



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

Michael O. Leavitt
Governor
Kathleen Clarke
Executive Director
Lowell P. Braxton
Division Director

1594 West North Temple, Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801
801-538-5340
801-359-3940 (Fax)
801-538-7223 (TDD)

May 26, 2000

Mike Glasson, Environmental Coordinator
West Ridge Resources, Inc.
PO Box 902
Price, Utah 84501

Re: Revised Permit for Inclusion of Security Gate on C Canyon Road, West Ridge Resources, Inc.,
West Ridge Mine, ACT/007/041-AM00B, Outgoing File

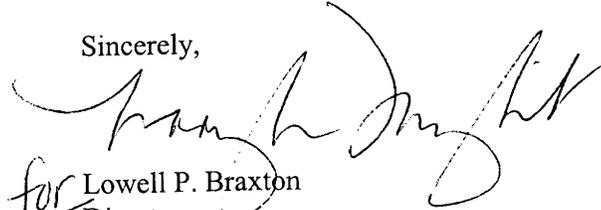
Dear Mr. Glasson:

The security gate on the C Canyon Road has been approved and included in the permit area for the West Ridge Mine. This amendment included a public notice of the occasional closure of this road. The public comment period ended on May 11, 2000 and the Division received no comments. A copy of the technical analysis is enclosed for your information as well as your stamped and approved pages for this amendment to incorporate into the West Ridge Mine mining and reclamation plan. The "Amended Analysis and Findings for the C Canyon Road" are also attached for your information (see attached).

Enclosed are two copies of the revised permit that include this portion of the C Canyon road (portions of Section 15, SE1/4NE1/4 of T14SR13E). Please sign both copies of the permit and return one to the Division.

If you have any questions, please feel free to call me or Pamela Grubaugh-Littig at (801)-538-5268.

Sincerely,


for Lowell P. Braxton
Director

sd/sm

Enclosures:

cc: Joe Wilcox, OSM, Denver
Richard Manus, BLM, Price
Mark Page, Water Rights, Price, w/o enc
Dave Ariotti, DEQ, Price, w/o enc
Derris Jones, DWR, Price, w/o enc
Price Field Office

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FEDERAL

Permit Number ACT/007/041

May 26, 2000

**STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84114-5801
(801) 538-5340**

This permit, ACT/007/041, is issued for the state of Utah by the Utah Division of Oil, Gas and Mining (Division) to:

**WEST RIDGE Resources, Inc.
P.O. Box 902
Price, Utah 84501
(801-637-5385)**

for the West Ridge Mine. A Surety Bond is filed with the Division in the amount of \$2,117,000 payable to the State of Utah, Division of Oil, Gas and Mining and the Office of Surface Mining Reclamation and Enforcement (OSM). Coal mining and reclamation operations will be conducted on Federal Lease: SL-068754-U-01215 and on a State Special Use Lease #1163. DOGM must receive a copy of this permit signed and dated by the permittee.

Sec. 1 STATUTES AND REGULATIONS - This permit is issued pursuant to the Utah Coal Mining and Reclamation Act of 1979, Utah Code Annotated (UCA) 40-10-1 et seq, hereafter referred to as the Act.

Sec. 2 PERMIT AREA - The permittee is authorized to conduct coal mining and reclamation operations on the following described lands within the permit area at the West Ridge Mine, situated in the state of Utah, Carbon County. The area to be mined is approximately 2,660 acres and is delineated on U.S.G.S. 7½ minute topographic maps as follows:

Township 14 South, Range 13 East

- Section 10: NE1/4, N1/2SE1/4, E1/2NW1/4, SE1/4SE1/4;
- Section 11: All;
- Section 12: S1/2SW1/4, NW1/4SW1/4;
- Section 13: W1/2, SE1/4, S1/2NE1/4, NW1/4NE1/4;
- Section 14: E1/2, N1/2NW1/4, SE1/4NW1/4;
- Section 15: NE1/4NE1/4; portions of SE1/4NE1/4;
- Section 16: Portions of NE1/4 SE1/4(9.6 acres); and
- Section 24: N1/2SE1/4, N1/2, NE1/4SW1/4.

This legal description is for the permit area of the West Ridge Mine. The permittee is authorized to conduct underground coal mining and reclamation activities and related surface activities on the foregoing described property subject to the conditions of all applicable conditions, laws and regulations.

- Sec. 3 COMPLIANCE** - The permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program.
- Sec. 4 PERMIT TERM** - This permit expires on April 1, 2004.
- Sec. 5 ASSIGNMENT OF PERMIT RIGHTS** - The permit rights may not be transferred, assigned or sold without the approval of the Director, Division. Transfer, assignment or sale of permit rights must be done in accordance with applicable regulations, including but not limited to 30 CFR 740.13{e} and R645-303-300.
- Sec. 6 RIGHT OF ENTRY** - The permittee shall allow the authorized representative of the Division, including but not limited to inspectors, and representatives of the Office of Surface Mining Reclamation and Enforcement (OSM), without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay to:
- (a) have the rights of entry provided for in 30 CFR 840.12, R645-400-220, 30 CFR 842.13 and R645-400-110;
 - (b) be accompanied by private persons for the purpose of conducting an inspection in accordance with R645-400-100 and R645-400-200 when the inspection is in response to an alleged violation reported to the Division by the private person.
- Sec. 7 SCOPE OF OPERATIONS** - The permittee shall conduct coal mining and reclamation operations only on those lands specifically designated as within the permit area on the maps submitted in the approved plan and approved for the term of the permit and which are subject to the performance bond.
- Sec. 8 ENVIRONMENTAL IMPACTS** - The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:

- (a) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;
- (b) immediate implementation of measures necessary to comply; and
- (c) warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

Sec. 9 DISPOSAL OF POLLUTANTS - The permittee shall dispose of solids, sludge, filter backwash or pollutants in the course of treatment or control of waters or emissions to the air in the manner required by the approved Utah State Program and the Federal Lands Program which prevents violation of any applicable state or federal law.

Sec. 10 CONDUCT OF OPERATIONS - The permittee shall conduct its operations:

- (a) in accordance with the terms of the permit to prevent significant, imminent environmental harm to the health and safety of the public; and
- (b) utilizing methods specified as conditions of the permit by the Division in approving alternative methods of compliance with the performance standards of the Act, the approved Utah State Program and the Federal Lands Program.

Sec. 11 EXISTING STRUCTURES - As applicable, the permittee will comply with R645-301 and R645-302 for compliance, modification, or abandonment of existing structures.

Sec. 12 RECLAMATION FEE PAYMENTS - The operator shall pay all reclamation fees required by 30 CFR Part 870 for coal produced under the permit, for sale, transfer or use.

Sec. 13 AUTHORIZED AGENT - The permittee shall provide the names, addresses and telephone numbers of persons responsible for operations under the permit to whom notices and orders are to be delivered.

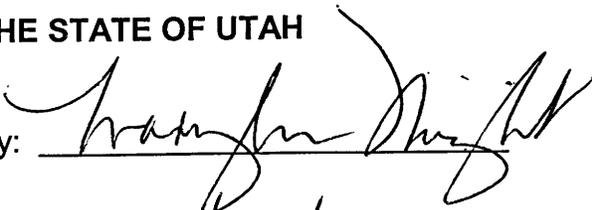
- Sec. 14 COMPLIANCE WITH OTHER LAWS** - The permittee shall comply with the provisions of the Water Pollution Control Act (33 USC 1151 et seq.) and the Clean Air Act (42 USC 7401 et seq), UCA 26-11-1 et seq, and UCA 26-13-1 et seq.
- Sec. 15 PERMIT RENEWAL** - Upon expiration, this permit may be renewed for areas within the boundaries of the existing permit in accordance with the Act, the approved Utah State Program and the Federal Lands Program.
- Sec. 16 CULTURAL RESOURCES** - If during the course of mining operations, previously unidentified cultural resources are discovered, the permittee shall ensure that the site(s) is not disturbed and shall notify the Division. The Division, after coordination with OSM, shall inform the permittee of necessary actions required. The permittee shall implement the mitigation measures required by Division within the time frame specified by Division.
- Sec. 17 APPEALS** - The permittee shall have the right to appeal as provided for under R645-300-200.
- Sec. 18 SPECIAL CONDITIONS** - There are special conditions associated with this permitting action as described in attachment A.

The above conditions (Secs. 1-18) are also imposed upon the permittee's agents and employees. The failure or refusal of any of these persons to comply with these conditions shall be deemed a failure of the permittee to comply with the terms of this permit and the lease. The permittee shall require his agents, contractors and subcontractors involved in activities concerning this permit to include these conditions in the contracts between and among them.

These conditions may be revised or amended, in writing, by the mutual consent of the Division and the permittee at any time to adjust to changed conditions or to correct an oversight. The Division may amend these conditions at any time without the consent of the permittee in order to make them consistent with any federal or state statutes and any regulations.

THE STATE OF UTAH

By: _____



Date: _____

5/26/2000

I certify that I have read, understand and accept the requirements of this permit and any special conditions attached.

Authorized Representative of Permittee

Date: _____

Attachment A

SPECIAL CONDITIONS

1. This permit specifically authorizes West Ridge Resources, Inc. to conduct an experimental practice in conjunction with their approved Coal Mining and Reclamation Operations at the West Ridge Mine, which allows for the protection of topsoil "IN-PLACE" rather than salvaging soil and stockpiling it for future reclamation. West Ridge Resources, Inc. will follow the plans as outlined in the approved Mining and Reclamation Plan, Chapter 2 and Appendix 2-6 and will be required to evaluate the effectiveness of the experimental practice on an annual basis. The Division will conduct annual reviews of the practice to ensure that it fully protects the environment and the public health and safety. In the event that the experimental practice is determined to be not as environmentally protective as would otherwise be required by standards promulgated under R645-301 and R645-302, revised reclamation plans which utilize standard reclamation technology will be required.



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May 26, 2000

TO: Mine Internal File

FROM: Mary Ann Wright, Associate Director, Mining 

RE: Amended Analysis and Findings on the C Canyon Road, West Ridge Resources, Inc., West Ridge Mine, ACT/007/041

Background

This is an amended finding and analysis of the C Canyon road leading from State Highway 123 to the West Ridge Mine, Carbon County, Utah. The original public road findings were issued on March 25, 1998 and the state permit was issued on April 1, 1999. The original findings are being amended because West Ridge Resources, Inc., will control access on some weekends and holidays (approximately 1600 feet of the public road) from the security gate owned by Carbon County and allowed by the county to be used by West Ridge Resources, Inc. The Carbon County Commission approved this activity in a commission meeting held on December 8, 1999 (8). The BLM approved this activity per a letter dated March 28, 2000 (9). Due to the fact that this will occasionally close a public road, the permittee published a public notice in the local newspaper about closure of this section of the public road. The Division received no comments during the thirty-day comment period (10).

This analysis and finding takes into account the regulations and policy under the Utah Coal Regulatory Program (UCRP) in regards to the "Permitting of Roads". This document becomes part of the permit findings for the West Ridge Mine.

Summary

The C Canyon Road, leading to the site of coal mining and reclamation operations in C Canyon is part of the Carbon County road system as a Utah State Class "B" county road. The County upgraded and realigned the existing (since at least 1952) unimproved public roadway to C Canyon in order to provide permanent and unrestricted access to State school trust lands and Federal public lands for multiple-use activities. Carbon County maintains this road with public funds as a multiple use, open access, public road not subject to the control of West Ridge Resources, Inc. ("West Ridge") or any other private entity. Carbon County is responsible for the environmental issues relating to the alignment, construction and maintenance of the road. During

operation of the West Ridge Mine, the C Canyon Road will remain a public road, allowing access by multiple purpose users up to a security gate about 1600 feet from the minesite, which may be closed occasionally on weekends and holidays.

The C Canyon Road is found under this analysis to be exempt from regulation according to the State of Utah Coal Mining Rules, R645, et seq. and the DOGM July 3, 1995 policy on roads. The road within the disturbed area boundary of the mine and beyond the security gate are permitted and maintained by the coal mining company, West Ridge Resources, Inc., (the Permittee).

Policy

This analysis implements the July 3, 1995, permitting policy on roads (see Reference #1 of the attached Reference List). In deciding to exempt the C Canyon road from regulation, DOGM herein makes written findings as to whether:

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

Analysis and Findings

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

- (1) July 3, 1995 letter from James W. Carter, Director of Utah Division of Oil, Gas, & Mining to Rick Seibel, Regional Director and to Jim Fulton Denver Field Office Division Chief, U.S. Dept. Of Interior, Office of Surface Mining. RE: Utah Section 733 Letter, Permitting of Roads;
- (2) West Ridge Resources, Inc. Permit Application Package (PAP);
- (3) Letter from William Krompel, Carbon County Commissioner, to Lowell P. Braxton, UDOGM, September 22, 1997;

- (4) Letter from William D. Krompel, Carbon County Commissioner, to David Shaver, Andalex, February 6, 1998;
- (5) Utah R-645 et seq. Coal Mining Rules;
- (6) December 15, 1997 Interior Board of Land Appeals decision (IBLA 94-366);
- (7) February 26, 1998 Application for Stream Alteration Permit, filed with the Utah Division of Water Rights by William Krompel, Carbon County Commission;
- (8) Minutes from December 8, 1999 Carbon County Commission Meeting;
- (9) Letter from BLM, Price Field Office Acting Field Manager, Thomas Rasmussen, supporting the installation and locking of the gate within BLM ROW - UTU-74334; and
- (10) Affidavit of Publication for Closure of Gate, published in the Sun Advocate on March 23, 30, April 6 and April 11, 2000. A thirty-day public comment period ended on May 11, 2000. No comments were received.

Analysis #1:

- The Permit Application Package for the West Ridge mine was submitted on January 26, 1998 and was issued a state approval on April 1, 1999. The original permit approved that the mine's surface facilities area would be accessed by the Carbon County public road. The original public road analysis and findings dated March 25, 1998 stated that approximately 1,000 feet of the northern end of the Carbon County road would extend into the minesite disturbed area and then terminate at the junction of the mine truck loop. This turn around was constructed at this terminus to give public vehicles an opportunity to turn around without having to drive through the mine yard. The 1,000 foot long segment of the public road, from the terminus of the road at the truck loop junction to just below the office at the southern end of the disturbed area, was included within the permit area of the original West Ridge Mine permit. Carbon County allowed special mine-related utilization of this segment of the road, and West Ridge is responsible for maintenance. The security gate is now the terminus of the permit area for the West Ridge Mine, as approved through an amendment to the original permit. The security gate will be closed occasionally on weekends and holidays and may restrict access on the public road from the gate to the turnaround. This permitting action, ACT/007/041-AM00B, was submitted as a result of a cessation order (C00-46-1-1 issued on February 7, 2000) because the gate was closed and West Ridge Resources, Inc., had not permitted this activity for inclusion in the permit area. Since West Ridge Resources, Inc., controls access on the public road, they are considered to be conducting coal mining and reclamation operation on that portion of the road. They were required to permit that section of the public road. West Ridge Resources, Inc. submitted an amendment for this activity and met the requirements for approval on May 26, 2000. Carbon County Commission, at a

meeting on December 8, 1999, made a motion to turn the gate over to the County and let West Ridge Resources, Inc. control the opening and closing (8). Additionally, the Bureau of Land Management Price Field Office by letter dated March 28, 2000 support the decision to install and lock the gate in question which is within a BLM right-of-way.(9) West Ridge Resources, Inc., published for four consecutive weeks (March 23, 30, and April 6 and 11, 2000) in the local newspaper, The Sun Advocate about the closure of this portion of the county road. A thirty-day comment period followed with no comments received by the Division about this closure.

The C Canyon Road, from the turnaround loop down to State Highway 123 is an integral part of the county's public road network and is maintained by Carbon County. The arrangement for snow removal is that Carbon County will remove the snow from the turnaround loop to State Highway 123, unless the gate is closed. In that event, the responsibility for snow removal is West Ridge Resources, Inc., Letters from Carbon County acknowledge that Carbon County will assume full responsibility for complying with all applicable environmental protection laws and regulations in the course of permitting, constructing and maintaining the C Canyon Road. (2) (3)

- Carbon County filed a right-of- way application with the Bureau of Land Management for the C Canyon road on June 9, 1997. The County also filed with the Utah Division of Water Rights, an application for a Stream Alteration Permit on February 26, 1998. (3)
- For most of its length the new road alignment will closely follow an existing unimproved public roadway (RS2477 road). Carbon County upgraded certain sections of the existing road and constructed new sections of road along the remainder of the alignment. The C Canyon road was engineered and constructed/reconstructed in accordance with the design standards of the American Association of State Highway Transportation Officials (AASHTO) and the Utah Department of Transportation (UDOT), and engineered and constructed similar to other such public roads within the County. Carbon county oversaw and directed all road construction activities. (3)
- The source for funds for the C Canyon Road was from a low interest loan from the Utah Community Impact Board(CIB). The maintenance for the road is funded from the Utah Class "B" road funds and Carbon County's general fund. The maintenance schedule for this road is the same as for other similar Class "B" roads in the county. (3)

- The legal description for the road alignment is as follows:BEGINNING AT A POINT ON STATE HIGHWAY 123, S22°04'15"W, 2,454.59 FEET FROM THE NE CORNER OF SECTION 7, T15S, R13E, SLB&M; THENCE N0°10'09", 935.45 FEET TO THE POINT OF A CURVE; THENCE 789.43 FEET ALONG THE ARC OF A 1,433.64 FOOT RADIUS CURVE TO THE RIGHT; THENCE N31°22'50"E, 5,320.16 FEET TO THE POINT OF A CURVE THENCE 249.38 FEET ALONG THE ARC OF A 1,443.05 FOOT RADIUS CURVE TO THE LEFT; THENCE N21°28'45"E, 1,125.94 FEET TO THE POINT OF A CURVE; THENCE 2,205.26 FEET ALONG THE ARC OF 2,253.05 FOOT RADIUS CURVE TO THE LEFT; THENCE N34°36'05"W, 519.19 FEET TO THE POINT OF A CURVE; THENCE 3,648.35 FEET ALONG THE ARC OF A 2,591.93 FOOT RADIUS CURVE TO THE RIGHT; THENCE N46°02'49"E, 3,029.24 FEET TO THE POINT OF A CURVE; THENCE 299.08 FEET ALONG THE ARC OF A 1,562.30 FOOT RADIUS CURVE TO THE RIGHT, THENCE N57°00'56"E, 1,829.06 FEET TO THE POINT OF A CURVE; THENCE 2,149.93 FEET ALONG THE ARC OF A 4,123.36 FOOT RADIUS CURVE TO THE LEFT; THENCE N27°08'29"E, 3,175.65 FEET TO THE POINT OF A CURVE; THENCE 498.59 FEET ALONG THE ARC OF A 2,708.50 FOOT RADIUS CURVE TO THE LEFT; THENCE N16°35'39"E, 1,688.08 FEET TO THE POINT OF A CURVE; THENCE 2,910.59 FEET ALONG THE ARC OF A 2,474.93 FOOT RADIUS CURVE TO THE RIGHT; THENCE N83°58'33"E, 950.00 FEET TO THE POINT OF A CURVE; THENCE 1,782.26 FEET ALONG THE ARC OF A 1,203.25 FOOT RADIUS CURVE TO THE LEFT; THENCE N0°53'26"W, 795.01 FEET TO THE POINT OF A CURVE; THENCE 591.66 FEET ALONG THE ARC OF A 1,450.86 FOOT RADIUS CURVE TO THE RIGHT; THENCE N22°28'29"E, 1,870.44 FEET TO A POINT ON MINE PROPERTY. TOTAL LENGTH: 36,362.75 FEET - 6.887 MILES. (3)

Finding #1:

Carbon County provided access into the West Ridge area by installing the C Canyon road which was designed, constructed/reconstructed, operated and maintained as a permanent and integral part of Carbon County's public road network. Carbon County assumed full responsibility for alignment, construction and operation of the road. The land upon which the road was built is public land and the County's right of access will be through appropriate applications for rights of way. The road was properly acquired by the governmental entity and was not deeded to avoid regulation.

Analysis # 2:

- The C Canyon Road is classified as a Class B county road, constructed and maintained in a manner similar to other Class B road systems within the County. The road up to the disturbed area boundary at the truck turnaround loop of the West Ridge Mine is maintained by the County with public funds as a multiple use, open access, public road not subject to the control of West Ridge Resources, Inc. or any other private entity, although snow removal will be by West Ridge Resources, Inc., if the gate is closed. However, at the conclusion of mining this section of road will be left, operated, and maintained as a permanent and integral part of the County's road system. Public access on the road will not be restricted during the life of the mine. Occasionally on weekends and holidays, however, West Ridge Resources, Inc., may close the gate. (2), (3), (4), & (8).
- As a member of the public, and in pursuit of its business located on nearby public lands, West Ridge Resources, Inc. is allowed to use the C Canyon road as would any other member of the public. With the C Canyon road being a public road, West Ridge Resources, Inc. will not deny or limit use of this road to anyone. This will be a multiple use road that has and will be utilized by stockmen, sight seers, recreationalists, mineral exploration and hunters.(3) & (4)
- The source of funds for the C Canyon Road is from a low interest loan from the Utah Community Impact Board (CIB). The maintenance for the road is funded from the Utah Class "B" road funds and Carbon County's general fund. The maintenance schedule for this road is the same as for other similar class "B" roads in the county.(3)

Finding # 2:

Carbon County has asserted its jurisdiction over the C Canyon Road as a Class B road within the public road system, to be constructed and maintained in a manner similar to other Class B road systems within the County. The road up to the mine permit area will be maintained by the County with public funds as a multiple use, open-access, public road not subject to the control of West Ridge Resources, Inc. or any other private entity.

Analysis # 3:

- Carbon County affirms that the C Canyon Road is permitted, designed, constructed/reconstructed, operated and maintained as a permanent and integral part

of the county's public road network. This road is a Class "B" Carbon County road. Carbon County is responsible for, and liable for, the engineering design, construction and maintenance of the roadway. (3)

- Carbon County controls numerous Class "B" county roads within Carbon County similar to the C Canyon road. These roads are all multiple use, open access public roads. (3)
- All use of the C Canyon road is for public use and all users of the road will be subject to the laws, rules and regulations that govern all other similar public roads in Carbon County, including, but not limited to: gross vehicle weight and length restrictions, limitations on tire and axle pavement loading, vehicle registration and insurance requirements, safety inspections and certification, operator licencing, and conformance to all operating rules established by the US Department of Transportation, the Utah Department of Transportation, The Utah Department of Public Safety, and the Carbon County Sheriff's Department. (3)
- The C Canyon road is engineered and constructed/reconstructed in accordance with the design standards of the American Association of State Highway Transportation Officials (AASHTO) and the Utah Department of Transportation (UDOT), and is engineered and constructed similar to other such public roads within the County. Carbon County oversaw and directed all road construction activities. (3)
- The C Canyon road provides access to State Institutional Trust Lands and Federal public lands for multiple-use activities such as recreation, hunting, rangeland and wildlife management, development of grazing, mineral, timber and water resources, tourism, scientific studies and all other such public uses. West Ridge Resources, Inc., may occasionally on holidays and weekends close the security gate. (3)

Finding #3:

The C Canyon road is engineered and constructed/reconstructed in accordance with the design standards of the American Association of State Highway Transportation Officials (AASHTO) and the Utah Department of Transportation (UDOT), and is engineered and constructed similar to other such public roads within the County. Carbon County oversaw and directed all road construction activities. Thus, the road is constructed similar to other public roads of the same classification.

Analysis # 4:

- The C Canyon road is planned as a county-owned and maintained road and will continue to be so in perpetuity. The road is planned as a multiple use, open access (which is open access below the gate and limited access on weekends and holidays), road not subject to the control of West Ridge Resources, Inc. or any other private entity. There are several property owners in the vicinity of this roadway and other public roads branch off from the C Canyon Road. These roads are used to access private property as well as to access grazing rights on public land. The road is utilized by stockmen, sight seers, recreationalists, mineral exploration and hunters. (3)
- The C Canyon Road is part of the Carbon County road system, and coal mining and reclamation operations will not deny public access, except occasionally on weekends and holidays from the security gate to the mine. The road will remain in place as part of the postmining land use. (2) and (3)
- The C Canyon Road is not considered "Affected Area" under the UCRP definitions, since the road will be designated as a public road pursuant to the laws of the jurisdiction in which it is located; will be maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and there will be substantial public use of this road. While the road will provide access to the mine (as well as to various other locations) it will not be utilized for coal mining and reclamation activities. Licensed vehicular traffic and commercial coal transportation are not considered mining activity that would require permitting under the UCRP. (5)
- In order for a road to be permitted under the UCRP, the road must meet the test of being a "coal mining and reclamation operation", and fall within the UCRP's definition of "roads." Due to the fact that West Ridge Resources, Inc., can control access by the occasional use of the gate, they are considered to be conducting coal mining and reclamation operations on that portion of the road and permitted that section of the public road. Activities to occur on the C Canyon Road are similar to activities occurring on public roads of the same classification throughout the State. No coal mining operations are to occur that would require special jurisdiction or regulation of the road under the UCRP except on that portion of the road within the permit area. This portion of the road is permitted under SMCRA and the UCRP. (2), (3) & (4)

- An Interior Board of Land Appeals (IBLA) decision states the following, *“We find nothing in section 701(28)(B) of SMCRA, or its legislative history, which expressly provides that transportation facilities, especially ones that carry processed coal to a remote point of sale/use, should generally be considered “surface coal mining operation,” subject to regulation under SMCRA... Congress made no specific provision for regulating the transportation of processed coal, even though that activity is itself a “major industrial sector,” which encompasses railroads, barges, trucks, and pipelines “that collectively stretch over thousands of miles throughout the nation.”... The fact that it did not, strongly indicates that Congress did not intend to regulate the transportation of processed coal under SMCRA, presumably leaving it to regulation pursuant to other Federal and state laws.”* (6)
- The trucks to be used for transporting coal on the C Canyon road below the mine site are licensed commercial haulers which are legal to operate on public roads of the same classification throughout the state. All users of the road will be subject to the laws, rules and regulations that govern all other similar public roads in Carbon County, including, but not limited to, gross vehicle weight and length restrictions, limitations on tire and axle pavement loading, vehicle registration and insurance requirements, safety inspections and certification, operator licencing, and conformance to all operating rules established by the US Department of Transportation, and Utah Department of Transportation, the Utah Department of Public Safety, and the Carbon County Sheriff Department. (3)

Finding #4:

The C Canyon Road is a Class “B” County Road upon which there will be substantial use by the public. While the road provides access to the West Ridge Mine, it will not be used for coal mining and reclamation activities, except where West Ridge Resources, Inc., may occasionally close the gate and this section of the public road has been permitted.

In addition, the environmental impacts to the C Canyon Road caused by coal truck traffic will not differ from the environmental impacts of other trucks of similar weight operating on this road and on other roads within the state. The mine will not conduct any surface coal mining operation on the C Canyon Road that would require any special regulation under SMCRA or the UCRP. Impacts from mining on the road are not significant under Utah’s definitions for “affected area” and “surface coal mining operations”.

C Canyon Road

ACT/007/041

May 26, 2000

Page 10

Conclusion:

The C Canyon County Road leading from the County Road 123 up to the security gate of the West Ridge Mine does not need to be permitted under the Utah Coal Regulatory Program. The section of the road from the security gate and leading to the mine is permitted because West Ridge Resources, Inc., controls that section of the public road when the gate is occasionally closed on weekends and holidays.

sm

cc:

Mike Glasson (West Ridge Resources, Inc.)

William Krompel, Carbon County

James Fulton, OSM

Lowell Braxton, Director, DOGM

O:\007041.WR\ROADfinding052600.wpd

REFERENCE LIST

1. July 3, 1995 letter from James W. Carter, Director of Utah Division of Oil, Gas, & Mining to Rick Seibel, Regional Director and to Jim Fulton Denver Field Office Division Chief, U.S. Dept. Of Interior, Office of Surface Mining. RE: Utah Section 733 Letter, Permitting of Roads.
2. West Ridge Resources Inc.'s Permit Application Package (PAP).
3. September 22, 1997 letter and attachment from William D. Krompel, Carbon County Commissioner to Lowell P. Braxton, Director, Utah Division of Oil, Gas, & Mining. RE: C Canyon Road.
4. February 6, 1998 Letter from William D. Krompel, Carbon County Commissioner, to David Shaver, Andalex, February 6, 1998
5. Utah R645 et. seq. Coal Mining Rules, especially definition of the terms "Affected Area", "Coal Mining and Reclamation Operations", and "Road".
6. December 15, 1997 Interior Board of Land Appeals decision (IBLA 94-366) finding that a railroad and pipeline used to transport coal from surface mines are not regulated by the federal Surface Mining Control and Reclamation Act.
7. February 26, 1998 Application for Stream Alteration Permit, filed with the Utah Division of Water Rights by William Krompel, Carbon County Commission.
8. Minutes from December 8, 1999 Carbon County Commission Meeting
9. Letter from BLM, Price Field Office Acting Field Manager, Thomas Rasmussen, supporting the installation and locking of the gate within BLM ROW - UTU-74334.
10. Affidavit of Publication for Closure of Gate, published in the Sun Advocate on March 23, 30, April 6 and April 11, 2000. A thirty-day public comment period ended on May 11, 2000. No comments were received.



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

Michael O. Leavitt
Governor

Ted Stewart
Executive Director

James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

July 3, 1995

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

Re: Utah Section 733 Letter; Permitting of Roads

Gentlemen:

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

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

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

Page 2

R. Seibel, J. Fulton

"Roads" 733 Action

July 3, 1995

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

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

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

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

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

Page 3
R. Seibel, J. Fulton
"Roads" 733 Action
July 3, 1995

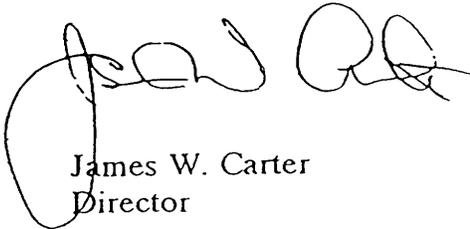
prerequisite for granting the permits and approvals necessary for the mining operation, the stipulation does not, by itself, render all such existing roads subject to regulation under SMCRA.

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

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

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

Very truly yours,



James W. Carter
Director

jbc
cc: R. Uram, Director
Office of Surface Mining
H:733RESOLLTR

CARBON COUNTY

1894

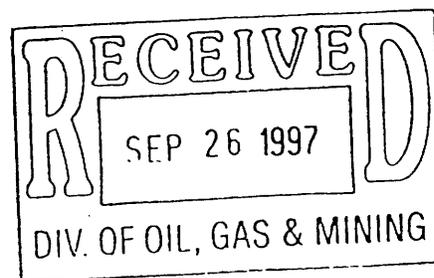


1994

mine jobs PRO 007-071
cc: M. Wright
D. Hadden
L. Braxton

September 22, 1997

Mr. Lowell P. Braxton
Division of Oil, Gas and Mining
1594 West North Temple, STE 1210
P.O. 145801
Salt Lake City, Utah 84114-5801



RE: C Canyon County Road

Dear Mr. Braxton:

Carbon County hereby provides the following information on the Carbon County C Canyon road:

- Carbon County recognizes that significant natural resources are located on State school trust lands and federal public lands within the West Ridge area of eastern Carbon County; that these natural resources include recreation, grazing, mineral deposits (including coal and natural gas), wildlife, timber, water, hunting and scenic resources; that responsible development of these resources would be of significant social and economic benefit to Carbon County, the State of Utah, and the United States in terms of employment, tax revenue, mineral royalty income, and recreational opportunities.
- Carbon County supports responsible development of natural resources in this area of the county, and such development is consistent with the Carbon County Comprehensive Plan.
- Carbon County intends to provide and maintain public road access into the West Ridge area in fulfillment of its responsibilities to provide safe and convenient accommodation of traffic associated with the management and responsible utilization of school trust land resources and federal public land resources within the County, to benefit the interests of the public at large.

100 YEARS OF COURAGE

MIKE MILOVICH, NEIL BREINHOLT, WILLIAM KROMPEL – COMMISSIONERS

Mr. Lowell P. Braxton
Division of Oil, Gas and Mining
September 22, 1997
Page Two

- Carbon County plans to provide access into the West Ridge area by constructing a new road segment (hereinafter referred to as the C Canyon Road) within the public road system. The C Canyon road will remain under the jurisdiction of Carbon County as a public road in perpetuity to serve the long-term needs of the County. Carbon County filed a right of way application with the Bureau of Land Management for the C Canyon Road on June 9, 1997.
- The C Canyon road will provide permanent and unrestricted access to State school trust lands and Federal public lands for multiple-use activities such as recreation, hunting, rangeland and wildlife management, development of grazing, mineral, timber and water resources, tourism, scientific studies and all other such public uses enjoyed under the rights of public land laws of the United States, the State of Utah, and Carbon County.
- Surface land ownership for the C Canyon County road is primarily the federal government (Bureau of Land Management). The other land owner is the State of Utah, (School Trust Administration). The total road length is 6.8 miles, 5.7 miles of which are located on BLM land and 1.1 miles on State land.
- For most of its length the new road alignment will closely follow an existing unimproved public roadway. Carbon County plans to upgrade (reconstruct) certain sections of the existing road and construct new sections of road along the remainder of the alignment. The C Canyon road will be engineered and constructed/reconstructed in accordance with the design standards of the American Association of State Highway Transportation Officials (AASHTO) and the Utah Department of Transportation (UDOT), and will be engineered and constructed similar to other such public roads within the County. Carbon County will oversee and direct all road construction activities. The legal description for this road alignment is attached to this letter as an addendum.
- Carbon County affirms that the C Canyon Road shall be permitted, designed, constructed/reconstructed, operated and maintained as a permanent and integral part of the County's public road network. This road will be a Class "B" Carbon County road. Carbon County will be responsible for, and liable for, the engineering design, construction and maintenance of the roadway. A numerical number will be assigned to this road upon its completion.
- The source for funds for the C Canyon Road will be from a low interest loan from the Utah Community Impact Board (CIB). The maintenance for the road will be funded from the Utah Class "B" road funds and Carbon County's general fund. The maintenance schedule for this road will be the same as for other similar Class "B" roads in the county.

Mr. Lowell P. Braxton
Division of Oil, Gas and Mining
September 22, 1997
Page Three

- Carbon County controls numerous Class "B" county roads within Carbon County similar to the proposed C Canyon road. These roads are all multiple use, open access public roads. Several of these roads were constructed by Carbon County through funding from the CIB in the form of grants or low interest loans. Some businesses pay a toll fee to Carbon County to help repay the loans in exchange for use of the roads. Some examples of these types of roads would be the Carbon County Airport Road, Wattis Road and Nine Mile Canyon Road. The proposed Dugout Canyon Road is yet another example of a similar publicly funded/publicly maintained County road.
- Carbon County will assume full responsibility for complying with all applicable environmental protection laws and regulations in the course of permitting, constructing and maintaining the C Canyon road. Carbon County is responsible for all decisions relating to the alignment, construction and operation of this road. Carbon County will assume all such attendant responsibilities and liabilities including maintenance for the C Canyon road as for all other County roads. Because the road alignment is located on entire public lands (federal and state), construction, operation and maintenance of the road will be in accordance with all federal, state and local environmental protection laws and regulations.
- All use of the C Canyon road will be public use and all users of the road (both private and commercial) will be subject to the laws, rules and regulations that govern all other similar public roads in Carbon County, including, but not limited to, gross vehicle weight and length restrictions, limitations on tire and axle pavement loading, vehicle registration and insurance requirements, safety inspections and certification, operator licensing, and conformance to all operating rules established by the US Department of Transportation, the Utah Department of Transportation, the Utah Department of Public Safety, and the Carbon County Sheriff's Department.
- Andalex Resources owns state and federal coal leases in the vicinity of the C Canyon road which it intends to develop. As a member of the public, and in pursuit of its business located on nearby public lands, Andalex will be allowed to use the C Canyon road as would any other member of the public. With the C Canyon road being a public road, Andalex will not be able to deny or limit use of this road to anyone. There are several property owners in the immediate vicinity of this roadway and other public roads branch off from the C Canyon Road. These roads are used to access private property as well as to access grazing rights on public land. This will be a multiple use road that has and will be utilized by stockmen, sight seers, recreationalists, mineral exploration and hunters.

Mr. Lowell P. Braxton
Division of Oil, Gas and Mining
September 22, 1997
Page Four

I hope this information submitted by Carbon County will assist the Division in making a finding that the multiple use C Canyon road is a public road and will remain open to the public for multiple use after its construction/reconstruction..

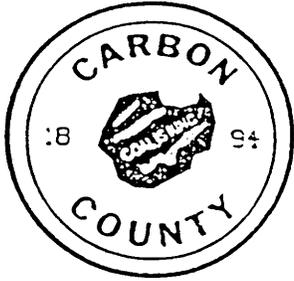
Sincerely,

A handwritten signature in cursive script that reads "William D. Krompel".

William D. Krompel
Commissioner

**C-CANYON ROAD
RIGHT OF WAY DESCRIPTION**

BEGINNING AT A POINT ON STATE HIGHWAY 123, S22°04'15"W, 2,454.59 FEET FROM THE NE CORNER OF SECTION 7, T15S, R13E, SLB&M; THENCE NO°10'09", 935.45 FEET TO THE POINT OF A CURVE; THENCE 789.43 FEET ALONG THE ARC OF A 1,433.64 FOOT RADIUS CURVE TO THE RIGHT; THENCE N31°22'50"E, 5,320.16 FEET TO THE POINT OF A CURVE THENCE 249.38 FEET ALONG THE ARC OF A 1,443.05 FOOT RADIUS CURVE TO THE LEFT; THENCE N21°28'45"E, 1,125.94 FEET TO THE POINT OF A CURVE; THENCE 2,205.26 FEET ALONG THE ARC OF 2,253.05 FOOT RADIUS CURVE TO THE LEFT; THENCE N34°36'05"W, 519.19 FEET TO THE POINT OF A CURVE; THENCE 3,648.35 FEET ALONG THE ARC OF A 2,591.93 FOOT RADIUS CURVE TO THE RIGHT; THENCE N46°02'49"E, 3,029.24 FEET TO THE POINT OF A CURVE; THENCE 299.08 FEET ALONG THE ARC OF A 1,562.30 FOOT RADIUS CURVE TO THE RIGHT, THENCE N57°00'56"E, 1,829.06 FEET TO THE POINT OF A CURVE; THENCE 2,149.93 FEET ALONG THE ARC OF A 4,123.36 FOOT RADIUS CURVE TO THE LEFT; THENCE N27°08'29"E, 3,175.65 FEET TO THE POINT OF A CURVE; THENCE 498.59 FEET ALONG THE ARC OF A 2,708.50 FOOT RADIUS CURVE TO THE LEFT; THENCE N16°35'39"E, 1,688.08 FEET TO THE POINT OF A CURVE; THENCE 2,910.59 FEET ALONG THE ARC OF A 2,474.93 FOOT RADIUS CURVE TO THE RIGHT; THENCE N83°58'33"E, 950.00 FEET TO THE POINT OF A CURVE; THENCE 1,782.26 FEET ALONG THE ARC OF A 1,203.25 FOOT RADIUS CURVE TO THE LEFT; THENCE NO°53'26" W, 795.01 FEET TO THE POINT OF A CURVE; THENCE 591.66 FEET ALONG THE ARC OF A 1,450.86 FOOT RADIUS CURVE TO THE RIGHT; THENCE N22°28'29"E, 1,870.44 FEET TO A POINT ON MINE PROPERTY.
TOTAL LENGTH: 36,362.75 FEET - 6.887 MILES.



CARBON COUNTY

120 EAST MAIN, PRICE, UTAH, 84501
(435)-636-3200 FAX: (435)-636-3210

STRENGTH THROUGH DIVERSITY

February 6, 1998

David Shaver
Andalex Resources Inc.
Manager, Technical Services
PO Box 902
Price, UT 84501

Dear Mr. Shaver,

Carbon County does hereby authorize Andalex Resources, Inc. to construct its West Ridge coal mining facilities within 100 feet of Carbon County's proposed C Canyon road in the NW $\frac{1}{4}$ of Sec 15, T14S, R13E. Andalex should avoid any negative impacts to the county road and should place a sign on the road to indicate that a controlled access area lies beyond. Ingress and egress from the county road to the mine facilities should be designed and constructed to provide maximum safety to the public users of the road. All mining operations adjacent to the road should be conducted in a manner that assures safety to the public.

Carbon County will be responsible for maintenance of the C Canyon road. However, Andalex will be responsible for maintenance of that segment of the road located within the disturbed area of the West Ridge mine yard.

Carbon County will require that Andalex leave the county road in place and intact upon final reclamation of the mine site, and terminate the road at a parking area/turn around for public use. The road will be left in a condition which provides safe and convenient access to public lands in the C Canyon area. Retention of this road is an acceptable post-mining land use which serves the best interests of the public and to consistent with Carbon County's management plan.

Carbon County concurs with the post-mining land use proposed by Andalex which is essentially the same that exists there now (i.e. wildlife habitat, grazing & recreational uses).

Sincerely,

A handwritten signature in cursive script that reads "William D. Krompel".

William D. Krompel
Carbon County Commissioner

CITIZENS COAL COUNCIL, ET AL.

IBLA 94-366

Interior Board of Land Appeals

142 IBLA 33; 1997 IBLA LEXIS 223

December 15, 1997, Decided

CORE TERMS: coal, mining, surface coal, railroad, pipeline, transportation, regulation, regulated, surface, functionally, plant, conveyor, loadout, preparation, processing, economically, tied, incidental, transport, electrical, miles, preamble, generating station, proximate, rulemaking, site, slurry, crushed, encompass, excavation

ACTION: [**1]

[*33] Appeal from Decisions of the Acting Director, Office of Surface Mining Reclamation and Enforcement, finding that a railroad and a pipeline, used to transport coal from surface mines, are not regulated by the Federal surface coal mining act. 94-16-Johnson/Bird.

Affirmed.

HEADNOTES:

1. Surface Mining Control and Reclamation Act of 1977: Applicability: Generally

The OSM properly concluded that a railroad and a pipeline, used solely to transport coal from surface mines to remote electrical generating stations, are not "surface coal mining operations," within the meaning of section 701(28)(B) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1291(28)(B) (1994), and are therefore not subject to the requirements of that Act.

APPEARANCES: Walton D. Morris, Jr., Esq., Charlottesville, Virginia, for Appellants; James R. Bird, Esq., and Benjamin J. Vernia, Esq., Washington, DC, for the Peabody Western Coal Company; Jack D. Palma, II, P.C., Esq., Cheyenne, Wyoming, and Donald B. Atkins, Esq., Tulsa, Oklahoma, for Black Mesa Pipeline, Inc.; John B. Weldon, Jr., Esq., and Stephen E. Crofton, Esq., Phoenix, Arizona, for the Salt River Project Agricultural Improvement and [*2] Power District; Jon K. Johnson, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Office of Surface Mining Reclamation and Enforcement.

OPINIONBY: KELLY

OPINION BY ADMINISTRATIVE JUDGE KELLY

The Citizens Coal Council, the Water Information Network, and the Dineh-Hopi Alliance (collectively, Appellants) have appealed from two identical Decisions of the Acting Director, Office of Surface Mining Reclamation and Enforcement (OSM), dated February 25, 1994. Responding to Appellants' citizens complaints, OSM found that two transportation facilities associated with the Black Mesa/Kayenta Mines are not "surface coal mining operations" governed by the Surface Mining Control and Reclamation [*34] Act of 1977 (SMCRA), as amended, 30 U.S.C. §§ 1201-1328 (1994), and are therefore not subject to the permitting and other requirements of SMCRA.

The two mines are owned and operated by the Peabody Western Coal Company (PWCC), and are located in northeastern Arizona within the Navajo/Hopi Indian Reservations. The transportation facilities are a railroad, known

assert that OSM must require PWCC to either amend its existing or proposed mine permits to encompass them or obtain separate permits for them. Failing such amendment or permit, OSM must preclude any further operation of these facilities.

[1] Section 701(28)(A) of SMCRA provides that "surface mining operations" are "activities conducted on the surface of lands in connection with a surface coal mine," including "excavation * * *, and * * * chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, [and] loading of coal for interstate commerce at or near the mine site." 30 U.S.C. § 1291(28)(A) (1994). Subsection B [**8] further provides that such operations include the "areas upon which such activities occur or where such activities disturb the natural land surface." It also states that

[*36] such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities[.]

30 U.S.C. § 1291(28)(B) (1994) (emphasis added). In enacting SMCRA, Congress stated that "surface coal mining operations" thus include "all roads, facilities[,], structures, property, and materials on the surface resulting from or incident to [surface coal mining] activities, such as refuse banks, [**9] dumps, culm banks, impoundments and processing wastes." S. Rep. No. 128, 95th Cong., 1st Sess. 98 (1977) (emphasis added).

We find nothing in section 701(28)(B) of SMCRA, or its legislative history, which expressly provides that transportation facilities, especially ones that carry processed coal to a remote point of sale/use, should generally be considered "surface coal mining operations," subject to regulation under SMCRA. Rather, the statute indicates that the point at which the coal is loaded for shipment, following all processing/preparation necessary for marketing and associated transportation, constitutes the last stage of mining and related operations subject to SMCRA, either under section 701(28)(A) or (B). See *Ann Lorentz Coal Co. v. OSM*, 79 IBLA 34, 43, 91 Interior Dec. 108, 113 (1984). Congress made no specific provision for regulating the transportation of processed coal, even though that activity is itself a "major industrial sector," which encompasses railroads, barges, trucks, and pipelines "that collectively stretch over thousands of miles throughout the nation." (PWCC Answer at 2, 9.) The fact that it did not, strongly [**10] indicates that Congress did not intend to regulate the transportation of processed coal under SMCRA, presumably leaving it to regulation pursuant to other Federal and state laws. Del

We turn to SMCRA's implementing regulations. When the Department first promulgated regulations in 1979 designed to permanently govern surface coal mining activities, it established general standards for constructing and maintaining transportation facilities other than roads, which were said to include "railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transportation facilities." 30 C.F.R. § 816.180 (1979). The Department explained in the preamble to the final rulemaking that the regulation was intended to cover transportation facilities "incident to coal mining operations," which are required for the "movement of coal, equipment and personnel within the mine plan area." 44 Fed. Reg. 15260, 15261 (Mar. 13, 1979) (emphasis added).

[*37] In 1983, the Department defined what constitutes facilities resulting from or incident to surface coal mining activities, termed "support facilities," requiring that they be operated "in accordance with a permit issued for the [**11] mine or coal preparation [plant] to which [they are] incident or from which [their] operation results." 30 C.F.R. §§ 701.5 and 816.181 (1983). It said that such facilities "may" include "railroads, surface conveyor systems, chutes, aerial tramways, or other transportation facilities." *Id.* However, the Department also stated, at the end of the regulation, that "'resulting from or incident to' a [surface coal mining] activity connotes an element of proximity to that activity." *Id.* Further, in the preamble to the final rulemaking, the Department indicated that whether the enumerated transportation facilities could be considered support facilities hinged on whether they did, in fact, result from or were incident to such activities. See 48 Fed. Reg. 20396 (May 5, 1983) ("To be regulated under Section 701(28)(B) a facility must result from or be incident to an activity regulated under Section 701(28)(A)"); *National*

Fed. Reg. 20393 (May 5, 1983). Indeed, to hold otherwise would bring facilities within the ambit of SMCRA regulation that are not somehow functionally and/or economically tied to regulated surface coal mining activity. We find nothing to indicate that Congress and the Department intended to do so.

[*39] At the present time, the railroad and pipeline are functionally tied to and economically dependent on the surface coal mining activities at issue here in the limited sense that they currently serve only to transport all of the coal from the Black Mesa/Kayenta Mines to the final point of use and derive all of their revenues from that service. However, there is no evidence that the two facilities are otherwise functionally tied, in any way, to the actual operation of or the conducting of any particular surface coal mining activity regulated by SMCRA.

As the circuit court instructed in *NWF*, 839 F.2d at 745, the phrase "resulting from or incident to" requires some type of proximate causation, "otherwise, every support facility that could be considered a 'but for' result of a surface coal mining operation would be [**17] subject to SMCRA regulation." We conclude that the railroad and pipeline are not functionally tied to any regulated surface coal mining activity, other than by the mere fact that they transport the final product derived from such activity to market. That fact alone does not render the facilities subject to SMCRA regulation, since it would encompass any and all transportation facilities. There is simply no evidence that Congress and the Department intended to apply the "incidental facilities" definition of "surface coal mining operations" in such a broad fashion.

Therefore, we conclude that the Acting Director, OSM, properly held that the BM&LP Railroad and BMP's coal slurry pipeline are not "surface coal mining operations," within the meaning of section 701(28)(B) of SMCRA, and are not subject to the permitting and other requirements of the Act.

To the extent Appellants have raised other arguments not specifically addressed herein, they have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decisions appealed from are affirmed.

John H. Kelly, Administrative Judge

[**18]

I concur: R.W. Mullen, Administrative Judge

#22

#22

JOINT PERMIT APPLICATION FORM

U. S. ARMY CORPS OF ENGINEERS - FOR SECTIONS 404 AND 10
UTAH STATE ENGINEER'S OFFICE - FOR NATURAL STREAM CHANNELS

West Ridge Copy Done ~~AA-Pr...~~
75-91-13 SA #2

Application Number _____ (Assigned by: _____) Corps _____ State Engineer _____

Applicant's Name (Last, First M.I.) Carbon County Commission	Authorized Agent	Telephone Number and Area Code (435) 636-3226
--	------------------	--

Applicant's Address (Street, RFD, Box Number, City, State, Zip)
120 East Main, Price, UT 84501

PROJECT LOCATION

Quarter Section(s) NE$\frac{1}{4}$/NE$\frac{1}{4}$/NE$\frac{1}{4}$	Section 7	Township 15 S	Range 13 E	Base & Meridian Salt Lake
County Carbon	Watercourse to be altered Grassy Trail Creek	Check one: <input type="checkbox"/> Within city limits <input checked="" type="checkbox"/> Outside city limits		List town or nearest town: East Carbon City

Project location or address:
The "C" Canyon Road alignment originates at State Route 123 (milepost 4.4) and trends northeast approximately 7 miles, terminating at the proposed West Ridge Minesite.

Brief description of project:
Construction of the "C" Canyon Road will require crossing Grassy Trail Creek with a double-barrel 10x10 concrete box culvert.

Purpose (justification) of project:
The "C" Canyon Road will be a Carbon County public road. It will provide public access to State and Federal resources located in the West Ridge area of the County for multiple-use activities including recreation, hunting, rangeland and wildlife management, and development of grazing, mineral, timber and water resources.

Is this a single and complete project or is it part of a larger project, continuing project, or other related activities? If so, please describe the larger project or other related activities.
NEPA analysis for reconstruction of the "C" Canyon Road is being addressed in the West Ridge Project Environmental Analysis (EA) being prepared by the Bureau of Land Management.

If project includes the discharge of dredged or fill material: **There will be no discharge of dredged or fill material.**

Cubic yards of material:

Acreage or square footage of waters of the United States, including wetlands, affected by the project:

Source and type of fill material:

Alternatives called upon to accomplish the project purposes:

The NEPA alternatives being considered in the EA include a different alignment for the "C" Canyon Road. This alternate alignment would also have to cross Grassy Trail Creek, but would be located several miles downstream and would require an even larger box culvert.

Names and addresses of adjacent property owners or other individuals who may be affected by this project:

Bureau of Land Management (BLM).

List other authorizations required by Federal, state or local governments (i.e.: National Flood Insurance Program), and the status of those authorizations

Right-of-way across BLM land: awaiting completion of the EA.

Estimated starting date of project

June, 1998

Estimated completion date

November, 1998

(If project has already been partially or totally completed, indicate date of work. Indicate existing work on drawings.)

Application is hereby made for a permit or permits to authorize the activities described herein. I certify that I am familiar with the information contained in the application, and that to the best of my knowledge and belief such information is true, complete and accurate. I further certify that I possess the authority to undertake the proposed activities or am acting as the duly authorized agent of the applicant.

Signature of applicant

William D. Krompel

Date 2/26/98

William D. Krompel, Carbon County Commission

I hereby certify that _____

is acting as my agent for this project.

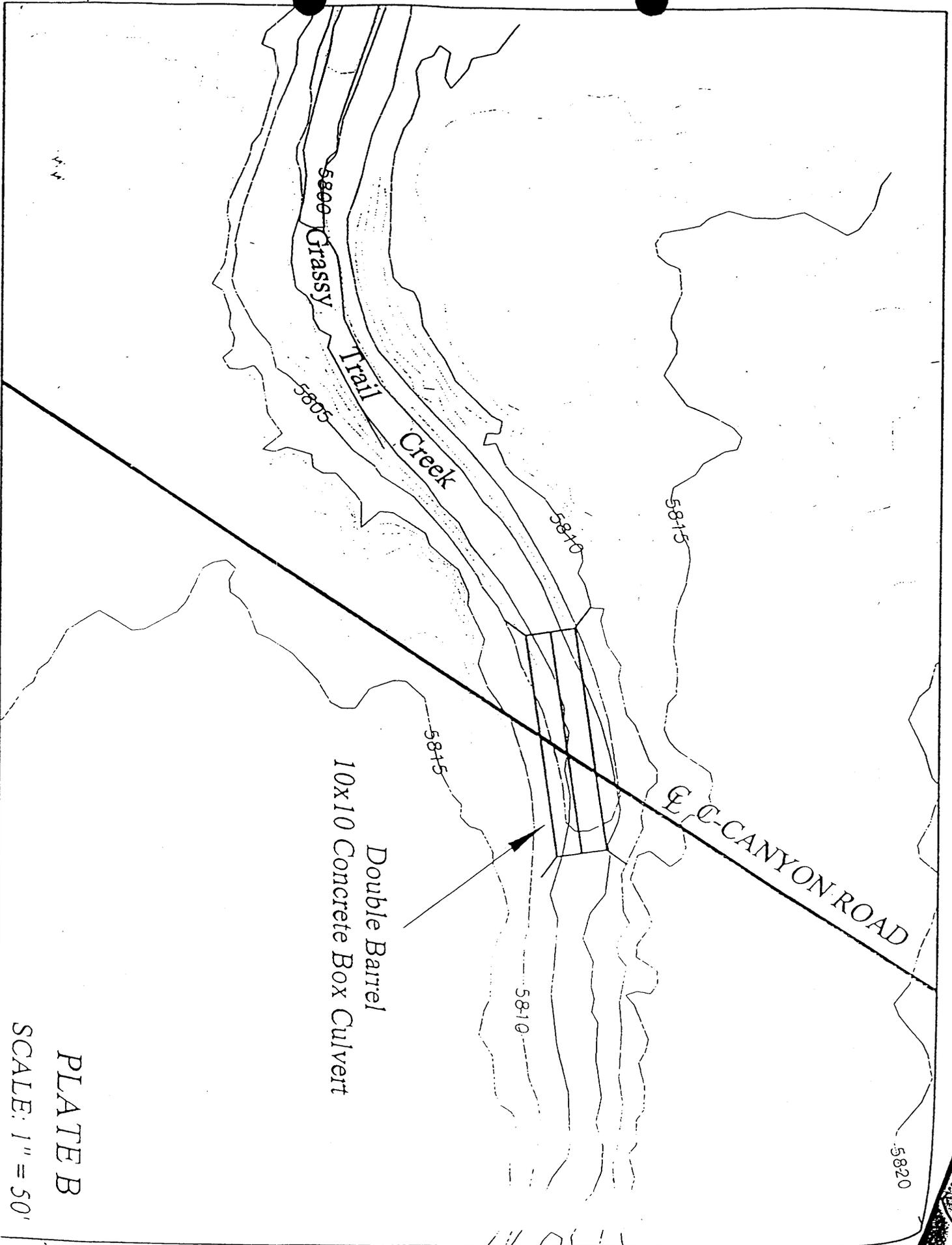
Agent's address and telephone number

INSTRUCTIONS

Applications which do not include the following will not be processed.

For a complete application, you MUST include the following on 8 1/2 by 11 paper (for large projects, multiple sheets with a key may be used). Clear, hand-drawn plans approximately to scale are acceptable.

1. An accurate location map (USGS quadrangle map preferred)
2. A plan view of the proposed activity (as seen from above) including dimensions of work.
3. A cross-section view of the proposed activity (may use typical cross-section for large projects) including dimensions.
4. For projects which include wetlands, an accurate wetland delineation must be prepared in accordance with the current method required by the Corps.



5800 Grassy

Trail Creek

5815

5810

5815

E. C. CANYON ROAD

Double Barrel
10x10 Concrete Box Culvert

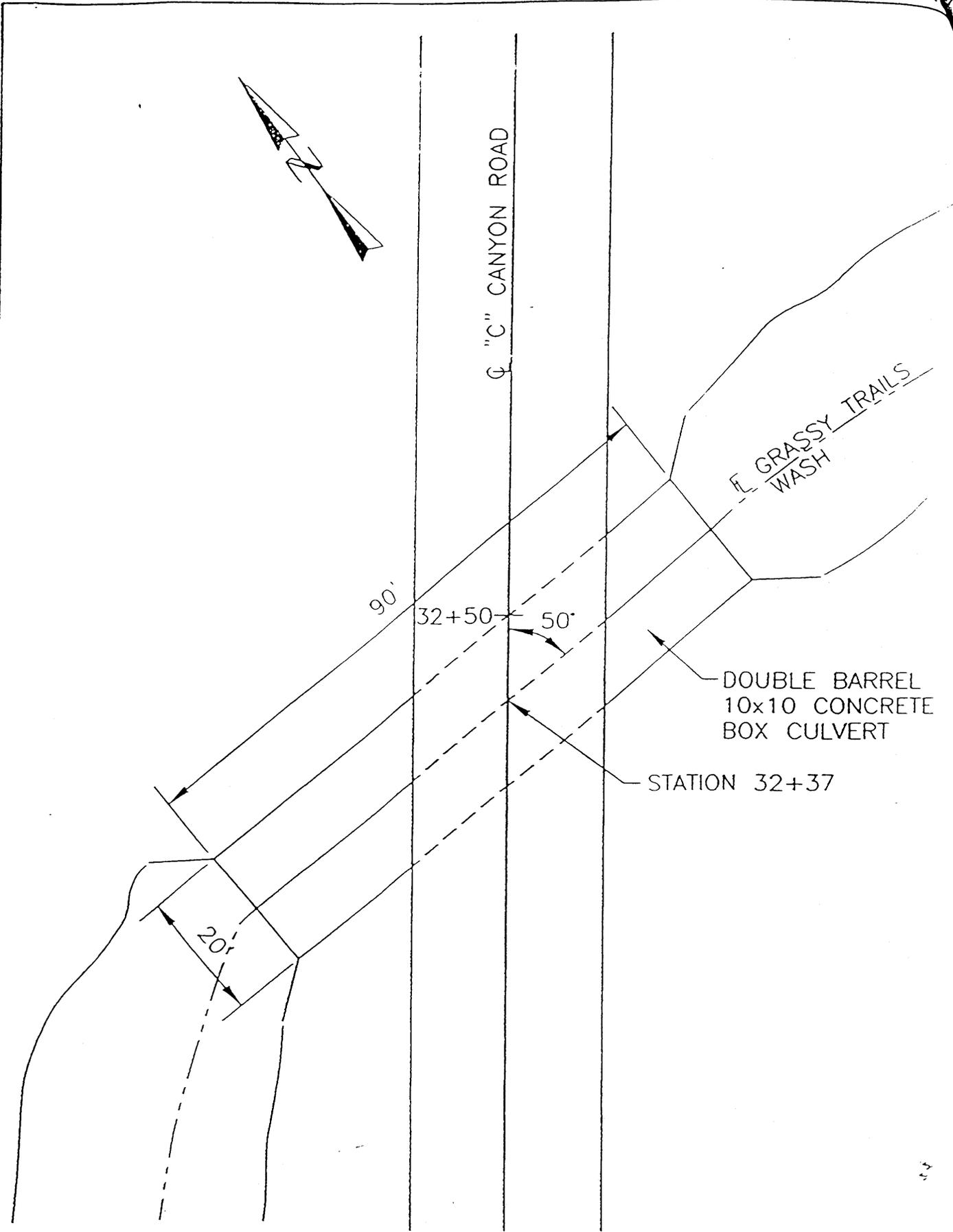
5810

5820

PLATE B

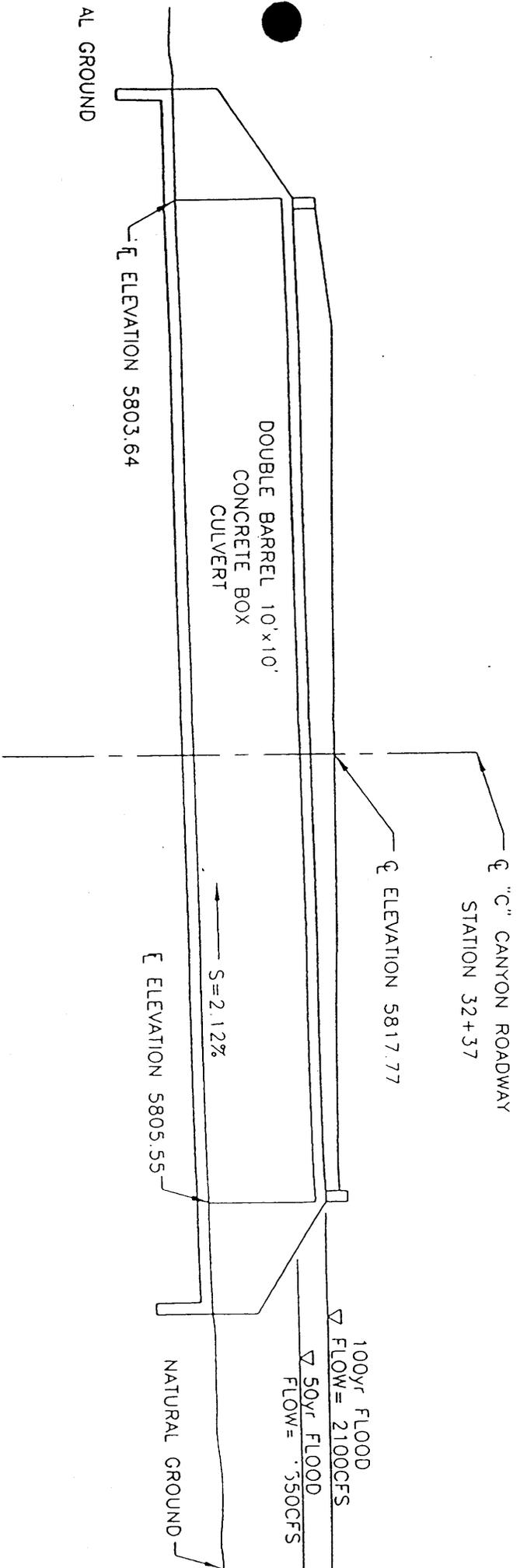
SCALE: 1" = 50'

#22



"C" CANYON ROAD
 DOUBLE BARREL 10'x10' CONCRETE BOX CULVERT
 GRASSY TRAILS WASH CROSSING

CREAMER & NOBLE
 ENGINEERS
 ST. GEORGE, UTAH

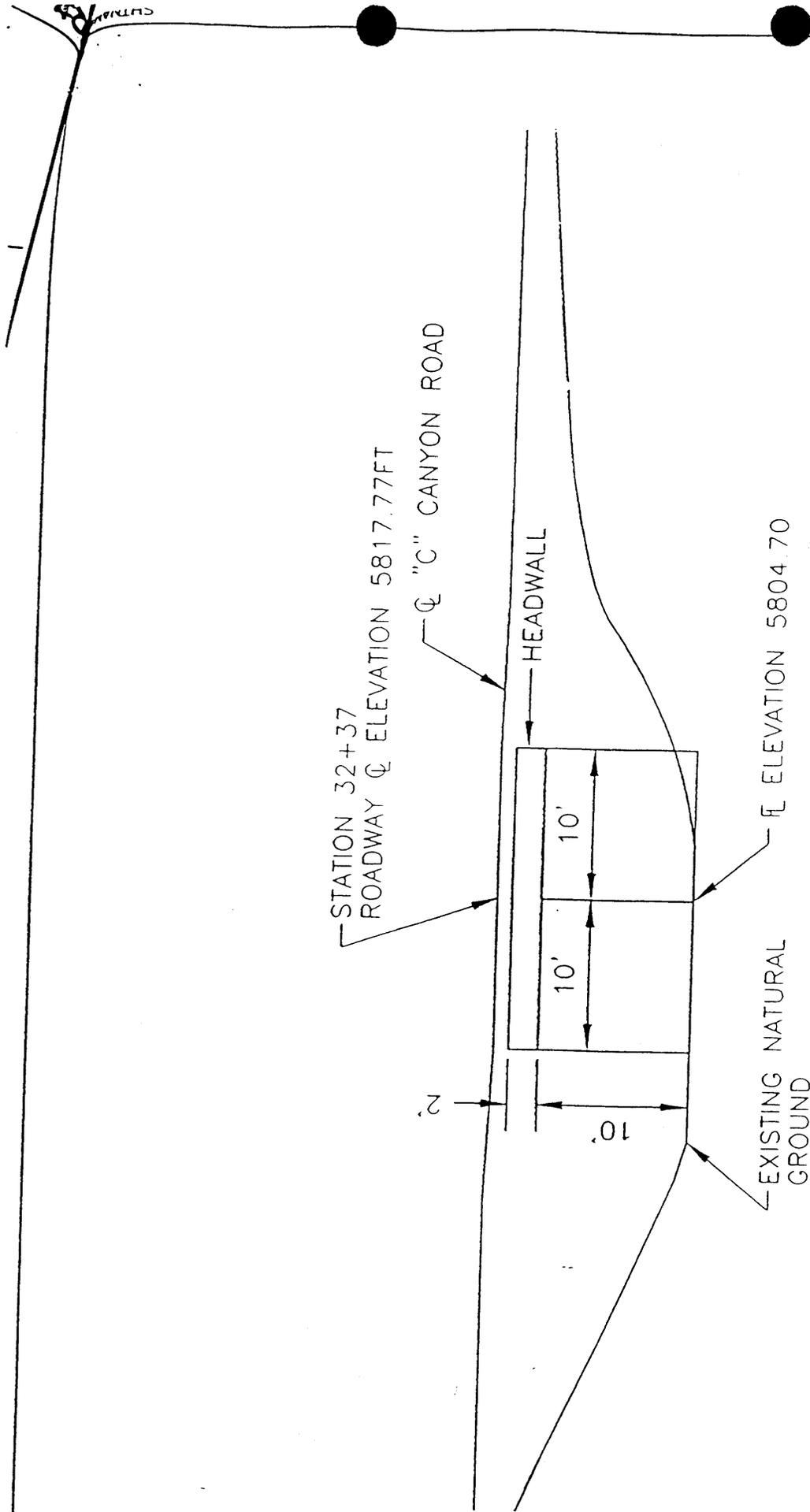


"C" CANYON ROAD
 DOUBLE BARREL 10'x10' CONCRETE BOX CULVERT
 GRASSY TRAILS WASH CROSSING

CREAMER & NOBI
 ENGINEERS
 ST. GEORGE, UTAH
 EXHIBIT NO. 3. STREAM CHANNEL

NOTE: RIP-RAP ROADWAY FILL SLOPES
 ON INLET END

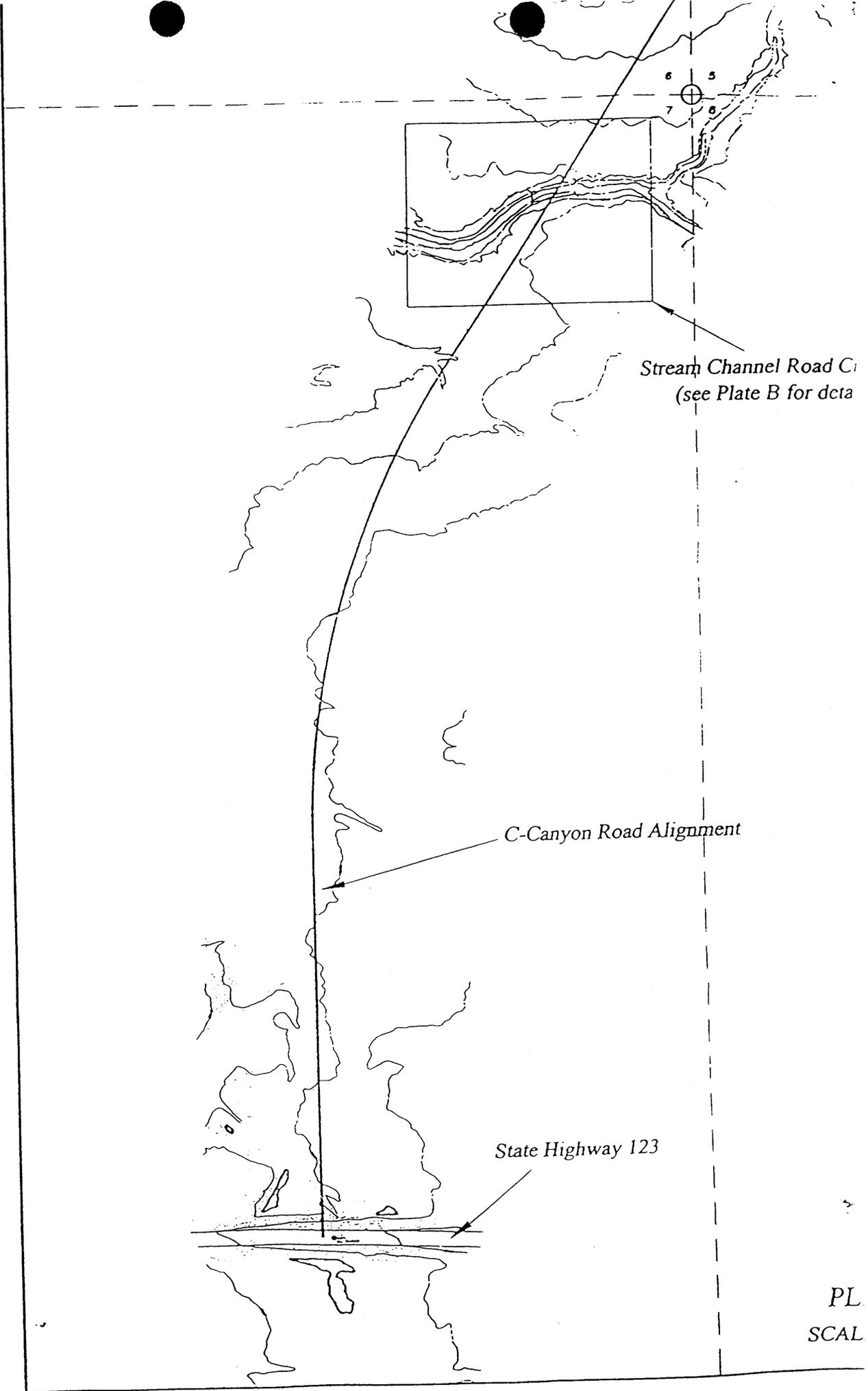
22



"C" CANYON ROAD
 DOUBLE BARREL 10'x10' CONCRETE BOX CULVERT
 GRASSY TRAILS WASH CROSSING
 CROSS SECTION AT ROADWAY CENTERLINE

CREAMER & NOBLE
 ENGINEERS
 ST. GEORGE, UTAH

EXHIBIT NO. 2: ROADWAY PROFILE



Stream Channel Road C
(see Plate B for data)

C-Canyon Road Alignment

State Highway 123

PL
SCAL

Minutes of the meeting of the Board of Commissioners, Carbon County, State of Utah, held December 8, 1999, at the Courthouse Building, Price, Utah, commencing at 6:00 p.m.

Those present: William D. Krompel, Chairman
Michael S. Milovich, Commissioner
Tom Matthews, Commissioner

Also present: Robert P. Pero, County Clerk
Gene Strate, County Attorney
Jana Hoyt, Transcriptionist
Dave Levanger, Building & Zoning
Dennis Dooley, Personnel Director

Clerk's Certificate of Compliance with Open Meeting Law was filed.

Chairman Krompel led the Pledge of Allegiance to the Flag. A motion was made by Commissioner Milovich to approve minutes of November 3, 1999. Seconded by Commissioner Matthews. Motion carried.

Commissioner Milovich motioned to approve minutes of November 22, 1999, after amended. Commissioner Matthews seconded the motion. Motion carried.

The Warrant Edit Report was approved, as were the November Monthly Reports of Ambulance, Assessor, Building Official, Clerk/Auditor, Recorder, and Sheriff.

9) — Discussion regarding action on "C" Canyon Road in connection with Andalex's Quit Claim Agreement and security concerns at the coal mine site-Dave Shaver.

Mr. Shaver explained that the C Canyon Road terminates at the mine. There is a gate in place, of which Westridge could grant ownership to the County. The construction of the gate cost \$6,000. The gate necessary for security of the mine and public safety/liability purposes. The only time gate is locked is when there is no one at the mine, which is limited to some weekends and holidays. Chairman Krompel requested that a concrete pad be put in at the intersection for maintenance purposes. Commissioner Milovich moved to turn the gate over to the County and let Westridge Resources control the opening and closing. Commissioner Matthews seconded the motion. Motion passes.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Price Field Office
125 South 600 West
Price, Utah 84501
(435) 636-3600

2810
UTU-74334
(UT-070)

Mr. Mike Milovich, Chairman
Carbon County Commission
Carbon County Courthouse
Price, Utah 84501

DIVISION OF
OIL, GAS AND MINING

MAR 28 2000

*For PFO
Copy to AM ACT 1007/041*

Dear Mr. Milovich:

On September 8, 1998, the Bureau of Land Management granted Carbon County a right-of-way to construct, operate and maintain a road that leads to a mine operated by West Ridge Resources, Inc. (UTU-74334). The subject grant was issued for a term of thirty (30 years with the right of renewal.

Recently there has been concern regarding a gate West Ridge Resources constructed approximately 1500 feet south of the mine site. The gate is located on public lands administered by the Bureau of Land Management within right-of-way UTU-74334. West Ridge Resources has met with my staff and requested authorization to lock the gate when necessary for safety and security reasons at the discretion of West Ridge Resources Management.

The Bureau of Land Management supports the decision to install and lock the gate in question. We hereby give our approval for Carbon County to install and lock the subject gate at your discretion. Please let us know in writing if this arrangement meets with approval of the Carbon County Commission.

If you have any questions, please feel free to contact Mark Mackiewicz of my staff at (435) 636-3616.

Sincerely,

Thomas E. Nassar (Acting)

Field Manager

cc: Mr. Michael Glasson
West Ridge Resources, Inc.
P. O. Box 902
Price, UT 84501

Ms. Pamela Graubaugh-Littig
Utah Division of Oil Gas and Mining
P. O. Box 145801
Salt Lake City, UT 84114-5801

AFFIDAVIT OF PUBLICATION

STATE OF UTAH)

ss.

County of Carbon,)

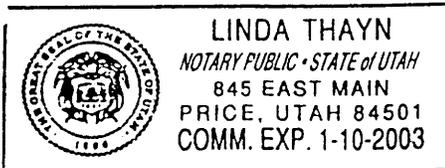
I, Kevin Ashby, on oath, say that I am the Publisher of the Sun Advocate, a twice-weekly newspaper of general circulation, published at Price, State and County aforesaid, and that a certain notice, a true copy of which is hereto attached, was published in the full issue of such newspaper for 4 (Four) consecutive issues, and that the first publication was on the 23rd day of March 2000, and that the last publication of such notice was in the issue of such newspaper dated the 11th day of April, 2000.

Kevin Ashby
Kevin Ashby - Publisher

Subscribed and sworn to before me this 11th day of April, 2000.

Linda Thayne
Notary Public My commission expires January 10, 2003 Residing at Price, Utah

Publication fee, \$ 116.00



PUBLIC NOTICE

Notice is hereby given to the public that there is a gate installed on Carbon County's new C Canyon Road, approximately 900 feet below the WEST RIDGE Mine existing permit area (slightly over 1/4 miles below the minesite). The gate is located in the SE1/4 of the NE1/4 of section 15, T14SR13E. This notice is to inform the public that occasionally this gate will be locked for safety and security reasons. The closure of this gate will be at the discretion of WEST RIDGE Resources, Inc., management and generally will include night time hours, weekends and holidays.

Following the publication of this notice, there will be an opportunity for a public comment should anyone desire. Anyone wishing to comment on this activity should address their comment to the Utah Division of Oil, Gas and Mining, 1594 West North Temple, Suite 1210, Box 145801, Salt Lake City, Utah 84114-5801, Attn: Lowell P. Braxton. In addition, but not in substitution, comments may also be directed to the Bureau of Land Management, 125 South 600 West, Price, Utah 84501, Attn: Mark Mackiewicz.

Published in the Sun Advocate March 23, 30 and April 6 and 11, 2000.

RECEIVED

APR 26 2000

DIVISION OF
OIL, GAS AND MINING