



0015

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Moab District
San Rafael Resource Area
P.O. Drawer AB
Price, Utah 84501

IN REPLY
REFER TO:

2810
U-40600
(U-067)

SEP 14 1983

copy to [unclear] file to [unclear]
Barbora Trail Man Road
Proposal. This is the signed copy.

RIGHT-OF-WAY

U-40600

Section A

1. There is hereby granted, pursuant to Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761), a nonexclusive, nonpossessory right-of-way to:

Emery County
Emery County Courthouse
Castle Dale, Utah 84513

In case of change of address the holder shall immediately notify the Authorized Officer.

2. To use, subject to terms and conditions set out below, the following described Public Land.

Salt Lake Meridian
T. 17 S., R. 7 E.,
Sec. 31, Lots 2-4, SE $\frac{1}{2}$ SW $\frac{1}{2}$ SE $\frac{1}{2}$
T. 18 S., R. 7 E.,
Sec. 6, Lot 3, E $\frac{1}{2}$

3. Description of the right-of-way facility and purpose:

The right-of-way is a road to be improved, maintained and used as part of the Emery County road system. The right-of-way width is 100 feet and 1.8 miles in length and contains 21.8 acres, more or less.

A map showing the location of the right-of-way over the above described public land is attached hereto as Exhibit "A".

TERMS AND CONDITIONS

Section B

1. The right-of-way holder agrees to comply with all the applicable regulations contained in 43 CFR 2800.

2. If the right-of-way holder violates any of the terms and conditions to this grant, the Authorized Officer, after giving written notice may declare the grant terminated.
3. This grant is subject to all valid rights existing on the effective date of this grant.
4. There is hereby reserved to the Authorized Officer the right to grant additional rights-of-way or permits for compatible uses, on, over, under, or adjacent to the lands involved in this grant.
5. The Holder shall comply with the applicable Federal and State laws and regulations concerning the uses of pesticides (i.e., insecticides, herbicides, fungicides, rodenticides, and other similar substances) in all activities/operations under this grant. The Holder shall obtain from the Authorized Officer approval of a written plan prior to the use of such substances. The plan must provide the type and quantity of material to be used; the pest insect, fungus, etc., to be controlled; the method of application; the location for storage and disposal of containers; and other information that the Authorized Officer may require. The plan should be submitted no later than December 1 of any calendar year that covers the proposed activities for the next fiscal year (i.e., December 1, 1983, deadline for a fiscal year 1985 action). Emergency use of pesticides may occur. The use of substances on or near the right-of-way shall not be used if the Secretary of the Interior has prohibited its use. A pesticide shall be used only in accordance with its registered uses and within other limitations if the Secretary has imposed limitations. Pesticides shall not be permanently stored on public lands authorized for use under this grant.
6. The Holder agrees not to exclude any person from participating in employment or procurement activity connected with this grant on the grounds of race, creed, color, national origin, and sex, and to ensure against such exclusions, the Holder further agrees to develop and submit to the proper reviewing official specific goals and timetables with respect to minority and female participation in employment and procurement activity connected with this grant. The Holder will take affirmative action to utilize business enterprises owned and controlled by minorities or women in its procurement practices connected with this grant. Affirmative action will be taken by the Holder to assure all minorities or women applicants full consideration of all employment opportunities connected with this grant. The Holder also agrees to post in conspicuous places on its premises which are available to contractors, subcontractors, employees, and other interested individuals, notices which set forth equal opportunity terms; and to notify interested individuals, such as bidders, contractors, purchasers, and labor unions or representatives of workers with whom it has collective bargaining agreements, of the Company's equal opportunity obligations.
7. The right-of-way herein granted is subject to the express covenant that it will be modified, adapted, or discontinued if found by the Secretary to be necessary, without liability of expense to the United States, so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the United States.
8. The Holder shall indemnify the United States against any liability for damage to life and property arising from the occupancy or use of public lands under this grant.

9. All survey monuments, witness corners, reference monuments and bearing trees must be protected against destruction. Any damaged or obliterated markers must be re-established in accordance with accepted survey practices at the expense of the Holder.

10. The right-of-way shall be relinquished to the United States if the authorized use is no longer needed.

11. Compliance shall be in accordance with the terms and conditions as specified herein and in Exhibit "B", attached hereto and made a part hereof.

12. The Holder is exempt from paying a rental fee in accordance with 43 CFR 2803.1-2(c)(1).

13. This right-of-way grant shall terminate 30 years from the effective date of this grant unless prior thereto it is relinquished, abandoned, terminated, or otherwise modified pursuant to the terms and conditions of this grant or of any applicable Federal law or regulation.

- a. This grant is subject to review at the end of 20 years from the date of this decision, and at regular intervals thereafter not to exceed 10 years.
- b. This grant may be renewed so long as it is still being used for the purposes granted, and is operated and maintained in accordance with all the provisions of this grant and pursuant to the regulations under which it is granted. If renewed the right-of-way will be subject to regulations existing at the time of renewal, and such other terms and conditions deemed necessary to protect the public interest.

Section C

The effective date of this right-of-way grant is the date of execution by the Authorized Officer.

The undersigned agrees to the terms and conditions of the right-of-way grant.

The right-of-way is executed this 14th day of Sept, 1983

EMERY COUNTY, a body corporate and politic
Name of Organization, Company or Corp.

By: Rued J. Ware

Title: CHAIRMAN

Date: September 14, 1983

Termination Date: 9/13/2013

Samuel R. Rowley
Area Manager

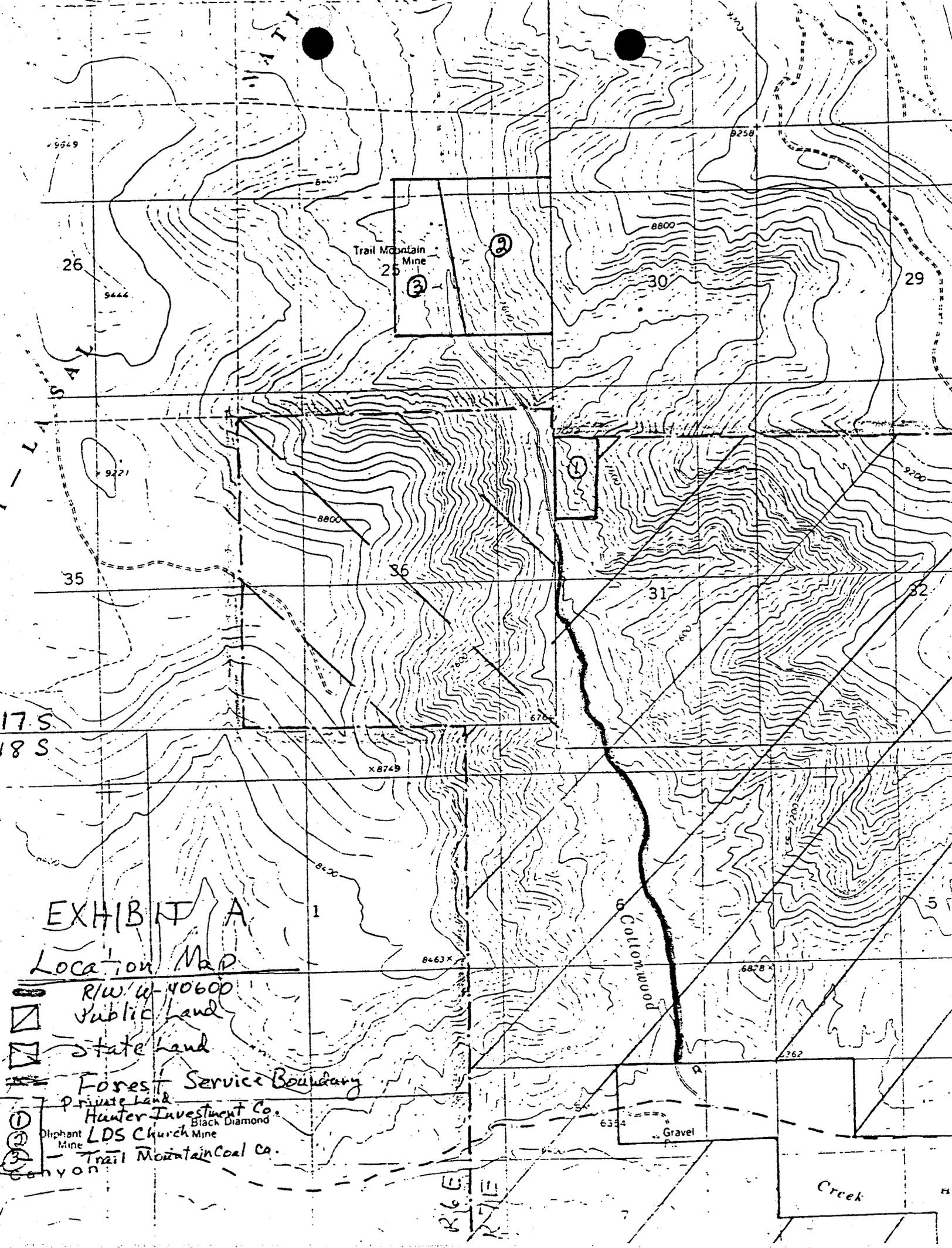


EXHIBIT A

Location Map

- R/W 40600
- Public Land
- State Land
- Forest Service Boundary
- Private Land
 - Hunter Investment Co. Black Diamond
 - LDS Church Mine
 - Trail Mountain Coal Co. Canyon

R 6 E
R 7 E

Creek

EXHIBIT "B"

Terms and Conditions

1. If the Holder or its contractors require materials from public lands, application shall be made under applicable regulations for such materials.
2. The Holder shall comply with applicable federal, state and local laws and regulations affecting in any manner construction, operation, maintenance or termination of the right-of-way grant.
3. The Holder shall protect existing telephone, telegraph and transmission lines, roads, trails, fences, ditches, and like improvements during construction, operation, maintenance and termination of the project. Damage caused by Holder to these systems shall be promptly repaired by the Holder to a condition satisfactory to the Authorized Officer. The Holder shall assure reasonable access for the Forest grazing allotment users.
4. The Holder shall notify the San Rafael Resource Area at least 48 hours before beginning any construction (phone 637-4584).
5. All construction activities shall be confined to the minimum area necessary and shall not exceed the 100 foot right-of-way width granted herein. The exterior boundaries of the right-of-way shall be clearly flagged prior to any surface disturbing activities.

Holder shall place slope stakes, culvert location, and grade stakes, and any other construction control stakes necessary to insure construction of this road, in accordance with all the technical information submitted with this right-of-way. If stakes are disturbed for any reason prior to or during clearing or topsoil removal, they shall be replaced before proceeding with the construction of the road.

6. Clearing will be held to a minimum and permitted only within the right-of-way, except that hazard trees outside the right-of-way may be cut with the approval of the Authorized Officer.

Vegetative debris and slash which is cut or cleared shall be completely disposed of by complete disposal or cut into 4 foot lengths for firewood. Stumps of cut trees shall be less than 12 inches in height.

7. The Holder shall make every reasonable effort to avoid or minimize dust problems. The Authorized Representative may require sprinkling, or other means of dust control on the road.

Any dust control measures required shall be continued for as long as necessary to effect control during the life of the project. These measures shall include, where necessary, sprinkling with water or similar actions at construction sites and project facilities.

8. The Holder shall comply with all state and federal regulations and laws pertaining to water quality, public health and public safety.

The Holder shall provide for the protection and enhancement of aesthetic values in the planning, construction and maintenance of the road.

Blasting is prohibited within 500 feet of any springs, unless otherwise permitted by the Authorized Officer.

Topsoils that have been excavated during construction shall be stockpiled and evenly spread over the disturbed area and seeded as determined by the Authorized Officer.

Trees, shrubs, grass and natural features that are not removed will be protected to the fullest extent possible from damage during construction.

9. Public Access. During construction, the Holder shall regulate access and vehicular traffic as required to facilitate construction operations and to protect the public, wildlife and livestock from hazards associated with the project. For this purpose, the Holder shall provide warnings, flagmen, barricades and other safety measures as circumstances require.

The Holder shall permit free and unrestricted public access to and upon the right-of-way for all lawful and proper purposes, except in areas designated as restricted by the Holder with the consent of the Authorized Officer in order to insure public safety and facilities constructed on the right-of-way.

The Holder acknowledges and agrees that the grant of this right-of-way is subject to the express condition that the exercise thereof will not unduly interfere with the management, administration or disposal of the United States of the lands affected thereby, or the full and safe utilization by the United States, for necessary operations incident to such management, administration or disposal.

10. The Holder shall immediately bring to the attention of the Authorized Officer any cultural or paleontological resources discovered during operations under this grant. The Holder shall not disturb any cultural or paleontological resources except as instructed by the Authorized Officer. The cost of investigating and protecting cultural resources discovered during operations shall be borne by the Holder.

11. The construction area will be kept clean at all times. All trash, packing material, oil residues, and other refuse or waste materials will be removed from construction areas on public land and placed in approved sanitary landfills.

12. During construction there will be periodic inspections by the Authorized Officer or his designee to ensure compliance.

13. Site Restoration. All public land areas where soils and surface materials are disturbed through construction or other actions incident to project operations shall be restored to their natural state insofar as practicable by water barring, scarifying, leveling, reseeding or other practices as prescribed by the Authorized Officer and to his satisfaction.

Excess excavated materials shall be loaded, overhauled, and disposal of at disposal sites shown on the plans. The materials placed shall be sloped and shaped to blend with the surrounding terrain and otherwise brought into a condition acceptable to the Authorized Officer. These materials shall not be disposed of on areas where the material will encroach on a stream course or other body of water or be subject to eroding into the stream.

All disturbed areas shall be reseeded to a mixture of grasses, browse and forbs as prescribed by the Authorized Officer, including location, season, rates, seed mixtures and methods of planting.

Whenever revegetation is required, the Holder shall file a report with the Authorized Officer when such planting is completed. The report shall contain information regarding the location of the area; the type of planting or seeding, including mixtures and amounts; the date of planting; and other relevant information as may be required by the Authorized Officer.

Inspection and evaluation of restorative measures taken will be made by the Authorized Officer as soon as it is possible to determine if a satisfactory growth has been established. In no instance shall this vegetative cover check be made until after completion of the first growing season.

14. Seeding shall take place from October 1 to November 30. Seeding method shall be by drilling and/or harrowing and will be repeated until vegetation is successfully established unless otherwise approved in writing by the Authorized Officer. The following seed mixture shall be used except in areas covered by Paragraph 15:

<u>Type</u>	<u>Rate (lbs./acre)</u>
Intermediate wheatgrass	2
Crested wheatgrass	2
Western wheatgrass	2
Indian ricegrass	2
Fourwing saltbush	1
Ephedra (Morman tea)	1
Yellow sweet clover	<u>2</u>
Total	12

15. To protect the riparian zone and stream channels, the Holder shall:

(a) Stabilize the road toe by using large rocks (greater than 12 inches diameter) for armor or riprap and reseeded with a mixture of grasses and forbs as specified by the Authorized Officer following construction.

(b) Plant cottonwood and willows (3-6 feet high) along the road toe where it contacts the riparian zone. Cottonwood trees and willows should also be planted in areas where channel realignment causes the stream to be diverted away from the existing riparian zone.

Turbidity in Cottonwood Creek below the confluence of Straight Canyon shall not be increased by more than 10 percent over the turbidity in Straight Canyon above the confluence for more than five consecutive days as a result of

the road or operation of the road. If the turbidity increase exceeds 10 percent for more than five days, the Holder must take appropriate measures to reduce the level.

In the construction of channel changes and stream-crossing embankment sections, natural stream flow shall be maintained at all times, unless otherwise provided.

16. Compliance. When all development and rehabilitation have been completed a joint compliance check of this right-of-way will be made by the Holder and the Authorized Officer to determine compliance with the terms and conditions of this grant. The Holder shall perform at his own expense any required modifications or additional reclamation work needed to comply with the terms of this grant.

17. If at any time hereafter the Holder wishes to reconstruct, remodel or relocate any portion of this right-of-way hereby granted, or any of the improvements thereon, the prior written approval of the Authorized Officer must be obtained. No such approval will be given unless the request is fully justified by the Holder and is authorized by law. Where necessary, the Holder shall make application under appropriate regulations.

18. No assignment shall be recognized unless or until it is approved in writing by the Authorized Officer in accordance with 43 CFR 2803.6-3 and 2803.6-4.