



*rec mine file  
cel T Mitchell  
1/2/91  
2 Buxton  
AKN*

**ONE UTAH CENTER**

201 SOUTH MAIN • SUITE 2100 • SALT LAKE CITY, UTAH 84140-0021 • (801) 220-2000

VIA TELECOPY

(505) 766-2609

and

VIA CERTIFIED MAIL  
-RETURN RECEIPT REQUESTED

**RECEIVED**

JUL 12 1991

DIVISION OF  
OIL GAS & MINING

July 11, 1991

Mr. Gary Fritz  
United States Department of Interior  
Office of Surface Mining  
Albuquerque Field Office  
625 Silver Avenue, S.W.  
Suite 310, Silver Square  
Albuquerque, New Mexico 87102

RE: Notice of Violations  
91-02-116-003 (Cottonwood/Wilberg Mine) and  
91-02-246-001 (Deer Creek Mine)

Dear Mr. Fritz:

PacifiCorp Electric Operations ("PacifiCorp") hereby submits information concerning the above-entitled Notices Of Violations ("NOVs") for considered in determining the facts surrounding the alleged violations and the amount of the penalties. This information is submitted pursuant to 30 C.F.R. § 845.17. PacifiCorp protests issuance of these NOVs due to the fact that both involve public roads which are not required to be permitted under either the Utah Coal Mining & Reclamation Act or the federal Surface Mining Control & Reclamation Act. PacifiCorp cooperated with the Utah Division of Oil, Gas & Mining ("DOG M") to confirm the public road status of State Highway Route 57 and the Emery County Road well prior to the issuance of the above-stated NOVs. In this regard, we provide the following enclosed correspondence:

1. State Highway Route 57:

- a. Letter dated March 28, 1991 from Lowell Braxton, DOGM, to Blake Webster, PacifiCorp, requesting information on the public road status of State Highway Route 57;
- b. Letter dated May 3, 1991 from Blake Webster, PacifiCorp, to Archie Hamilton, Utah Department of Transportation ("UDOT"), requesting a response to DOGM's letter requesting information on the public road status of State Highway Route 57; and
- c. Letter dated May 24, 1991 from Archie Hamilton, UDOT, to Lowell Braxton, DOGM, confirming the public road status of State Highway Route 57.

2. Emery County Road No. 304 (Deer Creek Road):

- a. Letter dated March 28, 1991 from Lowell Braxton, DOGM, to Blake Webster, PacifiCorp, regarding the public road status of the Emery County Road between Highway 31 and the Deer Creek Mine;
- b. Letter dated May 3, 1991 from Blake Webster, PacifiCorp, to Rex Funk, Emery County Road Department, requesting information regarding the public road status of the Emery County Road;
- c. Letter dated May 21, 1991 from the Emery County Road Department to J. Blake Webster, PacifiCorp, confirming the public road status of Emery County Road No. 304;
- d. Letter dated June 3, 1991 from J. Blake Webster, PacifiCorp, to Lowell Braxton, DOGM, forwarding the response of the Emery County Road Supervisor concerning the public road status of the Emery County Road;

Mr. Gary Fritz  
July 11, 1991  
Page Three

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- e. Letter dated January 29, 1985 from Allen K. Klein, Administrator, Western Technical Center, Office of Surface Mining ("OSM") to Chris Shingleton, Utah Power & Light Company (PacifiCorp predecessor in interest) stating that, "OSM finds that the Deer Creek Mine access road, as specified in the Deer Creek Mine permit application package, substantively meets the definition of a public road as outlined in 30 C.F.R. § 761.5 and the Utah Division of Oil, Gas & Mining (DOG M) public roads policy adopted on January 27, 1984";
- f. Letter dated December 7, 1984 from OSM Western Technical Center to Emery County Board of Commissioners regarding the public road status of the Emery County roads serving the Deer Creek Mine; and
- g. Letter dated February 6, 1985 from Emery County Board of Commissioners to OSM Western Technical Center confirming the public road status of the Emery County Road servicing the Deer Creek Mine.

Based upon the above-listed correspondence, it is clear that State Highway Route 57 and the Emery County Road No. 304 are public roads and the operator has no authority to either include them in a mining and reclamation permit or to reclaim them as required by the NOV's. The operator has taken all action which it can in timely responding to the NOV's and these NOV's should be vacated.

In the event that these NOV's are not vacated, PacifiCorp requests that the following factors be taken into consideration in any proposed penalty assessment.

1. Seriousness.

OSM should follow the well-established precedent requiring no assessment of "extent of damage points", where, as in this case, the violation charged is mining without a permit. West Virginia Energy, Inc., 88 ID. 831, 835 (1981).

Mr. Gary Fritz  
July 11, 1991  
Page Four

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2. Neqligence.

No penalty points should be assigned for negligence due to the fact that this violation has occurred through no negligence of PacifiCorp.

3. Good Faith in Attempting to Achieve Compliance.

OSM should award maximum good faith points because the operator took all action which it could to determine the public road status of State Highway Route 57 and Emery County Road 304 prior to issuance of the NOV's.

Thank you for your assistance in this matter.

Sincerely,



J. Blake Webster  
Permitting Administrator  
PacifiCorp Electric Operations

JBW:DAD:jmc:071191a

Enclosures

cc: ✓ John Heider, Western Support Center  
✓ Dianne R. Nielson, Director, DOGM

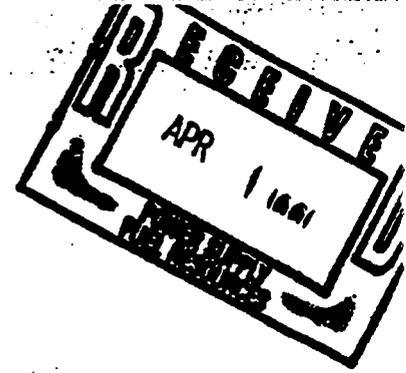


# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

Norman H. Bangertter  
Governor  
Dee C. Hansen  
Executive Director  
Dianne R. Nielson, Ph.D.  
Division Director

355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203  
801-538-5340



March 28, 1991

CERTIFIED RETURN RECEIPT REQUESTED  
No. P 540 714 145



JUL 12 1991

DIVISION OF  
OIL GAS & MINING

Mr. Blake Webster, Permitting Administrator  
PacifiCorp Electric Operations  
P. O. Box 26128  
Salt Lake City, Utah 84126-0128

*Blake*  
Dear Mr. Webster:

Re: Cottonwood/Wilberg, PacifiCorp Electric Operations, ACT/015/019, Emery County, Utah

Effective February 25, 1991, the Board of Oil, Gas and Mining adopted emergency rules dealing with the definition of "Public Road" and "Road." These terms as defined in the emergency rulemaking are:

"Public Road" means a road, (a) which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located, (b) which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction, and (c) which meets road construction standards for other public roads of the same classification in the local jurisdiction.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or coal mining and reclamation operations. 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 exploration, or within the affected areas of coal mining and reclamation operations, including use by coal hauling vehicles leading to processing or storage areas. The term does not include roads within the immediate mining-pit area and may not include public roads as determined on a site specific basis.

In order to make a finding that a road is a "public road" and not permittable under the Utah Coal Regulatory Program, DOGM must conduct a site-specific analysis of roads leading to permitted sites. I am asking for information on Highway 57 between Highway 29 and the Cottonwood/Wilberg Mine, crossing portions of Section 27, 34 and 35, Township 17 South, Range 7 East and portions of Sections 2, 11 and 14, Township 18 South, Range 7 East, SLBM.

Page 2  
Mr. Blake Webster  
March 28, 1991

In order to facilitate this analysis, you will need to secure a signed letter from Emery County discussing the following topics:

1. The above-referenced road is /is not a public road pursuant to the laws of that jurisdiction.
2. Designation of a public road: --
  - a. When was the designation first established?
  - b. In which governmental system is the road included?
  - c. How is it classified within the public road system, and are there similar roads within the jurisdiction?
3. What public funds have been expended in maintaining the road for the following years:
  - a. 1990
  - b. 1989
  - c. 1988
4. How maintenance expenditures compare with other public roads of the same classification within the jurisdiction?
5. How construction standards for this road compare with roads of similar classification within the jurisdiction?
6. Whether PacifiCorp Electric Operations has the ability to deny public access to any of this road?

Please provide the requested information within 60 days of receipt of this letter.

If you have questions concerning the above process, please feel free to call Lowell Braxton or Ron Daniels.

Sincerely,



Lowell P. Braxton  
Associate Director, Mining

vb  
cc: D. Nielson  
R. Daniels  
MI78/82&83

**PACIFIC POWER • UTAH POWER**

324 South State  
P.O. Box 26128  
Salt Lake City, Utah 84126-0128



May 3, 1991

Mr. Archie Hamilton  
Engineer  
State of Utah  
Department of Transportation  
Route 3, Box 75C5  
-- Price, Utah 84501

Dear Mr. Hamilton:

It was a pleasure to meet you at the recent OSM Hearing on Public Roads. The information we discussed is included in the attached copy of a letter from the Utah Division of Oil, Gas and Mining regarding Highway 57 which provides access to the Cottonwood coal mine. As indicated in the letter, the request involves Highway 57 between Highway 29 and the Cottonwood Mine, crossing portions of Section 27, 34 and 35, T17S, R7E and portions of Sections 2, 11 and 14, T18S, R7E, SLBM.

Please provide the information listed on page 2 of the attached letter.

We would appreciate your response by May 27. If you have questions, please call me at 220-4584 or Val Payne at 653-2312.

Thanks In Advance,

A handwritten signature in cursive script that reads "J. Blake Webster".

J. Blake Webster  
Permitting Administrator

VP/do  
Enclosure



State of Utah  
UTAH DEPARTMENT OF TRANSPORTATION

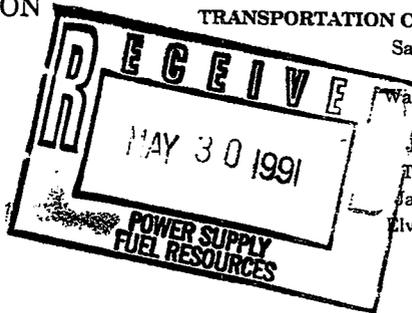
TRANSPORTATION COMMISSION

Samuel J. Taylor  
Chairman  
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Vice Chairman  
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Todd G. Weston  
James G. Larkin  
Elva H. Anderson  
Secretary

Eugene H. Findlay, C.P.A.  
Director  
Howard Richardson  
Assistant Director  
Steve R. Noble  
District Four Director

Route #3 Box 75C5  
940 South Caroon Avenue  
Price, Utan 84501  
(801) 637-1100  
(801) 637-9538 (Fax)

May 24, 1991



State of Utah  
Division of Oil, Gas and Mining --  
Lowell P. Braxton  
355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84130-1203

RE: Cottonwood/Wilberg, PacificCorp Electric Operations,  
ACT/015/019, Emery County, Utah

Dear Sirs,

In response to your request of PacificCorp, the following information is provided:

1. The above referenced roadway is a State highway, Route 57.
2. It was designed a State Route on October 15, 1982. It is a U.D.O.T. State Federal Aid Secondary. There are other roads with similar designations.
3. Various maintenance activities have been provided to this route with an average of \$50,000.00 expended annually.
4. These maintenance expenditures are average with this type of system.
5. It was constructed to U.D.O.T. and A.A.S.H.T.O. Secondary road standards.
6. No agency, Federal or State, other than U.D.O.T. has authority over this roadway and right-of-way.

Respectfully yours,

*Archie Hamilton*  
L. Archie Hamilton  
Asst. District Director

cc: D. Nielson  
R. Daniels  
J. Blake Webster  
Dixie Thompson  
Steve Noble  
Howard Richardson  
Rex Funk

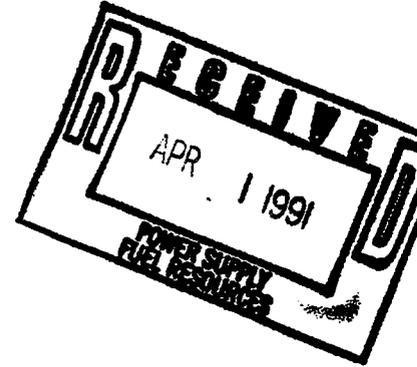


# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

Norman H. Bangertter  
Governor  
Dee C. Hansen  
Executive Director  
Dianne R. Nielson, Ph.D.  
Division Director

355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203  
801-538-5340



March 28, 1991

CERTIFIED RETURN RECEIPT REQUESTED  
No. P 540 714 144

Mr. Blake Webster, Permitting Administrator  
PacifiCorp Electric Operations  
P. O. Box 26128  
Salt Lake City, Utah 84126-0128

*Blake*

Dear Mr. Webster:

Re: Deer Creek Mine, PacifiCorp Electric Operations, ACT/015/018, Emery County, Utah

Effective February 25, 1991, the Board of Oil, Gas and Mining adopted emergency rules dealing with the definition of "Public Road" and "Road." These terms as defined in the emergency rulemaking are:

"Public Road" means a road, (a) which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located, (b) which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction, and (c) which meets road construction standards for other public roads of the same classification in the local jurisdiction.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or coal mining and reclamation operations. 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 exploration, or within the affected areas of coal mining and reclamation operations, including use by coal hauling vehicles leading to processing or storage areas. The term does not include roads within the immediate mining-pit area and may not include public roads as determined on a site specific basis.

In order to make a finding that a road is a "public road" and not permittable under the Utah Coal Regulatory Program, DOGM must conduct a site-specific analysis of roads leading to permitted sites. I am asking for information on the Deer Creek road between Highway 31 and the Deer Creek Mine, crossing portions of Section 36, Township 16 South, Range 7 East and portions of Sections 1, 2, 10 and 11, Township 17 South, Range 7 East, SLBM.

Page 2  
Mr. Blake Webster  
March 28, 1991

In order to facilitate this analysis, you will need to secure a signed letter from Emery County discussing the following topics:

1. The above-referenced road is /is not a public road pursuant to the laws of that jurisdiction.
2. Designation of a public road:
  - a. When was the designation first established?
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  - a. 1990
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  - c. 1988
4. How maintenance expenditures compare with other public roads of the same classification within the jurisdiction?
5. How construction standards for this road compare with roads of similar classification within the jurisdiction?
6. Whether PacifiCorp Electric Operations has the ability to deny public access to any of this road?

Please provide the requested information within 60 days of receipt of this letter.

If you have questions concerning the above process, please feel free to call Lowell Braxton or Ron Daniels.

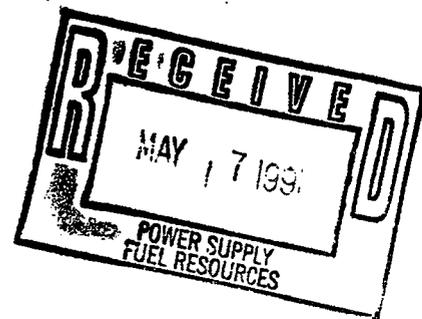
Sincerely,

  
Lowell P. Braxton  
Associate Director, Mining

vb  
cc: D. Nielson  
R. Daniels  
MI78/80&81

PACIFIC POWER • UTAH POWER

324 South State  
P.O. Box 26128  
Salt Lake City, Utah 84126-0128



◆ PACIFICORP  
ELECTRIC OPERATIONS GROUP

May 3, 1991

Mr. Rex Funk  
Supervisor  
Emery County Road Department  
PO Box 889  
Castle Dale, Utah 84513

Dear Mr. Funk:

Thank you for your participation in the recent OSM Hearing on Public Roads. Your response on such short notice is appreciated. Further information on the public road issue is required by the agencies.

Attached please find a copy of a letter from the Utah Division of Oil, Gas and Mining requesting information regarding the county road that provides access to the Deer Creek coal mine. As indicated in the letter, the request involves the Deer Creek road between Highway 31 and the Deer Creek Mine, crossing portions of Section 36, T16S, R7E and portions of Sections 1, 2, 10 and 11, T17S, R7E, SLBM.

Please provide the information listed on page 2 of the attached letter.

We would appreciate your response by May 27. If you have questions, please call me at 220-4584 or Val Payne at 653-2312.

Sincerely,

A handwritten signature in cursive script that reads "J. Blake Webster".

J. Blake Webster  
Permitting Administrator

VP/do  
Enclosure

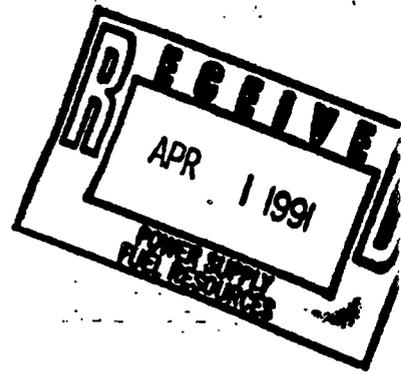


# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

Norman H. Bangertter  
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Dee C. Hansen  
Executive Director  
Dianne R. Nielson, Ph.D.  
Division Director

355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203  
801-538-5340



March 28, 1991

CERTIFIED RETURN RECEIPT REQUESTED  
No. P 540 714 144

Mr. Blake Webster, Permitting Administrator  
PacifiCorp Electric Operations  
P. O. Box 26128  
Salt Lake City, Utah 84126-0128

*Blake*  
Dear Mr. Webster:

Re: Deer Creek Mine, PacifiCorp Electric Operations, ACT/015/018, Emery County, Utah

Effective February 25, 1991, the Board of Oil, Gas and Mining adopted emergency rules dealing with the definition of "Public Road" and "Road." These terms as defined in the emergency rulemaking are:

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In order to make a finding that a road is a "public road" and not permissible under the Utah Coal Regulatory Program, DOGM must conduct a site-specific analysis of roads leading to permitted sites. I am asking for information on the Deer Creek road between Highway 31 and the Deer Creek Mine, crossing portions of Section 36, Township 16 South, Range 7 East and portions of Sections 1, 2, 10 and 11, Township 17 South, Range 7 East, SLBM.

Page 2  
Mr. Blake Webster  
March 28, 1991

In order to facilitate this analysis, you will need to secure a signed letter from Emery County discussing the following topics:

1. The above-referenced road is /is not a public road pursuant to the laws of that jurisdiction.
2. Designation of a public road:
  - a. When was the designation first established?
  - b. In which governmental system is the road included?
  - c. How is it classified within the public road system, and are there similar roads within the jurisdiction?
3. What public funds have been expended in maintaining the road for the following years:
  - a. 1990
  - b. 1989
  - c. 1988
4. How maintenance expenditures compare with other public roads of the same classification within the jurisdiction?
5. How construction standards for this road compare with roads of similar classification within the jurisdiction?
6. Whether PacifiCorp Electric Operations has the ability to deny public access to any of this road?

Please provide the requested information within 60 days of receipt of this letter.

If you have questions concerning the above process, please feel free to call Lowell Braxton or Ron Daniels.

Sincerely,

  
Lowell P. Braxton  
Associate Director, Mining

vb  
cc: D. Nielson  
R. Daniels  
MI78/80&81



# Emery County Road Department

P.O. Box 889  
Castle Dale, Utah 84513

Phone (801) 381-5450 or 381-5570  
Fax (801) 381-5239



May 21, 1991

J. Blake Webster  
PacifiCorp.  
324 South State  
Salt Lake City, Utah 84126-0128

Dear Mr. Webster:

In response to your letter of May 3, 1991 we submit the following in reference to Deer Creek Road #304. Using the questionnaire format which you enclosed I'll respond accordingly.

1. **QUESTION:** The above referenced road is/is not a public road pursuant to the laws of that jurisdiction.

**ANSWER:** The referenced road is a public road pursuant to the laws of Emery County and the State of Utah.

2. Designation of a public road:

- a. **QUESTION:** When was the designation first established?

**ANSWER:** Our records indicate public use at least as far back as 1892 as noted on Emery County Plat dated November 2, 1901. Other transactions are on file including a Right-of-Way deed granted by Bryon and Nida Howard (Howard Ranch/refer to Road Supervisor's letter to Val Payne dated December 18, 1989) to the State Road Commission of Utah on October 3, 1946. The Right-of-Way granted the state permission to relocate and reconstruct Highway 31 with proper reattachment of Deer Creek road to the new construction.

- b. **QUESTION:** In which government system is the road included?

**ANSWER:** Emery County Road #304 (Deer Creek Road) is a Utah State Class B county road belonging to Emery County.

Letter to J. Blake Webster  
PacifiCorp  
May 21, 1991  
Page Two

c. **QUESTION:** How is it classified within the public road system and are these similar roads within the jurisdiction?

**ANSWER:** Deer Creek Road #304 is classified as a general use public roadway under authority of Emery County. All of Emery County's roads are classified general use public roads in compliance with the Regulations Governing Class B and Class C Road Funds (Utah Department of Transportation Agreement 1983).

3. **QUESTION:** What public funds have been expended in maintaining the roads in the following years:

a. **1990:**

**ANSWER:** Records indicate \$17,724 expended 1990.

b. **1989:**

**ANSWER:** Records indicate \$640,152 expended 1989.

c. **1988:**

**ANSWER:** Records indicate \$5,978 expended 1988.

4. **QUESTION:** How maintenance expenditures compare with other public roads of the same classification within the jurisdiction?

**ANSWER:** Expenditures seem comparable to other public roads receiving heavy haul traffic combined with general use.

5. **QUESTION:** How construction standards for this road compare with roads of similar classifications within the jurisdiction?

**ANSWER:** As public roads are rehabilitated, as was the Deer Creek road in 1989, all applicable construction standards are subscribed to (re: AASHTO Standards on Geometric Design of Highways and the State of Utah Standard Specification for Road and Bridge Construction). Because of the recent rehabilitation efforts in 1989 Deer Creek Road is superior in design to most of our older existent public roads and comparable to others of later rehabilitation conforming to applicable design and construction standards.

Letter to J. Blake Webster  
PacifiCorp  
May 21, 1991  
Page Three

6. **QUESTION:** Whether Pacific Corp Electric Operations has the ability to deny public access to any o this road?

**ANSWER:** Pacific Corp does not have authority to deny public access to any portion of Deer Creek Road #304 nor does Pacific Corp have rights to maintenance or encroachment per Emery County Encroachment Ordinance #8-7-85A. Emery County has repeatedly responded over past years, to the inquiries as to whether Deer Creek Road #304 is a county and now particularly as to whether it is a public road or not.

We hope that the above information will be sufficient to deter further inquiry which consumes much time and effort in proving that which is common historic fact as pertaining to Emery County's legal right to the above subject road as recognized by the Utah Code.

If we can be of further assistance please contact us.

Sincerely,



Rex Funk,  
Road Supervisor

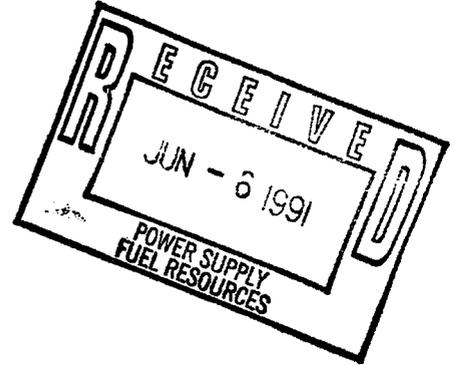
cc Commissioner Dixie Thompson  
Val Payne, UP&L Mining Division

**PACIFIC POWER • UTAH POWER**

324 South State  
P.O. Box 26128  
Salt Lake City, Utah 84126-0128

**PACIFICORP**  
ELECTRIC OPERATIONS GROUP

June 3, 1991



Mr. Lowell P. Braxton  
Associate Director, Mining  
State of Utah  
Department of Natural Resources  
Division of Oil, Gas and Mining  
355 West North Temple  
-- 3 Triad Center, Suite 350  
Salt Lake City, UT 84180-1203

Re: MINE ACCESS ROADS, PACIFICORP ELECTRIC OPERATIONS,  
DEER CREEK MINE, ACT/015/018 AND COTTONWOOD/WILBERG  
MINE, ACT/015/019, EMERY COUNTY, UTAH

Dear Mr. Braxton:

I am enclosing information in response to your letter of March 28, 1991 regarding the above referenced matter as well as a copy of a letter received from Mr. Rex Funk, Emery County Road Supervisor, in which the Deer Creek road is discussed. I understand that Mr. Archie Hamilton, Utah Department of Transportation, has submitted information regarding the Cottonwood/Wilberg road (Highway 57) directly to you. I hope this material sufficiently addresses your questions.

If you require further information, please call me at 220-4584 or Val Payne at 653-2312.

Sincerely,

A handwritten signature in cursive script that reads "Val Payne".

J. Blake Webster  
Permitting Administrator

VP/sh/1630

Enclosures

cc: Val Payne, with enclosures



# Emery County Road Department

P.O. Box 889  
Castle Dale, Utah 84513

Phone (801) 381-5450 or 381-2550  
Fax (801) 381-5239

May 21, 1991

J. Blake Webster  
PacifiCorp.  
324 South State  
Salt Lake City, Utah 84126-0128

Dear Mr. Webster:

In response to your letter of May 3, 1991 we submit the following in reference to Deer Creek Road #304. Using the questionnaire format which you enclosed I'll respond accordingly.

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**ANSWER:** The referenced road is a public road pursuant to the laws of Emery County and the State of Utah.

2. Designation of a public road:

- a. **QUESTION:** When was the designation first established?

**ANSWER:** Our records indicate public use at least as far back as 1892 as noted on Emery County Plat dated November 2, 1901. Other transactions are on file including a Right-of-Way deed granted by Bryon and Nida Howard (Howard Ranch/refer to Road Supervisor's letter to Val Payne dated December 18, 1989) to the State Road Commission of Utah on October 3, 1946. The Right-of-Way granted the state permission to relocate and reconstruct Highway 31 with proper reattachment of Deer Creek road to the new construction.

- b. **QUESTION:** In which government system is the road included?

**ANSWER:** Emery County Road #304 (Deer Creek Road) is a Utah State Class B county road belonging to Emery County.

Letter to J. Blake Webster  
PacifiCorp  
May 21, 1991  
Page Two

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Letter to J. Blake Webster  
PacifiCorp  
May 21, 1991  
Page Three

6. **QUESTION:** Whether Pacific Corp Electric Operations has the ability to deny public access to any o this road?

**ANSWER:** Pacific Corp does not have authority to deny public access to any portion of Deer Creek Road #304 nor does Pacific Corp have rights to maintenance or encroachment per Emery County Encroachment Ordinance #8-7-85A. Emery County has repeatedly responded over past years, to the inquiries as to whether Deer Creek Road #304 is a county and now particularly as to whether it is a public road or not.

We hope that the above information will be sufficient to deter further inquiry which consumes much time and effort in proving that which is common historic fact as pertaining to Emery County's legal right to the above subject road as recognized by the Utah Code.

If we can be of further assistance please contact us.

Sincerely,

  
Rex Funk,  
Road Supervisor

cc Commissioner Dixie Thompson  
Val Payne, UP&L Mining Division

miscltrs\67



United States Department of the Interior  
OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
BROOKS TOWERS  
1020 15TH STREET  
DENVER, COLORADO 80202

JAN 29 1985

Mr. Chris Shingleton  
Utah Power and Light Company  
P.O. Box 899  
Salt Lake City, Utah 84110

Dear Mr. Shingleton:

The Office of Surface Mining (OSM), Western Technical Center has reviewed the issue of the Deer Creek Mine access road relative to permit area requirements. Our review considered verbal comments expressed in our meeting of January 4, 1985. OSM finds that the Deer Creek Mine access road, as specified in the Deer Creek Mine permit application package, substantively meets the definition of a public road as outlined in 30 CFR 761.5 and the Utah Division of Oil, Gas and Mining (DOGM) public roads policy adopted on January 27, 1984.

The above finding is based on the current ownership, use, and maintenance of the access road, and the December 30, 1983, opinion of Administrative Law Judge Torbett vacating certain road violation issues in Virginia. A change in permit boundary to include the road would result in no change in performance standards and no increase in environmental protection. OSM and DOGM have therefore concluded that there is no need to change the permit boundary to include the access road.

Based on this conclusion, the second item of OSM's December 20, 1984, deficiency letter should be disregarded. All other permit application deficiency issues as outlined in our letter of December 20, 1984, remain applicable. If you have any questions, please call Louis Hamm or Walter Swain at (303) 844-3806.

Sincerely,

for Allen D. Klein  
Administrator

Western Technical Center

cc: Robert Hagen, OSM - Albuquerque Field Office  
Dianne Nielson, DOGM  
Mary Boucek, DOGM

Bill Zeller  
Morgan Moon  
Jim Atwood  
Bob Willey  
Val Payne



United States Department of the Interior  
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DENVER, COLORADO 80202

DEC 7 1984

Mr. Rue P. Ware, Chairman  
Emery County Board of Commissioners  
P.O. Box 629  
Castle Dale, Utah 84513

Dear Mr. Ware:

The Office of Surface Mining (OSM), Western Technical Center has received your letter of September 20, 1984, concerning responsibility for and maintenance of the roads serving the Deer Creek mine (approximately three miles long from Highway 31 to the Deer Creek portal), and the Des-Bee-Dove mine (7.7 miles long on Danish Bench) in Emery County. To assist us in completing permit actions on those mines, we are asking you to answer questions which remain:

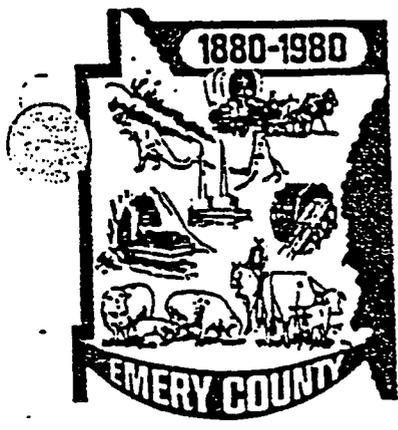
1. Does Emery County own the right-of-way to all or part of these roads? If the County owns the right-of-way to only part(s), please specify which part(s).
2. Does Emery County accept the post-mining responsibility for these roads, including maintenance? Please understand that the regulatory authority must have a commitment from the County regarding post-mining responsibility in order to complete the reclamation requirements of the mining applications. If it is later determined to be appropriate, the County may change their post-mining plans and notify the regulatory authority and the mine operator prior to reclamation.
3. Does Emery County currently have all responsibility for maintenance of these roads? If not, who does?

Your timely response would be most appreciated. If you have any questions, please call either Louis Hamm or Walter Swain at (303) 844-3806.

Sincerely,

*William J. Krain, acting for*  
Melvin Shilling  
Chief, Mining Analysis Division  
Western Technical Center

cc: Robert Hagen, OSM - Albuquerque Field Office.  
Dianne Nielson, DOGM  
Mary Boucek, DOGM  
Chris Shingleton, Utah Power and Light



# Emery County Board of Commissioners

P.O. Box 629  
Castle Dale, Utah 84513  
Telephone (801) 381-2119

Rue P. Warr, Commission Chairman  
Bevan K. Wilson, Commissioner  
Clyde Conover, Commissioner  
Bruce C. Funk, Clerk

February 6, 1985

Melvin Shilling  
Chief, Mining Analysis Division  
Western Technical Center  
Office of Surface Mining  
Reclamation and Enforcement  
Brooks Towers  
1020 15th Street  
Denver, Colorado 80202

Dear Mr. Shilling:

This correspondence is in response to the questions in your letter of December 7, 1984.

The subject roads are listed on the Emery County Road System. The County receives Class B funds concerning the roads. To receive the funds, concerning any given road, that road must be on the County System. The County, therefore, claims rights of way concerning these roads.

The County has in the past, and will continue, to maintain the subject roads as they are part of our County Road System. The County will maintain these roads until they become separated from the County Road System.

We trust this correspondence is sufficient. Should you have further questions, please submit them.

Yours truly,

*Clyde Conover*  
Clyde Conover, Chairman  
Emery County Board of Commissioners

CC/par

cc Ron Barney