



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

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July 17, 2002

TO: Internal File

FROM: Mary Ann Wright, Associate Director, Mining *M. A. Wright*

RE: Analysis and Finding on the Loop Road Extension to Emery County Road #907, Consolidation Coal Company, Emery Deep Mine, C/015/015, Internal File

Following is a finding and analysis of the Loop Road Extension proposed to be built across Consolidation Coal Company (Consol) property to connect County Road #907 to County Roads # 915 and #916 in Emery County, Utah. 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 will accompany and become part of the permit findings for the Emery Deep Mine permit issued by the UCRP.

## Summary

The Loop Road Extension of County Road #907 connecting to Emery County Roads #915 and #916 is to be part of the Emery County road system as a Utah State Class "B" county road. The County plans to construct this new loop road in order to provide local land owners, farmers, miners, recreationalists and other users of this area a convenient access to properties without miles of backtracking. Emery County plans to maintain the road with public funds as a multiple use, open access, public road not subject to the control of Consolidation Coal Company. Emery County is responsible for the environmental issues relating to the alignment, construction and maintenance of the road. During operation of the Emery Deep Mine, the Loop Road will remain a public road, allowing access by multiple purpose users. The Loop Road Extension of County Road #907 is found under this analysis to be exempt from regulation according to the State of Utah Coal Mining Rules, R645, et seq. and the UDOGM July 3, 1995 policy on roads.

## 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 Loop Road Extension of County Road #907 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) March 5, 2002 Emery County Interoffice Memorandum from Rex Funk, Road Supervisor to Commissioners.

(3) April 30, 2002 Letter from Seth McCourt Consol Energy to Daron Haddock, DOGM providing information on the Loop Road Right -of-Way through Properties of Consolidation.

(4) May 17, 2002 letter from Seth McCourt, Consol Energy to Daron Haddock, DOGM. With attached map showing proposed alignment of the Emery County Road #907 Extension.

(5) June 4, 2002 letter from Seth McCourt, Consol Energy to Daron Haddock, DOGM Re: Response to the Division's Request Regarding Additional Information for Consolidation Coal Company's Intent to Utilize Emery county Road #907

(6) Road Construction and Maintenance Easement issued to Emery County by Consolidation Coal Company and signed on May 29, 2002.

(7) June 25, 2002 letter form Rex Funk, Emery County Road Supervisor to Lowell Braxton, Director, DOGM.

(8) December 15, 1997 Interior Board of Land Appeals decision (IBLA 94-366).

(9) Utah R-645 et seq. Coal Mining Rules.

Analysis #1:

- The plan to build the Loop Road extension of County Road #907 was first proposed by Emery County ( see March 5, 2002 Emery County Interoffice Memorandum). The county was interested in building this road to provide easier access to properties in the area. Factors considered by the county in proposing this new road include the following:
  1. *The local interest in having a convenient connection road to access upper farms and lower farms without miles of backtracking.*
  2. *Dave Taylor, of Live Earth Products, has an active claim on the Hidden Valley Mine Road #929. He as trucked his product back to town occasionally using our Old State Road #906 through residential neighborhoods to his processing plant. Numerous complaints has been received and we had to post weight restrictions on our road to quiet citizens. He now uses S. R. 10 all the way into Emery City but still travels on city streets to get tot his processing plant; emotions run high with locals. With a loop road Live Earth could route across using he "Consol Loop" then dead head into their facility which is located on the Jensen Spur road, which would also intersect the proposed loop road. No residences would be impacted using this route and it would be the most direct route for Live Earth.*
  3. *The proposed future railroad spur would terminate in this vicinity so the loop road could provide easy access to that facility.*
  4. *The loop road could also be used as an access to Consol's new portal and be integral with the direct route to S. R. 10 from the mine. (2) & (7)*
- Since the property upon which the Loop Road is to be built is owned by Consolidation Coal Company, an easement is needed. Emery County applied for and acquired a Construction and Maintenance Easement from Consolidation Coal Company signed on May 29, 2002. The Loop Road Extension of road #907 will be an integral part of the County's public road network and will be maintained by Emery County. Rex Funk, Emery County Road Department, acknowledge that all state guidelines and procedures for permits acquisition, rights of way and road design and construction will be observed and implemented by emery County through Johansen & Tuttle Engineering, the County Engineers of record. (2), (3), (6) & (7)
- The Emery County Loop Road will be engineered and constructed 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. Emery County will oversee and direct all road construction activities. (3) & (7)

- The source for funds for the Loop Road will be provided by Emery County Special Service District #1 using mineral lease monies and supplemented with funding from Consol to the County through terms of an impact agreement. The maintenance for the road will be funded from the Utah Class "B" road funds and Emery County's general fund. The maintenance schedule for this road will be the same as for other similar Class "B" roads in the county. (3) & (7)

The legal description for the road alignment is as follows:

A CONSTRUCTION AND MAINTENANCE EASEMENT 200 FEET WIDE, 100 FEET ON EACH SIDE OF THE FOLOWING DESCRIBED CENTERLINE: BEGINNING AT A POINT WHICH IS S 89°43' 05" W, 894.55 FEET FROM THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 22 SOUTH, RANGE 6 EAST, SALT LAKE MERIDIAN; THENCE S31°47'53"E, 294.93 FEET TO THE BEGINNING OF A CIRCULAR CURVE TO THE LEFT HAVING A RADIUS OF 1535.00 FEET AND AN ARC LENGTH OF 3619.81 FEET; THENCE EASTERLY, 3619.81 FEET ALONG SAID CURVE (CHORD BEARS N 80°38'42" E, 2837.48 FEET); THENCE N 13°05'16"E, 1058.96 FEET TO THE BEGINNING OF A CIRCULAR CURVE TO THE RIGHT HAVING A RADIUS OF 1500.00 FEET AND AN ARC LENGTH OF 1386.81 FEET; THENCE NORTHEASTERLY 1386.81 FEET ALONG SAID CURVE (CHORD BEARS N 39°34'27" E, 1337.94 FEET); THENCE N 66°03'37"E, 2,924.54 FEET TO THE BEGINNING OF A CIRCULAR CURVE TO THE RIGHT HAVING A RADIUS OF 1700.00 FEET AND AN ARC LENGTH OF 713.06 FEET; THENCE EASTERLY, 713.06 FEET ALONG SAID CURVE (CHORD BEARS N 78°04'35" E, 707.84 FEET); THENCE S89°54'26"E, 1378.49 FEET TO A POINT WHICH IS N0°13'51"W, 949.81 AND N89°54'26"W, 99.22 FEET FROM THE CENTER OF SECTION 27, TOWNSHIP 22 SOUTH, RANGE 6 EAST, SALT LAKE MERIDIAN.. (3) (6)

**Finding #1:**

**Emery County plans to provide public and multiple-use access across Consolidation Coal Company property by installing the Loop Road Extension of County Road #907 which will be designed, constructed, operated and maintained as a permanent and integral part of Emery County's public road network. Emery County will assume full responsibility for alignment, construction operation and maintenance of the road. The land upon which the road will be built is owned by Consolidation Coal Company who has granted a perpetual easement to Emery County for the construction , operation, and**

**maintenance of the loop road. The road has been properly acquired by the governmental entity and will not be deeded to avoid regulation.**

Analysis # 2:

- The Loop Road is to be 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 is to be maintained by the County with public funds as a multiple use, open access, public road not subject to the control of Consol or any other private entity. At the conclusion of mining this Loop 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 (3) (4) (5) & (7)
- As a member of the public, and in pursuit of its business located on nearby private lands, Consol will be allowed to use the Loop Road as would any other member of the public. With the Loop Road being a public road, Consol will not be able to deny or limit use of this road to anyone. This will be a multiple use road that will be utilized by local farmers, ranchers, recreationists, hunters, mineral exploration and sightseers. (3) (5) & (7)
- The source of funds for the Loop Road will be provided by Emery County and will be supplemented with funding from Consol to the County through a special impact agreement. The maintenance for the road will be funded from the Utah Class "B" road funds and Emery County's general fund. The maintenance schedule for this road will be the same as for other similar class "B" roads in the county. (3) & (7)

Finding # 2:

**Emery County has asserted its jurisdiction over the Loop 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 will be maintained by the County with public funds as a multiple use, open-access, public road not subject to the control of Consol or any other private entity.**

Analysis # 3:

- Emery County affirms that the Loop Road shall be permitted, designed, constructed, operated and maintained as a permanent and integral part of the county's public road network. This road will be a Class "B" County road. Emery County will be responsible for, and liable for, the engineering design, construction and maintenance of the roadway. (3) & (7)

- Emery County controls numerous Class "B" county roads within Emery County similar to the proposed Loop road. These roads are all multiple use, open access public roads. (3) & (7)
- Consolidation Coal Company's use of the Loop road will be for transporting men and materials from the existing mine site to the new portal and transportation of coal from the new portal site. All vehicles used to transport personnel and materials will comply with the laws, rules and regulations that govern all other similar public roads in Emery 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 Emery County Sheriff's Department. (5)
- The Loop Road will be engineered and constructed 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. Emery County will oversee and direct all road construction activities. (3) & (7)
- Per phone conversation on 7-17-02, with Mr. Craig Johansen, County Engineer by contract, a cultural resource survey was completed, on 7-15-02, by Montgomery Consultants; and arrangements have been made with Joe Jarvis of JBR consultants for T & E species clearances.
- The Loop Road will provide permanent and unrestricted access to the public for multiple-use activities such as recreation, hunting, rangeland and wildlife management, development of grazing, and mineral resources, tourism, scientific studies and all other such public uses. (3) (5) & (7)

**Finding #3:**

**The Loop Road Extension of Emery County Road #907 will be engineered and constructed 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. Emery County will oversee and direct all road construction activities. Thus, the road will be constructed similar to other public roads of the same classification.**

Analysis # 4:

- The Loop Road Extension of County Road #907 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 road not subject to the control of Consolidation Coal Company or any other private entity. There are several property owners in the vicinity of this roadway and other public roads intersect the Loop Road. These roads are used to access private property as well as to access other mineral interests. The road will be utilized by local farmers, ranchers, sportsmen, and recreational enthusiasts. The Loop Road will connect two existing public roads neither of which require permitting under SMCRA (3) (5) & (7)
- The Loop Road is to be made part of the Emery County road system, and coal mining and reclamation operations will not deny public access to any portion of the road. The road will remain in place as a public road after the Emery Deep mine has been closed and reclaimed. (2) (3) & (7)
- The Loop 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) (7) (8) & (9)
- In order for a road to be permitted under the UCRP, the road must meet the test of being a "coal mining and reclamation operation", and fall within the UCRP's definition of "roads." Activities to occur on the Loop 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. (3) (5) (7) & (9)
- 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.” (8)*

- The trucks to be used for transporting coal on the Loop road from the 4<sup>th</sup> East Portal 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 Emery 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, and Utah Department of Transportation, the Utah Department of Public Safety, and the Emery County Sheriff Department. (5) & (7)

#### **Finding #4:**

**The Loop Road is planned as a Class “B” County Road upon which there will be substantial use by the public. While the road provides access to the proposed 4<sup>th</sup> East Portal of the Emery Deep mine, it will not be used for coal mining and reclamation activities. In addition, the environmental impacts to the Loop 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 Loop Road that would require any special regulation under SMCRA or the UCRP. Impacts from mining on the road are not significant under Utah’s definitions for “affected area” and “surface coal mining operations”.**

#### **Conclusion**

The Loop Road Extension of Emery County Road #907 connecting County Road #907 to County Roads # 915 and #916 in Emery County, does not need to be permitted under the Utah Coal Regulatory Program.

cc: Tim Kirschbaum (Consol)  
Rex Funk, Emery County  
Craig Johansen, Emery County  
Ranvir Singh, OSM  
Lowell Braxton, Director, DOGM  
Daron Haddock, DOGM

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## REFERENCE LIST

1. July 3, 1995 letter from James W. Carter, Director of Utah Division of Oil, Gas, & Mining to Rick Seibel, Regional Director and to Jim Fulton Denver Field Office Division Chief, U.S. Dept. Of Interior, Office of Surface Mining. RE: Utah Section 733 Letter, Permitting of Roads.
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6. Road Construction and Maintenance Easement issued to Emery County by Consolidation Coal Company and signed on May 29, 2002.
7. June 25, 2002 letter form Rex Funk, Emery County Road Supervisor to Lowell Braxton, Director, DOGM.
8. 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.
9. Utah R645 et. seq. Coal Mining Rules, especially definition of the terms "Affected Area", "Coal Mining and Reclamation Operations", and "Road".