



State of Utah

**Department of
Natural Resources**

MICHAEL R. STYLER
Executive Director

**Division of
Oil, Gas & Mining**

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

July 18, 2005

TO: Internal File

THRU: Mary Ann Wright, Associate Director, Mining

FROM: D. Wayne Hedberg, Permit Supervisor *page for DWH*

RE: Finding and Analysis on the Rilda Canyon Road Upgrade, North Rilda Canyon Fan Portal Facilities Project, Emery County Road #306, PacifiCorp/Energy West Mining Company (EWMC), Deer Creek Mine, C/015/0018, Internal File

Following is a finding and analysis of the Rilda Canyon access road (County Road EC #306) proposed to be upgraded and resurfaced across United States Forest Service (USFS), COP Coal Development Company, PacifiCorp, Intermountain Power Agency and ANDALEX properties as part of the North Rilda Canyon Fan Portal Facilities Project, Emery County, Utah. This finding and analysis complies with the regulations and policy under the Utah Coal Regulatory Program (UCRP) regarding to the "Permitting of Roads". This document will accompany and become part of the permit findings for a revision to the Deer Creek Mine permit issued by the UCRP.

Summary

The Rilda Canyon Road (EC #306) connects to the Huntington Canyon Road (State Highway 31) and is part of the Emery County road system. It is categorized as a Utah State Class "B" (improved surface) county road. Emery County Special Service District #1 plans to realign and improve portions of this road to provide local land owners, water users, miners, recreationists and other users with safe and convenient access to locations within and adjacent to Rilda Canyon.

During operation of the North Rilda Canyon Fan Portal Facilities, approximately 2300 feet of the Rilda Canyon Road passing through the proposed mine facilities area, will be "temporarily suspended" from unrestricted public use. A new trailhead parking area will be constructed at the lower end of the suspended section and a hiking trail will be extended around the "suspended" section allowing continued access to Rilda Canyon for multiple purpose users. Because the

Permittee (PacifiCorp/EWMC) will assume responsibility for the reclamation and reconstruction of the modified section of EC #306 that falls within the fan portal facilities disturbed area, this section of the county road *will not* 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. PacifiCorp and EWMC will be responsible for restoring and reconstructing that section of EC #306 to its original profile and design configuration upon the conclusion of its mining operations in Rilda Canyon. The reconstruction will be performed according to the Emery County approved design plans that have been included as part of the amended mine plan permit application.

Policy

This analysis implements the July 3, 1995, permitting policy on roads (see Reference #1 of the attached Reference List). In deciding to exempt all, or portions of, the Rilda Canyon Road (EC #306) from regulation, DOGM herein makes written findings as to whether: *(1)(2)*

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 from information obtained from existing documents that are referenced in the text according to the designated reference number. The Division sent a written request to EWMC on December 16, 2004, seeking background information on the Rilda Canyon access road to assist the Division in making a public road finding *(6)*. Energy West Mining Company provided a written response on April 8, 2005 *(7)*. Subsequent information regarding the Rilda Canyon road was received on June 30, 2005 and July 5, 2005 from Rex Funk, Road Supervisor, Emery County Road Department, and from Craig Johansen of Johansen & Tuttle Engineering, on July 7, 2005.

Analysis #1:

The road was properly acquired by the governmental entity and not deeded to avoid regulation.

- Available records indicate that portions of this public road have been used since the early 1900's, with initial development occurring near the mouth of the canyon. On June 17, 1935, a judicial court judge adjudged and decreed the Rilda Canyon Road as a public highway. The Forest Service authorized road development further up the canyon in the 1950's to support coal mining on Federal leases (at the Helco, Leroy and Rominger Mines). Emery County acknowledges ownership of this road by virtue of its historic and continued public use, decades of routine county maintenance, and pursuant to State Statutes pertaining to acquisition of property for highway purposes. (3) (4) (5) (7) (8)
- In 1993-94, Emery County reconstructed a two-mile stretch of the road from State Highway 31 (including a new bridge across Huntington Creek), to a location above the historic Leroy Mine. In 1994, North Emery Water Users Association (now called North Emery Water Users Special Service District) completed an expansion of their spring collection system. This system is located near the end of the 1993 road reconstruction work and below the historic Helco Mine. Also in 1994, in support of increased canyon activity, Emery County began a second phase of road reconstruction that involved a 1-mile section extending from the end of the 1993 work up canyon to the two main forks of Rilda Canyon. (7) (8) (10)
- EWMC's mining activity began about this same time with the need for a ventilation breakout in the Left Fork of Rilda Canyon. In 1995, EWMC permitted and constructed a ventilation fan in the left fork of Rilda Canyon for their Deer Creek Mine. In August of 1998, a public road easement was recorded at the Emery County Recorder's Office for the road. The United States Forest Service granted this easement to Emery County to provide documentary evidence of Emery County's rights and responsibility for this class of public road. This easement will be modified to account for the proposed upgrading of the Rilda Canyon Road (*personal communication w/Rex Funk, Emery County Road Dept. – 6/29/05*). (13)
- Public road EC #306 in Rilda Canyon has been utilized for many years to provide multiple use access into the canyon and surrounding area. Historically, the uses of the road have included: grazing, public utilities, recreation, culinary water development, and mineral development. These road uses will continue during and after coal mining operations cease in Rilda Canyon. Emery County is interested in building additional improvements to this county road to provide the general public, water users,

mining related traffic, and others with easier and safer access to lands and properties located within and adjacent to the Rilda Canyon area. (7) (10)

- Since portions of the property upon which EC #306 is built are owned by C.O.P. Coal Development Company, PacifiCorp, Intermountain Power Agency & ANDALEX, and the U. S. Forest Service, easements have been issued. On April 26, 1994, a Consent agreement was signed by C.O.P. vacating a section of the Rilda Canyon Road that was not located within the original 1935 adjudication. On May 18, 1994, Emery County Commission subsequently issued Ordinance Number 5-18-94, which effectively vacated and abandoned that portion of the existing County Road Right-of-Way crossing a section of C.O.P. private land as described above. On December 30, 2004, a Road Construction and Maintenance Easement was signed by Emery County and C.O.P. granting a perpetual right-of-way for that portion of EC #306 crossing their private surface. Emery County applied for and acquired a Construction and Maintenance Easement from the U.S. Forest Service, in August, 1998. An amended easement application has recently been filed with the USFS that identifies the areas of the Rilda Canyon road proposed to be upgraded. The upgrading of EC #306 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, acknowledged 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. (9) (11) (13) (16)
- Upgrades to EC #306 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 public roads within the County. Special Services District #1 will oversee and direct all road construction activities on EC #306 under a Road Encroachment Permit from the Emery County Road Department. (*personal communication - Leslie Bolinder, Emery County Commissioner's Office, and Linda Smith, Emery County Road Department, 7/14/2005*)

The legal description for the Rilda Canyon Road alignment is as follows: (17) (18)

USFS

A strip of land 80 feet wide, 40 feet on each side of the following described centerline.

Beginning at a point which is N 0°32'51" W, 268.54 feet from the Southwest corner of the Southwest quarter of the Northwest quarter of Section 28, Township 16

South, Range 7 East, SLM.; thence S $71^{\circ}03'58''$ E, 162.08 feet to the beginning of a circular curve to the left having a radius of 380.00 feet and an arc length of 342.07 feet; thence Easterly, 342.07 feet along said curve (chord bears N $83^{\circ}08'44''$ E, 330.63 feet); thence N $57^{\circ}21'27''$ E, 41.17 feet to the beginning of a circular curve to the right having a radius of 300.00 feet and an arc length of 180.35 feet; thence Easterly, 180.35 feet along said curve (chord bears N $74^{\circ}34'47''$ E, 177.65 feet); thence S $88^{\circ}11'52''$ E, 521.17 feet to the beginning of a circular curve to the left having a radius of 800.00 feet and an arc length of 384.35 feet; thence Easterly, 384.35 feet along said curve (chord bears N $78^{\circ}02'19''$ E, 380.67 feet); thence N $64^{\circ}16'30''$ E, 118.43 feet to the beginning of a circular curve to the right having a radius of 350.00 feet and an arc length of 330.06 feet; thence Easterly, 330.06 feet along said curve (chord bears S $88^{\circ}42'32''$ E, 317.97 feet); thence S $61^{\circ}41'34''$ E, 47.30 feet to the beginning of a circular curve to the left having a radius of 350.00 feet and an arc length of 240.68 feet; thence Easterly, 240.68 feet along said curve (chord bears S $81^{\circ}23'34''$ E, 235.97 feet); thence N $78^{\circ}54'26''$ E, 300.15 feet to the beginning of a circular curve to the right having a radius of 607.00 feet and an arc length of 108.32 feet; thence Easterly, 108.32 feet along said curve (chord bears N $84^{\circ}01'11''$ E, 108.18 feet); thence N $89^{\circ}07'55''$ E, 160.35 feet to the beginning of a circular curve to the left having a radius of 310.00 feet and an arc length of 204.78 feet; thence Easterly, 204.78 feet along said curve (chord bears N $70^{\circ}12'27''$ E, 201.08 feet); thence N $51^{\circ}16'58''$ E, 218.08 feet to the beginning of a circular curve to the right having a radius of 400.00 feet and an arc length of 169.56 feet; thence Easterly, 169.56 feet along said curve (chord bears N $63^{\circ}25'36''$ E, 168.29 feet); thence N $75^{\circ}34'14''$ E, 557.70 feet to the beginning of a circular curve to the left having a radius of 1000.00 feet and an arc length of 280.98 feet; thence Easterly, 280.98 feet along said curve (chord bears N $67^{\circ}31'16''$ E, 280.05 feet); thence N $59^{\circ}28'19''$ E, 902.67 feet to the beginning of a circular curve to the right having a radius of 1000.00 feet and an arc length of 43.42 feet; thence Easterly, 43.42 feet along said curve (chord bears N $60^{\circ}42'57''$ E, 43.42 feet) to the north line of the Southeast quarter of the Northeast quarter of said Section 28 at a point which is S $89^{\circ}53'55''$ W, 414.00 feet from the Northeast corner of said Southeast quarter of the Northeast quarter of said Section 28.

ALSO A strip of land 80 feet wide, 40 feet on each side of the following described centerline.

Beginning at a point which is N $0^{\circ}15'56''$ W, 187.43 feet from the Southwest corner of the Northwest quarter of the Northwest quarter of Section 27, Township 16 South, Range 7 East, SLM., said point being at the beginning of a non-tangent circular curve to the left having a radius of 650.00 feet and an arc length of 175.37 feet; thence Northeasterly, 175.37 feet along said curve (chord bears N $50^{\circ}14'41''$ E, 174.84 feet); thence N $42^{\circ}30'56''$ E, 162.76 feet to the beginning of a circular curve to the right having a radius of 528.00 feet and an arc length of 298.46 feet; thence Northeasterly, 298.46 feet along said curve (chord bears N $58^{\circ}42'33''$ E, 294.50 feet); thence N $74^{\circ}54'09''$ E, 122.61 feet to the beginning of a circular curve to the

left having a radius of 518.00 feet and an arc length of 148.87 feet; thence Northeasterly, 148.87 feet along said curve (chord bears N 66°40'10" E, 148.36 feet); thence N 58°26'10" E, 520.87 feet to the beginning of a circular curve to the right having a radius of 600.00 feet and an arc length of 89.53 feet; thence Northeasterly, 89.53 feet along said curve (chord bears N 62°42'40" E, 89.45 feet) to the east line of the Northwest quarter of the Northwest quarter of said Section 27 at a point which is S 0°05'07" W, 335.17 feet from the Northeast corner of the Northwest quarter of the Northwest quarter of said Section 27.

ALSO to accommodate cut and fill slopes which exceed the 80 foot right of way corridor an additional strip of land 40 feet wide adjacent to the above described easement at the following locations:

Along the North side between project stations 25+00 to 33+00,

Along the North side between project stations 41+00 to 44+00, and

Along the South side between project stations 70+00 to 73+00.

ALSO Beginning at a point which is N 66°52'37" E, 725.37 feet from the Southwest corner of the Southwest quarter of the Northwest quarter of Section 28, Township 16 South, Range 7 East, SLM. said point being on a non-tangent circular curve to the right having a radius of 260.00 feet and an arc length of 16.59 feet; thence Easterly, 16.59 feet along said curve (chord bears N 89°58'28" E, 16.58 feet); thence S 88°11'52" E, 183.42 feet; thence S 1°48'08" W, 40.00 feet; thence N 88°11'52" W, 183.42 feet to the beginning of a circular curve to the left having a radius of 220.00 feet and an arc length of 16.59 feet; thence Westerly, 16.59 feet along said curve (chord bears S 89°38'30" W, 16.59 feet); thence N 1°48'08" E, 40.00 feet to the point of beginning.

UP&L

A strip of land 80 feet wide, 40 feet on each side of the following described centerline.

Beginning at a point which is S 89°53'55" W, 414.00 feet from the Southeast corner of the Northeast quarter of the Northeast quarter of Section 28, Township 16 South, Range 7 East, SLM., said point being at the beginning of a non-tangent circular curve to the right having a radius of 1000.00 feet and an arc length of 88.52 feet; thence Northeasterly, 88.52 feet along said curve (chord bears N 64°29'44" E, 88.49 feet); thence N 67°01'49" E, 263.09 feet to the beginning of a circular curve to the left having a radius of 650.00 feet and an arc length of 102.74 feet; thence Northeasterly, 102.74 feet along said curve (chord bears N 62°30'08" E, 102.64 feet) to the east line of the Northeast quarter of the Northeast quarter of said Section 28 at a point which is N 0°15'56" W, 187.43 feet from the Southeast corner of the Northeast quarter of the Northeast quarter of said Section 28.

ALSO Beginning at a point which is N 89°41'22" W, 719.40 feet from the Southeast corner of the Southeast quarter of the Southwest quarter of Section 22, Township 16 South, Range 7 East, SLM.; thence N 52°53'42" E, 23.41 feet to the beginning of a circular curve to the right having a radius of 855.00 feet and an arc length of 192.25 feet; thence Northeasterly, 192.25 feet along said curve (chord bears N 59°20'12" E, 191.85 feet); thence N 65°46'42" E, 296.55 feet to the beginning of a circular curve to the left having a radius of 800.00 feet and an arc length of 216.78 feet; thence Northeasterly, 216.78 feet along said curve (chord bears N 58°00'56" E, 216.12 feet); thence N 50°15'09" E, 103.80 feet to the east line of the Southeast quarter of the Southwest quarter of said Section 22 at a point which is N 0°17'30" W, 418.38 feet from the Southeast corner of the Southeast quarter of the Southwest quarter of said Section 22.

IPA and ANDALEX

A strip of land 80 feet wide, 40 feet on each side of the following described centerline.

Beginning at a point which is S 0°05'07" W, 335.17 feet from the Northwest corner of the Northeast quarter of the Northwest quarter of Section 27, Township 16 South, Range 7 East, SLM., said point being at the beginning of a non-tangent circular curve to the right having a radius of 600.00 feet and an arc length of 34.19 feet; thence Northeasterly, 34.19 feet along said curve (chord bears N 68°37'06" E, 34.19 feet); thence N 70°15'04" E, 242.56 feet to the beginning of a circular curve to the left having a radius of 855.00 feet and an arc length of 259.00 feet; thence Northeasterly, 259.00 feet along said curve (chord bears N 61°34'23" E, 258.01 feet); thence N 52°53'42" E, 189.48 feet to the north line of the Northeast quarter of the Northwest quarter of said Section 27 at a point which is N 89°41'22" W, 719.40 feet from the Northeast corner of the Northeast quarter of the Northwest quarter of said Section 27.

ALSO Beginning at a point which is N 0°17'30" W, 418.38 feet from the Southwest corner of the Southwest quarter of the Southeast quarter of Section 22, Township 16 South, Range 7 East, SLM.; thence N 50°15'09" E, 636.93 feet to the beginning of a circular curve to the left having a radius of 1000.00 feet and an arc length of 258.36 feet; thence Northeasterly, 258.36 feet along said curve (chord bears N 42°51'03" E, 257.64 feet); thence N 35°26'58" E, 254.10 feet to the beginning of a circular curve to the right having a radius of 521.00 feet and an arc length of 91.22 feet; thence Northeasterly, 91.22 feet along said curve (chord bears N 40°27'55" E, 91.10 feet); thence N 45°28'52" E, 40.39 feet to the north line of the Southwest quarter of the Southeast quarter of said Section 22 at a point which is N 89°57'01" W, 415.27 feet from the Northeast corner of the Southwest quarter of the Southeast quarter of said Section 22.

COP Coal Development Company

Beginning at a point which is S 89°57'01" W, 343.83 feet along 40 acre line from the Southeast corner of the Northwest quarter of the Southeast quarter of Section 22, Township 16 South, Range 7 East, Salt Lake Meridian, Utah; thence N 44°48'56" E, 136.80 feet; thence N 30°12'28" E, 276.93 feet; thence N 5°39'00" E, 121.71 feet; thence N 27°39'10" W, 327.87 feet to the south right-of-way line of Highway SR-31; thence N 70°35'18" W, 330.76 feet more or less, along said right-of-way line; thence S 13°10'13" W, 102.52 feet; thence S 30°28'22" E, 116.06 feet; thence S 67°30'11" E, 101.02 feet; thence S 78°46'24" E, 156.57 feet; thence S 27°39'10" E, 170.78 feet; thence S 5°39'00" W, 70.03 feet; thence S 30°12'28" W, 242.35 feet; thence S 44°48'56" W, 223.17 feet to the south line of the Northwest quarter of the Southeast quarter of said Section 22; thence N 89°57'01" E, 140.85 feet to the point of beginning.

Finding #1:

Emery County plans to provide for public and multiple-use access across privately held and USFS controlled property by upgrading portions of the existing Rilda Canyon County Road (EC #306). This road will be designed, constructed, operated and maintained as a permanent and integral part of Emery County's public road network. Emery County (and Special Services District #1) will assume full responsibility for alignment, construction, operation and maintenance of the road. The land where the road will be upgraded is owned by C.O.P. Coal Development Company, PacifiCorp, Intermountain Power Agency (IPA) & ANDALEX, and the USFS who have granted easements to Emery County for the construction, operation, and maintenance of the Rilda Canyon Road. The road has been properly acquired by the governmental entity and will not be deeded to avoid regulation.

Analysis # 2:

The road is maintained with public funds or in exchange for taxes or fees.

- The Rilda Canyon Road EC #306 has been classified as a Class B county road, and has been constructed and maintained in a manner similar to other Class B road systems within the County. With the exception of the portion of the road passing through the portal facilities area, the road will continue to be maintained by Emery County with public funds as a multiple use, open access, public road not subject to the control of EWMC or any other private entity. The permittee will be responsible for maintaining that portion of the road profile falling within the portal facilities area, from the lower proposed trailhead parking area up to the existing gate at the junction of the left and right forks of the canyon. This 2300-foot section of the road will be included as part of the permit application and approved by the Division. At

the conclusion of mining, the entire length of the Rilda Canyon Road EC #306 will be left, and maintained as a permanent and integral part of the Emery County's road system. (7) (20)

- Special Services District #1 is involved with construction and improvement of EC #306 and similar types of roads, while Emery County actually owns the road and is responsible for its continued maintenance. Emery County is responsible for the environmental issues relating to the alignment, construction and maintenance of the upgraded road (*personal communication w/Rex Funk, Emery County Road Dept. – 6/29/05*). Emery County has maintained this road with public funds as a multiple use, open access, public road and it has not been subject to the control of EWMC. (8) (10) (14)
- The source for funds for the upgrading of EC #306 will be provided by Emery County, Special Service District #1, using mineral lease monies (25%) and supplemental funding from PacifiCorp/EWMC (75%) to the County through terms of an impact agreement (*personal communication with Leslie Bolinder – Emery County Commission Office, 7/14/2005*). 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 Class "B" roads in the county.

Finding # 2:

Emery County has asserted its jurisdiction over the Rilda Canyon Road (EC #306) 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 EWMC or any other private entity, except for that portion of the road which passes through the proposed mine portal facilities area under a "temporary suspension". A new trailhead parking area will be constructed and the existing trail extended to accommodate continued public use during active mining activities. Emery County will assume full maintenance responsibilities for the full length of EC #306 (including the 2300 foot section under temporary suspension) following cessation of mining operation.

Analysis # 3:

The road was constructed in such a manner similar to other public roads of the same classification.

- Emery County affirms that the Rilda Canyon Road (EC #306) has been designed, constructed, and operated in accordance with established county

road standards. It will continue to be maintained as a permanent part of the county's public road network. The proposed upgrades to EC #306 will also meet the established standards. This road is currently categorized as a Class "B" County road. Emery County will continue to be responsible and liable for the engineering design, construction and maintenance of the roadway (including the proposed improvements). (13) (14) (20)

- Emery County controls numerous Class "B" county roads within Emery County similar to the Rilda Canyon Road (EC #306). These roads are all multiple use, open access public roads. (3) (7)
- EWMC will use the Rilda Canyon Road to transport men and materials to the new portal facilities area. There will be no 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 for this classification of road.
- Rilda Canyon Road (EC #306) has been, and will continue to be, engineered, constructed and improved in accordance with the design standards of the American Association of State Highway Transportation Officials (AASHTO) and the Utah Department of Transportation (UDOT). Upgrades will be engineered and constructed similar to other such public roads within the County. Emery County (Special Services District #1) will oversee and direct the road improvement and construction activities on the Rilda Canyon Road. (21) (22)
- With the exception of the "temporary suspension" section of the Rilda Canyon Road through the portal facilities area, the 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.

Finding #3:

The proposed upgrading of the Rilda Canyon Road (EC #306) 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 (Special Services District #1) will oversee and direct road construction activities within Rilda Canyon. Thus, the road has been constructed and will be upgraded in a similar manner to other public roads of the same classification.

Analysis # 4:

Impacts from mining on the road are not significant under Utah's definitions for "affected area" and "surface coal mining operations".

- Rilda Canyon Road EC #306 is currently a county owned and maintained road. The road is a multiple use, open access road and is not subject to the control of PacifiCorp/EWMC or any other private entity. There are several property owners in the vicinity of this roadway and other public roads that intersect the Rilda Canyon Road. These roads are used to access private property as well as to access public lands for multiple purposes, including mineral development. The road has been and will continue be utilized by local water users, ranchers, sportsmen, recreational enthusiasts, miners and governmental agencies. The Rilda Canyon Road (EC #306) connects with the existing Huntington Canyon public road (State Highway 31) that does not require permitting under SMCRA. (7) (17)
- Public access on a portion of the county road (~2300 foot section) where the North Rilda Canyon fan portal facilities are proposed to be located, will be temporarily suspended and restricted during active mining operations (estimated 15 – 20 years). A "Temporary Suspension" Agreement was entered into between Emery County and Pacificorp/EWMC and signed on May 17, 2005. (17) (20)
- The Rilda Canyon Road is currently part of the Emery County road system. The proposed coal mining and reclamation operations will temporarily prohibit general public access across that section of the road passing through the fan portal facilities area. Public access (non-motorized traffic) to the upper forks of Rilda Canyon will be provided by an improved Forest Development trail and trailhead parking area that will route foot traffic around the county road section passing through the portal facilities area. However, the county roadway shall be available for access by the county, the U.S. Forest Service and such other governmental agencies as may require the use of said road for emergency transportation or related agency purposes. The road will remain as a public road after the Rilda Canyon Fan Portal facilities area has been closed and reclaimed. (7) (17) (20)
- Only that section of the Rilda Canyon Road passing through the proposed portal facilities area will be considered as "Affected Area" under the UCRP definitions (UCA, R645-100-200). This section of the road will be

impacted by the proposed mining operations and will be subject to permitting under the UCRP. The road is currently designated as a public road pursuant to the laws of the jurisdiction in which it is located. The county will not relinquish any of its rights to the road during mining operations. The remainder of the road will continue to be maintained with public funds, and has been constructed in a similar manner to other public roads of the same classification within the county's jurisdiction. There will be continued substantial public use of this road and canyon. While the road will provide access to the mine (as well as to various other locations within the canyon) it will not be used solely for coal mining and reclamation activities. Licensed vehicular traffic and commercial transportation are not considered mining activity that would require permitting under the UCRP.

- 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 "road" (UCA, R645-100-200). Activities to occur on the Rilda Canyon Road are similar to activities occurring on public roads of the same classification throughout the State. Except as noted above, no coal mining operations are to occur that would require special jurisdiction or regulation of the road under the UCRP.
- The trucks to be used for transporting supplies and materials on the Rilda Canyon Road from the intersection with State Highway 31 and the proposed portal facilities area will be 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.

Finding #4:

The Rilda Canyon Road (EC #306) is currently a Class "B" (Improved Surface) County Road upon which there has been and will continue to be, substantial use by the public. While the road provides access to the proposed Rilda Canyon Fan Portal Facilities area, only that portion that passes through the fan portal facilities area will be "temporarily suspended" and used for coal mining and reclamation activities. In addition, the environmental impacts to the Rilda Canyon Road caused by the coal mine traffic will not differ from the environmental impacts of other trucks and similar traffic operating on this road and on other roads within the state. The mine will only conduct surface coal

mining operation on an isolated section of the Rilda Canyon Road that will require regulation under SMCRA and the UCRP. Impacts from mining on the remainder of the road are not significant under Utah's definitions for "affected area" and "surface coal mining operations".

Conclusion

Upgrading of the Rilda Canyon Road (EC #306), with the exception of that portion of the road falling under the "Temporary Suspension" Agreement, does not need to be permitted under the Utah Coal Regulatory Program. That portion of the road that will fall under the "temporary suspension" has been included as part of the permit amendment application and will be properly permitted by the Division under the UCRP. Upon cessation of mining operations and following reclamation of the portal facilities area, the suspended portion of the road will be restored to its original profile and approved design configuration allowing full and unrestricted public access to the entire length of the Rilda Canyon Road.

cc: Chuck Semborski (Energy West Mining Company)
Rex Funk, Emery County
Craig Johansen, Emery County
Ranvir Singh, OSM
John R. Baza, Director, DOGM
Wayne Hedberg, 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. Utah R645 et. seq. Coal Mining Rules, especially definition of the terms "Affected Area", "Coal Mining and Reclamation Operations", and "Road".
3. November 2, 1901, Land Surveyor's Plat Map, showing a road from the Huntington Canyon road leading up "*Ridley Canon*" (Rilda Canyon).
4. June 17, 1935, 7th Judicial District Court "Judgment" for the Rilda Canyon Road, Judge Dilworth Wooley formally adjudged and decreed the roadway as a public highway.
5. Title 27-12-89, Article 6, Utah Code Annotated, Volume 3B, 1995 Replacement, Public Use Constituting Dedication. Continuous use of a highway as a public thoroughfare for a period of 10 years constitutes dedication as a public road.
6. December 16, 2004, letter from DOGM to Charles Semborski, Energy West Mining Company. Request for background information on Rilda Canyon Road to enable DOGM to make a public road finding determination.
7. April 8, 2005, letter from Charles Semborski, Energy West Mining Company to DOGM providing information in response to Division December 16, 2004 request letter. Attached map included showing proposed realignment plans for the Rilda Canyon Road (EC #306), and two large scale county road maps, entitled: Emery County IT Department Road/Highway Map, printed January 24, 2002, and Carbon County, Utah, printed 2004.
8. March 18, 1994, letter from Rex Funk, Road Supervisor, Emery County Road Department to Val Payne, Energy West Mining Company regarding the company's inquiry on historical information regarding Emery County Road #306 development.
9. April 26, 1994, Consent, signed by J. O. Kingston, President of C.O.P. Development Company, agreeing to the vacation by Emery County of a portion of Rilda Canyon Road EC #306 crossing C.O.P. land that did not lie along the original 1935 adjudication.

10. May 9, 1994, letter from Rex Funk, Road Supervisor, Emery County Road Department to Charles Jankiewicz, Price District Ranger, Manti-La Sal National Forest. Emphasizes maintenance and upgrades necessary for upper and lower sections of EC #306 crossing USFS lands. Reference made to previous discussions with USFS personnel of County's interest in acquiring a permanent easement for the lower portion of Rilda Canyon Road. Also mentions Emery County Commission approved April 20, 1994 annexation for the upper portion of Rilda Canyon Road to the Forks. Requests road construction and permanent easements from USFS for the upper portion of the Rilda Canyon Road.
11. May 18, 1994, Ordinance Number 5-18-94, An Ordinance Vacating and Abandoning a County Road Right-of-Way, addressing an older portion of Emery County Road #306 located on private land owned by C.O.P. Coal Development Company. New legal description, proper alignment defined and easement acquired from C.O.P. for existing Rilda Canyon Road EC #306, which did not lie along the original 1935 adjudication.
12. November 30, 1994, Supplement No. 2-94, to the Forest Development Road Cooperative Agreement (dated October 20, 1977) by and between the Forest Service, U. S. Department of Agriculture and Emery County, State of Utah. Agreement provides basis for improving and applying surfacing on Rilda Canyon Road FDR #50264 (E.C. #306), from the North Emery Water User Association spring development location to the junction with State Highway 31.
13. August 31, 1998, Public Road Easement, issued by Janette S. Kaiser, Forest Supervisor, Manti-La Sal National Forest to Emery County, Utah. Grants a right-of-way to Emery County for the Rilda Canyon County Road (EC #306) to cross certain portions of USFS land in Rilda Canyon.
14. February 12, 2004, letter from Rex Funk, Road Supervisor, Emery County Road Department to Mesia Nyman, District Ranger, Manti-La Sal National Forest. County comments regarding potential impacts to EC #306 from EWMC's proposed North Rilda Canyon Portal Facilities proposal. Emery County reemphasizes its jurisdiction for proposed road realignment and continued maintenance.
15. September 16, 2004, Application for Transportation & Utility Systems and Facilities on Federal Lands (Form 299), filed by Johansen & Tuttle Engineering with USFS to amend an existing road use authorization for the Rilda Canyon Road. Contains new road alignment proposal and detailed legal description of the entire length of road.

16. December 30, 2004, Road Construction and Maintenance Easement, between Emery County Road Department and C.O.P. Coal Development Company. Grants Emery County a perpetual easement and right-of-way to use their private land for construction, operation, and maintenance of Rilda Canyon Road (EC #306).
17. May 17, 2005, Agreement (Rilda Canyon Road – Temporary Suspension), between Emery County and PacifiCorp/Interwest Mining Company & Energy West Mining Company. Agreement authorizes Energy West to impose a “temporary suspension” on a section of EC #306, where it passes through the proposed North Rilda Canyon Portal Facilities area.
18. July 13 & 14, 2005, Email from Energy West Mining Company, attachment is updated USFS easement legal descriptions for EC#306 and new Right-of-Way drawing. Supercedes the September 16, 2004, application to USFS (see ref. #16 above).
19. July 13, 2005, Email from Johansen & Tuttle Engineering, updated easement legal descriptions for EC#306 on private land holdings. Supercedes the description given in September 16, 2004, application to USFS (see ref. #16 above).
20. December, 2004, North Rilda Canyon Portal Facilities Project, C/0150018, Permit Amendment Application, PacifiCorp - Energy West Mining Company.
21. August 9, 2004, Agreement (Rilda Canyon Road Upgrade), between Emery County Special Services District, No. 1 (“District”), PacifiCorp and its managing agent, Energy West Mining Company. Agreement outlines details of proposed road construction in Rilda Canyon, the respective responsibilities, terms and conditions.
22. September 14, 2004, Road Encroachment Permit (#200424) with Stipulations, issued by Emery County Road Department to Emery County Special Service District #1 (District) granting the District permission to proceed with roadway improvements on the Rilda Canyon Road.