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DIVISION OF OIL, GAS AND MINING

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January 28, 1998

TO: Mine Permit File

FROM: Mary Ann Wright, Associate Director, Mining

A handwritten signature in black ink, appearing to read "Mary Ann Wright".

RE: Amended Analysis and Finding on the Dugout Canyon Road, Canyon Fuel Company, LLC, Dugout Canyon Mine, PRO/007/039, Folder #3, Carbon County, Utah

This analysis and finding supersedes the analysis and finding dated September 8, 1997.

Following is a finding and analysis of the road leading to the proposed Dugout Canyon Mine, Carbon County, Utah. This analysis and findings 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 Dugout Canyon mine permit issued by the UCRP.

Summary

The Dugout Canyon Road, leading to the site of proposed coal mining and reclamation operations in Dugout Canyon is part of the Carbon County road system as a Utah State Class "B" county road and has been since 1958. Carbon County plans to improve the Dugout Canyon Road, from its current gravel condition to an upgraded and blacktopped condition, in order to meet certain UDOT specifications and using Community Impact Board (CIB) funds. Carbon County will be responsible for the environmental issues relating to the alignment, construction and maintenance of the road. After the Dugout Canyon Mine opens, the Dugout Canyon Road will remain a public road, allowing access by multiple purpose users up to, and ending at, the proposed disturbed area boundary (mine surface facilities area). The Dugout Canyon Road up to the mine disturbed area boundary 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 road as it exists within the disturbed area will be permitted and maintained by the coal mining company (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 public portion of the Dugout 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 and information is made from existing documents (see attached Reference List) and designated in the text as follows:

- (2) Canyon Fuel Company's Permit Application Package (PAP),
- (3) letter from Carbon County Commissioner William D. Krompel to Lowell P. Braxton, UDOGM, dated April 14, 1997,
- (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:

- Canyon Fuel Company's Dugout Canyon Permit Application Package was found "Administratively Complete" on September 23, 1996, and is currently still under technical review. The PAP states that the road which will access the mine is a county road that extends from the Nine Mile Canyon road, Utah Highway #53, to the mine, which is a distance of approximately 7.5 miles. It further states that Carbon County is currently planning to upgrade this road to handle the increased traffic which is anticipated as a result of the mine operation. The county will perform the upgrade and charge the operator a toll for use of the road.(2)

- The public portion of the Dugout Canyon Road extends from Utah Highway #53 to the proposed mine disturbed area boundary at the east-west line dividing the N1/2 and S1/2 of section 23, T13S, R12E, SLB&M, approximately 1000 feet, plus or minus, east of the west section line, at which location the public portion of the road terminates and the proposed mine disturbed boundary begins. The proposed mine permit area lies primarily to the north and east of this location. Incidentally, approximately 500 feet of the county road crosses a corner of the permit area in SE1/4NE1/4SE1/4 section 22, T. 13 S., R. 12 E. prior to reaching the disturbed area boundary. (2)
- The Dugout Canyon Road has been on the Utah State Class "B" county road system since at least 1958, when UDOT began keeping records. (3)
- The road has been referred to as the Dugout Canyon Road since this time, although Carbon County plans to provide a numerical designation for the road subsequent to a future upgrade to the road.(3)
- The surface land ownership for the Dugout Canyon Road is the BLM and Canyon Fuel Co. The Dugout Canyon Road as designated is 7.95 miles long and contains 140.48 acres. BLM owns 5.76 miles (113.94 acres) and the remaining 2.19 miles (26.54 acres) is owned by Canyon Fuel Company. Carbon County owns the right-of-way for this county road from both entities. (3)
- The legal description for the Dugout Canyon Road is: "The Dugout Canyon County road is located in Carbon County, approximately six miles northeast of Wellington, Utah (See PLATE I and PLATE II). The proposed road development and expansion by Carbon County would include a new 0.8 mile section entering the Nine Mile Canyon road in S.L.B.&M., T.14 S., R. 11 E., Section 13, NE ½ SW1/4 and intersecting the existing Dugout Road in Section 13, SE 1/4 SE 1/4. From this intersection, the proposed road alignment would follow the existing road to the end of the county road. In T. 14. S., R 12 E., Section 4, NE 1/4 NE 1/4, the proposed right -of-way (ROW) would expand from 100 feet to 200 feet. This ROW width would be maintained to the end of the proposed road expansion in T. 13 S., R. 12 E., Section 23, NW 1/4 SW 1/4." (3)

Finding #1:

The road has historically existed since 1958 and earlier. Carbon County had jurisdiction over the Dugout Canyon Road prior to the implementation of the Surface

Mining Control and Reclamation Act of 1977 (SMCRA), and has maintained this jurisdiction to the present. The Dugout Canyon road right-of-way crosses a mix of federal and fee lands. The mixed land ownership that is crossed by the Dugout Canyon Road precludes the possibility of Canyon Fuel, a predecessor, or successor from deeding the right-of-way to Carbon County to avoid regulation under the UCRP. Thus, the road was properly acquired by the governmental entity and was not deeded to avoid regulation.

Analysis # 2:

- Carbon County is and will be responsible for the alignment, construction (upgrading) and maintenance of the Dugout Canyon road. (2) and (3)
- Carbon County is responsible for all environmental issues relating to the alignment, and construction (upgrading) of the Dugout Canyon road. (2) and (3)
- The maintenance for the Dugout Canyon road has been and will continue to be performed by Carbon County. The source for the funds for the Dugout Canyon road will be from a low interest loan from the Utah Community Impact Board (CIB) The maintenance will be funded from the Utah Class "B" road funds and Carbon County's general fund. Some businesses pay a toll fee to Carbon County to help repay the loans in exchange for use of the roads. Carbon County provides other examples of such roads: Carbon County Airport road, Wattis road, and Nine Mile Canyon road. (3)

Finding # 2:

Carbon County has established its jurisdiction over the alignment, maintenance, construction and environmental aspects of this road. The road is to be maintained with public funds or in exchange for taxes or fees.

Analysis # 3:

- Carbon County proposes to upgrade the Dugout Canyon Road to meet AASHTO and UDOT *1992 Standard Specifications for Road and Bridge Construction*. Carbon County will oversee the upgrade of the Dugout Canyon road. (3)

Finding #3:

Carbon County will use established professional association and state guidelines to align and blacktop the road as it does for other Class 'B' roads. Thus, the road was and will be constructed similar to other public roads of the same classification.

Analysis # 4:

- The Dugout Canyon road is a public and multiple purpose road. It is currently used by stockmen, sightseers, picnickers, hunters, loggers and has been for over half a century. (3)
- The Dugout Canyon Road is a part of the Carbon County road system, and when coal mining and reclamation operations commence, public use will not be denied to any portion of the Dugout Canyon Road leading to the mine disturbed area boundary as previously described. (2) and (3)
- 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 Dugout 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) 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 Dugout 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 Dugout 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 public portion of the Dugout 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".

Conclusion

The Dugout Canyon County Road leading from the Nine Mile Canyon road up to the Dugout Canyon Mine disturbed area boundary does not need to be included in the permitted area for the Dugout Canyon Mine, and is thus exempted from the jurisdiction of the Utah Coal Regulatory Program.

cc: Rick Olsen, Canyon Fuel Company, LLC
Ken Payne, Canyon Fuel Company, LLC
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. Canyon Fuel Company's Permit Application Package (PAP).
3. April 14, 1997 letter from Carbon County Commissioner William D. Krompel to Lowell P. Braxton, Director, Utah Division of Oil, Gas, & Mining. RE: Dugout Canyon County 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.