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Beaver Creek Coal Company
P.O. Box AU
Price, Utah 84501
Telephone 801 637-5050

RECEIVED
MAR 19 1984

DIVISION OF
OIL, GAS & MINING

March 14, 1984

*"File Copy" ACT/015/004
Huntington #4
Catalog # 13
Copy to: Ron D.
Barbara
Majie*

Mr. Ronald W. Daniels
Deputy Director
Utah Division of Oil, Gas & Mining
4241 State Office Bldg.
Salt Lake City, Utah 84114

RE: Public Use of Roads; U.S. Forest Development
Road No. 50245 Located in Mill Fork Canyon

Dear Mr. Daniels:

Based on a review of your criteria for defining public roads, Beaver Creek Coal Co. does hereby request that the Mill Fork Canyon road remain classified as a public road and therefore be exempted from meeting Class I Haul Road Standards. The basis for this request is that the Mill Fork Canyon Road is owned by the the U.S. Forest Service and does in fact meet each of the criteria for a public road. The following is an explanation of how each of the criterion are met, supported by attached documentation:

"A public road is one which:"

- (1) "is classified as a public use road by the subject public body;"
The attached Special Use Permit from the U.S. Forest Service will verify that the Mill Fork Canyon Road is a public use road. (Exhibit A).
- (2) "is constructed similarly to similarly classified roads;"
The attached Exhibit B will also show that the Mill Fork Canyon Road was designed by the Forest Service and is constructed to U.S. Forest Service standards.
- (3) "is publicly funded:"
 - (a) "is literally constructed and/or maintained by the public body; or
 - (b) there is, at the public body's insistence, a construction and maintenance agreement with the operator wherein the public body retains control, over the construction and/or maintenance and some public funds are expended through the exercise of that control."

Attached Exhibit A is a Special Road Use Permit issued to Beaver Creek Coal Co. by the U.S. Forest Service, wherein it shows that Beaver Creek will maintain the Mill Fork Canyon Road to U.S.F.S Specifications, and the U.S.F.S. will retain control of the road.

- (4) "has substantial (more than incidental) public use:
(a) is, in fact, used by the public for access, and
(b) the operator does not deny year round public access; and
(c) has access to sites beyond permit area."

Exhibit C is a list of regular users of the Mill Fork Canyon Road. The users of this road, other than the U.S.F.S and Beaver Creek Coal Company, are primarily recreationists, due to the mountain location, and as a result, the list is very general. However, this is a Forest Development Road, and therefore is open to the public for all uses allowed by the U.S. Forest Service.

The road terminates in the canyon bottom; however, this is common for Forest Development roads, and this road still leads to trails which provide access into National Forest Lands beyond the permit area. The termination of this road is compatible with the designated Forest Service use of this area, and is completely at their discretion. In addition, Beaver Creek Coal Co. does not restrict travel on any portion of the public use portion of the road at any time during the year. Locked gates are maintained only at our private property boundaries, and do not affect general public use of the Mill Fork Canyon Road.

In addition, a recent decision by an administrative law judge (David Torbett) has told the Office of Surface Mining it cannot force counties to upgrade county roads to federal surface mining standards just because they are used for coal hauling. Torbett concluded that a coal company that hauls coal on county roads cannot "permit a bona fide county road even if it desires to do so." Beaver Creek Coal Company is of the opinion that this decision should apply to other public roads, including Forest Development Roads such as the Mill Fork Canyon Road.

It is our hope that the above explanation and attached documentation is adequate to show that the Mill Fork Canyon Road should remain designated as a public road.

If you have any questions, or need any further information, please let me know.

Respectfully,



J.A. Herickhoff
President

cc: D.W. Guy
S.M. Raymond
File:

JAH/cn

EXHIBIT A



United States
Department of
Agriculture

Forest
Service

Manti-LaSal
National Forest

Price Ranger District
10 N. Carbon Avenue
Price, Utah 84501

Reply to: 2820

Date: March 21, 1984

Mr. Dan W. Guy
Manager of Permitting and Compliance
Beaver Creek Coal Company
P.O. Box AU
Price, Utah 84501

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Dear Dan:

This letter will serve as clarification on the status of the access road leading to Beaver Creek Huntington #4 mine.

The road in question is designated as the Mill Fork Canyon Road No. 50245. This is a forest development road and the use on the road by Beaver Creek Coal Company is authorized by a Road Use Permit. This road use permit was issued and is administered by the Forest Service.

If you have further questions or desire additional information contact me.

Sincerely,

IRA W. HATCH
District Ranger



UNIT STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

Manti-LaSal National Forest
599 West Price River Drive
Price, Utah 84501

2820
7730

August 31, 1982



Mr. Tom Parker
ARCO Coal Company
1109 South Carbon Avenue
Price, Utah 84501

Dear Mr. Parker:

Enclosed is the approved Road-Use Permit for Forest Development
Road No. 50245 to your No. 4 mine.

Sincerely,

W H Bailey
for
REED C. CHRISTENSEN
Forest Supervisor

Enclosure

ROAD USE PERMIT
(re: FSM 7344)

Acts of 6/30/14, 4/24/50, 6/12/60,
10/14/64, and 10/21/76 (16 USC 498,
572, 530, and 532-38; and 43 USC 1702,
1761, 1764, and 1765).

~~CLAYTON~~ ^{THE} ~~COAL~~ Coal Company
(Name)

1109 South Carbon Avenue
Price, Utah 84501
(Address and ZIP Code)

(hereafter called the permittee) is hereby granted use of the following road(s) or road segments: (See map attached) That segment of Mill Fork Canyon Road, No. 50245, from its intersection with State 31 to the Forest boundary located between Sections 16 and 21, T16S, R7E, SLBM, a distance of approximately 1.3 miles.

on the Manti-LaSal National Forest, subject to the provisions of this permit, including clauses 1 through 13, on page(s) 1 through 3 for the purpose of hauling coal from their No. 4 Mine and transporting supplies, equipment, and personnel to and from said mine.

The exercise of any of the privileges granted in this permit constitutes acceptance of all the conditions of the permit.

1. Compliance with Laws, Regulations, and Rules Governing Use. The permittee, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of Agriculture and all Federal, State, County, and Municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit. The permittee, its agents, employees, contractors, employees of contractors, and guests of the permittee shall comply with the rules and regulations prescribed by the Forest Service for the control and safety in the use of the road and to avoid damage to the road. Such rules and regulations shall include:
 - a. Closing the road or restricting the use when required by any government agency which, by law, has jurisdiction to authorize such closing or restrictions.
 - b. Upon reasonable notice closing the road during periods when, in Forest Service judgment, there is extraordinary fire or avalanche danger.
 - c. Traffic controls which, in the judgment of the Forest Service, are required for the safe and effective use of the road by authorized users thereof.

This permit is accepted subject to all of its terms and conditions.

ACCEPTED	Permittee (Name and Signature) <i>Thomas H. Carter</i>	Date 25 Aug 1982
APPROVED	Issuing Officer (Name and Signature), Title <i>W. H. [Signature]</i>	Date 4/1/82

- d. The permittee shall not use chemical poison, as defined in Section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act of June 25, 1945, as amended (61 Stat. 163; 73 Stat. 286; 75 Stat. 18; 75 Stat. 190), or any chemical or other road surface treatment without the approval of the Regional Forester or his designated representative. The application for approval shall be in writing and shall specify the area to be treated, the material used in the treatment, and the time, rate, and method of application.
2. Use Nonexclusive. The privileges granted in this road use permit, including use when the road is closed to public use, is not exclusive. The Forest Service may use the road and authorize others to use the road at any and all times. The permittee shall use the road in such a manner as will not unreasonably or unnecessarily interfere with the use thereof, by other authorized persons including the Forest Service.
3. Use Plans. Prior to use each year this permit is in effect, the permittee shall notify the District Ranger Ira W. Hatch 10 S. Carbon Ave., Price, Utah 84501, telephone No. 801- 637-2817 in writing of the date and approximate time when such use will commence; the anticipated duration of such use, the names and addresses of permittee's contractors or agents who will use the road on behalf of the permittee, the estimated extent of use, purpose of use, and such other information relative to permittee's anticipated use as the Forest Service may from time to time reasonably request. When there is a significant change in use by the permittee, it is the permittee's responsibility to promptly notify the District Ranger in writing. Plans and changes will be approved by the Forest Supervisor before use may commence.

Operation of equipment is not desirable on these roads when wet surface or saturated subgrade conditions would cause excessive damage. ~~A sustained winter operation is prohibited, and snow removal is to be done only on an emergency basis unless specifically approved in the annual use plan, or as a provision of this permit.~~ Where emergency access by the permittee is required during periods when excessive damage will occur, the permittee will promptly repair the damage. CATH
WIS

4. Maintenance. The permittee shall bear the expense of maintenance proportionate to his use. This expense will be borne by the permittee, its agents, operators, and/or contractors. The Forest Service will, upon request of the permittee, make a determination of the proportionate road use and resulting road maintenance responsibilities and assign the maintenance accordingly.

Where road maintenance standards required by the permittee are above those required by the Forest Service, the permittee shall bear the total incremental cost of maintaining the road to the higher standard.

Maintenance shall be performed in accordance with Forest Service specifications or requirements for maintenance as hereinafter listed, or as may be mutually agreed upon from time to time and shall consist of (1) current

maintenance as necessary to preserve, repair, and protect the roadbed, surface and all structures and appurtenances, and (2) resurfacing equivalent in extent to the wear and loss of surfacing caused by operations authorized by this permit.

- a. Maintenance and Resurfacing Requirements and Specifications. Exhibit I, attached, specifies these requirements and shall be adhered to.
5. Fire Prevention and Suppression. The permittee shall take all reasonable precautions to prevent and suppress Forest fires. No material shall be disposed of by burning in open fires during the closed fire season established by law or regulation, without a written permit from the Forest Service.
6. Damages. The permittee shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit, and promptly upon demand shall pay the United States for any damage resulting from negligence, or from violation of the terms of this permit or of any law or regulation applicable to the National Forests, by the permittee, or by his agents, contractors, or employees of the permittee acting within the scope of their agency, contract, or employment.
7. Officials Not to Benefit. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.
8. Outstanding Rights. This permit is subject to all outstanding rights.
9. Suspension. Upon the failure of the permittee, its agents, employees or contractors to comply with any of the requirements of this permit, the officer issuing the permit may suspend operations in pursuance of this permit.
10. Termination. This permit shall terminate on January 1, 1986 unless extended in writing by the Forest Service. It may be terminated upon breach of any conditions herein.
11. The Environmental Assessment Report developed for this project shall be made a part of this permit. This permit is subject to the guidelines, requirements and constraints developed in that report.
12. Traffic Operations. The permittee may install a guard shack on Forest land adjacent to road #50245 near the lower loadout facility. The purpose of the guard shack shall be to provide protection of the guard person from the elements. The activities of a guard may be to administer use of the road in an attempt to discourage theft and vandalism from the mine. The purpose of the guard shall not be to prevent the public from use of the road. The appearance and size of the guard shack shall be as mutually agreed to between District Ranger Ira Hatch and the permittee.

MAINTENANCE REQUIREMENTS

EXHIBIT I

Road Maintenance. Road maintenance is defined as the performance of work on the entire road facility commensurate with Permittee's use. This work consists of restoration and preservation of surface, shoulders, roadsides, structures, drainage, sight distance, and such traffic control devices as are necessary for prevention of excessive erosion damage to the facility and adjacent lands.

- I. Description. Maintenance work to be done currently during the periods of use by the Permittee shall include:
- A. Removal of slides and boulders, which obstruct safe sight distance.
 - B. Adequate blading and shaping of roadway surfaces and ditches to maintain the original cross sections.
 - C. Removal of earth and debris from ditches and culverts so that the drainage systems will function efficiently at all times.
 - D. Prevention of excessive dusting of road surface materials.
 - E. Repair of damages to fences, cattleguards, culverts, and other roadway structures including traffic regulatory and directional signs.
 - F. Restoration of eroded fills and repair and protection of shoulder berms, berm outlets, stabilized waterways, vegetated slopes, and other erosion control features.
 - G. Removal of snow from roadway surface.
 - H. Replacement of roadway and/or surfacing material worn out and lost through use of the roadway.
 - I. Maintenance and erection of signs to warn the public of hauling operations.
- II. Performance. All items of maintenance work shall be done currently as necessary to insure safe, efficient transportation and to protect roads, streams, and adjacent lands from excessive damage. Work shall be done in accordance with the following minimum standards of performance:
- A. Removal of Material. Earth, rocks, trees, brush, and debris removed from roadways and ditches shall not be deposited in stream channels or upon slope stabilization and erosion control features.

- B. During roadway blading and shaping operations, banks shall not be undercut nor shall gravel or other selected surfacing material be bladed off the roadway surface. The original crown or slope of the road shall be preserved. Mud, debris, and oversize material shall be deposited outside the roadway by hand or by careful blading, and these materials shall not be mixed with the road surfacing material.
- C. Ditches, culverts, drop inlets, trash racks, downspouts, and splatter structures shall be kept clear of earth, slash, and other debris so that drainage systems will function efficiently during, and immediately following, periods of road use by Permittees. This includes correcting and eliminating causes of erosion or plugging of the structure, and actual repair of the structure and riprap if damaged.
- D. Fugitive dust shall be controlled to prevent hazardous driving conditions or loss of road surface or binder material. The Permittee shall control such dusting by sprinkling, or other approved surface treatments.
- E. Permittee shall promptly repair all damages, caused by the Permittee's operations, to the road surface or to any structures in or adjacent to the roadways.
- F. Any washing or settling of roadway fills shall be corrected promptly to prevent additional soil erosion or roadway damage. Shoulder berms, berm outlets, and stabilized waterways shall be protected during road maintenance operations and, if damaged, such structures shall be promptly restored to their original condition including repair and reseedling of vegetation established to control slope erosion. No earth, rocks, or other debris shall be deposited upon any roadside slope stabilization structure or feature.

G. Snow Removal

1. Requirements

- a. Sanding of hazardous areas shall be with sand. Coal dust or salt are not to be used.
- b. Equipment - The equipment should be in sound operating condition, be equipped with angle blade or adequate grousers or traction tires, and be operated by a fully qualified operator.

c. Removal

Width - Snow will be removed to the full width of the road plus any turnouts and ditch lines. Through-cuts will be allowed only after snow depths exceed the height of the cab or across flat ground. Disposal shall always be to the outside or downhill side of the road.

Outlets - Outlets for surface runoff shall be placed in all snow through-cuts at points where water can flow off the road surface at the following intervals:

8% or less grades - 500 feet center to center minimum.

8% and up grades - 300 feet center to center minimum.

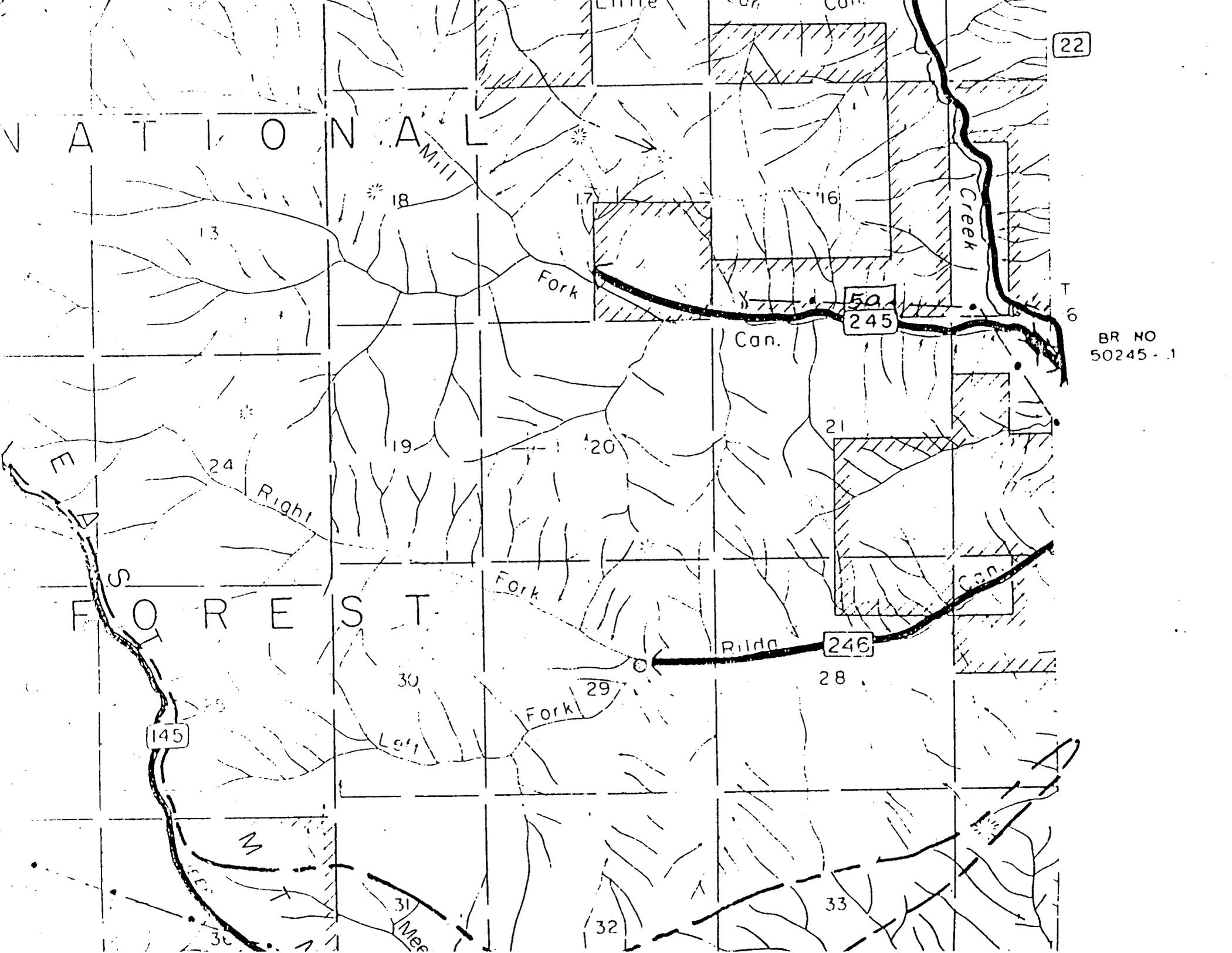
Cattleguards - Crawler tractors will not be operated across cattleguards.

Culvert Cleaning - Culvert heads and outlets shall be cleaned of snowpack by hand.

Tree Damage - Snow should not be pushed, blown, or stacked on trees along the roadside. Care will be taken to avoid scarring trees with equipment.

2. Inspections

- a. Intermittent inspections may be made during snow removal operations.
- b. Final inspection will be made to check for full compliance and damages.



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EXHIBIT B

COOPERATIVE AGREEMENT
Between
SWISHER COAL COMPANY
and
MANTI-LASAL NATIONAL FOREST, U.S.D.A.

This Cooperative Agreement, made and entered into by and between the Swisher Coal Company, Price, Utah, hereafter referred to as the COOPERATOR and the Forest Service, U.S. Department of Agriculture, hereafter referred to as the FOREST SERVICE, under the provisions of the Act of October 31, 1964, (16 USC 532, 535). WITNESSETH:

WHEREAS, the Mill Fork Canyon Road, No. 50245, hereinafter referred to as ROAD, is presently used jointly by the public, government agencies, and by the Cooperator; and

WHEREAS, the Cooperator desires to upgrade and maintain the Road to facilitate the operation of his coal mine business.

WHEREAS, it is mutually advantageous for the parties herein to cooperate in the reconstruction of the Road; and

WHEREAS, the Cooperator is willing to contribute money, labor, materials, and equipment toward reconstruction of the Road in order to upgrade the Road, maintain hauling efficiency, and improve traffic safety.

Now, THEREFORE, in consideration of the above premises, the parties hereto agree as follows:

A. The Cooperator will:

1. Reconstruct the Road from its intersection with the Fairview-Huntington Highway to the LOADING FACILITIES ~~Forest Service~~ to standards, specifications, lines, and grades mutually agreed upon by the Forest Service and Cooperator and provide quality control inspections during construction.
2. Construct the single lane bridge across Huntington Creek to the standards, specifications, lines, and grades mutually agreed upon by the Forest Service and Cooperator and provide quality control inspections during construction.
3. Provide the Forest Service with a formal Right-of-Way ~~across~~² for public access across portions of private land in Sections 16 and 17 of Township 16 South, Range 7 East, Salt Lake Baseline Meridian. The type and magnitude of which will be mutually agreed upon by the Forest Service and the Cooperator.

B. The Forest Service will:

1. Make a determination of the Road standards necessary as in A1 and A2.

2. *EXPEND THE FUNDS NECESSARY TO* Survey, design, prepare drawings and specifications, and accomplish initial construction staking as relates to ~~A1 and A2~~ *THE DEVELOPMENT OF THE ROAD AND BRIDGE.*

3. Provide inspection assistance during construction to assure compliance with the agreed design specifications and drawings.

4. Grant a ROAD USE PERMIT at such point in time as the aforementioned items are complete.

C. It is mutually agreed and understood by and between the parties that:

1. No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

2. Equal Employment Opportunity. See Exhibit "A" attached and hereby made a part of this Agreement.

3. The Cooperator shall indemnify the United States against any liabilities for damage to life or property resulting from negligent acts or omissions of acts of Cooperator's employees, agents, or servants, occurring in the performance of this Agreement. Cooperator assumes no liability for injuries or damages to anyone using the Road.

4. No contribution herein provided for shall entitle the Cooperator to exclusive use of the Road or to any share of interest in the Road other than the right to use same under regulations of the Forest Service. All improvements shall be and remain the property of the United States.

5. Nothing herein shall be construed as obligating the Forest Service, to expend, or as involving the United States in any contract or other obligations for future payment of money in excess of appropriations and expenditures authorized by law.

6. Nothing herein shall be construed as obligating Swisher Coal Company, Division of General Exploration Company, for future Road construction expenditures in excess of those authorized by annual budgets approved by General Exploration Company.

7. Either party may terminate this Agreement by providing 60 days written notice. Unless terminated by written notice, this Agreement will remain in force indefinitely.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last date written below.

Date

Swisher Coal Company

Date

Forest Supervisor
Manti-LaSal National Forest

EQUAL OPPORTUNITY

(The following clause is applicable unless this contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR, Ch. 60).

During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.
- (b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

Continued on reverse

- (E) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

AMENDMENT NO. 1

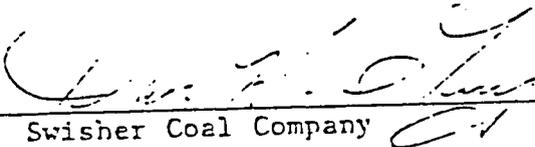
Road Use Permit
Mill Fork Canyon Road No. 50245
Swisher Coal Company

Clause 7. Rules Governing Use, Subpart (9) Other.

This clause is hereby amended to read as follows:

The operator shall limit hauling truck speeds to 25 miles per hour on roads covered by this permit.

Accepted


Swisher Coal Company

Date

10/15/79

Approved

William E. Holey, Acting Forest Supervisor

Date

August 24, 1976

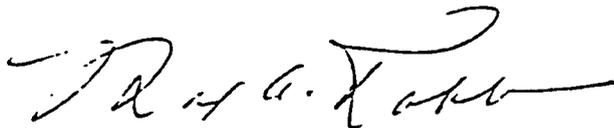
To Forest Supervisor
Manti-LaSal National Forest

The Swisher Coal Company hereby acknowledges its intent to grant to the Forest Service the following right of way for public access in return for Forest Service designs of the road and bridge and other considerations under the "Road Use Permit". Title transfer will be made upon receipt of the right of way plat and description.

The right of way in question begins at approximately the south quarter corner of Section 16, T16S, R7E, SLBM then meanders westerly through the south $\frac{1}{2}$ of the south $\frac{1}{2}$ of Section 16 to Section 17. From this point, the road traverses the southern half of the privately owned south east quarter of Section 17 bearing north west to the Forest Boundary.

The required right of way width will be developed in the description to encompass the road "as built" in Section 16 and "as exists" in Section 17.

Action on the right of way will commence following the remonumentation program by the Bureau of Land Management.



Swisher Coal Company

3. USE PLANS. Prior to January each year this permit is in effect, permittee shall notify the District Ranger in writing of the approximate time when such use will commence, the anticipated duration of such use, the names and addresses of permittee's contractors or agents who will use the road on behalf of permittee, the estimated extent of use, and such other information relative to permittee's anticipated use as the Forest Service may from time to time reasonably request. If and when during the year there is any significant change with respect to the information so supplied by permittee, the permittee will notify the District Ranger promptly in writing of such change. Plans and changes will be approved by the Forest Supervisor before use may commence.

5. COMPLIANCE WITH LAWS AND REGULATIONS. The permittee, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of Agriculture and all Federal, State, county and municipal laws, ordinances or regulations which are applicable to the area or operations covered by this permit.

6. USE NONEXCLUSIVE. The privileges granted in this permit to use this road are not exclusive. The Forest Service may use this road and authorize others to use it at any and all times. The permittee shall use said road in such manner as will not unreasonably or unnecessarily interfere with the use thereof by other authorized persons, including Forest Service.

7. RULES GOVERNING USE. The permittee, its agents, employees, contractors or employees of contractors, shall comply with all reasonable rules prescribed by the Forest Service for control and safety in the use of this road and to avoid undue damage to the road. Such rules will include:

- (1) Upon reasonable notice, closing the road or restricting its use when, due to weather conditions, or the making of alterations or repairs, unrestricted use would in Forest Service judgment, cause excessive damage, or create hazardous conditions.
- (2) Upon reasonable notice, closing the road during periods when, in Forest Service judgment, there is extraordinary fire danger:
- (3) Traffic controls, which in Forest Service judgment, are required for safe and effective use of the road by authorized users thereof;
- (4) Prohibition upon the loading ~~of~~ trucks while such trucks are standing on the roadway surface, except to receive ~~lost~~ materials.
- (5) Prohibition on the operation on this road of any vehicles or equipment having cleats or other tracks which will injure the surface thereof.
- (6) Applicable signing shall be erected to warn the general public of hauling operations.

(7) Regulation of the number of vehicles so as to prevent undue congestion of this road.

(8) The Permittee shall not use an "active ingredient" as defined in Section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973), in violation of said act on the land described in this permit.

(9) Other—Specify (Optional)

8. INSURANCE. Permittee shall be required to carry public liability and property damage insurance for the operation of vehicles, in the amounts established by applicable State laws, cooperative agreements, or easements issued on the subject road or roads. In any event, the permittee must carry liability insurance and property damage insurance of not less than \$ 100,000 for injury or death to one person, \$ 300,000 for injury or death to two or more persons, and \$ 50,000 for damage to property. Proof of satisfactory insurance may be required by the Forest Service prior to hauling over this road and will be for the duration of the permit, and such insurance policy shall bear an endorsement requiring the issuing company to give 30 days prior written notice to the Forest Supervisor Manti-LaSal National Forest of cancellation or material change.

9. MAINTENANCE. The permittee shall bear the expense of maintenance proportionate to his use. This expense will be borne by The Swisher Coal Company and the Forest Service. At a future time when hauling commences, the Forest Service will conduct a study to determine the proportionate share of maintenance cost for which each of the parties is to be held responsible. The study will take into consideration both the number of vehicles using the Road, and the type of vehicle. Forest Service will update such study periodically and will reapportion maintenance costs. Until such time as a study indicated otherwise, the Swisher Coal Company will perform all maintenance required under this permit.

Maintenance shall be performed in accordance with Forest Service specifications or requirements for maintenance as hereinafter listed, or as may be mutually agreed upon from time to time and shall consist of (1) current maintenance as necessary to preserve, repair, and protect the roadbed, surface and all structures and appurtenances, and (2) resurfacing equivalent in extent to the wear and loss of surfacing caused by operations authorized by this permit.

9a. MAINTENANCE AND RESURFACING REQUIREMENTS AND SPECIFICATIONS. (Specify)

Maintenance shall be performed on a routine, reoccurring interval to include cleaning of ditches and catch basins, removal of surface ruts and imperfection, maintenance of surface materials, and dust abatement control. Maintenance shall also include snow removal and the sanding of hazardous areas. Coal dust shall not be used during maintenance operations. (See attached continuation)

10. PERFORMANCE BOND. In the event the permittee is to perform his proportionate share of road maintenance, road resurfacing, or betterment, as determined and within time periods established by the Forest Supervisor, the Forest Service may require as a further guarantee of the faithful performance of such work that the permittee furnish and maintain a surety bond satisfactory to the Forest Service in the sum of one hundred thousand dollars (\$ 100,000.00), or in lieu of a surety bond, deposit into a Federal depository, as directed by the Forest Service, and maintain therein cash in the sum of one hundred thousand dollars (\$ 100,000.00), or negotiable securities of the United States having market value at time

of deposit of not less than hundred thousands 100,000.00). As soon as security for the performance of road maintenance (and betterment) requirements or the settlement of claims incident thereto is completed, unencumbered cash guarantees or negotiable securities deposited in lieu of surety bond will be returned to the permittee.

11. FIRE PREVENTION AND SUPPRESSION. The permittee shall take all reasonable precautions to prevent and suppress Forest fires. No material shall be disposed of by burning in open fires during the closed season established by law or regulation without a written permit from the Forest Service.

12. DAMAGES. The permittee shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit, and promptly upon demand shall pay the United States for any damage resulting from negligence, or from violation of the terms of this permit or of any law or regulation applicable to the National Forests, by the permittee, or by his agents, contractors, or employees of the permittee acting within the scope of their agency, contract, or employment.

13. OFFICIALS NOT TO BENEFIT. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.

14. OUTSTANDING RIGHTS. This permit is subject to all outstanding rights.

15. SUSPENSION. Upon the failure of the permittee, its agents, employees or contractors to comply with any of the requirements of this permit, the officer issuing the permit may suspend operations in pursuance of this permit.

16. TERMINATION. This permit shall terminate on January 1, 1986 unless extended in writing by the Forest Service. It may be terminated upon breach of any conditions herein. This permit shall be reviewed annually and is subject to revision.

17. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provisions thereof, the following clauses will control.

18. The Environmental Analysis Report developed for this project shall be made a part of this permit. The permit is subject to the guidelines and recommendations developed in that report.

19. Before final acceptance, buildings, roadways, borrow pits, quarries, and all ground occupied by the Contractor in connection with the work shall be cleaned of all rubbish, excessive materials, temporary structures and equipment, and all parts of the work shall be left in a neat and presentable condition. Cleanup will include roughly spreading the overlying material and topsoil back over disturbed areas in such a manner so that water will not collect in low areas. All slopes will be smooth and uniform.

2-1. Work Required to Accommodate Permitted Use

The attached plans, general provision, general specifications, and construction details shall be used and shall be adhered to as follows:

- A. The Permittee shall supply the materials to construct the bridge and road including material certification. The certifications are to be forwarded to the Manti-LaSal National Forest for confirmation prior to installation or erection. The Permittee shall also supply the corrugated metal culvert, aggregate, and bitumen surfacing materials needed to construct the road.
- B. The Permittee shall provide quality control inspections during construction. Such inspection will include but not be limited to:
 1. That pipe and bridge materials are of the proper size, shape, gage, and quality as specified.
 2. That compactive effort is maintained as specified through in place density tests. This action will require that the permittee obtain moisture density curves for field samples prior to beginning construction activities.
 3. That aggregate surfacing gradations meet the specifications.
 4. That constructed sections conform to the lines and grades as shown on the plans and staked on the ground by the Forest Service.
- C. The inspectors provided by the Permittee shall be qualified to take the tests called for in the specifications. The inspectors shall certify in writing that the work and materials comply with the specifications.
- D. Where materials are delivered to the job site, certification shall be made and given to the Forest Service prior to installation of the materials. A copy of the suppliers certification shall be forwarded to the Forest Service.
- E. In the attached specifications, the term "Contractor" refers to the Permittee, the Swisher Coal Company. The term "Engineer" refers to the person or persons designated by the Permittee as their Project Engineer. Inspection by the Forest Service will be done to insure that the Permittee's inspectors require compliance with the specifications.
- F. The term Contracting Officer refers to the Forest Supervisor.
- G. The Swisher Coal Company will take the necessary steps to obtain a responsible contractor, as determined by a review of said contractor's past performance and financial capabilities. Said contractor will be agreeable to all parties of this permit.

(Continuation)

9a. Maintenance and Resurfacing Requirements and Specifications

It is the intent of this permit that at some future time, the Permittee will provide an adequate bituminous pavement structure over the entire haul route. This second stage of construction concerning bituminous surfacing shall commence at such time as degradation of the gravel surface and dust abatement can no longer be contained by routine maintenance.

The specifications developed as a part of this contract contain no references to bituminous surfacing requirements. Such specifications and requirements will be developed by the Forest Service at that time.

Engineering - (801) 677-5052

November 18, 1975

Mr. Ira Hatch
District Ranger
Kanti-LaSal National Forest
10 North Carbon Avenue
Price, Utah 84501

Dear Ira:

Enclosed is an account of our recent meeting in Mill Fork Canyon and the conditions set forth in your verbal permission for Swisher Coal Company to begin upgrading the lower section of the road.

Sincerely,

SWISHER COAL COMPANY

Dave Shaver
Mining Engineer

DS:ld:

Enclosure

On Thursday, November 13, 1975, a meeting between the U.S. Forest Service and Swisher Coal Co. was held on the site in Mill Fork Canyon, a tributary of Huntington Canyon, Emery County, Utah. Those in attendance representing the Forest Service were Ira Hatch, Bill Boley and Roger Thomas. Representing Swisher Coal Co. were Dave Shaver, Reid Olsen, Ted Hanks and Max Robb.

At this time verbal permission was granted Swisher Coal Co. by the Forest Service to begin upgrading the section of road in Mill Fork Canyon from the intersection of the haul road at the old Leamaster Mine site to the big bend in the road up the canyon from the existing bridge over Huntington Creek. Road work below this stretch will be delayed until an appropriate bridge site is selected; road work above this section will be delayed until further surveying and engineering is done. Conditions of this verbal permission are:

1. All culvert locations are to be approved by the Forest Service and staked prior to construction.
2. The horizontal alignment of the road is to remain essentially unchanged.
3. The existing grade of the road is to remain unchanged except for localized smoothing and leveling.

On November 14 Ralph Geibel and Dan Hadley of the Forest Service and Dave Shaver and Bert Jeanselne of Swisher Coal staked the culverts along this stretch with the exception of the upper two culverts which locations are dependent upon the development of a more detailed site plan of the mine yard area. With the exception of the culvert handling the drainage from the side canyon in which the mine yard is located all culverts are to be 24" or 18" in diameter depending on the recommendation of the Forest Service hydrologist and are designed to accommodate a 26' wide road base. Culverts have been ordered.

EXHIBIT C

EXHIBIT C

Regular Users of Mill Fork Canyon Road

Sportsmen

Recreationists

U.S. Forest Service

Beaver Creek Coal Company

Utah Division of Wildlife Resources

Bureau of Land Management

Private Land Owners

General Public

EXHIBIT D

LOCATION MAP

U.S. FOREST SERVICE DEVELOPMENT
ROAD NO. 50245 - MILL FORK
CANYON

← To Scofield

#2 & #7
Mines

#6 Mine

GORDON CREEK COUNTY ROAD

Wildcat Junction

US 50-6

Helper

Price

Welling

C.V. Spur

U.S.F.S No. 50245
Mill Fork Canyon

#4 Mine

U-31

U-10



Huntington

