

NOTICE OF INTENT TO CONDUCT  
MINOR COAL EXPLORATION

UTAH STATE COAL LEASE  
ML-48435-OBA

August 2008

Ark Land Company  
A Subsidiary of Arch Coal, Inc.

File in:

Confidential

Shelf

Expandable

Refer to Record No. 0023 Date 8/18/2008

In C10070037 2008 Incoming

For additional information & Confidential

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DIV. OF OIL, GAS & MINING

**NOTICE OF INTENT TO CONDUCT  
MINOR COAL EXPLORATION**  
*Utah State Coal Lease ML-48435-OBA*

**R645-200. Coal Exploration: Introduction**

Ark Land Company (a subsidiary of Arch Coal Inc.) is submitting this Notice of Intent (NOI) to Conduct Minor Coal Exploration on behalf of Canyon Fuel Company, LLC – Dugout Canyon Mine to the Utah Division of Oil, Gas and Mining (Division) in order to obtain approval to conduct coal exploration and reclamation activities in 2008. Two holes are planned to be drilled utilizing rubber-tired drilling rigs to obtain spot cores of the coal seams and associated strata. All exploration activities will occur on private surface held by the Milton and Ardith Thayn Trust (Surface Use Agreement, Appendix A). Coal ownership is leased through the State of Utah (SITLA ML-48435-OBA). The drill sites are located within the Mining Permit Boundary of the Dugout Canyon Mine (Permit number C/007/039). This NOI follows the format of the applicable parts of Division rules (R645-200 through R645-203) regarding the exploration of coal.

Ark Land Company has provided four copies of the NOI to the Division for review and distribution to other agencies. An additional copy has been delivered to the Price Field office.

**R645-200-100. Scope (Minor Coal Exploration)**

**122. Minor Coal Exploration**

Ark Land Company intends to drill in order to verify the thickness, perceived mining conditions and quality of the Gilson Coal Seam in Utah State Coal Lease ML-48435-OBA. Less than 250 tons of coal will be removed during this drilling program. Ark Land is hereby filing a NOI to Conduct Minor Coal Exploration under the requirements of R645-201-200.

**R-645-200-200. Responsibilities**

**210. Responsibility to Comply with Regulations**

Ark Land Company, Canyon Fuel Company and Dugout Canyon Mine will comply with the requirements of R645-200 through R645-303.

**220. Responsibility of the Division to Review and Reply**

Rules and regulations state that the Division will review and reply to this NOI within 15 days of submission.

**230. Responsibility of the Division to Coordinate with Other Agencies**

Rules and regulations state that the Division will coordinate review of this NOI with the other appropriate government agencies (i.e., SITLA, BLM, OSM, etc.).

**R645-201. Coal Exploration: Requirements for Exploration Approval**

**R645-201-100. Responsibilities for Coal Exploration Plan Review**

**110. Coal Exploration Plan Review, Responsibility of the Division**

The lands upon which exploration will be conducted are state leases issued to Ark Land Company and, therefore not subject to 43 CFR Parts 3480-3487. Therefore, the exploration plan review will be the responsibility of the Division.

**120. Requirements of 43 CFR 3480-3487.**

As stated in R645-201-110 above, this requirement is not applicable.

**130. Division Responsibility to Coordinate with Other Agencies.**

This NOI will be submitted to the Division as the lead agency for review and approval.

**R645-201-200. Notices of Intention to Conduct Minor Coal Exploration.**

**210. Division Review Requirement.**

Ark Land Company is submitting a notice of intention to Conduct Minor Coal Exploration where removal of 250 tons or less of coal is planned.

**220. Required Applicant Information.**

**221. Name, Address and Telephone Number of Applicant**

Ark Land Company  
C/o Canyon Fuel Company  
Dugout Canyon Mine  
P.O. Box 1029  
Wellington, Utah 84542  
(Main Phone) 435-637-6360

The applicant is the same as the operator of the proposed exploration plan. Correspondence regarding this exploration plan should be addressed to:

Alex Papp (Contract Geologist))  
Ark Land Company  
C/o Canyon Fuel Company  
Dugout Canyon Mine  
P.O. Box 1029  
Wellington, Utah 84542  
(Office Phone) 435-613-2830

## **222. Name, Address and Telephone of Applicant's Representative**

The name, address and telephone number of the representative of the applicant who will be present during and be responsible for conducting the exploration is:

Alex Papp (Contract Geologist)  
Ark Land Company  
C/o Dugout Canyon Mine  
P.O. Box 1029  
Wellington, Utah 84542  
(Office Phone) 435-613-2830  
(Cell Phone) 303-478-4133

At times a consulting geologist may act as representative of the applicant. The Division will be notified of changes regarding the representatives in charge of the exploration drilling program.

## **223. Description of Exploration Area**

The exploration area is contained within the Dugout Canyon Mine permit boundary and is located approximately 20 miles northeast of the town of Wellington, Carbon County, Utah (Figure 1). Drilling will occur within specific portions of the State Institutional Trust Lands Administration's (SITLA) Dugout Canyon Coal Lease ML 48435-OBA (Appendix B). The legal description of the leases is as follows:

### **State Coal Lease ML 48435-OBA**

T. 13 S., R 13 E., SLB&M

Sec: 17: SW/4, SW/4SE/4;

Sec. 19: NE/4SE/4, S/2SE/4;

Sec. 20: All;

Sec. 21: SW/4NW/4, SW/4;

Sec. 28: NW/4, N/2SW/4, SW/4SW/4;

Sec. 29: All;

Sec 30: E/2, E/2W2.

Containing 2,560.00 acres, more or less.

The proposed exploration holes are located south of Pace Canyon and north of the Left Fork of Rock Canyon in Sections 29 and 30 in T. 13 S., R. 13 E. Figure 2 provides the location of exploration drill sites and access routes. Heavy Equipment access is via a county road through Clark Valley east of Wellington, herein called the Clark Valley Road. A well-maintained dirt road referred to as the Pace Canyon Road connects the Clark Valley Road to the exploration area. Existing drilling access routes will receive minor grading and localized repairs as needed. Vehicles associated with a degasification drilling program may share the roads with exploration drilling vehicles.

The elevation in the area ranges from 7,200 feet in the south along the base of the Book Cliffs to 8,700 feet in the north atop the high mesas. The terrain is rugged with relatively gently sloping mesas bounded by the steep slopes of the Book Cliffs. Relatively deep and narrow valleys bisect the highlands and drain southward away from the Book Cliffs. The major drainages in the area are Pace Creek, Rock Creek and Dugout Creek.

Rocks exposed in the exploration area belong to the Cretaceous age Blackhawk and Price River formations, and the Cretaceous-Tertiary age North Horn Formation. The rock types are predominantly sandstone, siltstone, shale, and coal. Quaternary alluvium and colluvium deposits of sand, silt, clay and boulders exist within the confines of the canyons. The major geologic features in the exploration area are the escarpments created by the various sandstone outcrops including the 200 ft thick Castlegate Sandstone, a member of the Price River formation. Some faults are present within the area of the exploration program.

**Threatened and Endangered Plant and Wildlife Species** - There are no known federally or state listed threatened and endangered plant and wildlife species within the sites planned for exploration drill holes.

There is no known groundwater or surface water flows to the Colorado or Green Rivers with potential for impact by the drilling of the exploration holes. Potential adverse affects to the four Colorado River endangered fish species would not be likely since there is no direct route to the Colorado River or Green River from the proposed drill hole locations. Per meetings with Division of Water Quality personnel during application for a UPDES permit in 2004, "there is no data supporting the premise that surface waters associated with the area of the mine operations reached the Price River or Colorado River prior to or since mining disturbance".

#### **Vegetation**

DUG-01 pad area was previously used as a drill site and the vegetation is sparse. The vegetation currently on the DUG-02 pad area is serviceberry, grasses, forbs and some sagebrush. A letter report by Mt. Nebo Scientific listing cover and the existence of Threatened and Endangered species is provided in Appendix C.

#### **Wildlife**

Drilling of DUG-01 and DUG-02 will be post-July 15, eliminating the sites from the wildlife exclusionary period.

**Raptors** - Aerial raptor nest surveys done of the area by the Utah Division of Wildlife Resource are available for review in the confidential folder of the Dugout Canyon Mine's M&RP.

**Goshawks** - A Northern Goshawk calling survey was performed for four weeks. According to the survey there was no response from a northern goshawk. A copy of this survey is located in the confidential binder.

**Bats** - No known open mine shafts, caves, adits or other man made structures that might provide habitats for bats are known to exist in the project area. The sites are open and the lack of a food source would force the bats to seek habitat and nourishment elsewhere.

**Mexican Spotted Owl** - A calling point survey was conducted in the area by EIS Environmental and Engineering Consulting. The survey report concluded that "within the project area, a thorough search did not reveal the presence of any Mexican spotted owls".

There are no known districts, sites, buildings, structures, or objects listed on, or eligible for listing on, the National Register of Historic Places within the proposed exploration area. There are no known archeological resources located in the proposed exploration area. Numerous cultural resource evaluations of previous drilling locations in the Pace Canyon and Rock Canyon areas have been completed in recent years, refer to the Confidential Folder of the Dugout Canyon M&RP. Appendix D (Confidential File) is a site-specific cultural resource evaluation for the drilling locations.

Ark Land Company will notify the Division should the unlikely event of a cultural or paleontologist resource is discovered during operations. If discovered, the operation will cease and the Division will be notified as soon as possible of the discovery.

#### **224. Period of Intended Exploration**

These holes are planned to be drilled in the Fall of 2008. Ark Land Company plans to commence operations in early September 2008 and end on or around October 31, 2008. During the first week the pump will be set, the frac/water tank will be placed and the waterline will be run. The drilling equipment will then be moved to the drill pad and the hole will be drilled. Following the completion of each of the holes the frac/water tank will be removed from the pad and then the disturbance will be reclaimed as described in Section 240.

#### **225. Method of Exploration**

The general method to be followed during drill hole exploration, reclamation, and abandonment is: 1) repair the ranch and logging roads as needed, repair of roads may include hauling gravel to fill rough areas on bedrock ledges and grading rutted areas 2) set temporary water tank, pump, and water line as needed, 3) drill and log holes, 3) reclaim the drill sites and remove the tank and pump. Water lines will remain to facilitate future exploration drill and degasification drilling. Access to the drill sites will be accomplished along an existing road and on foot. No blasting is planned.

Water will be pumped and/or hauled from Pace Creek to the drill sites (Figure 2). When necessary, water will be stored in water/frac tanks. Copies of Temporary Water Change to the Division of Water Rights are provided in Appendix E.

Core drilling typically involves one truck-mounted 2,000 ft rated core drill, one 3,000 gallon water truck, one drill pipe truck, one auxiliary air compressor, one supply trailer, four pick-up trucks, a geophysical logging truck and one covered trailer. The drilling procedure for the exploration holes will likely be rotary drilling and spot coring of selected zones. It is anticipated that casing will be set into the top of the Castlegate Sandstone.

Additional equipment potentially used for the drilling of the exploration holes follows. A supply trailer will carry drill steels, coring equipment, drilling additives, cutting and welding equipment, a dog house and other supplies. Two pick-up trucks will be used by the drillers to carry personnel, fuel, and supplies and two pickup trucks will be used by

the dirt contractor. A water truck will be used to supply water to the drilling equipment and/or the removal of water from the pit for disposal. The company representative and geological consultant will also use pick-up trucks for transportation. Support vehicles such as pickup trucks and geophysical logging truck will be parked at the drill sites or on adjacent existing roads.

The only coal removed during exploration activities will be cores. Cores will be a nominal three inches in diameter. Assuming an average thickness of 7 ft for the Rock Canyon Coal Seam and 8 ft for the Gilson Coal Seam, an estimated 78 pounds of coal will be removed. The drilling procedure will be to continuously core to total depth utilizing water, foam, polymer and/or mud as drilling medium.

The drill holes may range from a nominal 4 inches to 10 inches in diameter, depending on the drilling method. Most drilling will likely produce a 6 1/2" hole. The larger diameter will be associated with the installation of surface casing. The estimated depths of the proposed drill holes and disturbance area are as follows:

Drill Site	Location T13S, R13E	Total Depth (ft)	Pad Area Disturbance (ft)	Disturbed Area (acres)
DUG-01	NW1/4NE1/4, SEC. 30	1435'	100 X 100	0.5
DUG-02	SW1/4NE1/4, SEC. 29	1055'	100 X 100	0.5

All gasoline and diesel powered equipment will be equipped with mufflers or spark arresters. Fire suppression equipment will be available to personnel on the project site.

There are no occupied dwellings and no pipelines located in the exploration area. No trenches will be dug and no structures constructed.

The potential for water pollution will be minimized by keeping pollutants away from the drill hole and in their containers. Materials used during drilling operations will be selected to be biodegradable. All spills of polluting materials will be removed from the area and disposed of in a proper manner.

Drill pads will be constructed approximately 100 ft. X 100 ft., including a mud pit. On sites DUG-01 and DUG-02, approximately 12" of growth medium will be salvaged. Both sites are pre-disturbed and approximately 1/3 of the sites are existing roads. A qualified individual will be present at the site during construction to identify topsoil, should any be located and to direct topsoil/growth medium salvage. A one to three foot berm of subsoil will be constructed around the perimeter of the pad to ensure no runoff from the pad. The pad will be constructed such that fluids will drain toward the mud pit, which will be lined. Figure 3 shows a typical drill pad layout. Cutting, excess drill core and used drill foam/mud will be placed in the mud pits and buried at a depth greater than 3.5 feet prior to distribution of soils during reclamation. The pit liner not buried beneath the cuttings will be cut off and removed from the site for proper disposal. The liquids in the mud pit will be allowed to evaporate or will be pumped and hauled for disposal

before the site is reclaimed. Mud pits will be fenced when unattended to prevent wildlife from possible entry. The site will be free of trash and debris.

As an integral part of the exploration activities reclamation will progress as contemporaneously as practical following the exploration activities. The site will be returned to approximate original contour, pocked and gouged. An approved seed mix will be applied following gouging.

## **R645-202. Coal Exploration: Compliance Duties**

### **R645-202-100. Required Documents**

A copy of the NOI to Conduct Minor Coal Exploration including appendices will be available to personnel at the site and will be available for review by an authorized representative of the Division upon request. No road use or special permits are required for the project site.

### **R645-202-200. Performance Standards**

#### **210. Requirements of the State Program**

Ark Land Company will comply with all coal exploration requirements of the State Program, and any conditions on approval of the exploration plan

#### **220. Inspection and Enforcement**

Ark Land Company and Dugout Canyon Mine accepts the Divisions rights to inspect the exploration operations.

#### **230. Operational Standards**

##### **231. Non-Disturbance of Habitats**

Dugout Canyon will apply all methods necessary to minimize disturbances or any adverse effects to habitats of unique or unusually high value to T & E species. Refer to Section 223 for commitments and information related to threatened and endangered species.

##### **232. Road Construction and Use**

No new road construction is planned for this drilling project. The roads existing prior to starting the exploration program will not be reclaimed. Regulations cited under R645-202-232 relative to roads will be followed, when they apply to existing road.

##### **233. Topsoil Removal and Storage**

Topsoil/growth medium will be selectively removed, stored, and redistributed on areas disturbed by coal exploration activities as necessary to assure successful re-vegetation or as required by the Division. Refer to Section 225 for additional information related to topsoil removal.

#### **234. Diversion of Overland Flows**

No diversions of overland flows and ephemeral, perennial, or intermittent streams will be made in association with these two exploration drill holes. No adverse impacts to the stream channel will occur during pumping activities.

Ark Land Company has obtained the necessary permissions and water rights actions to take water for drilling from local drainages in the vicinity of the drill holes. A copy of the approved "Temporary Change Applications/Approvals" is located in Appendix E.

#### **235. Minimizing Disturbance to Hydrologic Balance**

Coal exploration will be conducted in a manner which minimizes the disturbance to the prevailing hydrologic balance in accordance with R645-301-356.300 and R645-301-763. Pads and pits will be constructed on each site and measures will be implemented to minimize the effect of run off. Contemporaneous reclamation will follow the completion of the drill holes and collection of the drill hole data.

#### **236. Acid-or Toxic Forming Materials**

Based on historical drilling results, it is not anticipated that acid- or toxic- forming materials will be encountered during exploration. Samples of in-mine floor and roof sample were taken in 2008. These analyses are located in Appendix D with the "Confidential Information". If the unlikely event occurs where unsuitable material is encountered the material will be handled and disposed of in accordance with the regulations.

#### **240. Reclamation Standards**

##### **241. Excavations**

Upon completion of drilling activities on a site, the site will be reasonably restored to its approximate original contour.

##### **242. Re-Vegetation**

The method of revegetation is intended to encourage prompt re-vegetation and recovery of a diverse, effective, and permanent vegetative cover. The seed mix is of the same seasonal variety native to the area to be disturbed. The following seed mixture will be used:

## Seed Mix

<u>SPECIES</u>	<u># pls/acre</u>	<u># pls/sq. ft.**</u>
<b>Grasses, Forbs, and Shrubs</b>		
Kentucky Bluegrass (1,390,000 seeds/lb)*	0.5	16
Mountain Brome (64,000 seeds/lb)*	2.0	3
Sandberg Bluegrass (1,100,000 seeds/lb)*	1.0	25
Bluebunch Wheatgrass (126,000 seeds/lb)*	4.0	12
Bottlebrush Squirreltail (192,000 seeds/lb)*	1.0	4
Rocky Mountain Penstemon (478,000 seeds/lb)*	2.0	22
Wyoming Big Sage (2,500,000 seeds/lb)*	<u>0.5</u>	<u>29</u>
<u>TOTAL</u>	<u>11.0</u>	<u>111</u>

\* Native Plants

\*\* Rounded nearest whole seed

When necessary a seed substitute may be made, the substitute will be native and of a similar genus. The seed mixture will be broadcasted and raked following the broadcast to assure higher probability for germination. The seed mixture and cultivation methods will assure growth capable of stabilizing the soil surface from erosion.

### 243. Reclamation of Boreholes

The exploration drill holes will be plugged in strict adherence to the requirements stipulated in the NOI. Typically the coal seams will be plugged with cement and the hole above the seam zone would be backfilled with bentonite chips/slurry to their full depth. The completion method includes pulling surface casing when possible; but when not possible, cutting it flush with the ground, and then pumping the cement/bentonite slurry through the drill pipe starting at the bottom of the hole. Plugging will then be done in stages by tripping-out of the hole 3-4 joints (60-80 ft) and pumping again. This process will be repeated to the surface. If bentonite chips are used, the chips will be dumped down the annulus of the hole in such a manner to prevent bridging in the hole and drilling water added to the hole as specified by the manufacturer. A monument marker will be placed in the top of the cement surface plug with the hole number and year. The Division will be notified prior to completion to verify the abandonment procedure if so desired.

### 244. Removal of Equipment

All equipment will be removed from the exploration site upon completion of the program.

## **R645-203. Coal Exploration: Public Availability of Information**

### **100. Public Records**

Except as provided in R645-203-200, all information submitted to the Division under R645-200 will be available for public inspection.

### **200. Confidentiality**

Ark Land Company requests that the Division not make any drilling information available for public inspection relative to coal seam thickness or quality. This information is considered crucial to Ark Land's competitive rights. Ark Land Company and Dugout Canyon Mine will retain all drill and geophysical logs. In addition, all information submitted with in the NOI which is designated "confidential" will be made unavailable for public inspection.

## **R645-301 Regulation Information and Commitments**

R645-301-358

The operator will to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and will achieve enhancement of such resources where practicable.

Dugout Canyon will minimize disturbances and adverse impacts on wildlife and their related environments as outline in Section 333 of the approved M&RP. See Chapter 7, Section 731.100 of the approved M&RP for methods to protect water sources in the area.

The sites will not be constructed or operated where they might jeopardize the existence of any endangered or threatened species. Refer to Section 322.200 and Attachments 3-1, 3-2 and 3-3 of the M&RP for additional information pertaining to threatened, endangered, and sensitive species. State or federally listed endangered or threatened species will be reported to the Division upon its discovery.

Dugout Canyon understands that there is no permission implied by these regulations for taking of bald or golden eagles, their nests, or eggs. If found eagle nests will be reported to the Division.

Dugout Canyon understands that there is no permission implied by these regulations for taking of endangered or threatened species, their nests, or eggs.

The sites contain no wetland or riparian vegetation.

No potential barriers will exist at any of the well sites, except for the perimeter fence. No ponds exist on the well sites.

R645-301-512.250

R645-301-534.100 thru 300

R645-301-542.600

Do not apply to this NOI, no roads will be constructed.

R645-301-526-200

No major utilities pass over, under, or through the exploration area. Use of roads and development of the exploration site will not disrupt or damage any utility service.

R645-301-527.100, 230, 240

The roads within the permit area that are not owned by the county (primary) are private roads and all roads are preexisting. The Pace Canyon road within the permit area is a primary road, the remainder of the roads within the permit area are ancillary roads. The existing roads will be maintained by Dugout Canyon Mine as required to permit access for environmental monitoring and subsidence surveying and in accordance with maintenance agreements with the private landowner.

If a road is damaged by a catastrophic event, the road will be repaired as soon as practical after the damage occurs.

R645-301-731.100

An approved Temporary Change of Water for water to be used in the drilling process is in place.

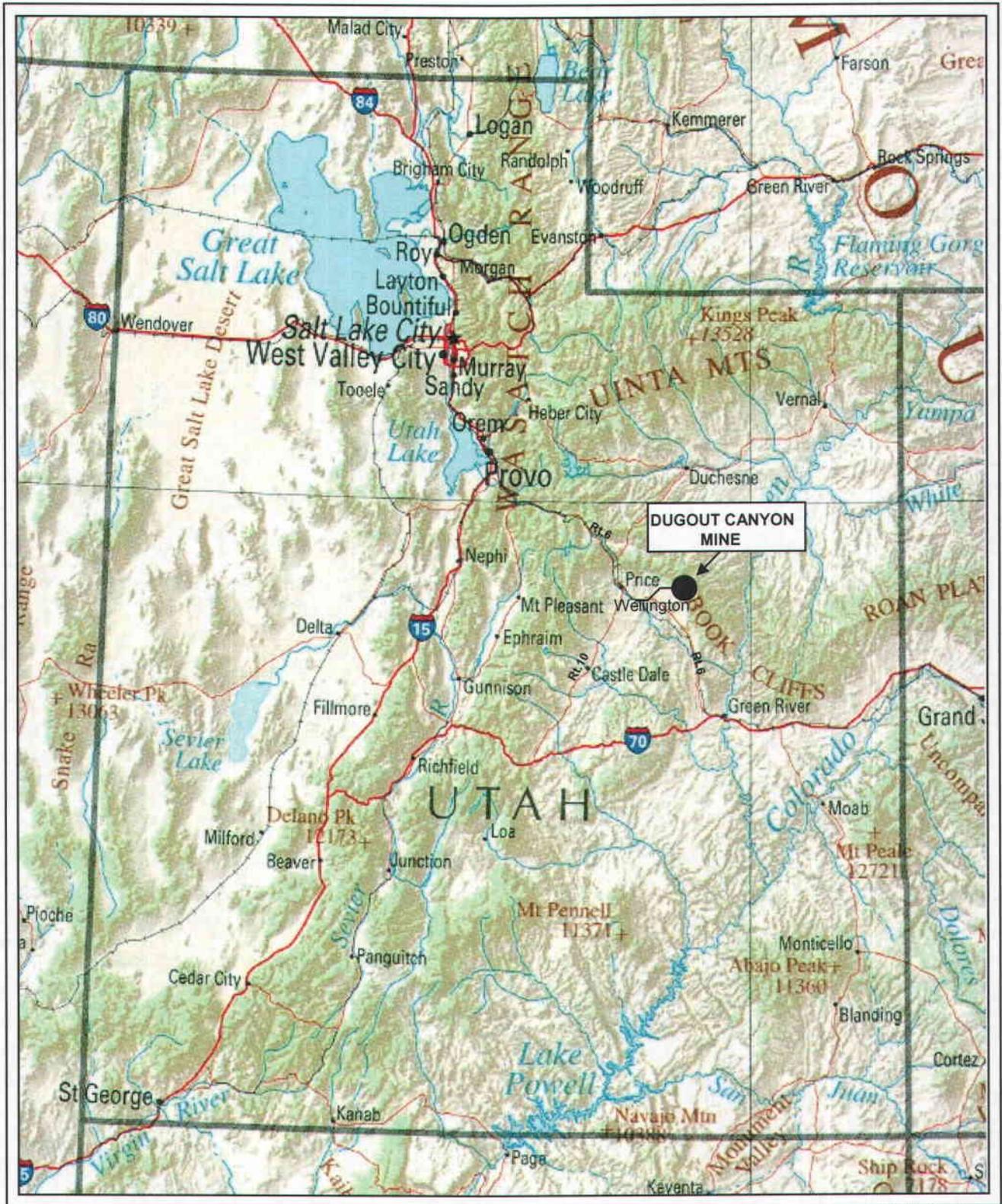
R645-301-742.410 thru 742.420

Minimal surface disturbance will be required for the drilling project. Disturbance will be limited to the drill site. No changes will occur to drainage patterns. The drill site will be setup such that the underlying pit liner will not allow water runoff to the surrounding soils. Water that collects in the pit liner will be pumped and then hauled to an approved waste water disposal site. Contributions of suspended solids will not occur.

The potential for water pollution will be minimized by keeping pollutants away from the drill hole and in their containers. Materials used during drilling operations will be selected to be as non-polluting as possible. All spills of polluting materials will be removed from the area and properly disposed of.

No mixing of surface and ground waters is possible because all drill sites will be above perennial and ephemeral stream drainages.

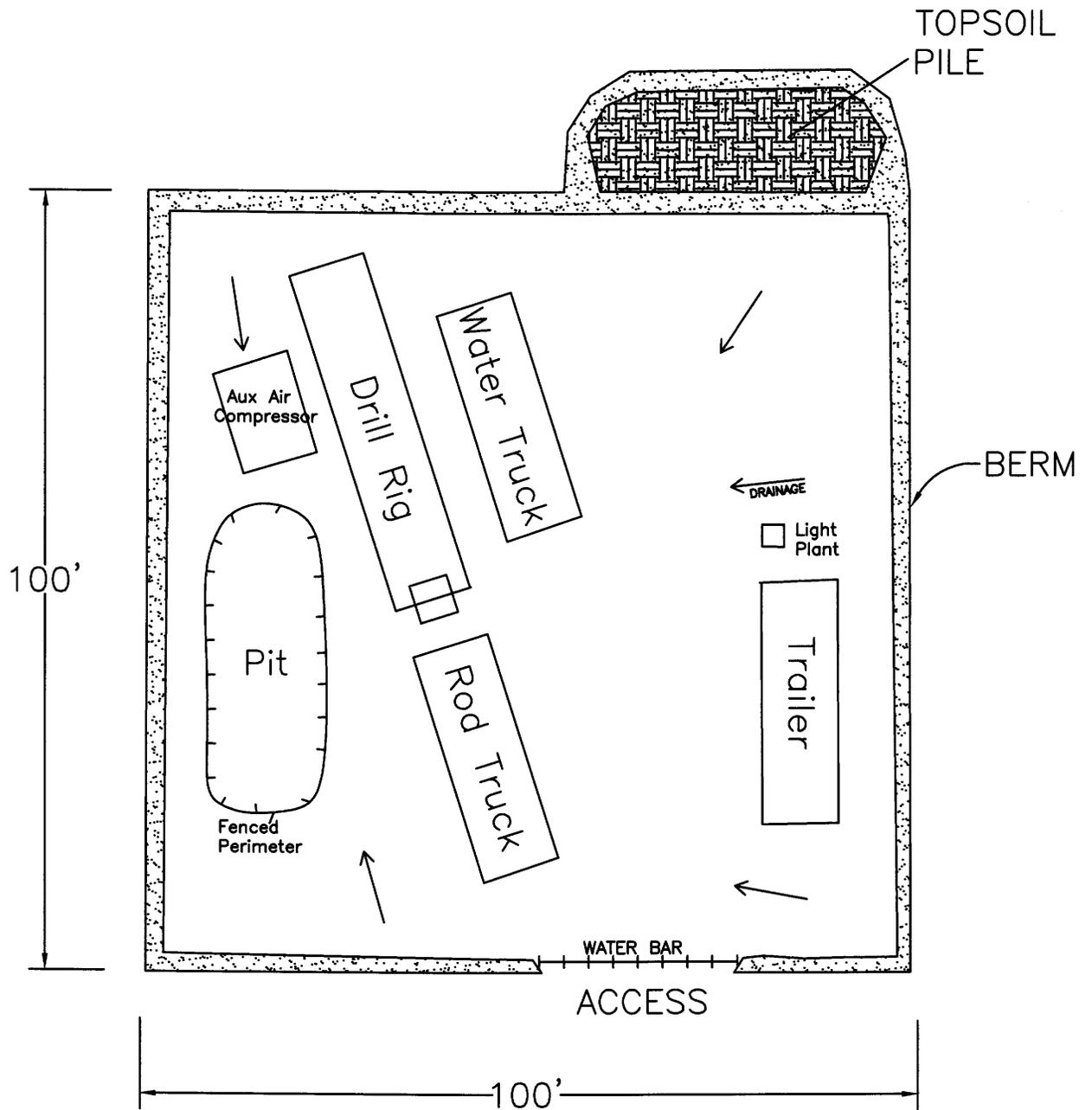
Drill fluids and/or cuttings will be contained within the mud pit. If necessary, excess fluids will be pumped out and excess drill cuttings and core will be hauled off and disposed of properly.



Not to Scale

Figure 1: Location Map of Dugout Canyon Mine





**Note:** Location of equipment, soil piles, and mudpit may vary depending on local terrain and conditions.

REVISIONS OR UP-DATES			DATE: 8/13/08	
NO.	DATE	BY	DESIGNED BY:	
1	8/13/08	AP	DRAWN BY:	JKS
			CHECKED BY:	AP
			SCALE:	NTS
FILENAME: Typical Drillpad Construction.Dwg				

**CF** Canyon Fuel Company, LLC  
Dugout Canyon Mine

**FIGURE 3**  
Typical Drill Pad Construction And Setup

P.O. BOX 1029  
WELLINGTON, UTAH 84542

DRAWING OR  
MAP NUMBER

Appendix A

Surface Use Agreement

Canyon Fuel Company, LLC  
Dugout Canyon Mine

Methane Degassification Amendment  
August 2003

**ATTACHMENT 4-2**  
**SURFACE LAND OWNER AGREEMENT**

## SURFACE USE AGREEMENT

THIS SURFACE USE AGREEMENT (this "Agreement"), dated as of November \_\_\_\_, 1999 ("Effective Date"), is by and between Canyon Fuel Company, L.L.C., ("CFC"), whose mailing address is 6955 Union Park Center, Suite 540, Midvale, Utah 84047, and Milton and Ardith Thayn Trust ("Thayn"), whose mailing address is 7730 East Hwy 6, Price, Utah 84501.

### Recitals

Thayn is the surface owner of lands located in Carbon County, Utah, which are described on Exhibit "A" attached hereto (the "Thayn Lands"). CFC is a coal mining company and owns and operates the Soldier Canyon Mine and Dugout Canyon Mine (the "Mines"). CFC holds rights under Federal coal leases and pursuant to mine permits granted or to be granted by the Utah Division of Oil, Gas and Mining (the "Mine Permits") to develop and mine underground coal. Thayn has agreed to grant to CFC the nonexclusive use by CFC of the surface of the Thayn Lands to facilitate its coal mining operations in exchange for rights and services from CFC.

### Agreement

IN CONSIDERATION of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grants and Services to Thayn.
  - (a) CFC shall lease to Thayn for farming and grazing the following lands and grazing and water rights described in Exhibit "B" attached hereto : (1) lands owned by CFC located in the Clark Valley (the "Clark Valley Lease Lands"); (2) water rights owned by CFC appurtenant to the Clark Valley Lease Lands (the "Clark Valley Water Rights"); (3) state and federal grazing rights held by CFC related to the Clark Valley Lease Lands (the "Grazing Rights"); and (4) water rights represented by 50 shares of water stock in the Wellington Canal Company owned by CFC (the "Water Shares"). The Clark Valley Lease Lands, the Clark Valley Water Rights, the Grazing Rights and the Water Shares shall all be leased to Thayn under the "Lease Agreement" attached hereto as Exhibit "C."

- (b) CFC hereby grants to Thayn, for the term of this Agreement and for so long thereafter as agreed in writing by the parties, the non-exclusive, limited use of the Dugout Canyon unimproved road lying north of the Dugout Canyon Mine as may be reasonable and necessary for Thayn's cattle ranching activities, provided that such use shall (i) not interfere with the regular activities of the Mines; (ii) comply with all CFC and applicable federal, state and local rules and regulations imposed on the use of the road; and (iii) not include use of the road by any third party including hunters, tourists or sight-seers.
- (c) Upon written notice to CFC, Thayn may request that CFC monitor the flow of springs, streams and seeps located on the Thayn Lands that Thayn reasonably believes may be impacted by CFC's underground mining operations. Upon receiving the written request, CFC shall meet with Thayn to discuss the monitoring sites and to reach a mutually acceptable schedule for such monitoring, provided that CFC shall only be required to monitor such sites for flow. Nothing in this Agreement shall modify CFC's water monitoring program as required by the Mine Permits.
- (d) Thayn shall have the non-exclusive right to submit bids as an independent contractor for earth-moving projects conducted on the Thayn Lands that CFC elects, in its sole discretion, to contract to a third party. Thayn shall have a preference for selection as the contractor for the project provided that Thayn can demonstrate to the reasonable satisfaction of CFC that (i) Thayn owns or has right to use the necessary equipment for the project, (ii) Thayn carries insurance coverage required by CFC's risk management procedures for the project, (iii) Thayn has the necessary licenses and permits to conduct the project, and (iv) Thayn's proposed bid is competitive with other bids solicited by CFC for the project. Notwithstanding the foregoing, nothing in this Agreement shall be construed to require CFC to use a third party contractor for any project on the Thayn Lands or to conduct a bid process to select a third party contractor for work conducted on the Thayn Lands or on behalf of Thayn.

2. Surface Use Grants to CFC. CFC shall have and is hereby granted an easement on, over, and through, and a right to use, the surface of the Thayn

Lands as may be necessary and appropriate for the following purposes in connection with mining coal by underground mining methods: (a) conduct subsidence and soil and water sampling, and carry out raptor, wildlife and other environmental studies; (b) conduct exploration drilling and analyses of subsurface conditions by all reasonable means; (c) place or install minor mechanical instruments such as geophones, geo-seismic lines and the like to monitor underground, mine-related activities and results; (d) drill production holes, place and relocate pipelines, and place surface facilities to develop, vent or remove coalbed methane gas, provided such use shall not interfere with regular activities of Thayn's ranching and hunting, and further provided, CFC shall coordinate such activities with Thayn to minimize disruption to Thayn's ranching and hunting activities; and (e) exclusively subside the surface of the Thayn Lands. Except as provided in Sections 3 and 5, CFC shall have no obligation to pay to Thayn any compensation for use of the Thayn Lands.

3. Compensation for Surface Facilities.

- (a) In the event CFC is required to place temporary or semi-permanent structures on the Thayn Lands (such as methane venting, exhausting equipment, methane drainage pump stations, pipelines and utilities) in connection with exercising its rights hereunder, CFC shall reasonably compensate Thayn for the use of the Thayn Lands for such structures at rates comparable to other operations in the area. (By way of example, coalbed methane venting and degasification wells are currently compensated at rates in the range of \$2,000 to \$3,500 per year until the well is plugged and reclaimed.) The parties shall use their best good faith efforts to negotiate compensation for any permanent structure placed on the Thayn Lands.
- (b) CFC shall pay Thayn \$2,000 for each exploration drill hole placed on the Thayn Lands. Thayn acknowledges that \$2,000 represents fair and reasonable compensation for each such drill hole, provided, however, if any such exploration drill hole is subsequently used for coalbed methane venting, Thayn shall be entitled to additional compensation in accordance with the provisions of Section 3(a).

4. Care of Thayn Lands.

- (a) CFC shall use and maintain the Thayn Lands in a careful, safe, and lawful manner and shall conduct its operations in compliance with all applicable federal, state and local laws, rules and regulations. CFC shall only use the Thayn Lands for the purposes set forth herein and shall not permit the use or occupancy of the Thayn Lands by any person other than CFC, its employees, agents and contractors.
- (b) CFC shall provide Thayn with written notice prior to undertaking any activities on the Thayn Lands. Thayn's concurrence shall be obtained regarding the location of any proposed material surface disturbance, including but not limited to drilling exploration boreholes. Thayn's permission shall not be unreasonably withheld.
- (c) CFC shall give special siting consideration to potential borehole locations near springs and seeps on the Thayn Lands.
- (d) CFC shall repair or replace any improvements upon the Thayn Lands damaged by CFC's operations. CFC shall reclaim all surface areas disturbed as a result of CFC's operations and shall implement a noxious weed control program for all such disturbed areas for a period of not less than four years from the date of reclamation reseedling.
- (e) All drilling or other similar activities and all CFC-related facilities, such as "mud pits," that could result in injury or death to livestock shall be fenced or otherwise isolated to protect livestock. CFC shall repair or reclaim to the extent technologically and economically feasible subsidence damage to the Thayn Lands that could be harmful to livestock.
- (f) CFC shall maintain insurance coverage for its activities conducted on the Thayn Lands consistent with coverages customary for the coal industry and in compliance with all applicable regulatory requirements and shall provide Thayn with a copy of all insurance certificates naming Thayn as an additional insured against CFC's operations conducted pursuant to this Agreement.
- (g) As required by and in conformance with applicable law, CFC shall replace any water supply owned and beneficially used by Thayn for

domestic, agricultural, or other legitimate use from an underground or surface source where the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from CFC's mining operations.

5. Term.

- (a) This Agreement shall be for a term of years beginning on the Effective Date and continuing for a period for the life of the Mines plus two (2) years, but in no event longer than twenty (20) years. For purposes of this Agreement, the life of the Mines shall end upon permanent closure of the Mines and cessation of all operations for the production and sale of coal from the Mines.
- (b) CFC shall have no obligation to make any rental or other payment to maintain this Agreement in full force and effect. The parties acknowledge and agree that the Lease Agreement shall constitute full and fair consideration for this Agreement. In the event the Lease Agreement terminates or expires as provided therein prior to a date twenty (20) years from the Effective Date, CFC shall pay to Thayn the sum of \$5,000 annually on the anniversary date for the remaining term of this Agreement in lieu of the rights granted under the Lease Agreement ("Rental Payment").
- (c) The monetary payment terms set forth in Sections 3 and 5(b) of this Agreement ("Payment Terms") shall be adjusted for inflation on the seventh (7<sup>th</sup>) and fourteenth (14<sup>th</sup>) annual anniversaries after the Effective Date based on the cumulative changes in the Consumer Price Index (CPI), or other generally-recognized economic pricing index, for the preceding seven-year period. The proposed adjustments shall be calculated by CFC and communicated to Thayn in writing within thirty (30) days after the seventh and fourteenth anniversaries. All adjustments to Payment Terms shall be effective as of the seventh and fourteenth anniversary dates and shall otherwise apply prospectively and shall not apply to payments previously made under this Agreement. All other claims for adjustment of non-monetary terms of this Agreement, including allegations of non-compliance with any express term, shall be subject to the provisions of Section 7.

- (d) Nothing in this Section 5 shall, nor shall it be interpreted to, amend, modify or waive any term or provision of Section 2 that grants rights to CFC to the Thayn Lands. Thayn shall have no right to claim a default of or to terminate this Agreement based on the Payment Terms readjustment provisions of this Section 5.
6. Title. Thayn warrants generally the title to the surface of the Thayn Lands and represents that Thayn has all necessary right and authority to grant to CFC the property rights and privileges conveyed hereunder.
7. Breach of Obligations. If either party believes that the other party has not complied with any express term, obligation or covenant of this Agreement, then in such event such party shall notify the other party in writing setting out specifically the details regarding the alleged breach or default. The party in default shall have thirty (30) days after receipt of the notice within which to cure or commence to cure all or any part of the breach or default alleged by the other party. If the defaulting party fails to cure or commence to cure the alleged default or breach as required, then the non-defaulting party shall have the option, but not the obligation, to submit the matter to binding arbitration as provided in this Agreement.
8. Arbitration. Disputes arising under this Agreement between the parties based upon any alleged breach of any of the obligations hereunder, which the parties are unable to resolve, shall be finally settled in accordance with the provisions of the Utah Arbitration Act by a single arbitrator. The arbitrator shall have broad power to grant relief for any dispute submitted pursuant to this Section 8, including without limitation termination of this Agreement. The arbitration proceedings shall be conducted in Price, Utah. CFC shall be responsible for all costs incurred in arbitration, including all fees and expenses of the arbitrator. Either party may enforce any arbitration award by instituting an action in the appropriate state or federal district court.
9. Indemnification. CFC shall indemnify, defend and hold harmless Thayn from and against all claims, costs, losses and expenses of any and every kind or character (including without limitation, mechanic liens and additional taxes) that are caused by or arise out of CFC's operations conducted on the Thayn Lands pursuant to this Agreement, provided that Thayn shall not be indemnified for matters expressly covered by this

Agreement, including without limitation the grant to CFC to subside the surface as a result of its underground mining operations.

10. Assignment. CFC's rights under this Agreement may not be assigned or sublet without the prior written consent of Thayn, which consent shall not be unreasonably withheld, provided that CFC may assign or sublease its interest hereunder without consent if such assignment or sublease is to an affiliate, parent or subsidiary of CFC, or to a party which acquires all or substantially all of the assets of CFC or the Mines.
11. Notices. All notices shall be in writing and addressed as follows:

If to Canyon Fuel Company:

President  
Ark Land Company  
CityPlace One  
Suite 300  
St. Louis, MO 63141-7056  
(314) 994-2700

With a copy to:

Canyon Fuel Company, L.L.C.  
Soldier Canyon Mine  
P.O. Box 1029  
Wellington, UT 84542  
Attn: David G. Spillman  
(435) 636-2872

If to Thayn:

Milton and Ardith Thayn Trust  
7730 East Hwy 6  
Price, UT 84501  
Attn: David Thayn  
(435) 472-4251

Notices are sufficient if delivered by hand, sent by facsimile transmission or deposited in the United States mail, postage prepaid and addressed to the appropriate addresses.

12. CFC Permits. Thayn expressly agrees to not oppose CFC's application for or issuance of the Mine Permits or for such other permits or approvals necessary or required to conduct coal mining operations at the Mines that may relate to or involve the Thayn Lands. In the event that CFC's Mine Permits are materially revised to require access or use of the Thayn Lands not granted by this Agreement, the parties shall use their respective best good faith efforts to negotiate such required access or use.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CANYON FUEL COMPANY L.L.C.

By James E. Hoyle  
Its VP & Treasurer

Milton and Ardith Thayn Trust

By Milton Thayn  
Its Trustee

Missouri  
STATE OF UTAH )  
City ) SS:  
COUNTY OF St. Louis

The foregoing instrument was acknowledged before me this 17 day of November, by James E. Hoyle who being by me duly sworn did say that he is the VP & Treasurer of Canyon Fuel Company, L.L.C.,

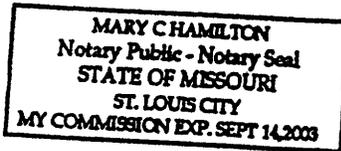
and that the foregoing Surface Use Agreement was signed on behalf of said limited liability company.

NOTARY PUBLIC

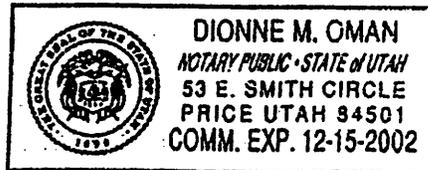
Mary C. Hamilton  
Residing at: City of St. Louis

My Commission Expires:

9-14-2003



STATE OF UTAH )  
 )ss:  
COUNTY OF CARBON )



The foregoing instrument was acknowledged before me this 15 day of NOVEMBER, by Milton Thayne, the signer of the foregoing Surface Use Agreement, who duly acknowledged to me that he executed the same as Trustee of and for the benefit of the Milton and Ardith Thayne Trust.

NOTARY PUBLIC

Dionne M. Oman  
Residing at: Price, UT

My Commission Expires:

12-15-2002

**EXHIBIT "A"**  
to  
**Surface Use Agreement**

**Thayn Lands**

**T13S, R12 E, Salt Lake Meridian, Utah**

Sec. 12: E/2 SE/4;  
Sec. 13: E/2; SE/4 NW/4; E2 SW/4; NW/4 SW/4;  
Sec. 24: All;  
Sec. 25: NW/4.

**T13S, R13 E, Salt Lake Meridian, Utah**

Sec. 7: S/2SW/4, NW/4SW/4;  
Sec. 18: S/2, NW/4, S/2NE/4, NW/4NE/4;  
Sec. 17: SW/4, S/2SE/4, NW/4SE/4;  
Sec. 19: All Except Lot 4;  
Sec. 20: All;  
Sec. 21: S/2, S/2N/2, NW/4NW/4;  
Sec. 22: SW/4, S/2NW/4;  
Sec. 27: W/2;  
Sec. 28: All;  
Sec. 29: All;  
Sec. 30: All Except Lots 1 and 2;  
Sec. 33: N/2N/2, S/2SW/4.

**EXHIBIT "B"**  
to  
**Surface Use Agreement**

**CLARK VALLEY LEASE LANDS**

(approximately 4,461 acres):

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Description</u>
14 South	12 East	3	S½SE¼; S½SW¼
"	"	5	S½SE¼
"	"	8	NE¼NE¼; W½NE¼; SW¼; E½NW¼
"	"	9	SE¼
"	"	10	E½; SW¼; E½NW¼; SW¼NW¼
"	"	11	SE¼; NE¼; E½SE¼; SW¼SE¼; W½
"	"	13	W½; SW¼; S½NW¼; NE¼SW¼
"	"	14	All
"	"	15	E½; SW¼; E½NW¼
"	"	17	NW¼; SE¼; E½SW¼; NW¼SW¼
"	"	18	E½NE¼
"	"	20	N½NE¼
"	"	21	NE¼NW¼; W½NW¼; SE¼NE¼
"	"	22	NW¼

**CLARK VALLEY WATER RIGHTS**

**Water Right No.  
(Irrigation &  
Stockwatering)**

91-23  
91-85  
91-86  
91-409

**Water Right No.  
(Stockwatering)**

91-410 91-447  
91-411 91-448  
91-412 91-449  
91-413 91-450

**Exhibit B  
to Surface Use Agreement**

<u>Water Right No. (Irrigation &amp; Stockwatering)</u>	<u>Water Right No. (Stockwatering)</u>
91-457	91-414 91-451
91-491	91-415 91-452
91-492	91-416 91-453
91-493	91-417 91-456
91-494	91-418 91-458
91-495	91-419 91-459
91-604	91-420 91-460
91-605	91-421 91-461
91-606	91-422 91-465
91-607	91-426 91-466
	91-427 91-467
	91-428 91-468
	91-429 91-469
	91-430 91-470
	91-443 91-591
	91-444 91-3729
	91-445 91-3730
	91-446

**GRAZING RIGHTS**

BLM Grazing Allotment #4079 (North Clark Valley) Approx. (Acreage 9,480)  
Period of Use - March 20<sup>th</sup>-June 5<sup>th</sup>

State Grazing Permit #21722 (Approx. Acreage 680)

**WATER SHARES**

50 Shares of water stock in The Wellington Canal Company from Certificate No. 881

**EXHIBIT "C"**  
to  
**Surface Use Agreement**

**LEASE AGREEMENT**

THIS LEASE AGREEMENT (this "Lease") is made and entered into as of November \_\_\_\_\_, 1999 ("Effective Date"), by and between CANYON FUEL COMPANY, L.L.C. ("Lessor"), and MILTON AND ARDITH THAYN TRUST ("Lessee").

Recitals

- A. Lessor is the owner of certain lands and water and grazing rights located in Carbon County, Utah, and more particularly described in Exhibit "A" attached hereto: (1) lands located in Clark Valley ("Clark Valley Lease Lands"); (2) water rights appurtenant to the Clark Valley Lease Lands ("Clark Valley Water Rights"); (3) state and federal grazing rights related to the Clark Valley Lease Lands ("Grazing Rights"); and (4) water rights represented by 50 shares of water stock in the Wellington Canal Company ("Water Shares"). The Clark Valley Lease Lands, the Clark Valley Water Rights, the Grazing Rights and the Water Shares are collectively referred to as the "Lease Interests."
- B. The parties have entered into that certain Surface Use Agreement dated \_\_\_\_\_ ("Surface Use Agreement") whereby Lessee grants to Lessor rights to use the surface of Lessee's lands to facilitate Lessor's coal mining operations in exchange for this Lease, Lessee desires to lease from Lessor and Lessor and other consideration.

Agreement

NOW, THEREFORE, in consideration of the mutual promises and obligations herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor hereby leases to Lessee the Lease Interests subject to and conditioned upon the following agreement between the parties:

ARTICLE I  
AGREEMENT FOR WATER RIGHTS

1.1 Lessor's Right to Use Clark Valley Water Rights and Water Shares. Lessee shall have the right to use part or all of the Clark Valley Water Rights and the water represented by the Water Shares (collectively, the "Leased Water Rights") for the sole purposes of irrigation or stock watering on or for the benefit of the Clark Valley Lease Lands, or such additional uses

expressly allocated to the Leased Water Rights, upon the condition that Lessee notifies Lessor of its intention to use the Leased Water Rights at least one (1) month prior to the date of use by Lessee. Notwithstanding Lessee's exercise of its right granted hereunder, Lessee shall make beneficial use of the Leased Water Rights during the term of this Lease and shall take all necessary and reasonable actions so as to preserve the validity of the Leased Water Rights and prevent any reversion back to the State of Utah. Lessee's promise to make beneficial use of the Leased Water Rights provides an essential portion of the consideration given by Lessee to cause Lessor to enter into this Lease.

1.2 Interest in Clark Valley Water Rights. Lessor and Lessee expressly acknowledge that the interest of Lessee in the Leased Water Rights is that of a tenant, that Lessee shall acquire no ownership interest in the Leased Water Rights, and that Lessee shall have no right, title, or interest in the Leased Water Rights from and after the termination of this Lease. Lessee shall not in any way, intentionally or otherwise, directly or indirectly, take or encourage others to take any action which is inconsistent with or which will or may jeopardize the interests of Lessor in the Leased Water Rights.

1.3 Change of Diversion or Use. Without the prior written consent of Lessor, Lessee shall not file any change application or exchange application with the Utah State Engineer for purposes of changing the nature, point of diversion or use of the Leased Water Rights.

1.4 Voting Rights. Lessee shall have no right to vote the Water Shares and nothing contained in this Lease shall, nor shall it be interpreted to, grant to Lessee any rights to participate in meeting of the Wellington Canal Company or to act for or on behalf of Lessor as the record title owner of the Shares.

## ARTICLE II AGREEMENT FOR GRAZING RIGHTS

2.1 Conditions. Lessor shall have the right to use the Grazing Rights shall be subject to the following conditions:

- (a) Lessee shall comply with all applicable statutes and regulations and the terms and conditions of the Grazing Rights and shall perform all other duties or tasks necessary to preserve the Grazing Rights in good standing and prevent any cancellation or other loss of the Grazing Rights. Lessee shall preserve and protect the interest of the Lessor therein and shall not take any action which is inconsistent with or will jeopardize the interest of Lessor in the Grazing Rights. Lessee shall promptly provide Lessor with a copy of any notice of violation, cancellation, inquiry or rental requirement received by Lessee relating to the Grazing Rights and shall undertake all necessary and reasonable actions to

remedy, cure or otherwise remove the basis for the notice. Lessee shall fully cooperate with Lessor to perform such actions as are necessary and advisable to preserve in full force and effect the Grazing Rights.

- (b) Lessor shall remain responsible for and shall pay directly to the BLM and/or State, as appropriate, all fees, rents, costs, or other charges required by statute, regulation, or agreement to keep the Grazing Rights in good standing.
- (c) Lessee hereby expressly waives any right or claim that it may have pursuant to 43 C.F.R. Part 4100 as now enacted or as hereinafter amended to receive compensation for any interests lessee may have in authorized range improvements on the Grazing Rights; and Lessee expressly acknowledges that the mutual promises and obligations of Lessor as specified in this Lease shall be deemed to be adequate compensation for any interests that Lessee may have in authorized range improvements on the Grazing Rights.
- (d) The general terms and conditions of this Lease shall apply to Lessee's right to use the Grazing Rights and the lands governed thereby as though included within the Clark Valley Lease Lands. Any breach or failure by Lessee to satisfy the covenants or conditions relative to the Grazing Rights shall constitute a breach of this Lease.

2.2 Lessee's Cattle. At all times during the term of this Lease, Lessee shall own a minimum of forty percent (40%) of the cattle actively grazing on or using the Clark Valley Lease Lands. Lessee shall not permit grazing of third party livestock on the Clark Valley Lease Lands that would result in a breach of this provision.

### ARTICLE III GENERAL TERMS AND CONDITIONS

3.1 Term. The term of this Lease shall commence upon the Effective Date and continue for a primary term five (5) years or the equivalent of sixty (60) calendar months. Lessee at its option shall have the right to renew this Lease for three (3) additional extended terms of five (5) years each by giving Lessor written notice of Lessee's election to renew 60-days prior to the termination of the then effective term. Unless otherwise terminated, this Lease shall terminate at the end of the last extended term which termination in no event shall occur later than 20 years after the Effective Date.

3.2 Consideration.

- (a) Lessee shall have no obligation to pay any rental to maintain this Lease in full force and effect for the term hereof, the consideration for this Lease being represented by the covenants and obligations set forth in the Surface Use Agreement.
- (b) In the event that this Lease is terminated or expires prior to a date twenty (20) years from the Effective Date, Lessor shall pay to Lessee as continuing consideration for the Surface Use Agreement the sum of \$5,000 annually ("Rental Payment") in lieu of this Agreement, payable on the anniversary date of the Effective Date each year for twenty (20) years from the Effective Date, or until the Surface Use Agreement terminates as provided therein.

3.3 Use and Occupancy by Lessee. Lessee shall use the Clark Valley Lease Lands, Leased Water Rights the Grazing Rights and the water attributable to the Water Shares exclusively for the grazing of cattle and for the raising of forage for the feeding of livestock. Lessee shall not authorize or conduct mining, drilling operations or hunting on the Clark Valley Lease Lands or remove sand, gravel, dirt, minerals, water, or associated substances from the Clark Valley Lease Lands; shall not commit any waste upon the Clark Valley Lease Lands; and shall not conduct or allow any business, activity, or thing on the Clark Valley Lease Lands which is or becomes unlawful, prohibited, or a nuisance, or which may cause damage to lessor, to occupants of the vicinity, or to other third parties. Lessee shall comply with and abide by all laws, ordinances, and regulations of all municipal, county, state and Federal authorities which are now in force or which may hereinafter become effective with respect to the use and occupancy of the Clark Valley Lease Lands, the Leased Water Rights and the Grazing Rights. Lessee shall conduct operations of the Clark Valley Lease Lands in accordance with good grazing and range or husbandry practices with reference to practices of others in the geographic vicinity of the Clark Valley Lease Lands and in compliance with applicable law. Lessee shall not overgraze the Clark Valley Lease Lands. Lessee shall ensure that all main entrance gates are kept locked with locks provided by Lessor.

3.4 Use by Lessor. Use of the Clark Valley Lease Lands by Lessee shall be nonexclusive. Lessor shall be entitled, without compensation to Lessee, to use the Clark Valley Lease Lands or grant other parties the right to use the Clark Valley Lease Lands, including but not limited to rights for easements, licenses, and leases, but Lessor shall not grant rights for grazing or agricultural use of the Clark Valley Lease Lands to third parties or make use of the Clark Valley Lease Lands itself for such purposes. However, Lessor shall reimburse Lessee for any damages done to Lessee's crops as a result of the use of the Clark Valley Lease Lands by Lessor.

3.5 Improvements. Lessee shall not construct any permanent building on the Clark Valley Lease Lands and shall not construct any temporary building or advertising sign on the Clark Valley Lease Lands without the prior written consent of Lessor. Lessee shall provide

and/or pay for the labor, material, and equipment for any fences, gates, cattle guards, ditches, ponds, reservoirs, or other improvements for Lessee to make use of the Clark Valley Lease Lands, the Grazing Rights, or to make beneficial use of the Leased Water Rights. Unless otherwise agreed in writing, any improvements which Lessee shall make to the Clark Valley Lease Lands shall be made at no expense to Lessor and shall not be removed and shall remain on the Clark Valley Lease Lands upon the termination of this Lease unless otherwise directed by Lessor. Lessee may use whatever fences, gates, cattle guards, ditches, ponds, reservoirs, and other improvements which now exist on the Clark Valley Lease Lands.

**3.6 Representation of Lessee.** Lessee represents as follows:

- (a) Lessee is experienced in farming methods, farm equipment, and irrigation methods generally used in Carbon County Lessee shall cultivate grazing pastures and make beneficial use of the Clark Valley Water Rights and otherwise exercise Lessee's rights and privileges under this Lease.
- (b) Lessee has sufficient farming and construction equipment available for its use and shall continue to have such equipment available for its use during the term of this Lease for the construction and maintenance of ditches, roads, ponds, fences, and the performance of other tasks which may be needed to satisfy Lessee's obligations under this Lease.
- (c) Lessee has knowledge of the requirements necessary to preserve the Leased Water Rights in good standing and prevent any loss of nonuse or other reversion back to the State of Utah.

**3.7 Right of Entry.** At any time throughout the term of the Lease, Lessor shall have the right to enter upon the Clark Valley Lease Lands or any portion thereof for purposes of inspecting the same, determining whether Lessee is performing its obligations under the Lease, including but not limited to the obligation to make beneficial use of the Leased Water Rights, taking any action necessary or desirable to remedy any default by lessee in any of Lessee's obligations hereunder, showing or exhibiting the Clark Valley Lease Lands to existing or prospective mortgage lenders, purchasers, or lessees, placing "for sale" or "for lease" signs on the Clark Valley Lease Lands, performing environmental or analytical studies, or for any other purpose whatsoever.

**3.8 Insurance.** At all times during the term hereof, Lessee shall secure and maintain public liability insurance providing coverage against damage to persons or property resulting from acts or omissions of Lessor or Lessee respecting the Clark Valley Lease Lands, with limits of liability in such amounts as lessor may determine. All insurance required or permitted hereunder shall be written by reputable, responsible companies licensed in the State of Utah and shall name Lessor as insured. Lessor shall be furnished with copies of the insurance policies then

in force pursuant to this section, together with evidence that the premiums therefor have been paid.

3.9 Taxes. Throughout the term hereof Lessor shall pay all real property taxes, assessments, and special assessments, (all of which are hereinafter collectively referred to as "Taxes"), which are levied against or which apply with respect to the Clark Valley Lease Lands, the Grazing Rights or the Water Rights. Lessee shall pay all taxes, assessments, charges and fees which during the term hereof may be imposed, assessed, or levied by any governmental or public authority against or upon Lessee's use of the Clark Valley Lease Lands or any personal property, equipment, or fixtures kept or installed therein by Lessee.

3.10 Assignment and Subletting.

- (a) Lessee shall have the right to assign or sublet a portion of this Lease with the prior written consent of Lessor, which consent shall not be unreasonably withheld, provided, however, that such assignment or sublease shall expressly provide and require that Lessee own and maintain a minimum of forty percent (40%) of the cattle actively grazing on or using the Clark Valley Lease Lands (as required under Section 2.2 of this Agreement) and that such assignment or sublease shall automatically terminate if at any time Lessee breaches the covenant under Section 2.2. In the event of any such assignment or sublease with the consent of the Lessor, Lessee shall remain liable on all of its covenants and obligations hereunder unless the instrument whereby Lessor consents to the assignment or subletting contains a provision in which Lessor specifically releases Lessee from such further liability. Any purported assignment without the written consent of the Lessor shall constitute a default hereunder and shall be void and of no effect.
- (b) Lessor shall have the right to assign its interests under this Lease without the consent of Lessee. In the event Lessor assigns such interests, Lessor shall, from and after the Effective Date (irrespective of when the assignment occurs), be relieved of any and all liability or obligation to Lessee hereunder, and all such liability and obligation shall, as of the time of such assignment or on the Effective Date, whichever is later, automatically pass to Lessor's assignee, whether or not specifically assumed by it.

3.11. Default and Remedies. In the event Lessee breaches or fails to perform any of its obligations hereunder and Lessee does not within sixty (60) days, unless a lesser time is required by applicable law for the Grazing Rights, after the giving of written notice by Lessor cure the default or begin action to cure the default and thereafter diligently prosecute such action to completion if the default cannot be reasonably cured within sixty (60) days, or as required by applicable law, Lessor shall have the right, at its option, to exercise any of the following rights and remedies:

- (a) Lessor may itself perform or cause to be performed the obligation with respect to which Lessee is in default. In the event Lessor does so, its cost of such performance, including reasonable attorneys' fees and all expenses incurred by Lessor, plus interest thereon at the rate of eighteen percent (18%) per annum from the date of expenditure, shall be deemed to be additional rent and shall be immediately paid by Lessee.
- (b) Lessor may terminate this Lease, immediately enter the Clark Valley Lease Lands, and take possession of the Clark Valley Lease Lands, the Leased Valley Water Rights and the Grazing Rights with or without process of law, and remove all persons and property from the Clark Valley Lease Lands. No such action by Lessor shall be considered or construed to be a forcible entry. By taking such action, Lessor shall incur no liability to Lessee or to any other persons occupying or using the Clark Valley Lease Lands or using the Leased Water Rights or the Grazing Rights for any damage caused or sustained by reason of such entry and removal of persons and property, and Lessee hereby covenants and agrees to indemnify and save harmless Lessor from all costs, loss, or damage arising from or occasioned by such action. In the event Lessor terminates this Lease pursuant to this Subsection (b), it shall also have the right to recover from lessee all other amounts necessary to compensate Lessor for all damages caused by Lessee's default or which would be likely to result from such default.
- (c) Lessor may continue this Lease in effect and enforce all of its rights hereunder. If Lessor does so, it shall have the right to relet or sublet the Clark Valley Lease Lands, the Leased Water Rights, and the Grazing Rights or portions thereof, and any such reletting or subletting may be for a term which extends beyond the term of this Lease. Notwithstanding any election by Lessor to proceed under Subsections (a) or (b) above, so long as Lessee remains in default under this Lease, Lessor shall have the right at any time to terminate this Lease pursuant to Subsection (b) above and to exercise the rights therein provided. The remedies specified in this Section 3.11 are cumulative and are not intended to exclude any other remedy or means of redress to which Lessor may be entitled in the even of any defalut or threatened default by Lessee with respect to any of its obligations under this Lease.

3.12 Indemnification and Waiver. Lessee shall indemnify and shall hold harmless Lessor and all of Lessor's directors, partners, members, officers, agents, and employees, and each of them, from and against any and all obligations, debts, loss, damage, claims, demands, suits, controversies, costs, fees, liens, encumbrances, and liabilities whatsoever, including attorneys' fees, in any way resulting from or arising out of any failure by Lessee to abide by all of the terms of this Lease or any negligent or intentional act or omission by Lessee or any of its agents, employees, invitees, licensees, or contractors arising out of or in connection and occupancy of the

Clark Valley Lease Lands or use of the Leased Water Rights, or the Grazing Rights. Lessor shall not be responsible or liable for any loss or damage to Lessee or to Lessee's property or business that may be occasioned by or through the acts or omissions of persons occupying, using, or trespassing upon the Clark Valley Lease Lands. Lessee shall use the Clark Valley Lease Lands, the Leased Water Rights and the Grazing Rights at its own risk, and hereby releases Lessor, to the full extent permitted by law, from all claims of every kind or nature, including claims for loss of life, personal or bodily injury, or property damage.

3.13 Enforcement. If any action is brought to recover any rent under this Lease, or because of any breach of or to enforce or interpret any of the provisions of this Lease, or for recovery of possession of the Clark Valley Lease Lands, the party prevailing in such action shall be entitled to recover from the other party reasonable attorney's fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

3.14 Notices. Any notice required or permitted hereunder to be given or transmitted between the parties shall be either personally delivered or mailed, postage prepaid by certified or registered mail, addressed as follows:

TO LESSOR:            President  
                             Ark Land Company  
                             CityPlace One  
                             Suite 300  
                             St. Louis, MO 63141-7056

With a copy to:       Canyon Fuel Company, L.L.C.  
                             Soldier Canyon Mine  
                             P. O. Box 1029  
                             Wellington, UT 84542  
                             Attn: David G. Spillman  
                             (435) 636-2872

TO LESSEE:            Milton and Ardith Thayn Trust  
                             7730 East Highway 6  
                             Price, Utah 84501  
                             Attn: David Thayn  
                             (435) 472-4751

Any notice which is mailed shall be effective on receipt as evidenced by the registration certificate. Either party may, by notice to the other given as prescribed in this Section 3.14, change the above address for any future notices which are mailed under this Lease.

3.15 Liens and Encumbrances. Lessor shall keep the Clark Valley Lease Lands, Leased Water Rights, and Grazing Rights, free of all liens and encumbrances of every nature and kind arising after the Effective Date and shall proceed with all diligence to contest or discharge any lien or encumbrance that is filed or claimed.

3.16 Miscellaneous.

- (a) Neither this instrument nor any memorandum or notice concerning the same shall be recorded without the prior written consent of Lessor. Lessor may, at its option and at any time, file this Lease or a notice or short form concerning the same (which said notice or short form Lessee hereby agrees to execute upon Lessor's request) for record in Carbon County, Utah.
- (b) The captions which precede the sections of this Lease are for convenience only and shall in no way affect the manner in which any provision hereof is construed.
- (c) There are no representations or agreements between the parties except as set forth in this Lease, and this Lease supersedes any and all prior negotiations, agreements, or understandings between Lessor and Lessee in any way related to the subject matter hereof. None of the provisions of this Lease may be altered or modified except through an instrument in writing signed by both parties.
- (d) The liability of each person executing and delivering this Lease shall be joint and several. Each provision of this Lease to be performed by Lessee shall be construed to be both a covenant and a condition. To the extent permitted by the provisions hereof, all reservations, terms, conditions, and covenants herein contained shall be binding upon and shall inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties hereto.
- (e) Time is of the essence to the provisions of this Lease. Any waiver, either express or implied, by Lessor or any breach by Lessee of any promise, condition or term hereof shall not be construed or claimed to be a waiver of any other breach of any condition, promise, or term of this Lease.
- (f) Nothing in this Lease shall, nor shall it be interpreted to, amend, modify or waive any provision of the Surface Use Agreement. Except for the express provision to make the Rental Payments under Section 3.2(b), any default under or termination of this Lease shall not affect in any manner the terms, conditions or validity of the Surface Use Agreement, it being the intent and understanding of the parties that the Surface Use Agreement and this Lease shall constitute separate and independent legal agreements, enforceable in accordance with their respective terms.

IN WITNESS WHEREOF the parties hereto have executed this Lease as of the Effective Date.

LESSOR:

LESSEE:

CANYON FUEL COMPANY, L.L.C.

MILTON AND ARDITH THAYN TRUST

By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its Trustee

STATE OF UTAH )

)ss:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, who being by me duly sworn did say that he is the \_\_\_\_\_ of Canyon Fuel Company, L.L.C., and that the foregoing Lease was signed on behalf of said limited liability company.

NOTARY PUBLIC

Residing at: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF UTAH )

)ss:

COUNTY OF CARBON )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, by

\_\_\_\_\_, the signer of the foregoing Lease, who duly acknowledged to me that he executed the same as Trustee of and for the benefit of the Milton and Ardith Thayn Trust.

NOTARY PUBLIC

Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

**EXHIBIT "A"**  
to  
**Lease Agreement**

**CLARK VALLEY LEASE LANDS**

(approximately 4,461 acres):

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Description</u>
14 South	12 East	3	S½SE¼; S½SW¼
"	"	5	S½SE¼
"	"	8	NE¼NE¼; W½NE¼; SW¼; E½NW¼
"	"	9	SE¼
"	"	10	E½; SW¼; E½NW¼; SW¼NW¼
"	"	11	SE¼; NE¼; E½SE¼; SW¼SE¼; W½
"	"	13	W½; SW¼; S½NW¼; NE¼SW¼
"	"	14	All
"	"	15	E½; SW¼; E½NW¼
"	"	17	NW¼; SE¼; E½SW¼; NW¼SW¼
"	"	18	E½NE¼
"	"	20	N½NE¼
"	"	21	NE¼NW¼; W½NW¼; SE¼NE¼
"	"	22	NW¼

**CLARK VALLEY WATER RIGHTS**

**Water Right No.  
(Irrigation &  
Stockwatering)**

91-23  
91-85  
91-86  
91-409  
91-457

**Water Right No.  
(Stockwatering)**

91-410 91-447  
91-411 91-448  
91-412 91-449  
91-413 91-450  
91-414 91-451

**Exhibit A  
to Lease Agreement**

<u>Water Right No. (Irrigation &amp; Stockwatering)</u>	<u>Water Right No. (Stockwatering)</u>
91-491	91-415 91-452
91-492	91-416 91-453
91-493	91-417 91-456
91-494	91-418 91-458
91-495	91-419 91-459
91-604	91-420 91-460
91-605	91-421 91-461
91-606	91-422 91-465
91-607	91-426 91-466
	91-427 91-467
	91-428 91-468
	91-429 91-469
	91-430 91-470
	91-443 91-591
	91-444 91-3729
	91-445 91-3730
	91-446

**GRAZING RIGHTS**

BLM Grazing Allotment #4079 (North Clark Valley) Approx. (Acreage 9,480)  
Period of Use - March 20<sup>th</sup>-June 5<sup>th</sup>

State Grazing Permit #22966 (Replacing Permit #21722) (Approx. Acreage 680)

**WATER SHARES**

50 Shares of water stock in The Wellington Canal Company from Certificate No. 881

cc

Canyon Fuel Company LLC  
6955 Union Park Center, Suite 540  
Midvale, Utah 84047

RE: Soldier Canyon Mine  
Dugout Canyon Mine

Gentlemen:

The Milton and Ardith Thayn Trust ("Trust") is the record title owner of the surface to the lands described below that cover or otherwise relate to coal leases Canyon Fuel Company now or in the future intends to develop ("Lands"):

T13S, R12 E, Salt Lake Meridian, Utah

Sec. 12: E/2 SE/4;

Sec. 13: E/2; SE/4 NW/4; E2 SW/4; NW/4 SW/4;

Sec. 24: All;

Sec. 25: NW/4.

T13S, R13 E, Salt Lake Meridian, Utah

Sec. 7: S/2SW/4, NW/4SW/4;

Sec. 18: S/2, NW/4, S/2NE/4, NW/4NE/4;

Sec. 17: SW/4, S/2SE/4, NW/4SE/4;

Sec. 19: All Except Lot 4;

Sec. 20: All;

Sec. 21: S/2, S/2N/2, NW/4NW/4;

Sec. 22: SW/4, S/2NW/4;

Sec. 27: W/2;

Sec. 28: All;

Sec. 29: All;

Sec. 30: All Except Lots 1 and 2;

Sec. 33: N/2N/2.

Subject to the Surface Use Agreement dated effective November 22, 1999, between the parties, the Trust hereby consents to Canyon Fuel's underground mining activities below the Lands and access to the surface to repair subsidence.

Very truly yours,

Milton and Ardith Thayn Trust

By: Milton Thayn

**FIRST AMENDMENT TO SURFACE USE AGREEMENT**

THIS FIRST AMENDMENT TO SURFACE USE AGREEMENT ("Amendment"), dated effective as of 13 August, 2001, is by and between Canyon Fuel Company, L.L.C. ("CFC") and Milton and Ardith Thayn Trust ("Thayn").

**Recitals**

A. The parties have entered into that certain Surface Use Agreement dated as of November 22, 1999, between CFC and Thayn ("Surface Use Agreement"). All capitalized terms used in this Amendment, unless otherwise defined herein, shall have the meanings assigned to them in the Surface Use Agreement

B. The parties now desire to amend the Surface Use Agreement consistent with the terms of this Amendment.

**Amendment**

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. The Surface Use Agreement is amended by addition of the following provisions:

a. **Water Purchases.** CFC may, at its option any time during the term of the Surface Use Agreement, purchase water from Thayn, for which Thayn holds beneficial use rights or otherwise controls, to conduct any of the activities permitted by the Surface Use Agreement on the Thayn Lands. CFC and Thayn will cooperate to make necessary filings with the Utah State Engineer to facilitate such water uses. The purchase price for the water is \$ .0125/ gallon and will be adjusted as provided in subparagraph (d) below. Thayn may determine at its discretion when water is available for purchase by CFC and CFC will be responsible for all costs and expenses to deliver the water to the location of usage. The purchase price for the water shall have no bearing on future determinations of the value of the Thayn water rights or water used on the Thayn Lands.

b. **Interference with Hunting Activities.**

(i) CFC will reimburse Thayn in an amount not to exceed \$10,000 annually for the loss of any revenue incurred by Thayn as a result of interference with, or the inability to conduct, deer and elk hunting and guide services on the Thayn Lands by Thayn's outfitters due to exploration or production drilling conducted by or on behalf of CFC on the Thayn Lands. For purposes of this provision, the deer hunting season includes the muzzle load, archery and rifle hunts. Thayn will provide CFC with a written claim for lost revenue describing the basis for the claim no later than 30 days after the end of a hunting season. The parties agree that the actual presence and ongoing operation of a drilling rig on the Thayn Lands during the elk or the deer hunting seasons will automatically constitute interference with hunting activities. In such event, upon written notice from Thayn, Arch will pay to Thayn \$3750 for the deer hunt season and \$3750 for the elk hunt season respectively impacted by the presence and operation of a drilling rig. Arch's maximum liability under this provision for each hunting season shall not

exceed \$5,000 for the elk hunt and \$5,000 for the deer hunt. The reimbursement payment will be readjusted as provided in subparagraph (d) below. Thayn acknowledges that the payment provided represents fair and reasonable compensation and Thayn waives any and all other claims against CFC for alleged damages arising out of interference with deer and elk hunting and guide services on the Thayn Lands.

(ii) CFC and Thayn have jointly established a 100-yard non-hunting buffer zone surrounding any drilling rig or active drilling operations. Thayn will inform hunters on the Thayn Lands of actual drilling locations and operations in an effort to create a safe operations buffer zone. CFC will prohibit its employees and employees of its contractors from carrying firearms, including muzzle loaders, archery equipment and rifles during the hunting seasons. Only road use necessary to conduct Arch's operations and activities under the Surface Use Agreement will be allowed during the elk and deer hunting seasons on the Thayn Lands in an effort to maintain a quality hunting environment.

c. Rezoning. Thayn will support and not oppose any rezoning of the Thayn Lands that is required by or results from mining or oil and gas operations conducted on the Thayn Lands, provided, however, that CFC will reimburse Thayn for all additional taxes, or other costs and expenses, incurred by Thayn as a result of such rezoning.

d. Adjustments to Payments.

(i) The purchase price for the water described in subparagraph (a) will be adjusted for inflation on the fifth annual anniversary date after the Effective Date, and every five years thereafter on the anniversary of the Effective Date based on the cumulative changes in the Consumer Price Index (CPI), or other generally-recognized economic pricing index, for the preceding five-year period.

(ii) The reimbursement payment described in subparagraph (b) will be adjusted for inflation on the fourth annual anniversary date after the Effective Date, and every four years thereafter on the anniversary of the Effective Date based on the then current fee arrangement with Thayn or on a written bona fide offer from a hunting outfitter who, if required by state law, is licensed. Allocation of the reimbursement payment between the deer and elk hunts shall be based on the terms of the offer.

(iii) The proposed adjustment shall be calculated by CFC and communicated to Thayn in writing within thirty (30) days after the applicable anniversary date. All adjustments shall be effective as of the then applicable anniversary date and shall otherwise apply prospectively and shall not apply to payments previously made under this Amendment.

2. Except as expressly provided in this Amendment, nothing herein shall, nor be interpreted to, amend, modify or waive any provision of the Surface Use Agreement. The parties acknowledge that the Surface Use Agreement is in full force and effect and currently in good standing. This Amendment may be executed in counterparts by the parties.

Executed and dated as of the Effective Date.

Canyon Fuel Company, L.L.C.

Milton and Ardith Thayn Trust

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: George M. Thayn

RECEIVED

Filed in the name of Ardith Thayn



Appendix B

Lease Document



GRANT: Multiple

**UTAH STATE LEASE FOR COAL  
ML 48435-OBA**

THIS COAL MINING LEASE AND AGREEMENT (the "Lease") is entered into and executed in duplicate as of September 1, 2000 (the "Effective Date") by and between the STATE OF UTAH, acting by and through the SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION, 675 East 500 South, Suite 500, Salt Lake City, Utah 84102 ("Lessor"), and

CANYON FUEL COMPANY, LLC  
6955 SOUTH UNION PARK CENTER, SUITE 540  
MIDVALE, UT 84047

having a business address as shown above ("Lessee").

WITNESSETH:

That the State of Utah, as Lessor, in consideration of the rentals, royalties, and other financial consideration paid or required to be paid by Lessee, and the covenants of Lessee set forth below, does hereby GRANT AND LEASE to Lessee the exclusive right and privilege to explore for, drill for, mine, remove, transport, convey, cross-haul, commingle, and sell the coal located within the boundaries of the following-described tract of land (the "Leased Premises") located in Carbon County, State of Utah:

**T. 13 S., R. 13 E., SLB&M**

Sec. 17: SW/4, SW/4SE/4;

Sec. 19: NE/4SE/4, S/2SE/4;

Sec. 20: All;

Sec. 21: SW/4NW/4, SW/4;

Sec. 28: NW/4, N/2SW/4, SW/4SW/4;

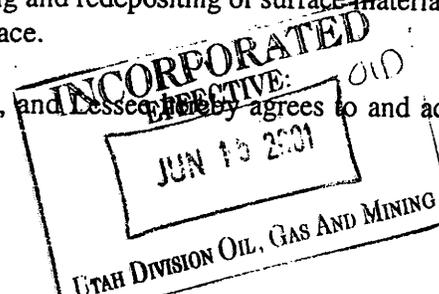
Sec. 29: All;

Sec. 30: E/2, E/2W/2.

Containing 2,560.00 acres, more or less.

Together with the right and privilege to make use of the surface (but only to the extent owned by Lessor) and subsurface of the Leased Premises for uses incident to the mining of coal by Lessee on the Leased Premises or on other lands under the control of Lessee or mined in connection with operations on the Leased Premises, including, but not limited to, conveying, storing, loading, hauling, commingling, cross-hauling, and otherwise transporting coal; excavating; removing, stockpiling, depositing and redepositing of surface materials; and the subsidence, mitigation, restoration and reclamation of the surface.

This Coal Mining Lease and Agreement is subject to, and Lessee hereby agrees to and accepts, the following covenants, terms, and conditions:



1. LEASED MINERALS.

- 1.1 Coal. This mineral lease covers coal, which shall mean and include black or brownish-black solid fossil fuels that have been subjected to the natural processes of coalification, and which fall within the classification of coal by rank as anthracitic, bituminous, sub-bituminous, or lignitic, together with closely associated substances which include, but are not limited to other hydrocarbon substances physically contained within the same geologic strata as the coal. In the event that minerals other than coal are discovered during lease operations, Lessee shall promptly notify the Lessor.
- 1.2 Coalbed Methane. To the extent that Lessor owns gas, coalbed methane or coal seam gas (collectively "coalbed methane") within the Leased Premises, Lessee may remove, vent, flare or capture such coalbed methane from the coal strata being mined and any overlying formations if such removal is necessary for safety reasons in the reasonable discretion of Lessee. If Lessee captures or uses such coalbed methane, it shall pay Lessor royalties on the value of such coalbed methane at the prevailing state royalty rate for natural gas, unless such royalties are expressly waived by Lessor. ~~In the event that Lessor does not own coalbed methane within the Leased Premises, Lessee must obtain the consent of the owner of such coalbed methane prior to removal or capture of such gas.~~ Except as expressly granted herein, the right to extract gas, coalbed methane and coal seam gas is not granted by this Lease. *Prop. L*
- 1.3 No Warranty of Title. Lessor claims title to the mineral estate covered by this Lease. Lessor does not warrant title nor represent that no one will dispute the title asserted by Lessor. It is expressly agreed that Lessor shall not be liable to Lessee for any alleged deficiency in title to the mineral estate, nor shall Lessee become entitled to any refund for any rentals, bonuses, or royalties paid under this Lease in the event of title failure.
- 1.4 Reversion of Leased Premises to United States. Pursuant to the May 8, 1998 "Agreement to Exchange Utah School Trust Lands Between the State of Utah and the United States of America", as ratified by Pub. L. No. 105-335, 112 Stat. 3139, ownership of the Leased Premises shall revert to the United States when thirty-four (34) million tons of coal have been produced from either or both the Leased Premises and the Muddy Coal Tract. Upon reversion, the United States shall succeed the State of Utah as Lessor.

2. RESERVATIONS TO LESSOR. Subject to the exclusive rights and privileges granted to Lessee under this Lease, and further provided that Lessor shall refrain from taking actions with respect to the Leased Premises that may unreasonably interfere with Lessee's operations, Lessor hereby excepts and reserves from the operation of this Lease the following rights and privileges (to the extent that Lessor has the right to grant such rights and privileges):

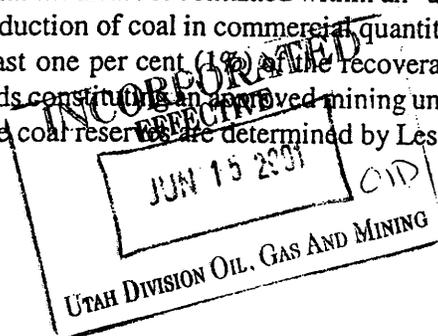
- 2.1 Rights-of-Way and Easements. Lessor reserves the right, following consultation with the Lessee, to establish rights-of-way and easements upon, through or over the Leased Premises, under terms

and conditions that will not unreasonably interfere with operations under this Lease, for roads, pipelines, electric transmission lines, transportation and utility corridors, mineral access, and any other purpose deemed reasonably necessary by Lessor.

- 2.2. Other Mineral Leases. Lessor reserves the right to enter into mineral leases and agreements with third parties covering minerals other than coal, under terms and conditions that will not unreasonably interfere with operations under this Lease in accordance with Lessor's regulations, if any, governing multiple mineral development.
- 2.3. Use and Disposal of Surface. To the extent that Lessor owns the surface estate of the Leased Premises and subject to the rights granted to the Lessee pursuant to this Lease, Lessor reserves the right to use, lease, sell, or otherwise dispose of the surface estate or any part thereof. Lessor shall notify Lessee of any such sale, lease, or other disposition of the surface estate.
- 2.4. Previously Authorized Improvements. If authorized improvements have been placed upon the Leased Premises by a third party prior to the commencement of this Lease, Lessee shall allow the owner of such improvements to remove them within ninety (90) days after the Lease term commences. Nothing in this paragraph shall authorize Lessee to remove surface improvements where Lessor does not own the surface estate.
- 2.5. Rights Not Expressly Granted. Lessor further reserves all rights and privileges of every kind and nature, except as specifically granted in this Lease.

3. TERM OF LEASE; READJUSTMENT.

- 3.1. Primary Term. This Lease is granted for a "primary term" of ten (10) years commencing on the Effective Date and for a "secondary term" of an additional ten (10) years, subject to Lessee's compliance with the requirements of paragraph 3.3, Diligent Operations; Minimum Royalty.
- 3.2. Extension Beyond Secondary Term. Subject to Lessee's compliance with the other provisions of this Lease, this Lease shall remain in effect beyond the secondary term and for as long thereafter as coal is produced in commercial quantities from the Leased Premises, or from lands constituting either (i) a logical mining unit approved by the Bureau of Land Management containing the Leased Premises, or (ii) a mining unit, in which the recoverable coal reserves can be developed in an efficient, economical and orderly manner as a unit with due regard to the conservation of recoverable coal reserves. The second type of mining unit requires a determination by the Lessor that the criteria set forth in item (ii) have been satisfied. The satisfaction of either (i) or (ii) above shall mean that the Lease is contained within an "approved mining unit." For the purposes of this Lease, production of coal in commercial quantities shall mean production during each lease year of at least one per cent (1%) of the recoverable coal reserves within the Leased Premises or within lands constituting an approved mining unit which includes the Leased Premises, as such recoverable coal reserves are determined by Lessor after



consultation with Lessee, subject to adjustment from time to time based upon reasonable justification from the Lessee.

- 3.3 Diligent Operations; Minimum Royalty. In the absence of actual production in commercial quantities as set forth in paragraph 3.2, Extension Beyond Secondary Term, this Lease shall remain in effect beyond the primary term only if the Lessee is engaged in diligent operations, exploration, research, or development activity (which development activity shall include, but not be limited to, pursuit of required permits and approvals) which in Lessor's reasonable discretion is calculated to advance development or production of coal from the Leased Premises or lands constituting an approved mining unit which includes the Leased Premises, and Lessee pays an annual minimum royalty in advance on or before the anniversary date of the Effective Date. The minimum royalty shall be calculated by determining the production royalty that would be payable upon production of one per cent (1%) of the recoverable coal reserves within the Leased Premises, as such recoverable coal reserves are determined by Lessor after consultation with Lessee, subject to adjustment from time to time based upon reasonable justification from the Lessee. The unit value of the recoverable coal reserves for purposes of determining the minimum royalty shall be determined by Lessor using the methodology set forth in 43 Code of Federal Regulations §3483.4(c)(1)-(3) (1998). Minimum royalties paid by Lessee pursuant to this paragraph may be credited against production royalties accruing during the term of this Lease.
- 3.4 Expiration; Cessation of Production. This Lease may not be extended pursuant to paragraph 3.3, Diligent Operations; Minimum Royalty, beyond the end of the twentieth year after the Effective Date except by the actual production of coal in commercial quantities from the Leased Premises or from lands constituting an approved mining unit which includes the Leased Premises. After expiration of the secondary term, this Lease will expire of its own terms, without the necessity of any notice or action by Lessor, if Lessee ceases production of coal in commercial quantities for an entire lease year, unless the Lease is suspended pursuant to paragraph 16.3, Suspension.
- 3.5 Readjustment. At the end of the primary term and at the end of each period of ten (10) years thereafter, Lessor may readjust the terms and conditions of this Lease (including without limitation rental rates, minimum royalties, royalty rates and valuation methods, and provisions concerning reclamation). In the event that the State as Lessor makes such readjustment prior to reversion, it shall not apply terms and conditions more economically disadvantageous than corresponding federal regulations and lease terms unless, based upon written findings after consultation with Lessee, it determines that the individual term or condition imposing the economic disadvantage is necessary to serve the best interests of the beneficiaries of the subject trust lands. If within thirty (30) days after submission of the readjusted lease terms to the Lessee, the Lessee determines that any or all of the proposed readjusted terms and conditions are unacceptable, then Lessee shall so notify Lessor in writing and the parties shall attempt to resolve the objectionable term or condition. If the parties are unable to resolve the matter and agree upon the readjusted terms and conditions submitted by Lessor at the end of such ten (10) year period, Lessee shall forfeit any right to the continued extension of this lease, and the lease shall

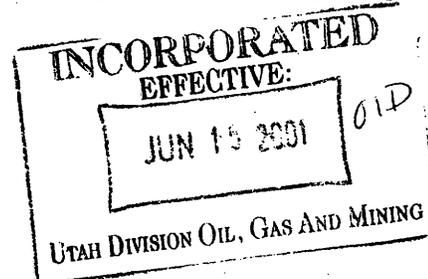
automatically terminate, provided that nothing herein shall be deemed to preclude Lessee from appealing any readjustment by Lessor pursuant to applicable law

3.6 Relinquishment. Lessee may relinquish all or portions of this Lease at any time by filing a written notice of relinquishment with Lessor. Lessor may disapprove any relinquishment if Lessee has failed to pay all rentals, royalties, and other amounts due and owing to the Lessor, if the lease is otherwise not in good standing, or if relinquishment would in Lessor's reasonable determination cause waste of economically recoverable coal. Lessee may not relinquish parcels smaller than a quarter-quarter section or surveyed lot. Upon approval, relinquishment shall relieve the Lessee of all future rental obligations as to the relinquished lands effective as of the date of filing of the relinquishment, but shall not relieve Lessee from other obligations to the extent provided in paragraph 15.2, Effect of Termination.

4. BONUS BID. Lessee agrees to pay Lessor, an initial bonus bid in the sum of One Million dollars (\$1,000,000.00) as partial consideration for Lessor's issuance of this Lease, payable in four equal annual installments of \$100,000.00 followed by five equal annual installments of \$120,000.00 commencing on the Effective Date. The unpaid balance of the bonus bid shall not bear interest; provided, however, that if this Lease is relinquished or otherwise terminated prior to the payment in full of the bonus bid, or if Lessee fails to make any bonus bid payment when due, the entire unpaid balance of the bonus bid shall immediately become due without regard to such relinquishment or termination, and such balance shall thereafter bear interest as provided in paragraph 16.2, Interest. Lessor may require Lessee to submit a bond or other sufficient surety to secure Lessee's obligation to pay the unpaid balance of the bonus bid. The initial bonus bid may not be credited against any other bonus payments, annual rentals or royalties accruing under the lease.

In addition to the initial bonus bid of \$1,000,000.00, Lessee agrees to pay Lessor a deferred bonus equal to 1.5% of the value of all coal severed and removed from the Leased Premises in excess of six million tons of coal. Lessee shall not be obligated to pay the deferred bonus on the first six million tons of coal mined and removed from the Leased Premises. The value of coal for the purposes of calculating deferred bonus payments shall be determined pursuant to the provisions of Article 6, ROYALTIES. Lessee shall notify Lessor when six million tons of coal have been severed and removed from the Leased Premises, and thereafter shall submit deferred bonus payments at the time the production royalties are submitted, clearly identified on royalty reporting documents as deferred bonus payments.

5. RENTALS. Lessee agrees to pay Lessor an annual rental of three dollars (\$3.00) for each acre and fractional part thereof within the Leased Premises. Lessee shall promptly pay annual rentals each year in advance on or before the anniversary date of the Effective Date. Lessee may not credit rentals against production royalties or against minimum royalties payable pursuant to paragraph 3.3, Diligent Operations; Minimum Royalty.



6. ROYALTIES.

- 6.1 Production Royalties. Lessee shall pay Lessor a production royalty of eight per cent (8%) of the value of all coal severed and removed from the Leased Premises. For all coal sold pursuant to an arm's-length contract, value shall be determined on the basis of the gross proceeds received by Lessee from the sale or disposition of such coal. Gross proceeds shall include all bonuses, allowances or other consideration of any nature received by Lessee for coal actually produced. For any coal that is sold or disposed of other than by an arms-length contract, or for coal that is used within the mine permit area containing the Leased Premises for generation of electricity or for gasification, liquefaction, in situ processing, or other method of extracting energy from such coal, the value of such coal shall be determined by Lessor with reference to (in order of priority): (i) comparable arms-length contracts or other dispositions of like-quality coal produced in the same coal field; (ii) prices reported for that coal to a public utility commission; (iii) prices reported to other governmental agencies; or (iv) other relevant information.
- 6.2 Allowable Deductions. It is expressly understood and agreed that none of Lessee's mining or production costs, including but not limited to costs for materials, labor, overhead, distribution, transportation within the mine permit area prior to the point of sale, loading, crushing, sizing, screening, or general and administrative activities, may be deducted in computing Lessor's royalty. All such costs shall be entirely borne by Lessee and are anticipated by the rate of royalty set forth in this Lease. In the event that the point of sale for coal produced from this Lease is located outside the mine permit area boundary, Lessee may deduct the reasonable, actual costs of transportation of such coal from the mine permit area boundary to the point of sale from gross proceeds in computing Lessor's royalty; provided, however, that transportation deductions for coal transported by Lessee, Lessee's affiliates, or by non-arm's-length contract are subject to review and modification by Lessor. Lessee shall be allowed to deduct its actual, reasonable washing and treatment costs from gross proceeds in computing Lessor's royalty; provided, however, that, upon Lessor's request Lessee shall provide to Lessor appropriate justification to demonstrate that Lessee's costs are reasonable.
- 6.3 Reference to Federal Regulations. It is the intent of Lessor and Lessee that the calculation of the value of coal for royalty purposes be consistent with federal coal regulations governing the valuation of coal, except where this Lease expressly provides otherwise. In no event shall the value of coal used for calculation of royalties under this Lease be less than the value which would be obtained were federal royalty valuation regulations applied.
- 6.4 Royalty Payment. For all coal severed and removed from the Leased Premises that is used, sold, transported or otherwise disposed of during a particular month, Lessee shall pay royalties to Lessor on or before the end of the next succeeding month. Royalty payments shall be accompanied by a verified statement, in a form approved by Lessor, stating the amount of coal sold or otherwise disposed of, the gross proceeds accruing to Lessee, the calculation of allowable deductions, and any other information reasonably required by Lessor to verify production and

disposition of the coal or coal products. In the event that Lessee uses or disposes of coal pursuant to a non-arm's-length contract, or uses coal for generation of electricity or for gasification, liquefaction, in situ processing, or other method of extracting energy from such coal, Lessee shall notify Lessor of such use or disposal on or before the end of the next succeeding month following such use or disposal, and shall pay royalties upon Lessee's good faith estimate of the value of such coal, subject to Lessor's right to determine the value of such coal pursuant to paragraph 6.1, Production Royalties. After reversion of the Leased Premises to the United States pursuant to paragraph 1.4, Reversion of Leased Premises to United States, Lessee shall report production and royalties monthly in accordance with applicable federal regulations.

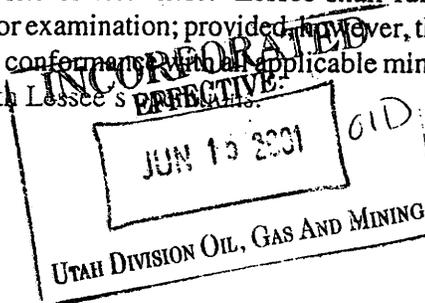
6.5 Royalty Valuation After Reversion. After reversion of the Leased Premises to the United States, the Secretary of the Interior may establish the reasonable value of post-reversion production for royalty purposes in the same manner and by the same methods as the United States establishes value under coal leases issued by the United States.

6.6 Suspension, Waiver or Reduction of Rents or Royalties. Lessor, to the extent not prohibited by applicable law, is authorized to waive, suspend, or reduce the rental or minimum royalty, or reduce the royalty applicable with respect to the entire Lease, whenever in Lessor's judgment it is necessary to do so in order to promote development, or whenever in the Lessor's judgment the Lease cannot be successfully operated under the terms provided herein.

7. RECORDKEEPING; INSPECTION; AUDITS.

7.1 Registered Agent; Records. Lessee shall maintain a registered agent within the State of Utah to whom any and all notices may be sent by Lessor and upon whom process may be served. Lessee shall also maintain an office within the State of Utah containing originals or copies of all maps, engineering data, permitting materials, books, records or contracts (whether such documents are in paper or electronic form) generated by Lessee that pertain in any way to coal production, output and valuation; mine operations; coal sales and dispositions; transportation costs; and calculation of royalties from the Leased Premises. Lessee shall maintain such documents for at least seven years after the date of the coal production to which the documents pertain.

7.2 Inspection. Lessor's employees and authorized agents at Lessor's sole risk and expense shall have the right to enter the Leased Premises to check scales as to their accuracy, and to go on any part of the Leased Premises to examine, inspect, survey and take measurements for the purposes of verifying production amounts and proper lease operations. Upon reasonable notice to Lessee, Lessor's employees and authorized agents shall further have the right to audit, examine and copy (at Lessor's expense) all documents described in paragraph 7.1, Registered Agent; Records, whether such documents are located at the mine site or elsewhere. Lessee shall furnish all conveniences necessary for said inspection, survey, or examination; provided, however, that such inspections shall be conducted in a manner that is in conformity with applicable mine safety regulations and does not unreasonably interfere with Lessee's operations.



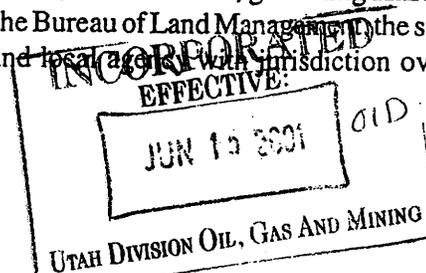
- 7.3 Federal Inspections. Lessee agrees that, prior to reversion of the Leased Premises to the United States, employees and authorized agents of the Bureau of Land Management ("BLM") may conduct underground inspections of the Leased Premises, both independently and in cooperation with the State in its capacity as Lessor. After reversion, employees and authorized agents of BLM may conduct underground inspections of the Leased Premises under the authority of applicable federal laws and regulations.
- 7.4 Geologic Information. In the event Lessee conducts core-drilling operations or other geologic evaluation of the Leased Premises, Lessor may inspect core samples, evaluations thereof, and proprietary geologic information concerning the Leased Premises.
- 7.5 Confidentiality. Any and all documents and geologic data obtained by Lessor through the exercise of its rights as set forth in paragraphs 7.2, Inspection., and 7.4, Geologic Information., may be declared confidential information by Lessee, in which event Lessor and its authorized agents shall maintain such documents and geologic data as protected records under the Utah Governmental Records Access Management Act or other applicable privacy statute (including applicable federal law after reversion), and shall not disclose the same to any third party without the written consent of Lessee, the order of a court of competent jurisdiction requiring such disclosure, or upon termination of this Lease. Following reversion of the Leased Premises to the United States, the United States as Lessor shall treat such information as confidential to the extent permitted by federal law.

8. USE OF SURFACE ESTATE.

- 8.1 Lessor-Owned Surface. If Lessor owns the surface estate of all or some portion of the Leased Premises, by issuance of this Lease the Lessee has been granted the right to make use of such lands to the extent reasonably necessary and expedient for the economic operation of the leasehold. Lessee's right to surface use of Lessor-owned surface estate shall include the right to subside the surface. Such surface uses shall be exercised subject to the rights reserved to Lessor as provided in paragraph 2, RESERVATIONS TO LESSOR, and without unreasonable interference with the rights of any prior or subsequent lessee of Lessor.
- 8.2 Split-Estate Lands. If Lessor does not own the surface estate of any portion of the Leased Premises, Lessee's access to and use of the surface of such lands shall be determined by applicable law governing mineral development on split-estate lands, including without limitation applicable statutes governing access by mineral owners to split estate lands, and reclamation and bonding requirements. Lessee shall indemnify, defend and hold Lessor harmless for all claims, causes of action, damages, costs and expenses (including attorney's fees and costs) arising out of or related to damage caused by Lessee's operations to surface lands or improvements owned by third parties.

9. APPLICABLE LAWS AND REGULATIONS; HAZARDOUS SUBSTANCES

- 9.1 Trust Lands Statute and Regulations. This Lease is issued pursuant to the provisions of Title 53C, Utah Code Annotated, 1953, as amended, and Lessee is subject to and shall comply with all current and future rules and regulations adopted by the School and Institutional Trust Lands Administration and its successor agencies until reversion of the Leased Premises to the United States pursuant to paragraph 1.4, Reversion of Leased Premises to United States.
- 9.2 Regulation Upon Reversion. After reversion of the Leased Premises to the United States pursuant to paragraph 1.4, Reversion of Leased Premises to United States, Lessee will be subject to the requirements of the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.* (the "MLA"), and to the royalty, operating, and administrative procedure rules and regulations of the Department of Interior, the Minerals Management Service, and the Bureau of Land Management, and to any other federal laws and regulations generally applicable to coal leases issued under the MLA to the same extent as if the Lease were a federally-issued lease. Notwithstanding the foregoing, to the extent that the State, as Lessor, approves a significant operational decision prior to reversion, and Lessee makes a substantial economic commitment based upon that approval, Lessee may continue to rely upon that approval after reversion; provided, however, that no such approval shall act to limit the liability of Lessee, if any, under CERCLA, RCRA, the Clean Water Act, 33 U.S.C. § 1251 *et seq* or other applicable environmental law. Upon reversion, nothing in this paragraph shall be deemed to require that the Leased Premises be included in the calculation of acreage held by Lessee for the purposes of the acreage limitation provisions of the MLA and associated regulations.
- 9.3 Other Applicable Laws and Regulations. Lessee shall comply with all applicable federal, state and local statutes, regulations, and ordinances, including without limitation the Utah Coal Mining and Reclamation Act, applicable statutes and regulations relating to mine safety and health, and applicable statutes, regulations and ordinances relating to public health, pollution control, management of hazardous substances and environmental protection.
- 9.4 Hazardous Substances. Lessee [or other occupant pursuant to any agreement authorizing mining] shall not keep on or about the premises any hazardous substances, as defined under 42 U.S.C. § 9601(14) or any other Federal environmental law, any regulated substance contained in or released from any underground storage tank, as defined by the Resource Conservation and Recovery Act, 42 U.S.C. § 6991, *et seq.*, or any substances defined and regulated as "hazardous" by applicable State law, (hereinafter, for the purposes of this Lease, collectively referred to as "Hazardous Substances") unless such substances are reasonably necessary in Lessee's mining operations, and the use of such substances or tanks is noted and approved in the Lessee's mining plan, and unless Lessee fully complies with all Federal, State and local laws, regulations, statutes, and ordinances, now in existence or as subsequently enacted or amended, governing Hazardous Substances. Lessee shall immediately notify Lessor, the Bureau of Land Management, the surface management agency, and any other Federal, State and local agency with jurisdiction over the



Leased Premises, or contamination thereon, of (i) all reportable spills or releases of any Hazardous Substance affecting the Leased Premises, (ii) all failures to comply with any applicable Federal, state or local law, regulation or ordinance governing Hazardous Substances, as now enacted or as subsequently enacted or amended, (iii) all inspections of the Leased Premises by, or any correspondence, order, citations, or notifications from any regulatory entity concerning Hazardous Substances affecting the Leased Premises, (iv) all regulatory orders or fines or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private Party concerning the Leased Premises.

9.5 Hazardous Substances Indemnity. Lessee [or other occupant pursuant to any agreement authorizing mining] shall indemnify, defend, and hold harmless Lessor and the United States (as successor Lessor or owner pursuant to reversion or as owner of surface estate) its agencies, employees, officers, and agents with respect to any and all damages, costs, liabilities, fees (including attorneys' fees and costs), penalties (civil and criminal), and cleanup costs arising out of or in any way related to Lessee's use, disposal, transportation, generation, sale or location upon or affecting the Leased Premises of Hazardous Substances, as defined in paragraph 9.4 of this Lease. This indemnity shall extend to the actions of Lessee's employees, agents assigns, sublessees, contractors, subcontractors, licensees and invitees. Lessee shall further indemnify, defend and hold harmless Lessor and the United States from any and all damages, costs, liabilities, fees (including attorneys' fees and costs), penalties (civil and criminal), and cleanup costs arising out of or in any way related to any breach of the provisions of this Lease concerning Hazardous Substances. This indemnity is in addition to, and in no way limits, the general indemnity contained in paragraph 16.1 of this Lease.

9.6 Waste Certification. The Lessee shall provide upon abandonment, transfer of operation, assignment of rights, sealing-off of a mined area, and prior to lease relinquishment, certification to the Lessor and the Bureau of Land Management that, based upon a complete search of all the operator's records for the Lease, and upon its knowledge of past operations, there have been no reportable quantities of hazardous substances as defined in 40 Code of Federal Regulations §302.4, or used oil as defined in Utah Administrative Code R315-15, discharged (as defined at 33 U.S.C. §1321(a)(2)), deposited or released within the Leased Premises, either on the surface or underground, and that all remedial actions necessary have been taken to protect human health and the environment with respect to such substances. Lessee shall additionally provide to Lessor and the Bureau of Land Management a complete list of all hazardous substances, hazardous materials, and their respective Chemical Abstracts Service Registry Numbers, and oil and petroleum products used or stored on, or delivered to, the Leased Premises. Such disclosure will be in addition to any other disclosure required by law or agreement.

10. BONDING.

10.1 Lease Bond Required. At the time this Lease is executed, Lessee shall execute and file with the Lessor a good and sufficient bond or other financial guarantee acceptable to Lessor in order to:

(a) guarantee Lessee's performance of all covenants and obligations under this Lease, including Lessee's obligation to pay royalties; and (b) ensure compensation for damage, if any, to the surface estate and any surface improvements. The Lease Bond shall meet all federal mineral lease bond requirements as described in 43 Code of Federal Regulations Subpart 3474. The Lease Bond shall further provide that upon forfeiture after reversion of the Leased Premises to the United States, the Lease Bond shall be payable to the Secretary of the Interior.

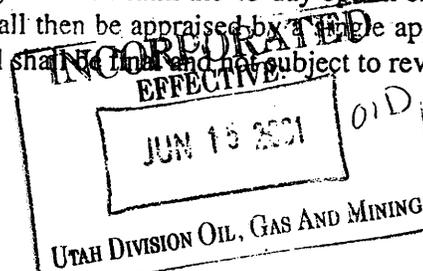
10.2 Reclamation Bonding. The bond filed with the Utah Division of Oil, Gas and Mining ("UDOGM") in connection with the issuance of a mine permit which includes the Leased Premises shall be deemed to satisfy Lessor's bonding requirements with respect to Lessee's reclamation obligations under this Lease; provided, however, upon notice to Lessee and a public hearing with respect to the basis for its decision, the Lessor may, in its reasonable discretion, determine that the bond filed with UDOGM is insufficient to protect Lessor's interests. In such an event the Lessor shall enter written findings as to the basis for its calculation of the perceived insufficiency and enter an order establishing the amount of additional bonding required. Lessee shall file any required additional bond with Lessor within thirty (30) days after demand by Lessor. Lessor may increase or decrease the amount of any additional bond from time to time in accordance with the same procedure.

10.3 Release of Additional Bond. Any additional bond required by Lessor pursuant to 10.2, Reclamation Bonding, may be released by Lessor at any time and shall be released no later than the time of final bond release by UDOGM with respect to the Leased Premises.

11. WATER RIGHTS.

11.1 Water Rights in Name of Lessor. If Lessee files to appropriate water for coal mining operations on the Leased Premises, the filing for such water right shall be made by Lessee in the name of Lessor at no cost to Lessor, and such water right shall become an appurtenance to the Leased Premises, subject to Lessee's right to use such water right at no cost during the term of this Lease.

11.2 Option to Purchase. If Lessee purchases or acquires an existing water right for coal mining operations on the Leased Premises, Lessor shall have the option to acquire that portion of such water right as was used on the Leased Premises upon expiration or termination of this Lease. The option price for such water right shall be the fair market value of the water right as of the date of expiration or termination of this Lease. Upon expiration or termination of this Lease, Lessee shall notify Lessor in writing of all water rights purchased or acquired by Lessee for coal mining operations on the Leased Premises and its estimate of the fair market value of such water right. Lessor shall then have forty-five (45) days to exercise its option to acquire the water by payment to Lessee of the estimated fair market value. If Lessor disagrees with Lessee's estimate of fair market value, Lessor shall notify Lessee of its disagreement within the 45 day option exercise period. The fair market value of the water right shall then be appraised by a mutually acceptable appraiser mutually acceptable to both parties, which appraisal shall be final and not subject to review or



appeal. If the parties cannot agree upon the choice of an appraiser, the fair market value of the water right shall be determined by a court of competent jurisdiction. Conveyance of any water right pursuant to this paragraph shall be by quit claim deed.

- 11.3 Reversion. Upon reversion of the Leased Premises to the United States, the United States shall succeed to the interests of the State of Utah pursuant to this article 11.

12. ASSIGNMENT OR SUBLEASE; OVERRIDING ROYALTIES.

12.1 Consent Required. Lessee shall not assign or sublease this Lease in whole or in part, or otherwise assign or convey any rights or privileges granted by this Lease, including, without limitation, creation of overriding royalties or production payments, without the prior written consent of Lessor. Any assignment, sublease or other conveyance made without prior written consent of Lessor shall have no legal effect unless and until approved in writing by Lessor. Exercise of any right with respect to the Leased Premises in violation of this provision shall constitute a default under this Lease.

12.2 Binding Effect. All of the terms and provisions of this Lease shall be binding upon and shall inure to the benefit of their respective successors, assigns, and sublessees.

12.3 Limitation on Overriding Royalties. Lessor reserves the right to disapprove the creation of an overriding royalty or production payment that would, in Lessor's reasonable discretion, constitute an unreasonable economic burden upon operation of the Lease. In exercising its discretion to disapprove the creation of an overriding royalty, Lessor shall consult with Lessee and any third parties involved and shall prepare findings to evidence the basis of its decision. Cumulative overriding royalties of 2% or less shall be deemed presumptively reasonable unless special circumstances are shown by Lessor to exist.

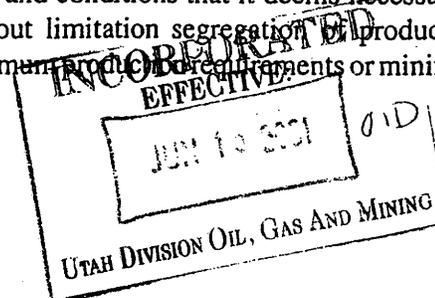
13. OPERATIONS.

13.1 Permitting. Before Lessee commences exploration, drilling, or mining operations on the Leased Premises, it shall have obtained such permits and posted such bonds as may be required under applicable provisions of the Utah Coal Mining and Reclamation Act, the Surface Mining Control and Reclamation Act, and associated regulations, together with applicable regulations of the surface management agency. Lessee shall maintain any required permits in place for the duration of mining operations and reclamation. Upon request, Lessee shall provide Lessor with a copy of all regulatory filings relating to permitting matters.

13.2 Plan of Operations. Prior to the commencement of any underground mining operations on the Leased Premises, Lessee shall obtain Lessor's approval of a plan of operations for the Leased Premises. The plan of operations shall contain all information required to be contained in a federal Resource Recovery and Protection Plan, as described in 43 Code of Federal Regulations.

§ 3482.1(b) and (c) (1998). Lessor may modify the proposed plan of operations as is needed to insure that there is no waste of economically recoverable coal reserves contained on the Leased Premises. In this context "waste" shall mean the inefficient utilization of, or the excessive or improper loss of an otherwise economically recoverable coal resource. Lessor shall notify Lessee in writing of its approval or modifications of the plan of operations. The plan of operations submitted by Lessee shall be deemed approved by Lessor if Lessor has not otherwise notified Lessee within sixty (60) days of filing.

- 13.3 Plan of Operations - Modification. In the event that material changes are required to the plan of operations during the course of mining, Lessee shall submit a modification of the plan of operations to the Lessor. Routine adjustments to the plan of operations based upon geologic circumstances encountered during day-to-day mining operations do not require the submission of a modification. If the proposed changes require emergency action by Lessor, then the Lessee shall so notify the Lessor at the time of submission of the modification and the parties shall use their best efforts to meet the Lessee's time schedule regarding implementation of the changes. Non-emergency modifications will be reviewed promptly by Lessor to insure that there is no waste of economically recoverable coal reserves pursuant to the plan of operations, as modified, and Lessor shall notify lessee in writing of its approval or modification of the proposed modification. Prior to reversion, modifications shall be deemed approved by Lessor if Lessor has not otherwise notified Lessee within thirty (30) days of filing. After reversion, modifications shall be approved in accordance with applicable federal regulations.
- 13.4 Mine Maps. Lessee shall maintain at the mine office clear, accurate, and detailed maps of all actual and planned operations prepared and maintained in the manner prescribed by 43 Code of Federal Regulations § 3482.3 (1998). Lessee shall provide copies of such maps to Lessor upon request.
- 13.5 Good Mining Practices. Lessee shall conduct exploration and mining operations on the Leased Premises in accordance with standard industry operating practices, and shall avoid waste of economically recoverable coal. Lessee shall comply with all regulations and directives of the Mine Safety and Health Administration or successor agencies for the health and safety of employees and workers. Lessee shall further comply with the performance standards for underground resource recovery set forth at 43 Code of Federal Regulations § 3484.1(c) (1998); provided, however, that Lessor may waive such standards from time to time in its reasonable discretion, upon request by Lessee. Coal shall be mined from this Lease by underground methods only.
- 13.6 Mining Units. Lessor may approve the inclusion of the Leased Premises in a mining unit with federal, private or other non-state lands upon terms and conditions that it deems necessary to protect the interests of the Lessor, including without limitation segregation of production, accounting for commingled coal production, and minimum production requirements or minimum royalties for the Leased Premises.



14. EQUIPMENT; RESTORATION.

- 14.1 Equipment. Upon termination of this Lease, Lessee shall remove, and shall have the right to remove, all improvements, equipment, stockpiles, and dumps from the Leased Premises within six (6) months; provided, however, that Lessor may, at Lessor's sole risk and expense, and subject to Lessee's compliance with requirements imposed by UDOGM and MSHA, require Lessee to retain in place underground timbering supports, shaft linings, rails, and other installations reasonably necessary for future mining of the Leased Premises. All improvements and equipment remaining on the Leased Premises after six (6) months may be deemed forfeited to Lessor upon written notice of such forfeiture to Lessee. Lessee may abandon underground improvements, equipment of any type, stockpiles and dumps in place if such abandonment is in compliance with applicable law, and further provided that Lessee provides Lessor with financial or other assurances sufficient in Lessor's reasonable discretion to protect Lessor from future environmental liability with respect to such abandonment or any associated hazardous waste spills or releases. Lessee shall identify and locate on the mine map the location of all equipment abandoned on the Lease Premises.
- 14.2 Restoration and Reclamation. Upon termination of this Lease, Lessee shall reclaim the Leased Premises in accordance with the requirements of applicable law, including mine permits and reclamation plans on file with UDOGM. Lessee shall further abate any hazardous condition on or associated with the Leased Premises. Lessee and representatives of all governmental agencies having jurisdiction shall have the right to re-enter the Leased Premises for reclamation purposes for a reasonable period after termination of the Lease.

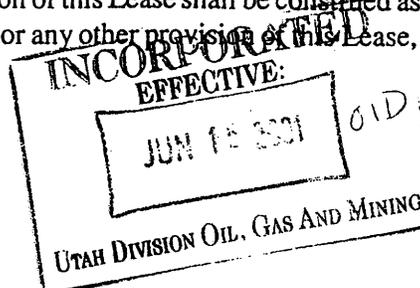
15. DEFAULT

- 15.1 Notice of Default; Termination. Upon Lessee's violation of or failure to comply with any of the terms, conditions or covenants set forth in this Lease, Lessor shall notify Lessee of such default by registered or certified mail, return receipt requested, at the last address for Lessee set forth in Lessor's files. Lessee shall then have thirty (30) days, or such longer period as may be granted in writing by Lessor, to either cure the default or request a hearing pursuant to the Lessor's administrative adjudication rules. In the event Lessee fails to cure the default or request a hearing within the specified time period, Lessor may cancel this Lease without further notice to or appeal by Lessee.
- 15.2 Effect of Termination. The termination of this Lease for any reason, whether through expiration, cancellation or relinquishment, shall not limit the rights of the Lessor to recover any royalties and/or damages for which Lessee may be liable, to recover on any bond on file, or to seek injunctive relief to enjoin continuing violations of the Lease terms. No remedy or election under this Lease shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies available under this Lease, at law, or in equity. Lessee shall surrender the Leased Premises upon termination; however, the obligations of Lessee with respect to reclamation,

indemnification and other continuing covenants imposed by this Lease shall survive the termination.

16. MISCELLANEOUS PROVISIONS.

- 16.1 Indemnity. Except as limited by paragraph 7.2, Inspection, Lessee shall indemnify and hold Lessor and the United States (as successor Lessor or owner pursuant to reversion or as owner of surface estate) harmless for, from and against each and every claim, demand, liability, loss, cost, damage and expense, including, without limitation, attorneys' fees and court costs, arising in any way out of Lessee's occupation and use of the Leased Premises, including without limitation claims for death, personal injury, property damage, and unpaid wages and benefits. Lessee further agrees to indemnify and hold Lessor harmless for, from and against all claims, demands, liabilities, damages and penalties arising out of any failure of Lessee to comply with any of Lessee's obligations under this Lease, including without limitation attorneys' fees and court costs.
- 16.2 Interest. Except as set forth in paragraph 4, BONUS BID, interest shall accrue and be payable on all obligations arising under this Lease at such rate as may be set from time to time by rule enacted by Lessor. Interest shall accrue and be payable, without necessity of demand, from the date each such obligation shall arise.
- 16.3 Suspension. In the event that Lessor in its reasonable discretion determines that suspension is necessary in the interests of conservation of the coal resource, or if Lessee has been prevented from performing any of its obligations or responsibilities under this Lease or from conducting mining operations by labor strikes, fires, floods, explosions, riots, any unusual mining casualties or conditions, Acts of God, government restrictions or orders, severe weather conditions, or other extraordinary events beyond its control, then the time for performance of this Lease by Lessee shall be suspended during the continuance of such acts which prevent performance, excepting any payments due and owing to Lessor.
- 16.4 Consent to Suit; Jurisdiction. Prior to reversion of the Leased Premises to the United States: (i) this Lease shall be governed by the laws of the State of Utah; (ii) Lessor and Lessee agree that all disputes arising out of this Lease shall be litigated only in the Third Judicial District Court for Salt Lake County, Utah; (iii) Lessee consents to the jurisdiction of such court; and (iv) Lessee shall not bring any action against Lessor without exhaustion of available administrative remedies and compliance with applicable requirements of the Utah Governmental Immunity Act. Notwithstanding the foregoing, after reversion of the Leased Premises to the United States, any litigation between the United States as Lessor and the Lessee shall be governed by the laws of the United States otherwise applicable to federal coal leases.
- 16.5 No Waiver. No waiver of the breach of any provision of this Lease shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Lease, nor shall



the acceptance of rentals or royalties by Lessor during any period of time in which Lessee is in default be deemed to be a waiver of such default.

16.6 Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

16.7 Special Stipulations. ~~The special stipulations set forth in Exhibit "A" to this Lease are hereby incorporated into and made an integral part of this Lease.~~ RAFL  
K

16.8 Entire Lease. This Lease, together with any attached stipulations, sets forth the entire agreement between Lessor and Lessee with respect to the subject matter of this Lease. No subsequent alteration or amendment to this Lease shall be binding upon Lessor and Lessee unless in writing and signed by each of them.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date hereinabove first written.

APPROVED AS TO FORM:  
JAN GRAHAM

ATTORNEY GENERAL

By [Signature]

Form Approved: 8/10/00

THE STATE OF UTAH, acting by and through the  
SCHOOL AND INSTITUTIONAL TRUST LANDS  
ADMINISTRATION ("LESSOR")

<sup>Acting</sup>  
~~DAVID T. TERRY~~, DIRECTOR

By [Signature]

School & Institutional Trust Lands Administration - LESSOR

CANYON FUEL COMPANY LLC ("LESSEE")

By: [Signature]  
Its: PRESIDENT & CEO

INCORPORATED  
EFFECTIVE:  
JUN 19 2001  
UTAH DIVISION OIL, GAS AND MINING  
CID

STATE OF UTAH )  
: ss.  
COUNTY OF SALT LAKE )

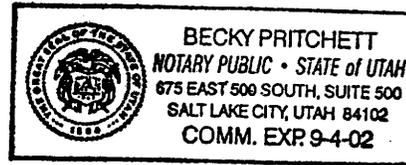
On the 1st day of May, 2001, personally appeared before me  
Kevin S. Carter who being by me duly sworn did say that he  
is The Acting Director of the School and  
Institutional Trust Lands Administration of the State of Utah and the signer of the above instrument, who duly  
acknowledged that he executed the same.

Given under my hand and seal this 1st day of May, 2001

Becky Pritchett  
Notary Public  
Residing at: SLL UT

My commission expires:

9-4-02



STATE OF UTAH )  
: ss.  
COUNTY OF SALT LAKE )

On the \_\_\_\_\_ day of \_\_\_\_\_, personally appeared before me  
\_\_\_\_\_, signer of the above instrument, who duly acknowledged to me that \_\_\_\_\_  
executed the same.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
Residing at: \_\_\_\_\_

My commission expires:

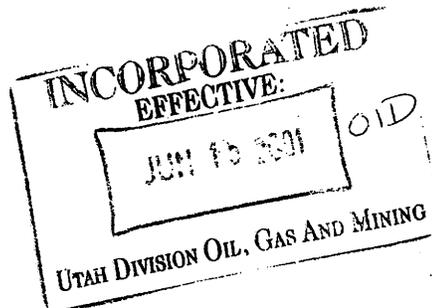
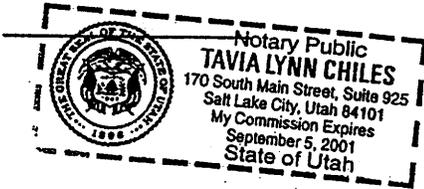
STATE OF UTAH )  
: ss.  
COUNTY OF SALT LAKE )

On the 21<sup>st</sup> day of August, 2000, personally appeared before me Richard D Pick, who being duly sworn did say that he is an officer of Canyon Fuel Company LLC and that said instrument was signed in behalf of said corporation by resolution of its Board of Directors, and said that he acknowledged to me that said corporation executed the same.

Given under my hand and seal this 21<sup>st</sup> day of August, 2000.

Tavia Lynn  
Notary Public  
Residing at: Salt Lake City UT

My commission expires:



Appendix C

Vegetation Information



**MT NEBO SCIENTIFIC, INC.**

*research & consulting*

August 14, 2008

Vicky Miller  
CANYON FUEL COMPANY, LLC.  
Dugout Canyon Mine  
P.O. Box 1029  
Wellington, UT 84542

Dear Ms. Miller:

Please find below the requested information for specific de-gas drill sites currently being studied in 2008. Final *complete* reports are currently in the process of completion.

Site Number	Plant Community	Total Living Cover	TES Present?
DUG-01	Previously Disturbed Mtn. Brush/Pinyon-Juniper	11.00	No
DUG-02/G-29	Sagebrush/Mtn. Brush/ Pinyon-Juniper	67.00	No
DUG-03/G-27	Maple/Conifer	59.00	No
DUG H-27	Maple/Pinyon-Juniper/Conifer	77.33	No*

\* Canyon vetch (*Hedysarum occidentale* var. *canone*) was observed in the drainage where this site is proposed. However, the sensitive plant species was not observed on the proposed drill site.

Please call if you have questions or comments.

Sincerely,

Patrick D. Collins, Ph.D.

Enclosures

Appendix D

Confidential Information  
Archeological Report  
Lab Analyses

CONFIDENTIAL

CONFIDENTIAL

Appendix E

Water Use Agreement



JON M. HUNTSMAN, JR.  
*Governor*  
GARY R. HERBERT  
*Lieutenant Governor*

# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

### Division of Water Rights

MICHAEL R. STYLER      JERRY D. OLDS  
*Executive Director*      *State Engineer/Division Director*

## ORDER OF THE STATE ENGINEER

### For Temporary Change Application Number 91-5024 (t34536)

Temporary Change Application Number 91-5024 (t34536) in the name of Canyon Fuel Company LLC, was filed on April 25, 2008, to add an additional place(s) of use and add an additional use(s) of or 12.00 acre-feet (af) of water as evidenced by Water Right Number 91-5024. Heretofore, the water has been diverted from an existing well located South 125 feet and East 2,307 feet from the NW Corner of Section 23, T13S, R12E, SLB&M (10-inch well, 300 feet deep). The water was stored in the following reservoir: Clarks Valley Reservoir - from March 31 to July 31, having a capacity of 460.5 acre-feet, inundating in all or portion(s) of Sections 10 and 15 T14S, R12E, SLB&M. The water was used for mining purposes. The water was used in all or portion(s) of Sections 9, 10, 11, 14, 15, 16, 17, 20, 21, 22 and 23 T13S, R12E, SLB&M.

Hereafter, it is proposed to divert 12.00 acre-feet of water from the same point as heretofore. The nature of use of the water is the same as heretofore but, in addition, the following use(s) are being added: the water is to be used for industrial purposes (dust suppression, fire protection, coal processing and drilling). The place of use of the water is to remain the same as heretofore, but adding all or portion(s) of Sections 17, 18, 19, 20 and 21 T13S, R13E, SLB&M.

Notice of this temporary change application was not published in a newspaper. It is the opinion of the State Engineer that it meets the criteria of Section 73-3-3 of the Utah Code for the approval of temporary change applications.

It is the opinion of the State Engineer that this change application can be approved without adversely affecting existing rights. The applicant is put on notice that diligence must be shown in pursuing the development of this application which can be demonstrated by the completion of the project as proposed in the change application.

It is, therefore, **ORDERED** and Temporary Change Application Number 91-5024 (t34536) is hereby **APPROVED** subject to prior rights.

**This temporary change application shall expire one year from the date hereof.**

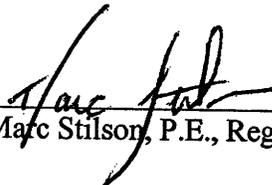
**It is the applicant's responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership.**

Your contact with this office, should you need it, is with the Southeastern Regional Office. The telephone number is 435-613-3750.

ORDER OF THE STATE ENGINEER  
Temporary Change Application Number  
91-5024 (t34536)  
Page 2

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Order. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Order, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 17 day of June, 2008.

  
\_\_\_\_\_  
Marc Stilson, P.E., Regional Engineer

Mailed a copy of the foregoing Order this 17 day of June, 2008 to:

Canyon Fuel Company LLC  
City Place One Suite 300  
St. Louis MO 63141



JON M. HUNTSMAN, JR.  
Governor  
GARY R. HERBERT  
Lieutenant Governor

# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

### Division of Water Rights

MICHAEL R. STYLER      JERRY D. OLDS  
Executive Director      State Engineer/Division Director

## ORDER OF THE STATE ENGINEER

For Temporary Change Application Number [REDACTED] 34537)

Temporary Change Application Number 91-409 (t34537) in the name of Canyon Fuel Company LLC, was filed on April 25, 2008, to add an additional point of diversion, add an additional place(s) of use and add an additional use(s) of 20.00 acre-feet (af) of water as evidenced by Water Right Number 91-409. Heretofore, the water has been diverted from a surface source located North 1,280 feet and West 1,200 feet from the SE Corner of Section 3, T14S, R12E, SLB&M.

Hereafter, it is proposed to divert 20.00 acre-feet of water from the same point as heretofore and from additional points located: ✓(1) Surface - North 790 feet and East 1,485 feet from the SW Corner of Section 21, T13S, R13E, SLB&M; ✓(2) Surface - North 1,070 feet and West 1,100 feet from the SE Corner of Section 19, T13S, R13E, SLB&M; ✓(3) Surface - South 780 feet and East 25 feet from the NW Corner of Section 18, T13S, R13E, SLB&M; ✓(4) Surface - North 1,070 feet and West 900 feet from the SE Corner of Section 20, T13S, R13E, SLB&M; (5) Surface - South 1,011 feet and East 1,322 feet from the NW Corner of Section 30, T13S, R13E, SLB&M; ✓(6) Surface - North 3,500 feet and West 850 feet from the SE Corner of Section 19, T13S, R13E, SLB&M; ✓(7) Surface - North 1,060 feet and East 2,590 feet from the SW Corner of Section 20, T13S, R13E, SLB&M; ✓(8) Surface - North 1,400 feet and West 960 feet from the SE Corner of Section 21, T13S, R13E, SLB&M. The nature of use of the water is the same as heretofore but, in addition, the following use(s) are being added: the water is to be used for industrial purposes (dust suppression, fire protection, coal processing and drilling). The place of use of the water is to remain the same as heretofore, but adding all or portion(s) of Sections 13 and 14, T13S, R12E, SLB&M; and Sections 17, 18, 19, 20, 21, 28, 29 and 30 T13S, R13E, SLB&M.

Notice of this temporary change application was not published in a newspaper. It is the opinion of the State Engineer that it meets the criteria of Section 73-3-3 of the Utah Code for the approval of temporary change applications.

It is the opinion of the State Engineer that this change application can be approved without adversely affecting existing rights. The applicant is put on notice that diligence must be shown in pursuing the development of this application which can be demonstrated by the completion of the project as proposed in the change application.

It is, therefore, **ORDERED** and Temporary Change Application Number 91-409 (t34537) is hereby **APPROVED** subject to prior rights.

**This temporary change application shall expire one year from the date hereof.**

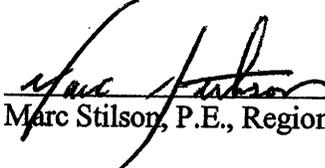
**It is the applicant's responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership.**

Inasmuch as this application proposes to divert water from a surface source, the applicant is required to contact the Stream Alteration Section of the Division of Water Rights at 801-538-7240 to obtain a Stream Alteration permit in addition to this Temporary Change Application.

Your contact with this office, should you need it, is with the Southeastern Regional Office. The telephone number is 435-613-3750.

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Order. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Order, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 17 day of June, 2008.

  
\_\_\_\_\_  
Marc Stilson, P.E., Regional Engineer

Mailed a copy of the foregoing Order this 17 day of JUNE, 2008 to:

Canyon Fuel Company LLC  
Attn: Property Administration  
City Place One, Suite 300  
St. Louis MO 63141

**Canyon Fuel Company, LLC**  
**Dugout Canyon Mine**  
P.O. Box 1029  
Wellington, Utah 84542

**RECEIVED**  
**APR 25 2008**  
**PRICE WATER RIGHTS**



April 25, 2008

Mr. Mark Stilson  
Utah Division of Water Rights  
319 North Carbonville Road, Suite B  
Price, Utah 84501

RE: Application for Temporary Change of Water – Water Right No. 91-409  
Application for Temporary Change of Water – Water Right No. 91-5024  
Application for Permanent Change of Water – Water Right No. 91-5024

Dear Mark:

Attached please find copies of applications for each of the changes listed above. A check for the fees and the original signature pages will be delivered to your office on Monday April 28, 2008. The delay in delivery of originals is due to a miscommunication between offices in Colorado and Utah and with the overnight shipping company.

If you have any questions, please call me at (435) 636-2869.

Sincerely yours,

A handwritten signature in black ink that reads "Vicky S. Miller". The signature is written in a cursive, flowing style.

Vicky S. Miller

Cc: Gene DiClaudio  
Dave Spillman  
Alex Papp  
Doug Downing  
Scott Kehrler  
Don Soper

# APPLICATION FOR TEMPORARY CHANGE OF WATER

STATE OF UTAH

Rec. by _____
Fee Paid _____
\$ _____

For the purpose of obtaining permission to make a temporary change of water in the State of Utah, application is hereby made to the State Engineer, based upon the following showing of facts, submitted in accordance with the requirements of Section 73-3-3 Utah Code Annotated 1953, as amended.

\*WATER RIGHT NO. 91 - 409 \*APPLICATION NO. t \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Changes are proposed in (check those applicable)

point of diversion.  place of use.  nature of use.  period of use.

1. OWNER INFORMATION

Name: Canyon Fuel Company, LLC \*Interest: \_\_\_\_\_ %

Address: City Place One, Suite 300

City: St. Louis State: MO Zip Code: 63141

2. \*PRIORITY OF CHANGE: \_\_\_\_\_ \*FILING DATE: \_\_\_\_\_

3. RIGHT EVIDENCED BY: \_\_\_\_\_

Prior Approved Temporary Change Applications for this right: t27967

\*\*\*\*\*HERETOFORE\*\*\*\*\*

4. QUANTITY OF WATER: 6.2 cfs and/or 485.40 ac-ft.

5. SOURCE: Pace Canyon Creek

6. COUNTY: Carbon

7. POINT(S) OF DIVERSION: N 1280 ft. W 1200 ft. from SE Cor., Sec. 3, T14S, R12E, SLB&M

Description of Diverting Works: Diversion Dam

8. POINT(S) OF REDIVERSION

The water has been rediverted from \_\_\_\_\_ at a point: \_\_\_\_\_

Description of Diverting Works: \_\_\_\_\_

9. POINT(S) OF RETURN

The amount of water consumed is \_\_\_\_\_ cfs or \_\_\_\_\_ ac-ft.

The amount of water returned is \_\_\_\_\_ cfs or \_\_\_\_\_ ac-ft.

The water has been returned to the natural stream/source at a point(s): \_\_\_\_\_

\*These items are to be completed by the Division of Water Rights.

10. NATURE AND PERIOD OF USE

Irrigation: From 04/01 to 09/30  
 Stockwatering: From 01/01 to 12/31  
 Domestic: From \_\_\_\_\_ to \_\_\_\_\_  
 Municipal: From \_\_\_\_\_ to \_\_\_\_\_  
 Mining: From \_\_\_\_\_ to \_\_\_\_\_  
 Power: From \_\_\_\_\_ to \_\_\_\_\_  
 Other: From \_\_\_\_\_ to \_\_\_\_\_

11. PURPOSE AND EXTENT OF USE

Irrigation 196.84 acres. Sole supply of 121.35 acres.  
 Stockwatering (number and kind): 810 ELU  
 Domestic: \_\_\_\_\_ Families and/or \_\_\_\_\_ Persons.  
 Municipal (name): \_\_\_\_\_  
 Mining: \_\_\_\_\_ Mining District in the \_\_\_\_\_ Mine.  
 Ores mined: \_\_\_\_\_  
 Power: Plant name: \_\_\_\_\_ Type: \_\_\_\_\_ Capacity: \_\_\_\_\_  
 Other (describe): \_\_\_\_\_

12. PLACE OF USE

Legal description of place of use by 40 acre tract(s): See Attachment A.

13. STORAGE

Reservoir Name: \_\_\_\_\_ Storage Period: from \_\_\_\_\_ to \_\_\_\_\_  
 Capacity: \_\_\_\_\_ ac-ft. Inundated Area: \_\_\_\_\_ acres.  
 Height of dam: \_\_\_\_\_ feet.  
 Legal description of inundated area by 40 acre tract(s): \_\_\_\_\_

\*\*\*\*\*THE FOLLOWING CHANGES ARE PROPOSED\*\*\*\*\*

14. QUANTITY OF WATER: \_\_\_\_\_ cfs and/or 20 ac-ft.

15. SOURCE: Pace Canyon Creek  
 Balance of the water will be abandoned: \_\_\_\_\_, or will be used as heretofore: X

16. COUNTY: Carbon

17. POINT(S) OF DIVERSION: Same as heretofore and additional points as listed on Attachment B.

Description of Diverting Works: Stream Diversion  
 \*COMMON DESCRIPTION: \_\_\_\_\_

18. POINT(S) OF REDIVERSION

The water will be rediverted from \_\_\_\_\_ at a point: \_\_\_\_\_

Description of Diverting Works: \_\_\_\_\_

19. POINT(S) OF RETURN

The amount of water to be consumed is \_\_\_\_\_ cfs or \_\_\_\_\_ ac-ft.

The amount of water to be returned is \_\_\_\_\_ cfs or \_\_\_\_\_ ac-ft.

The water will be returned to the natural stream/source at a point(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20. NATURE AND PERIOD OF USE

Irrigation: From \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_  
Stockwatering: From \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_  
Domestic: From \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_  
Municipal: From \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_  
Mining: From 05 / 15 / 08 to 12 / 31 / 08  
Power: From \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_  
Other: From \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_

21. PURPOSE AND EXTENT OF USE

Irrigation: \_\_\_\_\_ acres. Sole supply of \_\_\_\_\_ acres.

Stockwatering (number and kind): \_\_\_\_\_

Domestic: \_\_\_\_\_ Families and/or \_\_\_\_\_ Persons.

Municipal (name): \_\_\_\_\_

Mining: Dugout Canyon Mining District at the Dugout Mine.

Ores mined: Coal

Power: Plant name: \_\_\_\_\_ Type: \_\_\_\_\_ Capacity: \_\_\_\_\_

Other (describe): Dust suppression, fire protection and coal processing, coal mining and drilling

22. PLACE OF USE

Legal description of place of use by 40 acre tract(s): The same as heretofore plus lands described in Attachment C.

23. STORAGE

Reservoir Name: \_\_\_\_\_ Storage Period: from \_\_\_\_\_ to \_\_\_\_\_

Capacity: \_\_\_\_\_ ac-ft. Inundated Area: \_\_\_\_\_ acres.

Height of dam: \_\_\_\_\_ feet.

Legal description of inundated area by 40 acre tract(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

24. EXPLANATORY

The following is set forth to define more clearly the full purpose of this application. Include any supplemental water rights used for the same purpose. (Use additional pages of same size if necessary): In addition to normal mining activities, dust suppression, fire protection and coal processing the applicant seeks to use water for a drilling program incidental to coal mining.

The undersigned hereby acknowledges that even though he/she/they may have been assisted in the preparation of the above-numbered application through the courtesy of the employees of the Division of Water Rights, all responsibility for the accuracy of the information contained herein, at the time of filing, rests with the applicant(s).



A handwritten signature in black ink, appearing to read "D.E. D. [unclear]", is written over a horizontal line.

Signature of Applicant(s)  
Canyon Fuel Company, LLC

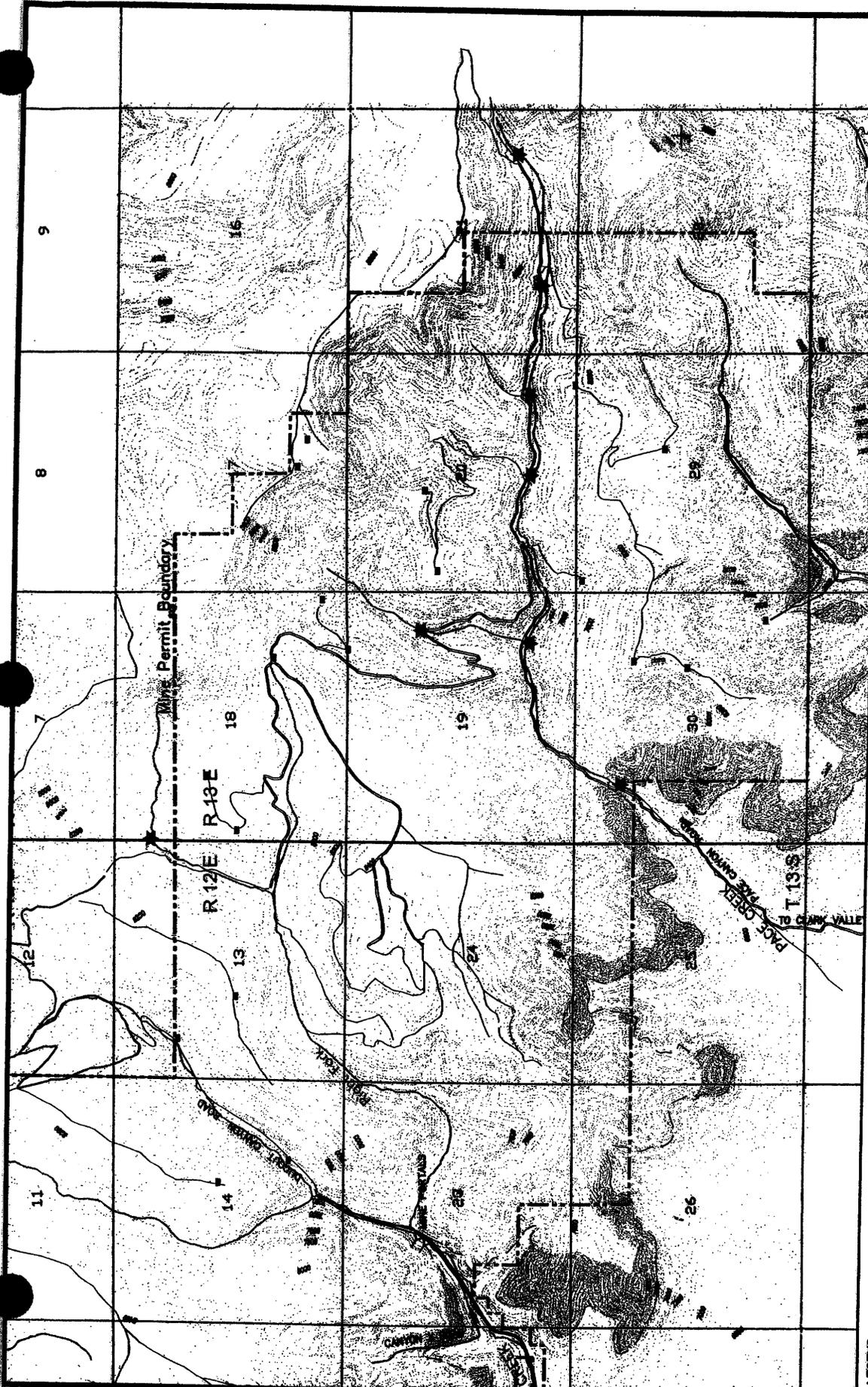
**APPLICANT'S CERTIFICATION**  
**Application for Temporary Change of Use**  
**Number t \_\_\_\_\_**

Canyon Fuel Company hereby acknowledges that this map attached to Temporary Change Application Number t \_\_\_\_\_, consisting of page number 6, was prepared in support of Temporary Change Application t \_\_\_\_\_. It hereby submits this map as a true representation of the facts shown thereon to the best of its knowledge and belief.

Dated this 24<sup>th</sup> day of APRIL, 2008.

**CANYON FUEL COMPANY**

*[Handwritten Signature]*



**LEGEND**

Scale: 1" = 300'

- Mine Permit Boundary
- Existing Road
- Road to be Constructed
- Glass Seam Outcrop
- ★ Water Diversion Point
- Water Use Point  
(Also use for dust  
suppression on roads  
and connecting holes)



**CF** Canyon Fuel Co., LLC.  
Dugout Canyon Mine  
Temporary Change Application  
Water Diversion and Use Map  
Water Right Number 91-409  
DATE PREPARED: 04/23/2008

File: X:\Geology\Drilling Surfaces\2008 MDW & Expl Holes\Water Use\2008 Water Diversion & Use Map.dwg

**Attachment A**  
**Temporary Change Application WR# 91-409**

**Place of Use Heretofore:**

1. SW1/4SW1/4, Sec. 9, T14S, R12E, SLB&M
2. NE1/4SE1/4, SE1/4SE1/4, Sec. 9, T14S, R12E, SLB&M
3. NE1/4NW1/4, SW1/4NW1/4, Sec. 10, T14S, R12E, SLB&M
4. NW1/4NE1/4, SW1/4NE1/4, SE1/4NE1/4, Sec. 10, T14S, R12E, SLB&M
5. SW1/4, Sec. 10, T14S, R12E, SLB&M
6. NE1/4NW1/4, SW1/4NW1/4, SW1/4NE1/4, Sec. 15, T14S, R12E, SLB&M
7. NW1/4SE1/4, SW1/4SE1/4, Sec.15, T14S, R12E, SLB&M
8. NW1/4NW1/4, NE1/4NW1/4, SW1/4NW1/4, Sec. 22, T14S, R12E, SLB&M

**Attachment B**  
**Temporary Change Application WR# 91-409**

**Proposed Point(s) of Diversion:**

Same as heretofore and in addition -

1. N 1070 ft. W 1100 ft. from SE Corner, Sec. 19, T13S, R13E, SLBM
2. S 780 ft. E 25 ft. from NW Corner, Sec. 18, T13S, R13E, SLBM
3. N 1060 ft. E 2590 ft. from SW Corner, Sec. 20, T13S, R13E, SLBM
4. N 3500 ft. W 850 ft. from SE Corner, Sec. 19, T13S, R13E, SLBM
5. N 1070 ft. W 900 ft. from SE Corner, Sec. 20, T13S, R13E, SLBM
6. N 1400 ft. W 960 ft. from SE Corner, Sec. 21, T13S, R13E, SLBM
7. S 1011 ft. E 1322 ft. from NW Corner, Sec. 30, T13S, R13E, SLBM
8. N 790 ft. E 1485 ft. from SW Corner, Sec. 21, T13S, R13E, SLBM

**Attachment C**  
**Temporary Change Application WR# 91-409**

**Proposed Place of Use:**

Same as heretofore and in addition -

1. All of Sec. 13, T13S, R12E, SLB&M
2. All of Sec. 14, T13S, R12E, SLB&M
3. All of Sec. 17, T13S, R13E, SLB&M
4. All of Sec. 18, T13S, R13E, SLB&M
5. All of Sec. 19, T13S, R13E, SLB&M
6. All of Sec. 20, T13S, R13E, SLB&M
7. All of Sec. 21, T13S, R13E, SLB&M
8. All of Sec. 28, T13S, R13E, SLB&M
9. All of Sec. 29, T13S, R13E, SLB&M
10. All of Sec. 30, T13S, R13E, SLB&M

Also, dust suppression may be required along miscellaneous access roads in Section 16 of T13S, R13E, SLB&M.

# APPLICATION FOR TEMPORARY CHANGE OF WATER

STATE OF UTAH

Rec. by _____
Fee Paid
\$ _____

For the purpose of obtaining permission to make a temporary change of water in the State of Utah, application is hereby made to the State Engineer, based upon the following showing of facts, submitted in accordance with the requirements of Section 73-3-3 Utah Code Annotated 1953, as amended.

\*WATER RIGHT NO. 91 - 5024 \*APPLICATION NO. t \_\_\_\_\_

Changes are proposed in (check those applicable)  
\_\_\_\_\_ point of diversion.  place of use.  nature of use.  period of use.

**1. OWNER INFORMATION**

Name: Canyon Fuel Company, LLC \*Interest: \_\_\_\_\_ %  
Address: City Place One, Suite 300  
City: St. Louis State: MO Zip Code: 63141

2. \*PRIORITY OF CHANGE: \_\_\_\_\_ \*FILING DATE: \_\_\_\_\_

3. RIGHT EVIDENCED BY: 91-23 & 491 (A5039) Cert. No. 1685

Prior Approved Temporary Change Applications for this right: \_\_\_\_\_

\*\*\*\*\*HERETOFORE\*\*\*\*\*

4. QUANTITY OF WATER: \_\_\_\_\_ cfs and/or 245.00 ac-ft.  
5. SOURCE: Dugout Canyon Creek  
6. COUNTY: Carbon  
7. POINT(S) OF DIVERSION: S 125 ft. E 2307 ft. from NW Corner, Sec. 23, T13S, R12E, SLBM

Description of Diverting Works: Underground Well and pump system.

**8. POINT(S) OF REDIVERSION**

The water has been rediverted from \_\_\_\_\_ at a point: \_\_\_\_\_

Description of Diverting Works: \_\_\_\_\_

**9. POINT(S) OF RETURN**

The amount of water consumed is \_\_\_\_\_ cfs or \_\_\_\_\_ ac-ft.

The amount of water returned is \_\_\_\_\_ cfs or \_\_\_\_\_ ac-ft.

The water has been returned to the natural stream/source at a point(s): \_\_\_\_\_

\*These items are to be completed by the Division of Water Rights.

10. NATURE AND PERIOD OF USE

Irrigation: From \_\_\_\_\_ to \_\_\_\_\_
Stockwatering: From \_\_\_\_\_ to \_\_\_\_\_
Domestic: From \_\_\_\_\_ to \_\_\_\_\_
Municipal: From \_\_\_\_\_ to \_\_\_\_\_
Mining: From 01/01 to 12/31
Power: From \_\_\_\_\_ to \_\_\_\_\_
Other: From \_\_\_\_\_ to \_\_\_\_\_

11. PURPOSE AND EXTENT OF USE

Irrigation: \_\_\_\_\_ acres. Sole supply of \_\_\_\_\_ acres.
Stockwatering (number and kind): \_\_\_\_\_
Domestic: \_\_\_\_\_ Families and/or \_\_\_\_\_ Persons.
Municipal (name): \_\_\_\_\_
Mining: Dugout Canyon Mining District in the Dugout Mine.
Ores mined: Coal
Power: Plant name: \_\_\_\_\_ Type: \_\_\_\_\_ Capacity: \_\_\_\_\_
Other (describe): Dust suppression, fire protection and coal processing.

12. PLACE OF USE

Legal description of place of use by 40 acre tract(s): See Attachment A.

13. STORAGE

Reservoir Name: Mine Site Tank Storage Period: from 01/01 to 12/31
Capacity: 0.9 ac-ft. Inundated Area: \_\_\_\_\_ acres.
Height of dam: \_\_\_\_\_ feet.
Legal description of inundated area by 40 acre tract(s): \_\_\_\_\_

\*\*\*\*\*THE FOLLOWING CHANGES ARE PROPOSED\*\*\*\*\*

14. QUANTITY OF WATER: \_\_\_\_\_ cfs and/or 12 ac-ft.

15. SOURCE: Dugout Canyon Creek
Balance of the water will be abandoned: \_\_\_\_\_, or will be used as heretofore: X

16. COUNTY: Carbon

17. POINT(S) OF DIVERSION: Same as heretofore.

Description of Diverting Works: Well.
\*COMMON DESCRIPTION: NE of Wellington, Utah

18. POINT(S) OF REDIVERSION
The water will be rediverted from \_\_\_\_\_ at a point: \_\_\_\_\_
Description of Diverting Works: \_\_\_\_\_

19. POINT(S) OF RETURN

The amount of water to be consumed is \_\_\_\_\_ cfs or \_\_\_\_\_ ac-ft.

The amount of water to be returned is \_\_\_\_\_ cfs or \_\_\_\_\_ ac-ft.

The water will be returned to the natural stream/source at a point(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20. NATURE AND PERIOD OF USE

Irrigation: From \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_

Stockwatering: From \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_

Domestic: From \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_

Municipal: From \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_

Mining: From 05 / 15 / 08 to 12 / 31 / 08

Power: From \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_

Other: From \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_

21. PURPOSE AND EXTENT OF USE

Irrigation: \_\_\_\_\_ acres. Sole supply of \_\_\_\_\_ acres.

Stockwatering (number and kind): \_\_\_\_\_

Domestic: \_\_\_\_\_ Families and/or \_\_\_\_\_ Persons.

Municipal (name): \_\_\_\_\_

Mining: Dugout Canyon Mining District at the Dugout Mine.

Ores mined: Coal

Power: Plant name: \_\_\_\_\_ Type: \_\_\_\_\_ Capacity: \_\_\_\_\_

Other (describe): Dust suppression, fire protection and coal processing, coal mining and drilling

22. PLACE OF USE

Legal description of place of use by 40 acre tract(s): The same as heretofore plus lands described in

Attachment B.

23. STORAGE

Reservoir Name: \_\_\_\_\_ Storage Period: from \_\_\_\_\_ to \_\_\_\_\_

Capacity: \_\_\_\_\_ ac-ft. Inundated Area: \_\_\_\_\_ acres.

Height of dam: \_\_\_\_\_ feet.

Legal description of inundated area by 40 acre tract(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

24. EXPLANATORY

The following is set forth to define more clearly the full purpose of this application. Include any supplemental water rights used for the same purpose. (Use additional pages of same size if necessary): In addition to

normal mining activities, dust suppression, fire protection and coal processing the  
applicant seeks to use water for a drilling program incidental to coal mining.

The undersigned hereby acknowledges that even though he/she/they may have been assisted in the preparation of the above-numbered application through the courtesy of the employees of the Division of Water Rights, all responsibility for the accuracy of the information contained herein, at the time of filing, rests with the applicant(s).

A handwritten signature in cursive script, appearing to read "D.E. Daniels", is written over a horizontal line.

Signature of Applicant(s)  
Canyon Fuel Company, LLC

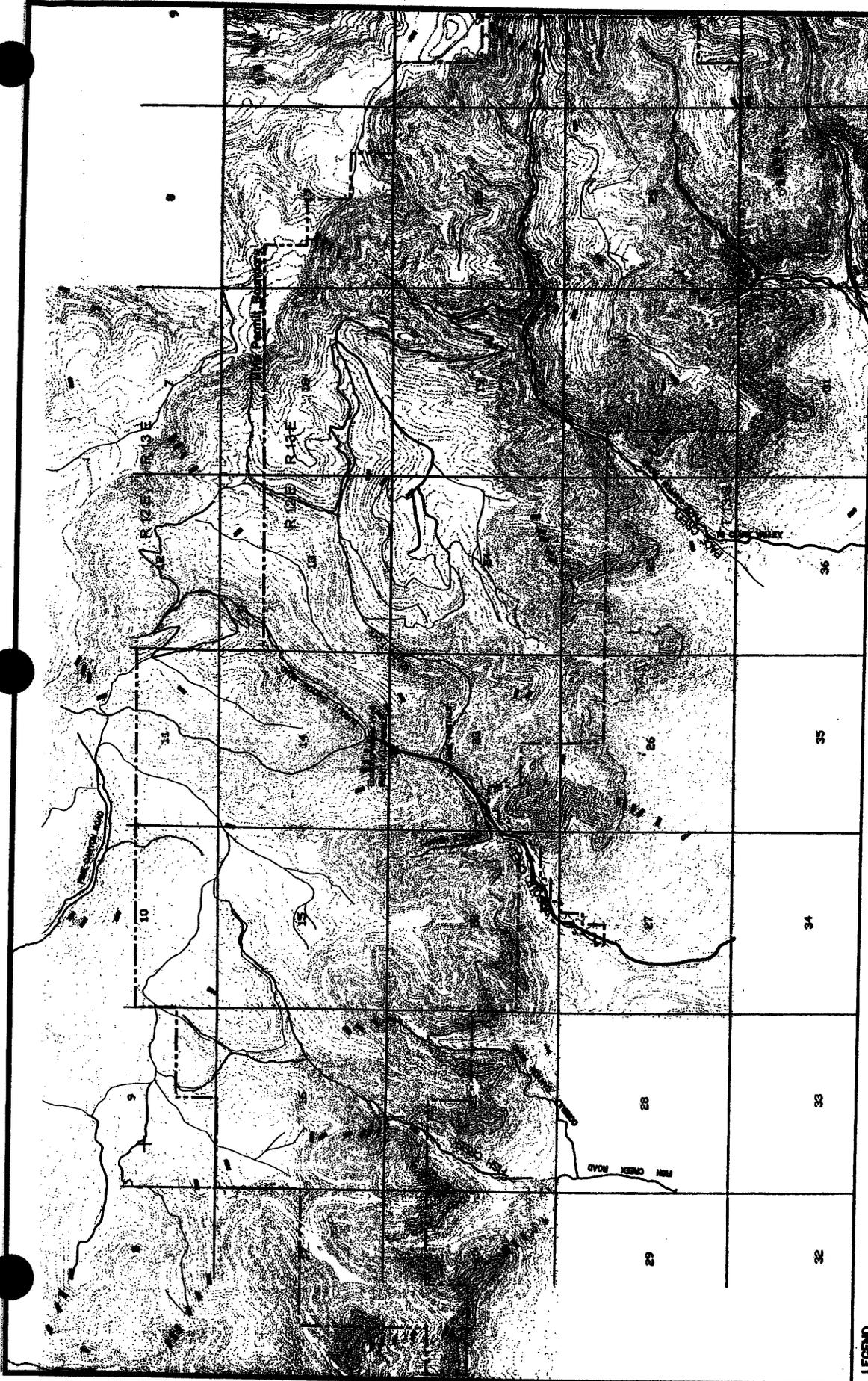
**APPLICANT'S CERTIFICATION**  
**Application for Temporary Change of Use**  
**Number t \_\_\_\_\_**

Canyon Fuel Company hereby acknowledges that this map attached to Temporary Change Application Number t \_\_\_\_\_, consisting of page number 10, was prepared in support of Temporary Change Application t \_\_\_\_\_. It hereby submits this map as a true representation of the facts shown thereon to the best of its knowledge and belief.

Dated this 21<sup>st</sup> day of APRIL, 2008.

**CANYON FUEL COMPANY**

*D E D Charles*



**CF** Canyon Fuel Co., LLC.  
 Dugout Canyon Mine

Temporary Change Application  
 Water Diversion and Use Map  
 Water Right Number 91-5024

FILE NO. 2008-0000  
 MEASUREMENT: 272AF 6-6-08  
 DATE: April 23, 2008



File: X:\Geology\Drilling Surfaces\2008 MOW & Epi Nelson\Water Use\2008 Water Diversion & Use Map.dwg

**LEGEND**

Scale: 1" = 4000'

- Mine Parcel Boundary
- Existing Road
- Road to be Constructed
- Glass Seam Outcrop



Water Diversion Point

9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36
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**Attachment A**  
**Temporary Change Application WR # 91-5024**

**Place of Use Heretofore:**

1. SW1/4SE1/4; SE1/4SE1/4; Sec. 9, T13S, R12E, SLBM.
2. SW1/4; SE1/4; Sec. 10, T13S, R12E, SLBM.
4. SW1/4; SE1/4; Sec. 11, T13S, R12E, SLBM.
5. All of Sec. 13, T13S, R12E, SLBM
6. All of Sec. 14, T13S, R12E, SLBM.
7. All of Sec. 15, T13S, R12E, SLBM.
8. All of Sec. 16, T13S, R12E, SLBM.
9. NE1/4SW1/4; SE1/4SW1/4; SE1/4; Sec. 17, T13S, R12E, SLBM.
10. NE1/4NW1/4; SW1/4NW1/4; SE1/4NW1/4; Sec. 20, T13S, R12E, SLBM.
11. NW1/4NE1/4; NE1/4NE1/4; Sec. 20, T13S, R12E, SLBM.
12. NW1/4NW1/4; NE1/4NW1/4; NE1/4; Sec. 21, T13S, R12E, SLBM.
13. NW1/4; NE1/4; NW1/4SW1/4; NE1/4SW1/4; NW1/4SE1/4; NE1/4SE1/4;  
Sec. 22, T13S, R12E, SLBM.
14. NW1/4; NW1/4NE1/4; SW1/4NE1/4; Sec. 23, T13S, R12E, SLBM.
15. All of Sec. 24, T13S, R13E, SLB&M
16. All of Sec. 27, T13S, R13E, SLB&M

**Attachment B**  
**Temporary Change Application WR# 91-5024**

**Proposed Place of Use:**

Same as heretofore and in addition -

1. All of Sec. 13, T13S, R12E, SLB&M
2. All of Sec. 14, T13S, R12E, SLB&M
3. All of Sec. 17, T13S, R13E, SLB&M
4. All of Sec. 18, T13S, R13E, SLB&M
5. All of Sec. 19, T13S, R13E, SLB&M
6. All of Sec. 20, T13S, R13E, SLB&M
7. All of Sec. 21, T13S, R13E, SLB&M
8. All of Sec. 28, T13S, R13E, SLB&M
9. All of Sec. 29, T13S, R13E, SLB&M
10. All of Sec. 30, T13S, R13E, SLB&M

Also, dust suppression may be required along miscellaneous access roads in Section 16 of T13S, R13E, SLB&M.