



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-

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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

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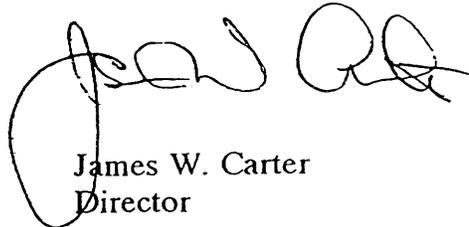
prerequisite for granting the permits and approvals necessary for the mining operation, the stipulation does not, by itself, render all such existing roads subject to regulation under SMCRA.

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

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

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

1594 West North Temple, Suite 1210  
PO Box 145801  
Salt Lake City, Utah 84114-5801  
(801) 538-5340 telephone  
(801) 359-3940 fax  
(801) 538-7223 TTY  
www.nr.utah.gov

Michael O. Leavitt  
Governor  
Robert L. Morgan  
Executive Director  
Lowell P. Braxton  
Division Director

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July 17, 2002

TO: Internal File

FROM: Mary Ann Wright, Associate Director, Mining

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:



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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.

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(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

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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**

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**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)

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- 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.**

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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

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*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.
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) 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".

EMERY COUNTY  
INTEROFFICE MEMORANDUM

TO: Commissioners  
FROM: Rex Funk, Road Supervisor   
DATE: March 5, 2002

**RE: Consideration for a Loop Road South of Emery**

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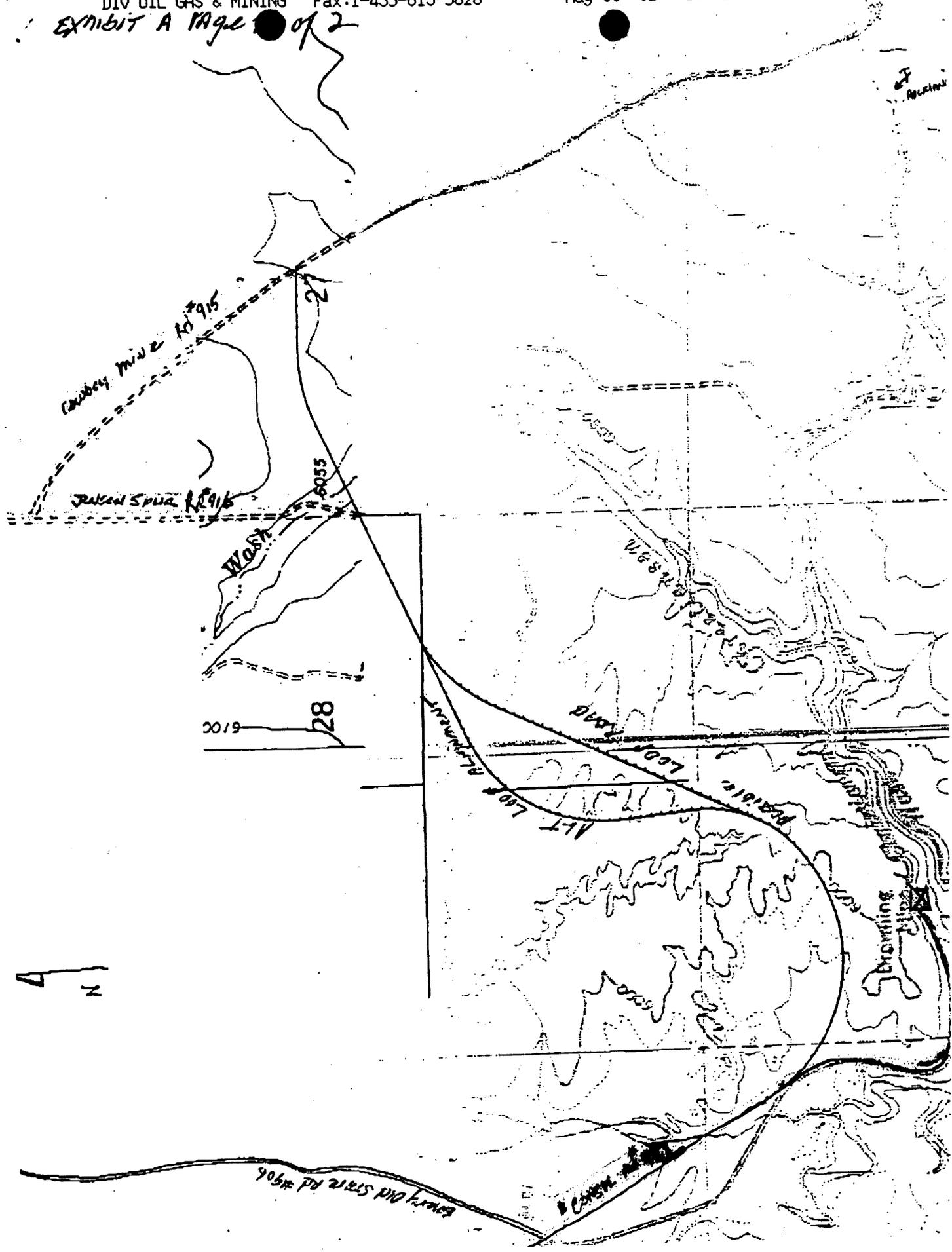
With the mounting excitement regarding the reopening of the Consol mine there are numerous "bits and pieces" of information "floating around". "The talk" is that Consol may have to drive in a new portal above the old one somewhere between the Consol Road #907 and the Cowboy Road #915..

In the past, there have been periodic comments and requests from local ranchers to have the County extend the Jensen Spur Road #916 down to the Consol Mine Road so that owners of isolated properties would not have to go half way back to town then loop back around to get to their lower farms in the vicinity of the Consol Mine Road. I can vividly recall requests from the former Cedar Ridge Ranch owners (Dave Horne & Jerry Wilson) as well as others. There are several favorable factors in considering this possibility such as:

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 has 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 to his processing plant; emotions run high with locals. With a loop road Live Earth could route across using the "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.

It wouldn't surprise me if Consol would give the County a right of way for a public loop route and even supply funds to build it. I think that the timing is right if we move now. The entire loop route looks like it could stay on Consol properties so that we would not have to deal with BLM or private property owners. I also think DOGM would be favorable to allow it because the road would be multi use and a County road.

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015/015  
 Incoming  
 cc: Mary Amy  
 Daron ✓



CONSOLIDATION ENERGY

April 30, 2002

Daron Haddock  
 Mined Land Reclamation Program  
 1594 West North Temple, Suite 1210  
 Box 145801  
 Salt Lake City, Utah 84114-5801

RE: Loop Road Right-of-Way through Properties of Consolidation

Dear Mr. Haddock:

As per our discussion of April 24<sup>th</sup> at the Salt Lake City office of the Division of Oil, Gas and Mining, I am providing the information that was requested regarding Emery County's proposed "Loop Road" through Consolidation Coal Company's property at the Emery Mine.

**a) Legal Description of the Right of Way**

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 S 31°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, 2924.54 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 S 89°54'26" E, 1378.49 feet to a point which is N 0° 13'51" W, 949.81 feet and N 89°54'26" E, 1378.49 feet to a point which is N 0° 13'51" W, 949.81 feet and N 89°54'26" W, 49.22 feet from the Center of Section 27, Township 22 South, Range 6 East, Salt Lake Meridian.

**b) Name and numerical designation for road.**

The "Loop Road" will be an extension of County Road #907 connecting Emery County Roads #907 and #915.

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**c) Land ownership for the right-of-way**

Emery County has requested a right-of-way through Consolidation Coal Company's property for the purpose of constructing a multiple use road. The proposed alignment of the extension of County Road #907 is entirely on Consol's property. Consolidation Coal Company is willing to deed the right-of-way to Emery County as a good neighbor and in the public spirit of the Road Department.

**d) Name of the entity responsible for alignment, construction, maintenance and liability for the road.**

Emery County  
Road Department  
P.O. Box 889  
Castle Dale, Utah 84513  
Phone: (435) 381 - 5450

**e) Name of the entity responsible for environmental permitting of the road.**

Emery County  
Road Department  
P.O. Box 889  
Castle Dale, Utah 84513  
Phone: (435) 381 - 5450

**f) Construction standard for the road, and the entity responsible for attaining this standard.**

Emery County extension of 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 Utah Department of Transportation (UDOT) and will be engineered and constructed similar to other such public roads within Emery County. Emery County will oversee and direct all road construction activities.

**g) Maintenance schedule for road.**

Emery County will maintain the road as a permanent and integral part of the County's public road network. This road will be a Class "B" Emery County Road. The maintenance schedule for this road will be the same as for other similar Class "B" roads in the county.

**h) Source of funds for construction and/or maintenance of the road.**

Funding for the extension of County Road #907 will be provided by Emery County and supplemented with funding from Consol to the County. Maintenance for the road will be funded from the Utah Class "B" road funds and Emery County's general fund.

**i) Examples of similar roads in Carbon and Emery Counties.**

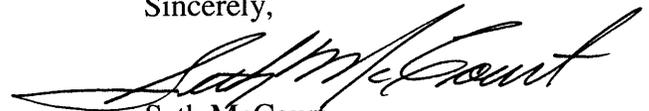
1. "C" Canyon Road; Carbon County, Utah
2. Dugout Canyon Road; Carbon County, Utah

**j) Will Consolidation Coal Company have the ability to deny use of the road?**

No. The extension of County Road #907 will be a County constructed and maintained, Class "B" public road. Consolidation Coal Company will deed the right-of-way to Emery County and have no jurisdiction to limit or deny use of the road by the public. This multiple use road will be used by local farmers, ranchers, recreationalists, hunters, mineral exploration and sightseers.

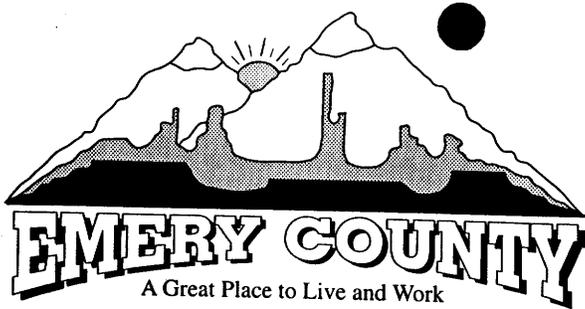
If you have any questions or concerns, please feel free to contact me at (435) 286 2301.

Sincerely,



Seth McCourt  
Mining Engineer  
Consol – Emery Mine

CC: Bart Hyita – Consol  
John Zachwieja – Consol  
Jim Noyes - Consol  
Karl Skrypak – Consol  
Rex Funk – Emery County Road Department  
Steve Demczak – DOGM (Price Field Office)



Road Department

April 30, 2002

Seth McCourt  
Consol Energy - Emery Mine  
P. O. Box 527  
Emery, Utah 84522

Dear Mr. McCourt:

On April 2, 2002 Mr. Hyita responded to my letter of March 20, 2002 requesting an easement through Consol properties for a "loop" extension of the Consol Road (#907). The proposed extension would connect two upper county roads (Jensen Spur #916 and Cowboy Mine Rd #915). Mr. Hyita indicated that "Consolidation would be willing to convey for the price of one dollar (\$1.00), a permanent easement (at appropriate widths) as well as any necessary construction easements over and through Consolidation surface properties for the public road.

In conferring with J & T Engineering we asked that they submit a centerline description (enclosed) for the proposed "loop" road extension. I submit this description for your consideration. We can meet, at your convenience, to go over the easement on site, please let us know when.

Also I recently had a discussion with Mr. Darron Haddock of DOGM regarding our "loop" road proposal and he indicated that he will be responding to you with a questionnaire seeking information (from Consol). We would be willing to provide any other file information should you need it.

We appreciate Consol's cooperation and willingness to work with us on the county "loop" road proposal in the public interest. Please contact us where you can meet on the proposed alignment.

Sincerely,

  
Rex Funk,  
Road Supervisor

enclosures

cc Commissioners  
J & T Engineering (Howard & Craig)  
Val Payne, Public Lands

**RECEIVED**  
MAY 06 2002  
DIVISION OF  
OIL, GAS AND MINING

CONSOL LOOP ROAD  
CENTERLINE DESCRIPTION

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 S 31°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, 2924.54 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 S 89°54'26" E, 1378.49 feet to a point which is N 0°13'51" W, 949.81 feet and N 89°54'26" W, 99.22 feet from the Center of Section 27, Township 22 South, Range 6 East, Salt Lake Meridian.

**CONSOL Energy**

CNX Coal Operations  
172 Route 519  
Eighty-Four, PA 15330

**phone:** 724/206-2006

**fax:** 724/206-2007

**e-mail:** barthyita@consolenergy.com

**web:** www.consolenergy.com

**BART HYITA**

*Vice President, Operations Support*

April 2, 2002

Mr. Rex Funk  
Road Supervisor  
Emery County Road Department  
P. O. Box 889  
300 North First West  
Castle Dale, Utah 84513

Re: Loop Road Easement through Properties of Consolidation

Dear Mr. Funk:

Your letter dated March 20, 2002 addressed to Mr. Seth McCourt has been forwarded to me. In that letter you detail the general interest by the public, the Public Lands Council, and the Emery County Commissioners in the possible development of a "loop road" which would connect two County Roads (Jensen Spur #916 and Cowboy Mine Road #915) with Consol Mine Road #907. It appears that a majority of, if not all of, the proposed loop road would be constructed across surface properties owned by Consolidation Coal Company ("Consolidation") as set forth on the sketch attached to your letter.

Consolidation, as a good neighbor, always supported the public spirit of the Road Department, the County Commission and Special Service District No. 1. Therefore, Consolidation would be willing to convey for the price of one dollar (\$1.00), a permanent easement (at appropriate widths) as well as any necessary construction easements over and through Consolidation surface properties for the public road. Further, Consolidation agrees that J. & T. Engineering would be the appropriate firm to plot a route and survey a description for the road. Finally, Consolidation concurs that funding and other details, including possibly considering extending the existing Consolidation Road improvement project, can be discussed once the engineers develop a feasible route.

Very truly yours,



Bart J. Hyita  
Vice President

cc: Dan Baker  
Seth McCourt  
Jim Noyes  
John Zachwieja



Johansen  
& Tuttle

ENGINEERING, INC.

BOX 487 • CASTLE DALE, UTAH 84513 • TELEPHONE (435) 381-2523

April 22, 2002

Emery County Road Department  
PO Box 889  
Castle Dale, Utah 84513

Re: Consol Loop Road  
Centerline Description

Attn: Rex Funk

Dear Rex:

Enclosed is the centerline legal description of the Consol Loop Road Extension, Road #907. This proposed road will connect County Road #907 to County Road #915.

Please contact me if you have further questions.

Sincerely,

Howard Tuttle

Johansen & Tuttle Engineering

**RECEIVED**

MAY 06 2002

DIVISION OF  
OIL, GAS AND MINING

CONSOL LOOP ROAD  
CENTERLINE DESCRIPTION

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 S 31°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, 2924.54 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 S 89°54'26" E, 1378.49 feet to a point which is N 0°13'51" W, 949.81 feet and N 89°54'26" W, 99.22 feet from the Center of Section 27, Township 22 South, Range 6 East, Salt Lake Meridian.



CONSOL ENERGY™

May 17, 2002

Mr. Daron Haddock, Permit Supervisor  
Division of Oil, Gas and Mining  
1594 West North Temple, Suite 1210  
Box 145801  
Salt Lake City, Utah 84114-5801

*McCourt  
5/15/02  
Copy Daron*

RE: Proposed Alignment of Emery County Road #907 Extension

Dear Mr. Haddock:

Please find enclosed a copy of the map showing the Proposed extension of Emery County Road #907 as supplied by Emery County. This information is being provided as a follow up to the information submitted on April 30, 2002.

If you have any questions or concerns, please contact me at (435) 286 -3512.

Sincerely,

Seth McCourt  
Mining Engineer

**RECEIVED**

MAY 17 2002

DIVISION OF  
OIL, GAS AND MINING

**CONSOL ENERGY™**

Emery Mine  
 P.O. Box 527  
 Emery, Utah 84522

June 4, 2002

Daron R. Haddock, Permit Supervisor  
 Department of Natural Resources  
 Division of Oil, Gas, and Mining  
 1594 West North Temple, Suite 1210  
 PO Box 145801  
 Salt Lake City, Utah 84114-5801

**RECEIVED**

JUN 10 2002

**DIVISION OF  
 OIL, GAS AND MINING**

RE: Response to the Division's Request Regarding Additional Information for  
 Consolidation Coal Company's Intent to Utilize Emery County Road #907

*See memo  
 6/15/02  
 Copy to [unclear]*

Dear Mr. Haddock:

On behalf of Consolidation Coal Company (CONSOL), I submit the following response to your request of May 30, 2002 (in addition to the letter dated April 30, 2002) regarding the Emery Mine's intent to use Emery County Road #907.

Emery County has approached CONSOL and requested an easement through CONSOL property to join Emery County Road #907 and Emery County Cowboy Mine Road #915. This road will be permitted, built and maintained by Emery County the same as other similar public roads within Emery County.

CONSOL has used the existing Emery County Road #907 for access to the mine and transportation of coal since 1975 (previous coal operators also used the road prior to 1975). This encompasses more than 27 years of utilization of a public road that is also used by local farmers, ranchers, sportsmen, and recreational enthusiasts. This road has been built and maintained by Emery County and serves as a multi-purpose, public road. As a member of the community, CONSOL has conformed with all regulations that apply to public road use and intends to continue to exercise this right. Coalmines utilizing public roads is not an uncommon practice and many county, state and federal roads are used for the transporting of coal, personnel and materials. For example, the Soldier Canyon and SUFCO Mines have used public roads to transport men and materials to a remote portal site. This use required personnel carriers, equipment and material transportation to conform with all regulations for use on public roads. CONSOL's intent is no different and will comply with the same laws, rules and regulations that govern all other similar public roads in Emery County.

As a comparison to more recent construction of public roads and their use by coal mines; the roads leading to the West Ridge and Dugout Canyon Mines almost exclusively terminate at each portal site and alternative road traffic is somewhat exclusive to recreational use. The proposed extension (by Emery County) of County Road #907

would connect County Roads #907 and #915. The extension would provide a loop connection allowing traffic to access both roads and eliminating 5 miles of back tracking. This would be a multiple use, open access public road not subject to the control of CONSOL or any other private entity.

CONSOL's use of the road would 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 all laws, rules and regulations, 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.

The extension of Emery County Road #907 is not being constructed, reconstructed nor used exclusively for coal mining and reclamation activities. Emery County has properly acquired the easement; the road will be maintained with public funds (the same as the existing road); it will be constructed in a similar manner as other public roads; and the impacts from mining are not significant under the definition of "affected area" and "surface coal mining operations" since a public entity will control

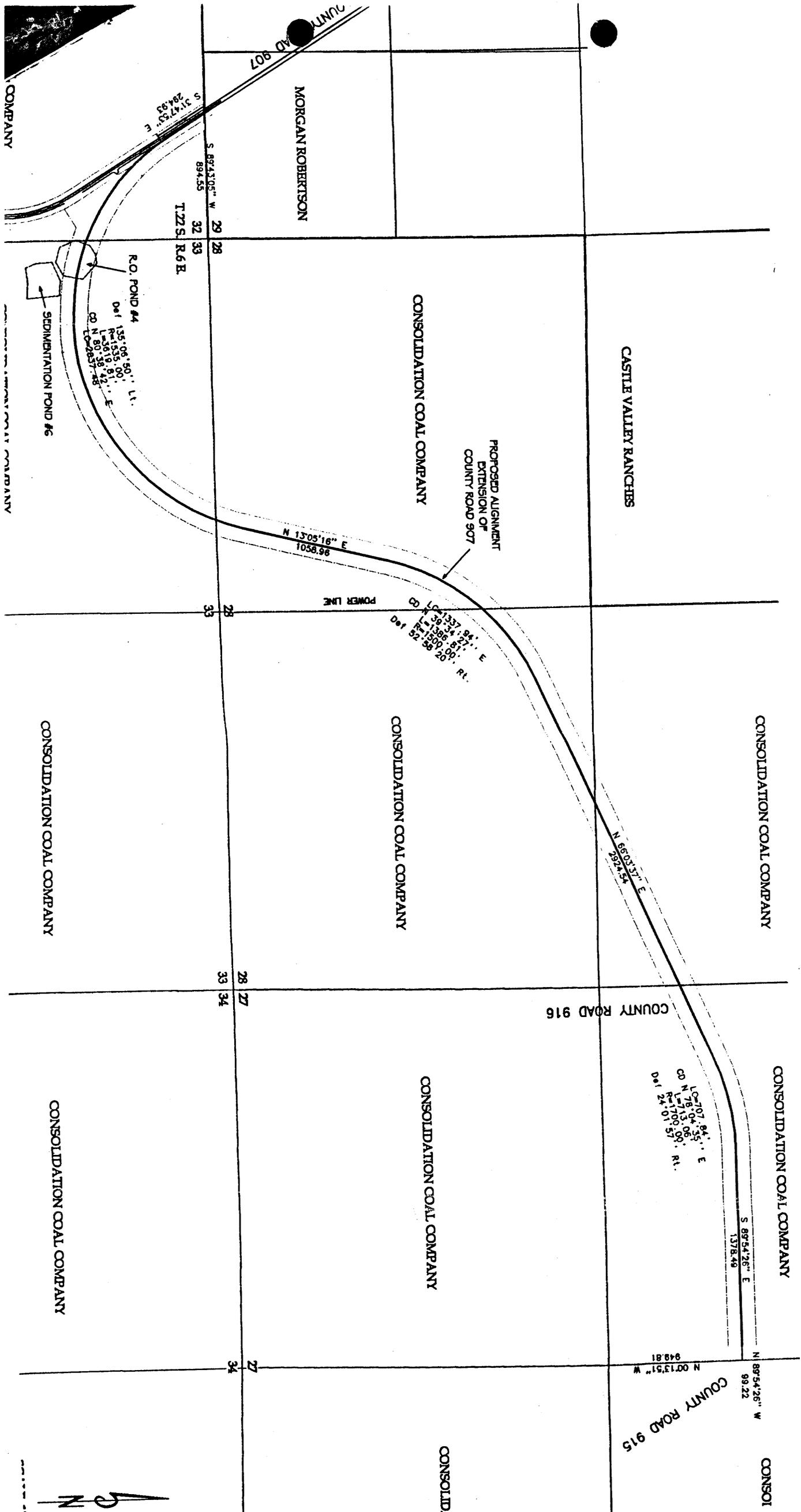
I appreciate your consideration on this matter and if you have any questions feel free to contact me at (435) 286-3512 or (435) 286-2301.

Sincerely,



Seth McCourt  
Mining Engineer

CC: Bart Hyita  
Jim Noyes  
Tim Kirschbaum



E 3616041 200 P 430  
Date 10-JUN-2002 10:38am  
Fee: No Fee Cash  
DIXIE SWASEY, Recorder  
Filed by DKS  
For EMERY COUNTY ROAD DEPARTMENT  
EMERY COUNTY CORPORA

**ROAD CONSTRUCTION AND MAINTENANCE EASEMENT**

Consolidation Coal Company, a Pennsylvania corporation, Grantor does hereby grant and warrant to Emery County Road Department, a perpetual easement and right-of-way to use Grantors land for the construction, operation, and maintenance of Consol Loop Road, Emery County road number 907, and appurtenant works, upon, across, and over the lands, hereafter described, together with the right to excavate and place fill as required for said road along with the right to remove trees, bushes, and undergrowth and the obstructions interfering with the location, construction, and maintenance of said road. The above referred-to land is situated in Emery County, Utah, and is particularly described as follows, to-wit:

A Construction and Maintenance Easment 200 feet wide, 100 feet on each side of the following 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 S 31°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, 2924.54 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 S 89°54'26" E, 1378.49 feet to a point which is N 0°13'51" W, 949.81 feet and N 89°54'26" W, 99.22 feet from the Center of Section 27, Township 22 South, Range 6 East, Salt Lake Meridian.

Containing 52.23 acres more or less.

Basis of bearing: S 89°43'05" W between the Northeast corner and the North quarter corner of said Section 32.

IN WITNESS WHEREOF, the Grantor has caused its corporate name and seal to be hereunto affixed by its duly authorized officers this 29th day of MAY, 2002.

Consolidation Coal Company

ATTEST

By 

Title VP OPS SUPPORT

Secretary

STATE OF Pennsylvania  
: SS  
COUNTY OF Washington

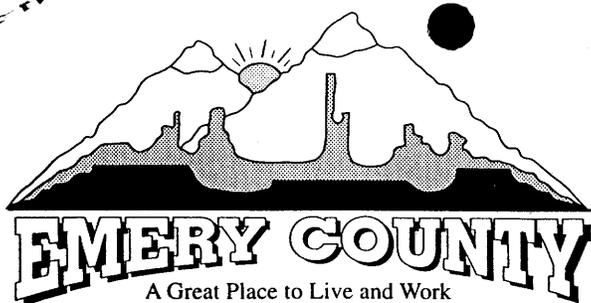
On the 30th day of May, 2002, personally appeared before me Bart J. Hyita, who being by me duly sworn did say that he is the VP OPS Support of said Consolidation Coal Company, and that the within and foregoing instrument was signed in behalf of said corporation and that said corporation executed the same and that the seal affixed is the seal of said corporation.

  
Notary Public

Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_  

Notarial Seal Kimberly M. Jacovino, Notary Public Peters Twp., Washington County My Commission Expires Aug. 24, 2004
---

  
Member, Pennsylvania Association of Notaries



Road Department

June 25, 2002

**RECEIVED**

JUN 26 2002

DIVISION OF  
OIL, GAS AND MINING

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

Dear Mr. Braxton:

Emery County has just acquired a Road Construction and Maintenance Easement across Consolidation Coal Company (Consol) Mine property south of Emery City. It is the intent of Emery County to construct and maintain a Class B improved surface road which will connect our lower county road #907 (Consol Mine Road) to two other county roads (#915 Cowboy Mine Road and #916 Jensen Spur) situated on the bench above the Consol properties. Years ago Commissioner Mangum (1986-90) was approached by local farmers to tie the upper roads in with the (lower) Consol Mine Road so that they could conveniently access their lower farm properties "without going halfway back to town then all the way around to get there". At that time it was the misconception of the Commissioner and myself that once the mine plan was set in place that it could not be altered, so we discouraged locals by stating it couldn't be done without causing permit violations for Consol Mine.

In time, as farm properties changed hands, the new owners would re-approach the county with the same type of request, feeling that the county could push a road through under its own authority. I have since learned that mine plans and permits can be altered or amended making it possible to acquire easements across mine properties. Last fall local rumors were in abundance indicating that Consol Mine was going to reopen and perhaps even construct a new portal. I had some dialog with former mine employees who reported that "it sounded like" Consol would reopen soon. I pressed on with my inquiries and learned that the reopening of the mine was under serious consideration. Sometime in February the topic of a possible new portal surfaced again. I learned that the former portal and entry had serious problems and that there was serious discussion going on about opening a new one above the mine.

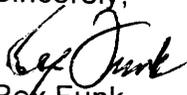
On March 5<sup>th</sup> I approached County Commissioners, during their regularly scheduled Commission Meeting, about contacting Consol for the purposes of acquiring an easement to construct, what I termed a "loop road" which would tie the three roads together. The commissioners were favorable to the concept but directed me to present the idea to the Public Lands Council which I did on March 12<sup>th</sup>. They too were also in favor of the loop road. I then proceeded to contact Consol Mine regarding our desire to acquire an easement. I have taken the liberty to enclose copies of our file information regarding the proposed easement and discussions with Consol (for your perusal).

Letter to Lowell P. Braxton  
June 25, 2002  
Page 2

As already indicated the road will be a Class B county road which is maintained with State monies issued annually for that purpose. The "B" loop road would, in reality, be an extension of Road #907 (already a B road) and would connect to Roads #915 and #916, as mentioned. General funding for initial construction will be provided by the Emery County Special Service District #1 (ECSSD#1) using mineral lease monies. They have come to terms of agreement with Consol Mine who will also partially fund the project (agreement copy enclosed). This practice is consistent with other Class B County road improvement projects which may have industry impacts associated with them. Some past projects having had similar funding agreements through ECSSD#1, are Cottonwood Canyon Road #506, which also receives impacts from the former Trail Mountain Mine and gas wells on the Forest. Road #305 which also receives impacts from Co-Op Mine. Deer Creek Road #304 also receives impacts from gas wells, power plant and Deer Creek Mine. Rilda and Trail Canyon Road #306 also receives impacts from North Emery Water Users and Energy West Mine Portal access. The term "also" has been used as a clarifying word since all of the above roads are multiple use county roads which "also" receive industrial type impacts. None of the industries nor any user has authority to deny use of any road which is exclusively Emery County's. Under authority of our Encroachment Ordinance #8-7-85A we can permit special uses of our roads if deemed necessary.

The proposed extension of road #907 also fits the above mentioned "type" roads which have similar multiple uses. Other uses which remain consistent with our Class B multiple use policy provide access for recreation, residential, ranching/farming, canal maintenance, timbering, general tourism, school bus routes and accesses to State and Federal Lands (to name several). The liability, construction, maintenance and alignment for these roads remains exclusively Emery County's. There have been occasions through our Encroachment Ordinance 8-7-85A when we have imposed additional liability restrictions on contractors or others if we feel the need to do so, but this is on a case by case basis.

County road projects must be constructed in compliance with applicable State (UDOT) and Federal (AASHTO) Road Construction standards. 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. This procedure is consistent with all County road construction projects. I hope that my information will be useful for your purposes. Please call should you have questions.

Sincerely,  
  
Rex Funk,  
Road Supervisor

enclosures

cc Emery County Commissioners  
Johansen & Tuttle Engineering  
ECSSD#1  
Val Payne, Public Lands Director  
Consol Energies

ATTACHMENT #8

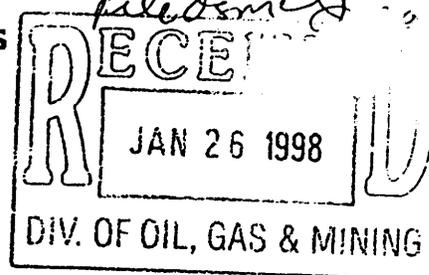
*Copy Mary Ann; Aaron Joe, Penn*



IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
Interior Board of Land Appeals  
4015 Wilson Boulevard  
Arlington, Virginia 22203



CITIZENS COAL COUNCIL, ET AL.

IBLA 94-366

Decided December 15, 1997

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.

- 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 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.

OPINION BY ADMINISTRATIVE JUDGE KELLY

The Citizens Coal Council, the Water Information Network, and the Diné-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

IBLA 94-366

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 as the Black Mesa and Lake Powell (BMLP) Railroad, which is owned (along with others) and operated by the Salt River Project Agricultural Improvement and Power District (SRP), and a coal slurry pipeline, which is owned and operated by Black Mesa Pipeline, Inc. (BMP). The PWCC, BMP, and SRP have all filed answers to Appellants' Statement of Reasons for Appeal (SOR) and all are joined as proper parties to this appeal.

The pipeline at issue is 273 miles long and is buried for most of its length. It carries coal from the Black Mesa Mine to the Mohave Generating Station, in Laughlin, Nevada. Coal extracted at the mine is crushed by PWCC and placed on a conveyor system, which is owned by PWCC, BMP, and the Mohave Generating Station, and operated by PWCC. That system carries the coal to a preparation plant, which is owned and operated by BMP, where it is further crushed and water is added to create a coal slurry. The conveyor system and preparation plant are all within the area proposed by PWCC for permitting under SMCRA as part of the Black Mesa Mine. The proposed mine permit would cover the conveyor system. The BMP has applied for a separate permit for the plant. Following preparation, the coal slurry leaves the plant by way of BMP's pipeline, traversing a portion of the proposed mine permit area and continuing on to the electrical generating station in Laughlin, Nevada, where it is used for fuel.

The railroad at issue is 83 miles long, and carries coal from the Kayenta Mine to the Navajo Generating Station, in Page, Arizona. Coal extracted at the mine is crushed by PWCC and placed on a conveyor system, which is owned and operated by PWCC. That system carries the coal to silos and a loadout facility, which are also owned by PWCC. The conveyor system, silos, and loadout facility are all within the permit area for the Kayenta Mine and covered by the mine permit. At the loadout facility, the coal is loaded into cars and transported by SRP's railroad to the electrical generating station in Page, Arizona, where it is used for fuel.

Title to the coal passes from PWCC to the electrical generating station either at the station (Black Mesa Mine) or at the loadout facility (Kayenta Mine). Further, the railroad and the pipeline are operated for the sole purpose of transporting all of the coal produced by PWCC at each mine to the respective electrical generating station. Throughout the 17-year operation of the mines from the enactment of SMCRA in 1977 to the 1994 Decisions at issue here, neither transportation facility has ever been permitted or otherwise authorized to operate under that Act.

In her Decisions, the Acting Director concluded that the railroad and pipeline are not "surface coal mining operations" regulated by SMCRA. She

IBLA 94-366

concluded that the applicable statutory standard is whether they can be considered facilities "resulting from or incident to" FWC's surface coal mining activities at the Black Mesa/Navajo Mines, under section 701(28)(B) of SMRA, 30 U.S.C. § 1291(28)(B) (1994), as that standard is explicated in the preamble to 1988 final rulemaking, 53 Fed. Reg. 47377 (Nov. 22, 1988). (Decision at 1-2, 3.) Applying this standard, the Acting Director held that neither the railroad nor the pipeline can be considered to result from or be incident to FWC's mining activities since a substantial portion of each facility is located well beyond the minesite, the primary function of the facility is to supply coal to a power plant, and, because the facility is not owned or operated by FWC, it is more economically dependent on the generating station than on the mine. (Decision at 3; see *id.* at 4, 5.) The Acting Director also noted that weighing against SMRA regulation is the fact that neither the statute nor the regulations explicitly cover either facility and that regulating them at this point would "reverse long-standing decisions by [OSM] which have been relied upon" by the operator of the facility. *Id.* at 3, 5.

*and present the argument*

In their SOR, Appellants contend that the railroad and pipeline should be considered "surface coal mining operations," within the meaning of section 701(28)(B) of SMRA, 30 U.S.C. § 1291(28)(B) (1994), because they are "facilities 'resulting from or incident to' surface coal mines that [FWC] operates on Navajo lands." (SOR at 2 (quoting from 30 U.S.C. § 1291(28)(B) (1994)).) They argue that this is so because each facility is "functionally integrated with the mine it serves because it provides the sole means of transporting coal from the mine site directly to the mine's only customer" and serves no other mine, and each is "economically dependent upon the mine they serve because the mine is their sole source of cargo, and thus presumably their sole source of revenue." (SOR at 29, 30.) Appellants distinguish this situation from that of a common carrier, noting that each transportation facility and its respective mine and power plant are a "closed, unified industrial operation." *Id.* at 14, 16. They argue that to find that the facilities at issue here do not result from or are not incident to the mines, would exclude all such facilities from SMRA jurisdiction. Since the railroad and pipeline are section 701(28)(B) facilities, Appellants assert that OSM must require FWC 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 SMRA 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 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

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[s]uch 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 SMRA, 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, 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 SMRA, 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 SMRA. 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 SMRA, 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." (FWOC Answer at 2, 9.) The fact that it did not, strongly indicates that Congress did not intend to regulate the transportation of processed coal under SMRA, presumably leaving it to regulation pursuant to other Federal and state laws.

We turn to SMRA'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 "[r]ailroad 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 "[m]ovement of coal, equipment and personnel within the mine plan area." 44 Fed. Reg. 15260, 15261 (Mar. 13, 1979) (emphasis added).

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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 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 "[r]esulting 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) ("[T]o 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 Wildlife Federation (NWF) v. Hodel, 839 F.2d 694, 746 n.80 (D.C. Cir. 1988).

Moreover, the Department particularly stated that it would interpret the regulation "to include all facilities located up to the point of load-out of coal for interstate transport." 48 Fed. Reg. 20397 (May 5, 1983) (emphasis added). Thus, where coal was transported by rail, the regulation "would extend to the loadout facility located at or near the mine site from which run of mine coal is conveyed or trucked to the rail line and loaded," and this same principle would also apply in the case of other modes of transportation, such as trucks, barges, and pipelines. *Id.* This regulation would have clearly excluded that portion of the railroad and pipeline at issue here, which are located beyond the loadout point.

In 1988, the Department dropped that regulatory definition, leaving the requirement in 30 C.F.R. § 816.181 that "support facilities" be operated under the permit for the individual mine or coal preparation plant to which they were incident or from which their operation resulted. It rejected any categorical exclusion or inclusion in favor of a case-by-case determination of what facilities can properly be regulated under SHRA, and declined to define what facilities result from or are incident to mining activities. See 53 Fed. Reg. 47380, 47382 (Nov. 22, 1988).

However, in the preamble which accompanied its 1988 rulemaking, the Department provided that OSM would address three factors when deciding whether a facility is properly considered to result from or be incident to surface coal mining activities: (1) whether the facility is geographically proximate to the producing mine; (2) whether the facility is functionally tied to the particular mine in question; and (3) whether the facility is economically dependent upon that particular mine. 53 Fed. Reg. 47379, 47381 (Nov. 22, 1988). The Department noted that the factors of geographic proximity and function had been endorsed by the circuit court in NWF, when it reviewed the propriety of the prior "support facilities" definition in 30 C.F.R. § 701.5 (1983). See 839 F.2d at 765-66.

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*Interpreted as*  
 Appellants assert that this case should be decided by applying the above three factors. (SOR at 8.) The other parties to the case likewise utilize those criteria. See Decision at 1, 3; OSM Answer at 9-10; PWC Answer at 18; SRP Answer at 14; BHP Answer at 10.

We conclude that, even applying the criteria outlined in the 1988 preamble but never formally adopted by the Department, the railroad and pipeline at issue here do not constitute facilities "resulting from or incident to" regulated surface coal mining activities, within the meaning of section 701(28)(B) of SMRA.

We agree with OSM that both the railroad and pipeline are not geographically proximate to the surface coal mining activities at issue here, since most of those transportation facilities are located many miles from the Black Mesa/Kayenta Mines. Indeed, 80 percent of the pipeline and railroad is located more than 54 and 16 miles, respectively, from the 2 mines. These facilities do not become geographically proximate because they originate at and traverse a small portion of the mine area that is currently permitted or proposed for permitting. (SOR at 11, 18.) To so hold would render all transportation facilities proximate unless the coal is first transported outside the mine area by other means and then placed into the facility. We do not think this is what the Department intended. Nor is geographic proximity affected by the particular use made of the facilities or, generally, the functional and economic concerns that animate the other criteria. *Id.*

Next, we conclude that, in order to be considered to "result[] from or [be] incident to" surface coal mining activities which are themselves subject to SMRA regulation under section 701(28)(A) of SMRA, within the meaning of 30 U.S.C. § 1291(28)(B) (1994), facilities must be functionally and economically tied to regulated surface coal mining activities, and thus be justifiably also subject to such regulation. This does not mean that the facilities must be actually "involved in excavation, processing or loading coal," i.e., section 701(28)(A) activity. (SRP Answer at 16.) Rather, there must be a direct and meaningful connection to such activity. See United States v. Devil's Hole, Inc., 747 F.2d 895, 897-98 (3d Cir. 1984) (mining waste piles used to recover anthracite silt - "incidental facility"); Paul F. Kuhn, 120 IBLA 1, 30-32, 98 Interior Dec. 231, 246-47 (1991) (natural gas pipeline section relocated from mine area - "incidental facility"). We think that is the clear intent of Congress in expanding the definition of "surface coal mining operations" to include "incidental facilities" and also of the Department when it adopted the relevant criteria. See NWE, 839 F.2d at 743, 744; 53 Fed. Reg. 47379 (Nov. 22, 1988); 48 Fed. Reg. 20393 (May 5, 1983). Indeed, to hold otherwise would bring facilities within the ambit of SMRA 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.

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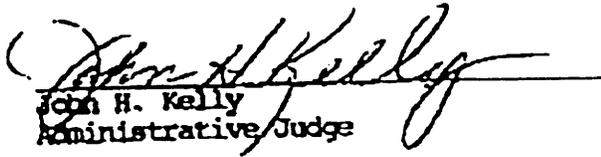
At the present time, the railroad and pipeline are functionally tied to and economically dependent on the surface coal mining activities at issue here in the limited sense that they currently serve only to transport all of the coal from the Black Mesa/Kayenta Mines to the final point of use and derive 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 SMRA.

As the circuit court instructed in ME, 839 F.2d at 745, the phrase "resulting from or incident to" requires some type of proximate causation, "[o]therwise, every support facility that could be considered a 'bot for' result of a surface coal mining operation would be subject to SMRA 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 SMRA 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 BMLP Railroad and BMLP's coal slurry pipeline are not "surface coal mining operations," within the meaning of section 701(28)(B) of SMRA, 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

I concur:

  
R.W. Hollen  
Administrative Judge

with time; and

- (vii) Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.
- (2) The public notice and opportunity to comment required under part (c)(1) of this definition shall be provided as follows:
  - (i) The Division shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.
  - (ii) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the office where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

"Account" means the Abandoned Mine Reclamation Account established pursuant to Section 40-10-25 of the Act.

"Acid Drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity discharged from an active, inactive, or abandoned coal mining and reclamation operation, or from an area affected by coal mining and reclamation operations.

"Acid-Forming Materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

"Act" means Utah Code Annotated Section 40-10-1 et seq.

"Adjacent Area" means the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed coal mining and reclamation operations, including probable impacts from underground workings.

"Administratively Complete Application" means an application for permit approval or approval for coal exploration, where required, which the Division determines to contain information addressing each application requirement of the State Program and to contain all information necessary to initiate processing and public review.

"Affected Area" means any land or water surface area which is used to facilitate, or is physically altered by, coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from coal mining and reclamation operations, except as provided in this definition; any area covered by surface 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, shipping areas; any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, coal mining and reclamation operations, unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public

funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental) public use. Editorial Note: The definition of "Affected area", insofar, as it excludes roads which are included in the definition of "Surface coal mining operations", was suspended at 51 FR 41960, Nov. 20, 1986. Accordingly, Utah suspends the definition of Affected Area insofar as it excludes roads which are included in the definition of "coal mining and reclamation operations."

"Agricultural Use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

"Alluvial Valley Floors" means the unconsolidated stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities, but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by unconcentrated runoff or slope wash, together with talus, or other mass-movement accumulations, and windblown deposits.

"Applicant" means any person seeking a permit, permit change, and permit renewal, transfer, assignment, or sale of permit rights from the Division to conduct coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Application" means the documents and other information filed with the Division under the R645 Rules for the issuance of permits; permit changes; permit renewals; and transfer, assignment, or sale of permit rights for coal mining and reclamation operations or, where required, for coal exploration.

"Approximate Original Contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain with all highwalls, spoil piles, and coal refuse piles having a design approved under the R645 Rules and prepared for abandonment. Permanent water impoundments may be permitted where the Division has determined that they comply with R645-301-413.100 through R645-301-413.334, R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-542.400, R645-301-733.220 through R645-301-733.224, R645-301-743, R645-302-270 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900.

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

"Arid and Semiarid Area" means, in the context of ALLUVIAL VALLEY FLOORS, an area where water use by native vegetation equals or exceeds that supplied by precipitation. All coalfields in Utah are in arid and semiarid areas.

"Auger Mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

"Best Technology Currently Available" means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state or federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are

currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetation selection and planting requirements, animal stocking requirements, scheduling of activities, and design of sedimentation ponds in accordance with R645-301 and R645-302. Within the constraints of the State Program, the Division will have the discretion to determine the best technology currently available on a case-by-case basis, considering among other things the economic feasibility of the equipment, devices, systems, methods or techniques, as authorized by the Act and the R645 Rules.

**"Blaster"** means a person who is directly responsible for the use of explosives in connection with surface blasting operations incidental to UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES or SURFACE COAL MINING AND RECLAMATION ACTIVITIES, and who holds a valid certificate issued by the Division in accordance with the statutes and regulations administered by the Division governing training, examination, and certification of persons responsible for the use of explosives in connection with surface blasting operations incidental to coal mining and reclamation operations.

**"Board"** means the Board of Oil, Gas and Mining for the state of Utah, or the Board's delegated representative.

**"Cemetery"** means any area of land where human bodies are interred.

**"Coal"** means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D388-95.

**"Coal Exploration"** means the field gathering of: (a) surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or (b) the gathering of environmental data to establish the conditions of an area before beginning coal mining and reclamation operations under the requirements of the R645 Rules.

**"Coal Mine Waste"** means coal processing waste and underground development waste.

**"Coal Mining and Reclamation Operations"** means (a) activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 40-10-18 of the Act, surface coal mining and reclamation operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include all activities necessary and incidental to the reclamation of the operations, excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in-situ distillation; or retorting, leaching, or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16-2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 40-10-8 of the Act; and, provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and (b) the areas upon which the activities described under part (a) of this definition occur or where such activities disturb the natural land surface. These areas will 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 those activities and for haulage and excavation, 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 material on the surface, resulting from or incident to those activities.

**"Coal Mining and Reclamation Operations Which Exist on the Date of Enactment"** means all coal mining and reclamation operations which were being conducted on August 3, 1977.

**"Coal Preparation or Coal Processing"** means the chemical and physical processing and the cleaning, concentrating, or other processing or preparation of coal.

**"Coal Processing Plant"** means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. Coal processing plant includes facilities associated with coal processing activities, such as, but not limited to, the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

**"Coal Processing Waste"** means earth materials which are separated from the product coal during cleaning, concentrating, or the processing or preparation of coal.

**"Collateral Bond"** means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the Division of: (a) a cash account, which will be the deposit of cash in one or more federally-insured or equivalently protected accounts, payable only to the Division upon demand, or the deposit of cash directly with the Division; (b) negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and placed in the possession of, the Division; (c) negotiable certificates of deposit, made payable or assigned to the Division and placed in its possession, or held by a federally insured bank; (d) an irrevocable letter of credit of any bank organized or authorized to transact business in the United States payable only to the Division upon presentation; (e) a perfected, first lien security interest in real property in favor of the Division; or (f) other investment grade rated securities having a rating of AAA or AA or A, or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of, and placed in the possession of, the Division.

**"Combustible Material"** means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise

**"Community or Institutional Building"** means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions including, but not limited to educational, cultural, historic, religious, scientific, correctional, mental-health or physical-health care facility; or is used for public services, including, but not limited to, water supply, power generation, or sewage treatment.

**"Compaction"** means increasing the density of a material by reducing the voids between the particles, and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

**"Complete and Accurate Application"** means an application for permit approval or approval for coal exploration, where required, which the Division determines to contain all information required under the Act, the R645 Rules, and the State Program that is necessary to make a decision on permit issuance.

**"Continuously Mined Areas"** means land which was mined for coal by underground mining operations prior to August 3, 1977, the effective date of the Federal Act, and where mining continued after that date.

impound water, slurry, or other liquid or semiliquid material.

**"Remining"** means conducting coal mining and reclamation operations which affect previously mined areas

**"Renewable Resource Lands"** means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands. For the purposes of R645-103, RENEWABLE RESOURCE LANDS means geographic areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

**"Renewal of a Permit"** means, for the purposes of R645-302-300, a decision by the Division to extend the time by which the permittee may complete mining within the boundaries of the original permit.

**"Replacement of Water Supply"** means, with respect to State-appropriated water supplies contaminated, diminished, or interrupted by coal mining and reclamation operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

**"Road"** means a surface right-of-way for purposes of travel by land vehicles used in coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

**"Safety Factor"** means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

**"Secretary"** means the Secretary of the Department of Interior or his or her representative.

**"Sedimentation Pond"** means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

**"Self Bond"** means an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor, and made payable to the Division with or without separate surety.

**"Significant Forest Cover"** means an existing plant community consisting

predominantly of trees and other woody vegetation. The Secretary of Agriculture will decide on a case-by-case basis whether the forest cover is significant within those national forests in Utah.

**"Significant, Imminent Environmental Harm to Land, Air, or Water Resources"** means (a) the environmental harm has an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life; (b) an environmental harm is imminent, if a condition, practice, or violation exists which (i) is causing such harm, or (ii) may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under 40-10-22 of the Act, and (c) an environmental harm is significant if that harm is appreciable and not immediately repairable.

**"Significant Recreational, Timber, Economic, or Other Values Incompatible With Coal Mining and Reclamation Operations"** means those values to be evaluated for their significance which could be damaged by, and are not capable of existing together with, coal mining and reclamation operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include (a) recreation, including hiking, boating, camping, skiing, or other related outdoor activities, (b) timber management and silviculture, (c) agriculture, aquaculture, or production of other natural, processed, or manufactured products which enter commerce, and (d) scenic, historic, archaeological, aesthetic, fish, wildlife, plants, or cultural interests.

**"Siltation Structure"** means, for the purposes of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763, a sedimentation pond, a series of sedimentation ponds or other treatment facilities.

**"Slope"** means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

**"SOAP"** means Small Operator Assistance Program.

**"Soil Horizons"** means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four major soil horizons are"

A HORIZON - The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

E HORIZON - The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

B HORIZON - The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

C HORIZON - The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity

**"Soil Survey"** means a field and other investigations resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in R645-302-