mine plan shall be made available to the authorized officer during construction, operation, and termination of the right-of-way. Noncompliance with the above will be grounds for an immediate temporary suspension of activities if it constitutes a threat to public health and safety or the environment.
2. The holder shall contact the authorized officer at least fourteen (14) days prior to the anticipated start of underground development activities. The authorized officer shall require and schedule a premining conference with the holder prior to the holder's commencing mining activities on the right-of-way. The holder and/or his representative shall attend this conference. The holder's contractor, or agents involved with mining activities associated with the right-of-way, shall also attend this conference to review the stipulations of the grant including the mine plan.
3. The holder shall designate a representative(s) who shall have the authority to act upon and to implement instructions from the authorized officer. The holder's representative shall be available for communication with the authorized officer within a reasonable time when underground development occurs.
4. The holder shall not initiate any mining activities on the right-of-way without the prior written authorization of the authorized officer. Such authorization shall be a written notice to proceed issued by the authorized officer. Any notice to proceed shall authorize mining or use only as therein expressly stated and only for the particular location or use therein described.

5. The authorized officer may suspend or terminate in whole, or in part, any notice to proceed which has been issued when, in his judgement, unforeseen conditions arise which result in the approved terms and conditions being inadequate to protect the public health and safety or to protect the environment.
6. Any paleontological resource discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.
7. The holder shall conduct all activities associated with the operation and termination of the right-of-way within the authorized limits of the right-of-way.
8. Ninety (90) days prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a joint inspection of the right-of-way. This inspection will be held to agree to an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of mining facilities and equipment. The authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities.
9. The holder shall develop underground entries in accordance with information provided in the right-of-way application. Any modification to the proposed design must be approved by the authorized officer.
10. This instrument shall terminate upon issuance of a Federal coal lease to the holder.
11. The holder shall provide maps to the authorized officer showing development progress of the right-of-way entries. Maps shall be provided on a monthly basis for the purpose of estimating production by volumetric calculation. Scale weight for total mine production shall also be provided on a monthly basis.

12. The holder shall pay fair market value for the Federal coal removed from the right-of-way as provided in 43 CFR 3431.2 (a). The basis for the price of the coal is the estimated F.O.B. selling price of the coal removed less direct mining costs for removal of the coal. It has been estimated that 120,000 tons of coal will be removed from the right-of-way. Fair market value is determined to be \$1.20 per ton of coal or not less than 8 percent of the selling price of the coal. It is estimated that the total payment will be \$144,000.
13. The holder shall remit a check in the amount of \$36,000, determined to be 25 percent of the estimated total payment, at least ninety (90) days prior to commencement of mining. Payment shall be made to the Price River Resource Area Office, 125 South, 600 West, Price, Utah 84501. Payment for coal removed shall be made on a monthly basis.
14. A bond in the amount of \$108,000 shall be provided with this initial payment as security for the remainder of the total estimated payment. The bond may be in the form of a surety or personal bond (cash, or Treasury security).
15. The holder shall be subject to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) as well as the Coal Mine Reclamation Act of 1978 ((Utah) U.C.A. 40-10-1 *et seq.*) in the removal of all coal within the right-of-way as required in 43 CFR 3431.2 (c).