





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

6/29/95

EXHIBIT 1

Michael O. Leavitt  
Governor

Ted Stewart  
Executive Director

James W. Carter  
Division Director

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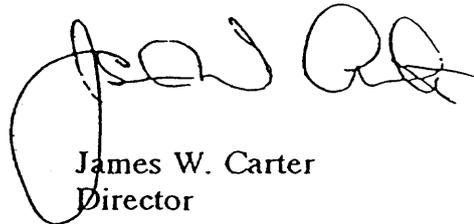
prerequisite for granting the permits and approvals necessary for the mining operation, the stipulation does not, by itself, render all such existing roads subject to regulation under SMCRA.

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

**EXHIBIT 2**

"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,

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

"Refuse Pile" means a surface deposit of coal mine waste that does not 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



IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH, IN AND FOR EMERY COUNTY.

FREED COAL & COKE COMPANY, a corporation,

Plaintiff,

vs.

J. B. Johnson, "John Doe" Christensen; "John Doe" Parish, "John Doe" Clark, and "John Doe" Wagoner,

Defendants.

FILE

JUDGMENT

RECEIVED

JUN 30 2005

DIV. OF OIL, GAS & MINING

This cause came on regularly to be heard on the 12th day of June, A. D. 1935; Frank H. Hansen, Esq., of Price, Utah, appearing as counsel for the plaintiff and the defendants appearing by their attorneys, F. W. Keller of Monticello, Utah, and T. C. Peacock of Castle Dale, Utah, and counsel for the respective parties having in Open Court entered a stipulation to the effect that the Court may enter its judgment and decree declaring the hereinafter described roadway to be a public highway with the condition that no general taxes be levied and assessed embraced therein and with the further condition that the plaintiff be relieved of any and all responsibility to maintain said highway and be released from any and all responsibility for any negligent or unlawful use of said highway and with the further condition that the plaintiff shall have the use of any and all timber or any other useful product within the right-of-way hereinafter described, and that each party to this action pay its or his own cost, and to the further effect that no findings of fact or conclusions of law shall be required in this action, NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

That that certain roadway in Hilda Canyon passing over and across the NW 1/4 SE 1/4, SW 1/4 SE 1/4, SE 1/4 SW 1/4, Section 21, and the NE 1/4, Section 23, Township 16 SOUTH, RANGE 7 EAST, S. L. M., which follows, a course approximately as follows:

Beginning at a point North 43°11' West 2354.5 feet from the Section corner common to Sections 22, 23, 26, 27, Township and Range above mentioned, thence South 69°22' West 190 feet, thence South 19°08' East 220 feet; thence South 42°08' East 655 feet, thence South 31°37' West 335 feet, thence South 45°51' West 279.6 feet, thence South 49°00' West 400 feet, thence South 47°30' West 500 feet; thence South 61°45' West 1000.7 feet, thence South 63°15' West 300 feet, at which point leave West side of the NE 1/4 of the NW 1/4 of Section 27, continue South 65°15' West 306 feet, thence South 59°19' West 1217 feet at which point enter the East side of the NE 1/4 of the NW 1/4 of Section 23, continuing South 59°19' West 434 feet, at which point leave the South side of the NE 1/4 of the NW 1/4 of Section 23, continue South 59°19' West 392.3 feet, thence South 60°49' West 600 feet, thence South 85°19' West 500 feet, to hub with tack which is the end of survey; and extending a distance of twenty-five (25) feet on each side of said course, he and the same is HEREBY ADJUDGED AND DECREED, a public highway; it is provided, however, that the plaintiff, its successors and assigns may and shall have the exclusive use any timber or other valuable product growing or produced upon said right-of-way; that the acreage embraced in the said right-of-way shall not bear any general or special taxes levied by Emery County upon the lands above described; and that the plaintiff in this action, be and it is hereby relieved of every and all responsibility to maintain the said roadway and from any and all responsibility that may accrue from failure to keep said highway in a passable or safe condition for travel;

IT IS FURTHER ADJUDGED AND DECREED, that the parties to this action shall each bear their own cost.

Done in Chambers at Lanti, Utah, this 17th day of June, A. D. 1935.

Dilworth Woolley Judge.

STATE OF UTAH ) 33. COUNTY OF EMERY )

I, Hector L. Peterson, Clerk of the Seventh Judicial District Court, in and for Emery County, State of Utah, hereby certify that the foregoing is a full, true and correct copy of the original Judgment and now on file and of record in my office.

Witness my hand and seal of said District Court at my office in Castle Dale, Emery County, Utah, this 24th day of June, A. D. 1935.

Hector L. Peterson Clerk of the District Court.



Recorded at the request of Frank H. Hansen, Price, Utah, this 24th day of June 1935 at 9:30 A. M. in Book A-9 of Deeds at Page 311.

**UTAH CODE  
ANNOTATED**

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**1953**

**VOLUME 3B  
1995 REPLACEMENT**

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**Titles 25 to 30**

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**THE MICHIE COMPANY**  
*Law Publishers*  
Charlottesville, Virginia

**EXHIBIT 5  
RECEIVED  
JUN 30 2005  
DIV. OF OIL, GAS & MINING**

HIGHWAY CODE

27-12-89

Routes 161 to 280, were re-  
969, ch. 89, § 32. For present  
27-12-47.1 et seq.

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(i) the permission shall contain the condition that any instal-  
lation will be removed from the right-of-way at the request of the  
city or town; and

(ii) the city or town shall cause any installation to be removed  
at the request of the department when the department finds the  
removal necessary:

(A) to eliminate a hazard to traffic safety;

(B) for the construction and maintenance of the state  
highway; or

(C) to meet the requirements of federal regulations.

(3) If it is necessary that a utility, as defined in Section 27-12-11, be  
relocated on federal-aid highways, reimbursement shall be made for the  
relocation as provided for in Section 27-12-11.

(4) (a) The department shall construct curbs, gutters, and sidewalks on  
the state highways when it is found necessary by the department for  
the proper control of traffic, driveway entrances, or drainage.

(b) If a state highway is widened or altered and existing curbs,  
gutters, and sidewalks are removed, the department shall replace the  
curbs, gutters, and sidewalks.

(5) The department may furnish and install street lighting systems for  
the state highways, but their operation and maintenance is the responsi-  
bility of the city or town.

(6) If new storm sewer facilities are necessary in the construction and  
maintenance of the state highways, the cost of the storm sewer facilities  
shall be borne by the state and the city or town in a proportion mutually  
agreed upon between the department and the highway authorities of the  
city or town.

(7) In accordance with Title 63, Chapter 46a, Utah Administrative  
Rulemaking Act, the department may make rules governing the location  
and construction of approach roads and driveways entering the state  
highway, and the department may delegate the administration of the rules  
to the highway authorities of the city or town.

History: L. 1963, ch. 89, § 88; 1991, ch.  
187, § 21; 1994, ch. 120, § 36.

Amendment Notes. — The 1991 amend-  
ment, effective April 29, 1991, redivided Sub-  
section (1) into present Subsections (1) to (3);  
redesignated former Subsections (2) to (5) as  
present Subsections (3) to (7); substituted "de-  
partment" for "state road commission" through-  
out the section; and made changes in punctua-  
tion and phraseology.

The 1994 amendment, effective May 2, 1994,  
substituted "for highways" for "with respect to  
streets" in the introductory language; subdivi-  
ded Subsection (2); substituted "department"  
for "commission" in Subsections (6) and (7);  
added the code citation in Subsection (7); and  
made stylistic changes.

ARTICLE 6

ACQUISITION OF PROPERTY FOR HIGHWAY  
PURPOSES

27-12-89. Public use constituting dedication.

A highway shall be deemed to have been dedicated and abandoned to the use  
of the public when it has been continuously used as a public thoroughfare for  
a period of ten years.

27-12-89

## HIGHWAYS

History: L. 1963, ch. 39, § 89.

## NOTES TO DECISIONS

## ANALYSIS

Acceptance.  
 Burden of proof.  
 Change in highway.  
 Control by landowners.  
 Estoppel.  
 Intent of landowner.  
 —Necessary.  
 —Not necessary.  
 "Public" defined.  
 Rights granted to public.  
 Rights of subsequent grantees.  
 Sufficiency of proof of dedication.  
 "Thoroughfare" and "public thoroughfare" distinguished.

## Acceptance.

When owner of land deeded it to city for public use but city never accepted it, no dedication took place and claim of purchaser from city was invalid as against subsequent purchaser from original owner of land. *William J. Lemp Brewing Co. v. P.J. Moran, Inc.*, 51 Utah 178, 169 P. 459 (1917).

## Burden of proof.

Where claim is made that a highway has been dedicated to public use, there is a presumption in favor of the property owner and the burden of establishing public use for the required period of time is on those claiming it. *Leo M. Bertagnole, Inc. v. Pine Meadow Ranches*, 639 P.2d 211 (Utah 1981).

## Change in highway.

A public highway over public lands is established, although there has been no official acceptance, when it has been used for longer than ten years; if travel has remained substantially unchanged, and practical identity of road preserved, that is sufficient, although there may have been slight deviations from the common way. *Lindsay Land & Live Stock Co. v. Churnos*, 75 Utah 884, 285 P. 846 (1929).

Slight change in course of highway or of its location that does not materially change or affect the general course thereof or affect its location, nor break or change the continuity of travel or use, does not constitute abandonment or affect public nature of highway. *Sullivan v. Condas*, 76 Utah 585, 290 P. 954 (1930).

## Control by landowners.

No dedication was shown under identically worded predecessor section where it appeared that an alleyway which had more or less been used by the public at will for a number of years had from time to time been closed by the abutting owners, who had at all times exercised

control over it. *Culmer v. Salt Lake City*, 27 Utah 252, 75 P. 620 (1904).

## Estoppel.

Municipality may be estopped from asserting dedication by acts and conduct that have been relied on by others to their prejudice and, likewise, private individual may be estopped in the same way where he stands by and permits others to improve land claimed to have been dedicated. *Premium Oil Co. v. Cedar City*, 112 Utah 324, 187 P.2d 199 (1947).

## Intent of landowner.

## —Necessary.

In order for a private road to become a public thoroughfare there must be evidence of intent by the owner to dedicate the road to a public use and an acceptance by the public. Such intent may be inferred from declarations, acts or circumstances and use by the general public. *Gillmor v. Carter*, 15 Utah 2d 280, 391 P.2d 426 (1964) (but see cases noted under "—Not necessary" below).

For cases discussing landowner's intent to dedicate road to public use, see *Wilson v. Hull*, 7 Utah 90, 24 P. 799 (1890); *Whittaker v. Ferguson*, 16 Utah 240, 51 P. 980 (1896); *Schettler v. Lynch*, 28 Utah 305, 64 P. 955 (1901); *Culmer v. Salt Lake City*, 27 Utah 252, 75 P. 620 (1904); *Brown v. Oregon Short Line R.R.*, 36 Utah 257, 102 P. 740 (1909); *Morris v. Blunt*, 49 Utah 243, 161 P. 1127 (1916); *William J. Lemp Brewing Co. v. P.J. Moran, Inc.*, 51 Utah 178, 169 P. 459 (1917); *Barboglio v. Gibson*, 61 Utah 514, 213 P. 385 (1923).

## —Not necessary.

The determination that a roadway has been continuously used by members of the general public for at least ten years is the sole requirement for it to become a public road; it is not necessary to prove the owner's intent to offer the road to the public. *Thurman v. Byram*, 626 P.2d 447 (Utah 1981).

To establish a dedication of a road to a public use, it is not necessary to prove landowner's intent to dedicate the road to a public use. *Leo M. Bertagnole, Inc. v. Pine Meadow Ranches*, 639 P.2d 211 (Utah 1981).

## "Public" defined.

Owners of property abutting or straddling rural road and their personal visitors were not members of public generally within this provision; burden of proving real public use of that road continuously for ten years was not met in suit by subdividers who sought to establish that the road had become a public thorough-

*Provision made  
 under Millrite*

## HIGHWAY CODE

27-12-90

*Hulmer v. Salt Lake City*, 27  
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alt Lake City, 27 Utah 252,  
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740 (1909); *Morris v.*  
P. 1127 (1916); *William*  
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fare. *Petersen v. Combe*, 20 Utah 2d 376, 438  
P.2d 545 (1968).

#### Rights granted to public.

City still owned fee to strip, acquired under  
Townsite Act (49 U.S.C. § 718 et seq., now  
repealed), after alleged dedication thereof as  
public street, so that only right that public  
could have acquired would be right to easement  
across strip for traveling purposes, and only  
additional right contiguous property owners  
might acquire would be right of ingress to and  
egress from their property. *Premium Oil Co. v.*  
*Cedar City*, 112 Utah 324, 187 P.2d 199 (1947).

#### Rights of subsequent grantees.

Where land is dedicated by owner as highway  
and is accepted by public as such, all subse-  
quent grantees of abutting lands are bound by  
dedication. *Schettler v. Lynch*, 23 Utah 305, 84  
P. 955 (1901).

#### Sufficiency of proof of dedication.

Highway over privately owned ground will be  
deemed dedicated or abandoned to the public  
use when the public has continuously used it as  
a thoroughfare for a period of ten years. *Morris*  
v. *Blunt*, 49 Utah 248, 161 P. 1127 (1916).

Mere use by public of private alley in common  
with owners of alley does not show a dedication  
thereof to public use, or vest any right in public  
to the way. *Thompson v. Nelson*, 2 Utah 2d 340,  
273 P.2d 720 (1954).

Though dedication of one's land to public use  
should not be lightly regarded, where a narrow,  
private dead-end street was used by neighbor-  
ing residents and the general public without  
interference for at least 25 years, and where the  
city had platted it as a public street in 1915 and  
had thereafter paved it and maintained a pub-  
lic street sign at its entrance, and where plain-

tiff who owned the fee simple interest in the  
land on which the street was situated had not  
paid any taxes on the street property for 25  
years, this combination of factors was sufficient  
to justify finding that the street had been  
dedicated to public use. *Bonner v. Sudbury*, 18  
Utah 2d 140, 417 P.2d 646 (1966).

Clear and convincing quantum and quality of  
proof is required for the establishment of a  
public thoroughfare or taking of another's prop-  
erty. *Thomson v. Condas*, 27 Utah 2d 129, 498  
P.2d 639 (1972).

Where the trial court found that public had  
used north-south road for 12 years and that  
during this time, the road was ten feet wide,  
and the court found that there was insufficient  
use of an east-west road by the public to make  
it a public road, these findings of fact, sup-  
ported by substantial evidence, compelled a  
holding that the north-south road was a public  
highway ten feet wide and that no public high-  
way existed on the east-west road. *Western*  
*Kane County Special Serv. Dist. No. 1 v. Jack-*  
*son Cattle Co.*, 744 P.2d 1876 (Utah 1987).

For cases finding sufficient evidence to sup-  
port finding of dedication to public use, see  
*Sullivan v. Condas*, 76 Utah 585, 290 P. 954  
(1930); *Jeremy v. Bertagnole*, 101 Utah 1, 116  
P.2d 420 (1941); *Boyer v. Clark*, 7 Utah 2d 395,  
326 P.2d 107 (1958); *Clark v. Erikson*, 9 Utah  
2d 212, 341 P.2d 424 (1959).

#### "Thoroughfare" and "public thorough- fare" distinguished.

Under identically worded predecessor sec-  
tion, a "thoroughfare" was a place or way  
through which there is passing or travel. It  
became a "public thoroughfare" when the public  
acquired a general right of passage. *Morris v.*  
*Blunt*, 49 Utah 248, 161 P. 1127 (1916).

#### COLLATERAL REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d Highways,  
Streets, and Bridges § 25 et seq.

C.J.S. — 39A C.J.S. Highways § 15.  
Key Numbers. — Highways — 6(1).

#### 27-12-90. Highways once established continue until aban- doned.

All public highways once established shall continue to be highways until  
abandoned or vacated by order of the highway authorities having jurisdiction  
over any such highway, or by other competent authority.

History: L. 1963, ch. 39, § 90.

DWH ✓

EXHIBIT 6



OLENE S. WALKER  
Governor

GAYLE F. McKEACHNIE  
Lieutenant Governor

December 16, 2004

State of Utah  
Department of  
Natural Resources

ROBERT L. MORGAN  
Executive Director

Division of  
Oil, Gas & Mining

MARY ANN WRIGHT  
Acting Division Director

Chuck Semborski, Environmental Supervisor  
Energy West Mining Company  
P.O. Box 310  
Huntington, Utah 84528

Re: Rilda Canyon Road, North Rilda Canyon Project, PacifiCorp, Deer Creek Mine, C/015/0018, Task ID #2088, Outgoing File

Dear Mr. Semborski:

Your application to permit mine facilities in the North Rilda Canyon area raises questions regarding the transportation and access routes to the proposed Rilda Canyon facilities. Access will be by an existing county road that may require some modification to accommodate the proposed Rilda Canyon facilities.

In order to better understand the status of the transportation and access corridors and to determine whether or not the road would require a permitting action, we will need some additional information. The following information is needed for the Division to make the required findings. Please provide the following information or a reference to its location in your revised application:

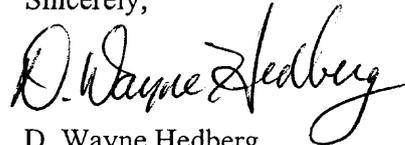
- A. A legal description of the road right-of-way.
- B. Name or numerical designation for the road.
- C. Land ownership for the road right-of-way.
- D. Name of entity responsible for the alignment, construction, maintenance and liability for the road.
- E. Name of the entity responsible for environmental permitting of the road.
- F. Construction standard for the road, and the entity responsible for attaining this standard.
- G. Maintenance schedule for the road.
- H. Source of funds for construction and/or maintenance of the road.

Page 2  
Chuck Semborski  
December 16, 2004

- I. Examples of similar roads in Carbon and Emery Counties.
- J. Will PacifiCorp have the ability to deny use of the road? If yes, please provide a legal description for the portions of the road that are subject to exclusive use by PacifiCorp. Also please provide the basis for the exclusive use.

Please provide this information by January 21, 2005. If you have any questions, please call me at (801) 538-5286. Thank you.

Sincerely,



D. Wayne Hedberg  
Permit Supervisor

an  
cc: Rex Funk, Emery County Road Department  
Dale Harber, Manti La Sal Forest – Price Office  
Price Field Office  
O:\015018.DER\FINAL\roadfindings.doc



PO Box 310  
Huntington, Utah 84528

April 8, 2005

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

*Reaming  
4/15/05*

Re: Response to Rilda Canyon Road, North Rilda Canyon Project, DOGM Task ID #2088

PacifiCorp, by and through its wholly-owned subsidiary, Energy West Mining Company ("Energy West"), responds to the questions and concerns regarding the transportation and access routes to the proposed Rilda Canyon facilities.

By way of background, the public road in Rilda Canyon has been utilized for many years to provide multiple use access into the canyon and surrounding area. The uses of the road have included grazing, public utilities, recreation, mineral development, culinary water development, etc. The road is also used for access by governmental agencies such as the BLM, the U.S. Forest Service, DOGM, DWR and Emery County.

Available records indicate portions of the public road have been utilized since as early as 1935. Initial development occurred near the mouth of the canyon. In the 1950's in support of coal mining activities on Federal leases, the Forest Service authorized road development further up the canyon. The road provided access to the Helco Mine, the Leroy Mine and the Rominger Mine. As the road progressed up the canyon, multiple use of the road increased. In 1993, Emery County (through Emery County Special Service District #1 ("District")) reconstructed a two mile stretch of the road from State Road 31 to a location above the historic Leroy Mine. This activity included construction of a new bridge crossing Huntington Creek together with road re-alignment and widening.

In 1994, North Emery Water Users Association (now known as the North Emery Water Users Special Service District) completed an expansion of their spring collection system near the end of the 1993 road work to provide a more reliable supply of culinary water. This system is located below the historic Helco Mine.

In 1994, in support of increased activity in the canyon, the District also began a second phase of construction. This phase required reconstructing a 1 mile stretch of road from the end of the 1993 activity to the forks of Rilda Canyon. PacifiCorp's mining activities in the area began at this same time with the need for a ventilation breakout in the Left Fork of Rilda Canyon. By 1995, PacifiCorp had permitted and completed the development of the ventilation fan.

Huntington Office:  
(435) 687-9821  
Fax (435) 687-2695  
Purchasing Fax (435) 687-9092

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APR 13 2005

Deer Creek Mine:  
(435) 687-2317  
Fax (435) 687-2285

DIV. OF OIL, GAS & MINING

In August 1998, a public road easement was recorded at the Emery County Recorder's Office with respect to the road. The easement was granted by the United States Forest Service in favor of Emery County. This action was taken to provide the documentary evidence of Emery County's rights as the governmental agency responsible for this class of public road. The District is involved with construction and improvement of such roads while Emery County actually owns the road and is responsible for its maintenance.

The following is the list of specific questions contained in the Division's December 16, 2004 letter and our respective responses shown in italics:

- A. A legal description of the road right of way.

*A legal description of the road right of way as obtained from Emery County is included as Attachment A. As mentioned above, this is an Emery County right of way crossing both Forest Service and private lands. Detailed information can be obtained by contacting the Emery County Road Department.*

- B. Name or numerical designation for the road.

*Numerical designation is EC#306.*

- C. Land ownership for the road right of way.

*The road right-of-way is owned by Emery County. The underlying surface ownership encumbered by the right-of-way is shown on Attachment B. The owners include:*

- 1. COP Coal Development Company.*
- 2. PacifiCorp (Successor of interest to Utah Power and Light Company).*
- 3. Intermountain Power Agency 50%, ANDALEX 50%*
- 4. United States Forest Service.*

- D. Name of entity responsible for the alignment, construction, maintenance and liability for the road.

*As explained above, the responsibilities are shared by the District and Emery County. It is our understanding that the District is responsible for construction and major improvements while the County has maintenance and liability for the road. Clarification of these shared responsibilities can be obtained from Rex Funk, Emery County Road Supervisor.*

- E. Name of the entity responsible for the environmental permitting of the road.

*The District.*

- F. Construction standard for the road, and the entity responsible for attaining this standard.

*Emery County Road Department. It is our understanding the design of the road was contracted to Johansen and Tuttle Engineering by the District. Design information can be viewed at the Emery County Road Department in Castle Dale, Utah.*

- G. Maintenance schedule for the road.

*As per phone conversation with Rex Funk, Emery County Road Supervisor, there is no set maintenance schedule. Maintained on an "as needed" basis only.*

- H. Source of funds for construction and/or maintenance of the road.

*The District will fund the reconstruction of EC#306. As mentioned above, Emery County Road Department retains the financial responsibility for maintaining the road.*

- I. Examples of similar roads in Carbon and Emery Counties.

*PacifiCorp is unable to determine what roads are similar and what roads are not similar when comparing EC#306 to any other road in Carbon and Emery counties. However, enclosed are two maps (see Attachment C) each representing the location of all jurisdictional roads located within Carbon and Emery counties. The information as to whom these roads serve and where they lead would be best obtained from the respective counties.*

- J. Will PacifiCorp have the ability to deny use of the road? If yes, please provide a legal description for the portions of the road that are subject to exclusive use by PacifiCorp. Also please provide the basis for the exclusive use.

*No. It is proposed, with County approval, to temporarily suspend use by the general public of a small portion of the upper road within the Emery County Road Right of Way through the area known as the proposed North Rilda Canyon Portal facilities (see Attachment B). Access through the portion subject to the temporary suspension will still be available for use by the District, North Emery Water Users Special Service District, utility providers, government and regulatory agencies. It is proposed that the suspended*

Utah Coal Program  
Division of Oil, Gas and Mining  
Response to Rilda Canyon Road, North Rilda Canyon Project, DOGM Task ID #2088  
April 8, 2005  
Page 4

*portion of the road will be converted into a portion of the area covered by the portal facilities. The portal facilities will be part of the disturbed area of the Deer Creek Mine and regulated by DOGM. At the time of reclamation, the road will be re-established at its original location and the temporary suspension removed. Interim public access for recreation and other uses will be provided through the use of a trail system on the south side of Rilda Canyon. The interim access will still allow the use of the remainder of the public road for other purposes while a portion is being used as a portal facility.*

We appreciate the opportunity to provide this information regarding the Rilda Canyon road. If additional information is needed please contact me, the District or Emery County.

Sincerely,



Charles A. Semborski

Attachments

Cc: Rex Funk, Emery County Road Department  
Emery County Road District  
IMC  
EW

EXHIBIT B



# Emery County Road Department

P.O. Box 889  
Castle Dale, Utah 84513

Phone (801) 381-5450 or 381-2550  
Fax (801) 381-5289

March 18, 1994

**FILE**

Energy West Mining Company  
15 West Main  
Huntington, Utah 84528

Dear Mr. Payne:

Regarding your inquiry concerning Emery County Road #306 I submit the following:

1. The road in question was commonly known as Ridley Canyon probably earlier than our November 2, 1901 map.
  - a. It was commonly used by local citizens for cattle grazing and timber harvesting.
  - b. Mining claims appear to have developed at some subsequent period of time as fuel needs were recognized in the developing Huntington settlement.
2. The road seems to have been well established to within ½ mile of the forks (North Emery collection system) in 1901 then continues on as a trail.
3. For decades the county has participated in the road maintenance in one way or other (for various reasons) including coal mining.
4. Sometime in the early 30's a dispute developed between property owners and citizens utilizing Rilda Canyon Road. Apparently J.B. Johnson wanted to setup a toll across his portion of property. It went to court wherein it was "Hereby adjudged and decreed a public highway" on the 17th day of June 1935 by Judge Dilworth Wooley of the Seventh Judicial District.
5. One might reasonably assume that the county was more regularly involved in maintenance from that time on through the present.
6. In approximately 1987 I was involved in a bridge structure inventory and could not identify the source who constructed the present mud sill type bridge structure which was on top of a then still visible pole type bridge (obviously very old). I conferred with Brent Barney of the Forest Service regarding the bridge. He agreed that the bridge deck appeared to be a forest type but the steel "I" beams suggested otherwise. The forest indicated that the bridge was not constructed by them. I then contacted Co-Op Mine who emphatically denied any association with the county's bridge or roadway. The bridge, I feel, is vintage late 1950's or early 1960's and has been commonly used by citizens including North Emery Water Users, ranchers and coal interests. Because of the diverse public use we did not pursue abandonment of the road or bridge. The county authority then stems from several decades of public use combined with the adjudication of 1935 (on part of the road) and county maintenance.

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JUN 30 2005

DIV. OF OIL, GAS & MINING

Mr. Val Payne  
March 18, 1994  
Page 2

FILE

7. Active county maintenance is from the Highway 31 connection to the springs used by North Emery Water Users. The grader turnaround is very visible and it is apparent where our active maintenance ends.
8. The state recognizes this as a valid county roadway including the bridge.
9. The earliest county road log available to me is 1968 wherein the road is called Rilda Canyon #H-23, 2.0 miles long.
10. The 1973 county road log names this road Rilda Canyon and Trail Canyon #306, 2.3 miles long. the Trail Canyon .3 miles across highway 31 was added to the original 2.0 miles (of Rilda Road) and labeled road #306.

It is not the counties intention to relinquish any authority regarding the roadway or the bridge; in fact it is our intent to improve the existing road with culverts, gravel and rip rap (as needed) including a new bridge structure. This of course is long over due and is a much needed improvement. I am particularly pleased to see the bridge replaced and I'm sure North Emery Water Users and the "citizens" in general will be pleased with the new gravel and culverts. We intend to stay on the present alignment except at the bridge crossing where we shift the new structure a little to the west for better road alignment and attachment to Highway 31.

If I can be of further assistance please call.

Sincerely,

  
Rex Funk,  
Road Supervisor

RF/ls

a/16.94



5  
Commission Minutes  
May 18, 1994

(8)  
REGISTRATION AGENTS AND JUDGES OF ELECTION TRAINING AND COMPENSATION

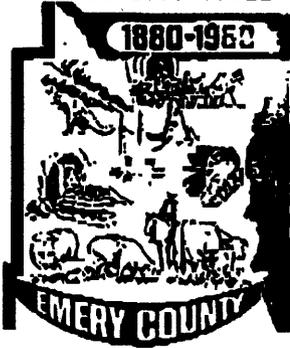
Clerk, Bruce Funk informed the Commission of the need to replace McKette Allred in Orangeville as the Registration Agent who has declined because of upcoming summer activities. Therefore, it was his recommendation that the Commission appoint Glenna Sasser of Orangeville to fill that vacancy. Also, it was his recommendation that the Commission approve the compensation to Judges of Election at the rate of \$50 per day and Registration Agents at \$30 per day as has been paid in previous years. Also, to approve light refreshments and mileage expense to the training meetings.

Whereupon, motion was made by Commissioner Mark Justice to approve Glenna Sasser as the Orangeville Registration Agent and approve compensation and training expenses for the Registration Agents and Judges of Election as presented. Motion was seconded by Commission Chairman Kent Petersen and approved by all members present.

(9)  
ORDINANCE VACATING AND ABANDONING A COUNTY ROAD RIGHT OF WAY - ORDINANCE 5-18-94

County Attorney, David Blackwell presented to the Commission for their consideration Ordinance 5-18-94. Wherein, said Ordinance vacates the existing Emery County road number 306 in Rilda Canyon which does not lie along the description described in the adjudication of 1935. Previously, the Commission had approved the acquisition of the Rilda Canyon County road. Wherein, said Ordinance, Emery County and the C.O.P. Coal Development Company reached an agreement in which C.O.P. will grant a property easement for the existing road alignment and Emery County will vacate and abandon the adjudicated right of way as described in this Ordinance. Also attached was a consent from the C.O.P. Coal Development Company consenting to the vacating of the described property.

Whereupon, motion was made by Commissioner Mark Justice to approve Ordinance No. 15-18-94 vacating and abandoning a County Road Right of Way as described therein. Also included in his motion was the project agreement supplement number 1-94 with the U. S. Forest Service for improvements to be made on the Rilda Canyon Road. Motion was seconded by Commission Chairman Kent Petersen and approved by all members present.



# Emery County Road Department

P.O. Box 889  
Castle Dale, Utah 84513

Phone (801) 881-5450 or 881-2550  
Fax (801) 881-5289

May 9, 1994

EXHIBIT 10

**FILE**

Mr. Charles Jankiewicz/Price Ranger  
U. S. Forest Service  
599 Price River Drive  
Price, Utah 84501

Dear Mr. Jankiewicz:

Enclosed please find three (3) sets of blue prints for Rilda Canyon Road #306 situated in Huntington Canyon. We currently recognize this roadway in two portions; upper and lower. The lower portion begins at Highway 31 and ends at North Emery Water Users collection system and the upper portion begins at the collection system and ends at the Forks.

The scope of maintenance on the lower portion will be of a routine nature where the road bisects Forest Service jurisdiction consisting of:

1. Blading and sloping of the existing roadway to a consistent 20' width (currently averages 16'-20") crowning of the existing road in preparation for 6" of Permazyme treated road base. The alignment will not be changed; we will stay on top of the old road template.
2. Several culvert crossings will be installed and engineered to eliminate the north shoulder scour and erosion while presenting minimal impact to the servient estate. Of course our engineers (J&T Engineers) will work closely with your engineers to achieve optimum results for your processes. The repaired shoulder will be armored with small rock where to the worse problems have been.
3. The small stream encroachment against the existing roadway will of necessity need rip rap. This will be on the south edge of the road and identified on the enclosed drawings. Mark Page has been contracted and permits are being processed.
4. The termination zone will be at the North Emery Water Users Collection system and a proper road access will be constructed at that point.

RECEIVED

JUN 30 2005

DIV. OF OIL, GAS & MINING

Letter to Charles Jankiewicz  
May 10, 1994  
Page Two

As mentioned we view the above items as essential maintenance and look forward to your co-operation and assistance. In an earlier conversation with Brent Barney and Aaron Howe, Emery County desires permanent easement for the already mentioned lower portion of Rilda Canyon Road.

At the April 20th Commission meeting, Commissioners approved annexation for the upper portion of Rilda Canyon to the Forks, in the vicinity of the Energy West proposed fan portal. They feel that the diverse public uses already recognized on the upper portion of road sufficiently justifies a request to the Forest Service for annexation. Of course this arrangement is subject to Forest Service approval and a subsequent easement agreement. We are therefore requesting road construction and permanent easements for the upper Rilda road. We have directed J&T Engineers to survey and design a roadway which is shown on the attached blueprints.

We recognize that there are several "hoops" to jump through (NEPA & etc.) to acquire permanent easements and would appreciate your assistance to that end. I have also instructed J&T Engineering to provide you with surveys and legal descriptions for both the lower and upper portions of Rilda Canyon Road in hope that both can ultimately be combined into one agreement with the Forest Service. We have enjoyed years of good relationship with the Forest Service and look forward to many more. The descriptions will be sent to you very soon. Thank you for your help.

Sincerely,



Rex Funk,  
Road Supervisor

enclosure  
cjw

29.94

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH, IN AND FOR  
EMERY COUNTY.

FILE

Plaintiff:  
vs.  
Defendants:

INEXD OIL & COKE COMPANY,  
a corporation,

Plaintiff,

vs.

J. B. Johnson, "John Doe" Christensen;  
"John Doe" Parish, "John Doe" Clark,  
and "John Doe" Wagoner,

Defendants.

JUDGMENT

This cause came on regularly to be heard on the 12th day of June, A. D. 1935; Frank B. Hansen, Esq., of Price, Utah, appearing as counsel for the plaintiff and the defendants appearing by their attorneys, F. W. Keller of Monticello, Utah, and T. C. Peacock of Castle Dale, Utah, and counsel for the respective parties having in open Court entered a stipulation to the effect that the Court may enter its judgment and decree declaring the hereinafter described roadway to be a public highway with the condition that no general taxes be levied and assessed thereon and with the further condition that the plaintiff be relieved of any and all responsibility to maintain said highway and be released from any and all responsibility for any negligent or unlawful use of said highway and with the further condition that the plaintiff shall have the use of any and all timber or any other useful product within the right-of-way hereinafter described, and that each party to this action pay its or his own cost, and to the further effect that no finding or conclusions of law shall be required in this action, 1935, WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

That that certain roadway in Hilda Canyon passing over and across the NW 3/4, SW 3/4, SE 3/4, section 21, and the NE 1/4, section 22, township 16 NORTH, RANGE 7 EAST, S. L. M., which follows, a course approximately as follows:

Beginning at a point North 43°11' West 2054.5 feet from the Section corner common to Sections 22, 23, 26, 27, Township and Range above mentioned, thence South 69°22' West 190 feet, thence South 19°06' East 220 feet; thence South 42°04' East 655 feet, thence South 31°37' West 338 feet, thence South 45°51' West 279.5 feet, thence South 49°00' West 400 feet, thence South 47°30' West 500 feet; thence South 61°45' West 1022.7 feet, thence South 61°15' West 555 feet, at which point leave East side of the NE 1/4 of the NW 1/4 of Section 27, continue South 65°15' West 306 feet, thence South 50°19' West 1217 feet at which point enter the West side of the NE 1/4 of the NW 1/4 of Section 22, continuing South 59°13' West 434 feet, at which point leave the South side of the NE 1/4 of the NW 1/4 of Section 22, continue South 59°19' West 392.3 feet, thence South 60°40' West 800 feet, thence South 65°15' West 300 feet, to hub with track which is the end of survey; and extending a distance of twenty-five (25) feet on each side of said course, to and the same is HEREBY ADJUDGED AND DECREED, a public highway; it is provided, however, that the plaintiff, its successors and assigns may and shall have the exclusive use any timber or other valuable product growing or produced upon said right-of-way; that the acreage embraced in the said right-of-way shall not bear any general or special taxes levied by Emery County upon the lands above described; and that the plaintiff in this action, be and it is hereby relieved of every and all responsibility to maintain the said roadway and from any and all responsibility that may accrue from failure to keep said highway in a passable or safe condition for travel;

IT IS FURTHER ADJUDGED AND DECREED, that the parties to this action shall each bear their own cost.  
Done in Chambers at Panti, Utah, this 17th day of June, A. D. 1935.

Dilworth Hooley  
Judg.

STATE OF UTAH )  
                  ) SS.  
COUNTY OF EMERY )

I, Hector L. Peterson, Clerk of the Seventh Judicial District Court, in and for Emery County, State of Utah, hereby certify that the foregoing is a full, true and correct copy of the original Judgment and now on file and of record in my office.

Witness my hand and seal of said  
District Court at my office in Castle  
Dale, Emery County, Utah, this 24th  
day of June, A. D. 1935.

Hector L. Peterson  
Clerk of the District Court.



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Request of Frank B. Hansen, Price, Utah, this 24th day of June 1935 at 9:50 A. M. in Book A-9 of Deeds at Page 314.

JUN 30 2005

EXHIBIT 11

ORDINANCE NO. 5-18-94

**AN ORDINANCE VACATING AND ABANDONING  
A COUNTY ROAD RIGHT-OF-WAY**

RECEIVED  
JUN 30 2005

DIV. OF OIL, GAS &amp; MINING

**WHEREAS**, the existing Emery County Road #306 in Rilda Canyon does not lie along the description contained in the adjudication of 1935; and,

**WHEREAS**, Emery County is desirous of acquiring the proper description of the existing Emery County Road #306; and,

**WHEREAS**, Emery County and C.O.P. Coal Development Company (C.O.P.) have reached an agreement that C.O.P. will grant a proper easement for the existing road alignment, and Emery County will vacate and abandon the adjudicated right-of-way; and,

**WHEREAS**, the Emery County Commission has received a Consent signed by C.O.P., the owner of property adjacent to portions of a County road sought to be abandoned and vacated; and,

**WHEREAS**, the Emery County Commission considered and approved vacating and abandoning the following-described County road upon approval of including a newly-described road for inclusion into the County road system at its meeting on April 20, 1994; and,

**WHEREAS**, the Emery County Commission found that the vacating and abandoning of the road, as sought, was in the best interest of the County, and notice is not required pursuant to §27-12-102.3, Utah Code Annotated (1953), as amended;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF EMERY COUNTY COMMISSIONERS AS FOLLOWS:**

Upon consent of adjacent owner, C.O.P., the following-described County road be and the same is vacated and declared no longer to be public property for use as a County road:

Beginning at a point North 43°11' West 2854.5 feet from the section corner common to Sections 22, 23, 26 and 27, Township 16 South, Range 7 East, S.L.M.; thence South 69°22' West 190 feet; thence South 19°08' East 200 feet; thence South 42°08' East 655 feet, more or less, to the South line of the Northwest Quarter of the Southeast Quarter of Section 22, Township 16 South, Range 7 East, S.L.M.

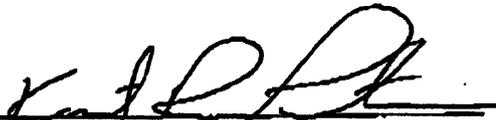
Said vacation is made expressly subject to all existing rights-of-way and the easements

of all public utilities of any and every description now located in, on, under or over the confines of the above-described property and also subject to the rights of entry thereon for the purpose of inspecting, maintaining, repairing, replacing, removing, altering or rerouting said utilities and all of them.

This Ordinance shall take effect upon passage and posting.

PASSED AND ORDERED POSTED by unanimous vote of the Board of County Commissioners of Emery County at the regularly scheduled meeting of the Board on the 18<sup>th</sup> day of May, 1994.

**BOARD OF EMERY COUNTY COMMISSIONERS**

By   
Kent R. Petersen, Chairman

ATTEST:

  
Bruce C. Funk, Clerk

PROJECT AGREEMENT

**FILE**

Supplement No. 2-94 to the Forest Development Road Cooperative Agreement entered into on October 20, 1977 by and between the Forest Service, U.S. Department of Agriculture and Emery County, State of Utah.

**EXHIBIT 12**

Whereas, both parties are desirous of improving and applying surfacing on the Rilda Canyon Road, FDR #50264, from the North Emery Water User Association spring development in the NW1/4 of the SW1/4 of Section 28, T. 16 S., R. 7 E., SLB&M, to the NW1/4 of the SE1/4 OF Section 29, T. 16 S., R. 7 E., SLB&M, and

To that end, it is mutually agreed that:

A project will be re-constructed from the junction with Forest Highway 7 (State Route 31) to the spring development. Said construction shall consist of reconstructing the road to a finished surface width of 20 feet plus curve and fill widening, armoring sections of the cut ditch and fill slopes, installing drainage culverts where needed, and placing 6 inches of surfacing, and it is further agreed that:

**A. The County will:**

1. Perform preliminary surveys and roadway design and provide plans and specification for reconstruction of the road.
2. Perform construction engineering and staking for the reconstruction of the roadway.
3. Provide all necessary personnel, equipment, surface course materials, culverts and seeding to properly perform the complete reconstruction of said road.
4. Perform the said reconstruction in reasonably close conformity to the plans and specifications approved by the Forest Service.
5. Provide a plat and right-of-way description for final easement document preparation at the completion of the entire road reconstruction.

**B. The Forest Service will:**

1. Review with the County the proposed work on the ground prior to the work and periodically inspect the work as it progresses to insure compliance with the terms of this agreement.
2. The Forest Service will prepare the final easement documents and grant an easement to the County for the road after completion of entire road within the Forest Boundaries.

**C. Both parties mutually agree that:**

1. The United States, and/or its assignees, will not be liable to the County for any damages incident to the above cooperation.

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**JUN 30 2005**  
DIV. OF OIL, GAS & MINING

**FILE**

11-29-94 11:08 FAX 801 637 4940

MANTI-LA SAL NF

0003-003

- 2. The reconstruction will be performed in an orderly workmanship-like manner and upon beginning the work, it will continue without disruption, except as required due to inclement weather, until the work is complete and accepted by both parties.

The parties hereto have executed this agreement on the dates shown below.

Emery County Commissioners

[Signature]  
[Signature]  
[Signature]

Nov 29, 1994  
Date

Forest Service, U.S. Department of Agriculture

[Signature]  
 Forest Supervisor

Nov. 30, 1994  
Date

49563 B 0245 P 86  
8-SEP-1998 13:23PM  
FEE: NO FEE CASH  
DIXIE SWASEY, RECORDER  
FILED BY SLB  
FOR EMERY COUNTY ROAD DEPARTMENT  
EMERY COUNTY CORPORATION

PUBLIC ROAD EASEMENT

THIS EASEMENT, dated this 31 day of August, 1998,  
from the UNITED STATES OF AMERICA, acting by and through the Forest Service,  
Department of Agriculture, hereinafter called Grantor, to EMERY COUNTY, UTAH,  
hereinafter called Grantee.

EXHIBIT 13

WITNESSETH:

WHEREAS, the Grantee has applied for a grant of an easement under the Act  
of October 13, 1964 (78 Stat. 1089, 16 U.S.C. 532-538), for a road over  
certain lands or assignable easements owned by the United States in the County  
of Emery, State of Utah, and administered by the Forest Service, Department of  
Agriculture.

NOW, THEREFORE, Grantor does hereby grant to Grantee an easement for a  
public road and highway along and across a strip of land, hereinafter defined  
as the right-of-way over and across the lands in the County of Emery, State of  
Utah, as described on exhibit A attached hereto.

The word "right-of-way" when used herein means said strip of land whether  
or not there is an existing road or highway located thereon. Except where it  
is defined more specifically, the word "highway" shall mean roads or highways  
now existing or hereafter constructed on the right-of-way or any segment of  
such roads or highways.

Description:

Beginning at a point which is S 86°27'40" W, 2165.00 feet from the East 1/4 of  
Section 29, T. 16 S., R. 7 E., SLM, said point being the centerline of the  
Rilda Canyon Road:

thence along a curve to the left with a radius of 606.71 feet, through an  
angle of 27°46'26", a distance of 294.10 feet; thence N 25°35'57" E, 244.99  
feet; thence along a curve to the right with a radius of 192.10 feet, through  
an angle of 55°00'00", a distance of 184.40 feet; thence N 80°35'57" E, 38.32  
feet; thence along a curve to the right with a radius of 1638.80 feet, through  
an angle of 10°27'34", a distance of 299.17 feet; thence S 88°56'29" E, 851.65  
feet; thence along a curve to the right with a radius of 443.21 feet, through  
an angle of 18°45'00", a distance of 145.04 feet; thence S 70°11'29" E, 612.58  
feet; thence along a curve to the left with a radius of 360.05 feet, through an  
angle of 20°28'00", a distance of 128.61 feet; thence along a curve to the left  
with a radius of 283.76 feet, through an angle of 31°29'20", a distance of  
155.95 feet; thence N 57°51'11" E, 93.37 feet; thence along a curve to the  
right with a radius of 284.87 feet, through an angle of 32°41'28", a distance  
of 162.54 feet; thence S 89°27'21" E, 624.95 feet; thence along a curve to the  
left with a radius of 600.00 feet, through an angle of 26°59'32", a distance of  
282.66 feet; thence N 63°33'07" E, 100.97 feet; thence along a curve to the  
right with a radius of 375.00 feet, through an angle of 53°51'27", a distance  
of 352.50 feet; thence S 62°35'26" E, 32.11 feet; thence along a curve to the  
left with a radius of 375.00 feet, through an angle of 37°42'28", a distance  
of 246.80 feet; thence N 79°42'06" E, 284.91 feet; thence along a curve to the  
right with a radius of 850.00 feet, through an angle of 13°30'31", a distance

of 200.40 feet; thence along a curve to the left with a radius of 375.00 feet, through an angle of  $46^{\circ}33'55''$ , a distance of 304.77 feet; thence  $N 46^{\circ}38'42'' E$ , 92.62 feet; thence along a curve to the right with a radius of 465.00 feet, through an angle of  $32^{\circ}02'38''$ , a distance of 260.06 feet; thence  $N 78^{\circ}41'20'' E$ , 253.31 feet; thence along a curve to the left with a radius of 1995.00 feet, through an angle of  $18^{\circ}51'59''$ , a distance of 656.91 feet; thence  $N 59^{\circ}49'21'' E$ , 202.23 feet; thence along a curve to the right with a radius of 1000.00 feet, through an angle of  $05^{\circ}31'25''$ , a distance of 96.41 feet; thence along a curve to the left with a radius of 1971.95 feet, through an angle of  $10^{\circ}45'07''$ , a distance of 370.05 feet; thence along a curve to the right with a radius of 1500.00 feet, through an angle of  $07^{\circ}17'26''$ , a distance of 190.87 feet; to point of ending;

said ending point being  $S 90^{\circ}00' W$ , 403.03 feet from the North 1/16 between Sections 27/28, T. 16 S., R. 7 E., SLM;

Beginning at a point which is  $N 00^{\circ}06'00'' W$ , 171.52 feet from the North 1/16 corner between Sections 27/28, T. 16 S., R. 7 E., SLM, said point being the centerline of the Rilda Canyon Road:

thence along a curve to the left with a radius of 800.00 feet, through an angle of  $06^{\circ}05'36''$ , a distance of 85.08 feet; thence  $N 55^{\circ}30'09'' E$ , 99.11 feet; thence along a curve to the left with a radius of 250.00 feet, through an angle of  $23^{\circ}09'08''$ , a distance of 101.02 feet; thence  $N 32^{\circ}21'01'' E$ , 83.47 feet; thence along a curve to the right with a radius of 300.00 feet, through an angle of  $39^{\circ}18'24''$ , a distance of 205.81 feet; thence  $N 71^{\circ}39'25'' E$ , 210.91 feet; thence along a curve to the left with a radius of 300.00 feet, through an angle of  $08^{\circ}33'57''$ , a distance of 44.85 feet; thence  $N 63^{\circ}05'28'' E$ , 328.30 feet; thence along a curve to the left with a radius of 1200.00 feet, through an angle of  $09^{\circ}29'29''$ , a distance of 198.79 feet; thence  $N 53^{\circ}35'59'' E$ , 34.57 feet; thence along a curve to the right with a radius of 800.00 feet, through an angle of  $13^{\circ}02'43''$ , a distance of 182.15 feet; to point of ending;

said ending point being  $S 00^{\circ}02'31'' E$ , 319.26 feet from the West 1/16 between Sections 22/27, T. 16 S., R. 7 E., SLM;

The right of way width is 66 feet, 33 feet either side of centerline.

This grant is made subject to the following terms, provisions, and conditions:

1. Outstanding valid claims, if any, existing on the date of this grant.
2. The easement herein granted is limited to use of the described right-of-way for the purpose of construction, operation, and maintenance of a highway and does not include the grant of any rights for nonhighway purposes or facilities; Provided, That the Forest Service shall not exercise its right to use or authorize the use of any portion of the right-of-way for nonhighway purposes when such use would interfere with the free flow of traffic or impair the full use and safety of the highway; and Provided further, That nothing herein shall preclude the Forest Service from locating National Forest and other Department of Agriculture information signs on the portions of the right-of-way outside of construction limits.

3. Any reconstruction of the highway situated on this right-of-way shall conform with plans, specifications, and written stipulations approved by the Forest Supervisor or authorized representative prior to beginning such reconstruction.

4. Consistent with highway safety standards, the Grantee shall:

(a) Protect and preserve soil and vegetative cover and scenic and esthetic values on the right-of-way outside of construction limits.

(b) Provide for the prevention and control of soil erosion within the right-of-way and adjacent lands that might be affected by the construction, operation, or maintenance of the highway, and shall vegetate and keep vegetated with suitable species all earth cut or fill slopes feasible for revegetation or other areas on which ground cover is destroyed. The Grantee shall perform these activities where it is deemed necessary during a joint review between the authorized Forest Officer and Grantee prior to completion of the highway. The Grantee also shall maintain all terracing, water bars, leadoff ditches, or other preventive works that may be necessary to accomplish this objective. This provision shall also apply to waste disposal areas and slopes that are reshaped following slides that occur during or after construction.

5. The Grantee shall:

Establish no borrow, sand or gravel pits; stone quarry; permanent storage areas; sites for highway-operation and maintenance facilities; camps, supply depots; or disposal areas within the right-of-way, unless shown on approved construction plans, without first obtaining approval of the authorized Forest Officer.

6. The Grantee shall maintain the right-of-way clearing by means of chemicals only after the Forest Supervisor has given specific written approval. Application for such approval must be in writing and must specify the time, method, chemicals, and the exact portion of the right-of-way to be chemically treated.

7. The Grantee does, by the acceptance of this document, covenant and agree for itself, its assigns, and its successors in interest to the property here granted or any part thereof, that the covenant set forth below shall attach to and run with the land:

(a) That the Grantee shall operate the described property and its appurtenant areas and its buildings and facilities whether or not on the land therein granted as a public road in full compliance with Title VI of the Civil Rights Act of 1964 and all requirements imposed by or pursuant to the regulations issued thereunder by the Department of Agriculture and in effect on the date of this document to the end that no person in the United States shall, on the grounds of race, sex, color, religion, or national origin, be excluded from participation in, be denied

the benefits of, or be subjected to discrimination under any programs or activities provided thereon; and

- (b) That the United States shall have the right to judicial enforcement of these covenants not only as to the grantee, its successors and assigns, but also as to lessees and licensees doing business or extending services under contractual or other arrangements on the land therein conveyed.

The Chief, Forest Service, may terminate this easement, or any segment thereof, (1) by consent of the Grantee, (2) by condemnation, or (3) after a five (5) year period of nonuse, by a determination to cancel after notification and opportunity for hearing as prescribed by law.

IN WITNESS WHEREOF, the Grantor, by its duly authorized representative, has executed this easement pursuant to the delegation of authority to the Chief, Forest Service, 7 CFR 2.60, and the delegation of authority by the Chief, Forest Service, dated August 29, 1984 (49 FR 34283), on the day and year first above written.

UNITED STATES OF AMERICA

BY: *Janette S. Kaiser*  
 JANETTE S. KAISER  
 Forest Supervisor  
 Manti - La Sal National Forest  
 Intermountain Region  
 Forest Service  
 U.S. Department of Agriculture

ACKNOWLEDGEMENT

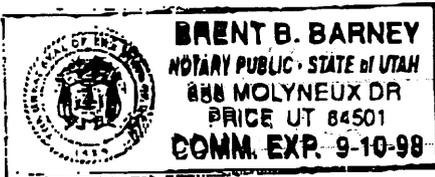
STATE OF Utah )  
 ) ss  
COUNTY OF Carbon )

7 98

On this 31 day of August, 1998, personally appeared before me, JANETTE S. KAISER, Forest Supervisor, Manti - La Sal National Forest, Intermountaion Region, Forest Service, Department of Agriculture, , the signer of the within instrument, who acknowledged to me that she executed the foregoing instrument, by duly delegated authority.

(Seal)

Brent B Barney  
Notary Public for the State of Utah  
Residing in Carbon County, Price, Utah  
My commission expires 7-10-98



*[Faint, illegible text]*



**EMERY COUNTY**  
A Great Place to Live and Work

Road Department

EXHIBIT 14

February 12, 2004

**FILE**

Mesia Nyman, District Ranger  
Manti-La Sal National Forest  
Ferron Work Center  
P. O. Box 310  
Ferron, Utah 84523

Dear Ms. Nyman:

Energy West Mining Company (EWMC) has contacted us with a proposal to construct a mine surface facility in Rilda Canyon. Said facility will include customary installations such as: bathhouse, offices, shop, warehouse, etc. for coal mining operations. There is to be no coal handling and transportation at this site. In reviewing and discussing EWMC concept drawings we can see a definite conflict with the current alignment of our County Road #306 at the proposed site. This will necessitate the realignment and reconstruction of our existing road for approximately 1,500 feet (see map). The new alignment would route local traffic not commonly associated with the mine operations around the perimeter of the facility.

County Road #306, including the proposed realignment, will remain under Emery County jurisdiction and maintenance. The scope of the project also will include some widening and asphalt surfacing from the proposed facility to Highway 31 where there will also be a relocation of the road attachment to the highway. This letter is submitted as notification that we will be seeking to work with the USFS and affected agencies in acquiring any necessary permits and interagency agreements not unlike those acquired for the Rilda Canyon Road (#306) improvement project in 1994. We will be in touch with more specifics and look forward to working with you.

Sincerely,

Rex Funk,  
Road Supervisor

attachment: map

cc Ira Hatch, County Commissioner  
Gary Kofford, County Commissioner  
Drew Sitterud, County Commissioner  
Ray Petersen, Public Lands Director  
Aaron Howe, Manti-La Sal Forest Service Engineer  
Craig Johansen, Johansen & Tuttle Engineering  
Chuck Semborski, Energy West Mining

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United States  
Department of  
Agriculture

Forest  
Service

Manti-La Sal  
National Forest

Supervisor's Office  
999 West Price River Drive  
Price, UT 84501  
Phone # (435) 637-2817  
Fax# (435) 637-4940

File Code: 2820-4

Date: June 8, 2001

Mary Ann Wright  
Utah Department of Natural Resources  
Division of Oil, Gas and Mining  
P.O. Box 145801  
Salt Lake City, UT 84114-5801

FILE

RE: Revised Volume 11: North Rilda Area Engineering Section (R645-301-500), Page 44 Add  
Vehicle Use Stipulation 20, PacifiCorp, Deer Creek Mine, C/015/018, Emery County, Utah

Dear Mary Ann:

We have reviewed the subject mine plan amendment and consent to the proposal with the following conditions:

- The permit package/mine plan and permit for hauling of the longwall equipment is a one-time approval that will end on/before September 25, 2001. At such time the original volumes and restrictions regarding hauling of bulk materials (restricted to 6 loads per day and 28 loads per week, page 42), and restriction of hauling on weekends (Stipulation 1, page 42) would again be observed.
- Stipulation 6 that prohibits hauling on Federal and State holidays, including holiday weekends, will remain unchanged and must be observed. For clarification, the restriction(s) for this year include the 4<sup>th</sup> of July that falls on Wednesday; haul restriction on actual holiday only, the 24<sup>th</sup> of July State holiday that falls on a Tuesday; haul restriction from the prior Friday (July 19) through Tuesday the holiday, and September 3, Labor Day; haul restriction from the prior Friday (August 31) through Monday the holiday.
- No loading or unloading of materials will take place on the breakout access road or turnaround area.
- Hauling on the Rilda Canyon Road and State Route 31 must be consistent with Emery County Road Department and Utah Department of Transportation (UDOT) requirements, respectively, for traffic safety, traffic volume, and vehicle weight limitations.



If you have any questions, contact us at the Forest Supervisor's Office in Price, Utah

Sincerely,

FILE



ELAINE J. ZIEROTH  
Forest Supervisor

cc:  
Rex Funk, Emery County  
Road Department

Kleston Laws, UDOT

D-2/3

# MEMORANDUM

**DATE:** September 16, 2004  
**TO:** Aaron Howe  
U.S. Forest Service  
**FROM:** Craig Johansen  
Johansen & Tuttle Engineering  
**SUBJECT:** Rilda Canyon Road (Energy West Mining Co.)

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Enclosed is Application for Transportation & Utility Systems and Facilities on Federal Lands (Form 299), which amends an existing authorization.

Any questions please call.

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JUL 07 2005

DIV. OF OIL, GAS & MINING

STANDARD FORM 299 (2/2003)  
 Prescribed by DOI/USDA/DOT  
 P.L. 96-487 and Federal  
 Register Notice 5-22-95

**APPLICATION FOR TRANSPORTATION AND  
 UTILITY SYSTEMS AND FACILITIES  
 ON FEDERAL LANDS**

FORM APPROVED  
 OMB NO. 1004-0189  
 Expires: October 31, 2005

**FOR AGENCY USE ONLY**

Application Number  
 Date filed

**NOTE:** Before completing and filing the application, the applicant should completely review this package and schedule a preapplication meeting with representatives of the agency responsible for processing the application. Each agency may have specific and unique requirements to be met in preparing and processing the application. Many times, with the help of the agency representative, the application can be completed at the preapplication meeting.

<p>1. Name and address of applicant (include zip code)</p> <p>Emery County                  PO Box 629                  Castle Dale, Utah 84513</p>	<p>2. Name, title, and address of authorized agent if different from Item 1 (include zip code)</p> <p>Ira Hatch, Commissioner, Emery County</p>	<p>3. TELEPHONE (area code)</p> <p>Applicant                  435-381-2119                  Authorized Agent                  435-381-2119</p>
---	---	--

<p>4. As applicant are you? (check one)</p> <p>a. <input type="checkbox"/> Individual                  b. <input type="checkbox"/> Corporation*                  c. <input type="checkbox"/> Partnership/Association*                  d. <input type="checkbox"/> State Government/State Agency                  e. <input checked="" type="checkbox"/> Local Government                  f. <input type="checkbox"/> Federal Agency</p> <p>* If checked, complete supplemental page</p>	<p>5. Specify what application is for: (check one)</p> <p>a. <input type="checkbox"/> New authorization                  b. <input type="checkbox"/> Renewing existing authorization No.                  c. <input checked="" type="checkbox"/> Amend existing authorization No.                  d. <input type="checkbox"/> Assign existing authorization No.                  e. <input type="checkbox"/> Existing use for which no authorization has been received*                  f. <input type="checkbox"/> Other*</p> <p>* If checked, provide details under Item 7</p>
---	--

6. If an individual, or partnership are you a citizen(s) of the United States?  Yes  No  N/A

7. Project description (describe in detail): (a) Type of system or facility, (e.g. canal, pipeline, road); (b) related structures and facilities; (c) physical specifications (length, width, grading, etc.); (d) term of years needed; (e) time of year of use or operation; (f) Volume or amount of product to be transported; (g) duration and timing of construction; and (h) temporary work areas needed for construction (Attach additional sheets, if additional space is needed.)

The Rilda Canyon Road is being hard surfaced to accommodate a proposed man entry for Energy West Mining Company. Some realignment will be necessary to facilitate anticipated increased traffic and higher speeds. A design speed increase from 35 mph to 50 mph will require a larger radius on numerous curves. Gabions used as retaining walls will be placed at two locations to prevent stream encroachment. The length of the road to be improved is 1.6 miles. 1.1 miles are on Forest Service Administrated lands. Construction will occur between July 1, 2005, and November, 2006. The road will be year round, perpetual public use.

8. Attach a map covering area and show location of project proposal

9. State or local government approval:  Attached  Applied for  Not required

10. Nonreturnable application fee:  Attached  Not required

11. Does project cross international boundary or affect international waterways?  Yes  No (If "yes," indicate on map)

12. Give statement of your technical and financial capability to construct, operate, maintain, and terminate system for which authorization is being requested.

Emery County has the technical and financial capability to construct, operate, and maintain public road #306.

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13a. Describe other reasonable alternative routes and modes considered.

No other reasonable route is available.

b. Why were these alternatives not selected?

N/A

c. Give explanation as to why it is necessary to cross Federal Lands.

To provide public access to public lands.

14. List authorizations and pending applications filed for similar projects which may provide information to the authorizing agency. (Specify number, date, code, or name)

There is an existing authorization issued in 1998 for this road.

15. Provide statement of need for project, including the economic feasibility and items such as: (a) cost of proposal (construction, operation, and maintenance); (b) estimated cost of next best alternative; and (c) expected public benefits.

The project will cost about \$900,000 to realign and provide an asphalt surface.

16. Describe probable effects on the population in the area, including the social and economic aspects, and the rural lifestyles.

No adverse effect is expected on population of the area or the rural life style.

17. Describe likely environmental effects that the proposed project will have on: (a) air quality; (b) visual impact; (c) surface and ground water quality and quantity; (d) the control or structural change on any stream or other body of water; (e) existing noise levels; and (f) the surface of the land, including vegetation, permafrost, soil, and soil stability.

A copy of an environmental assessment is enclosed.

18. Describe the probable effects that the proposed project will have on (a) populations of fish, plantlife, wildlife, and marine life, including threatened and endangered species; and (b) marine mammals, including hunting, capturing, collecting, or killing these animals.

A copy of an environmental assessment is enclosed.

19. State whether any hazardous material, as defined in this paragraph, will be used, produced, transported or stored on or within the right-of-way or any of the right-of-way facilities, or used in the construction, operation, maintenance or termination of the right-of-way or any of its facilities. "Hazardous material" means any substance, pollutant or contaminant that is listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq., and its regulations. The definition of hazardous substances under CERCLA includes any "hazardous waste" as defined in the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 9601 et seq., and its regulations. The term hazardous materials also includes any nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under CERCLA Section 101(14), 42 U.S.C. 9601(14), nor does the term include natural gas.

Hazardous material will not be transported across the right-of-way.

20. Name all the Department(s)/Agency(ies) where this application is being filed.

U.S. Forest Service

I HEREBY CERTIFY, That I am of legal age and authorized to do business in the State and that I have personally examined the information contained in the application and believe that the information submitted is correct to the best of my knowledge.

Signature of Applicant

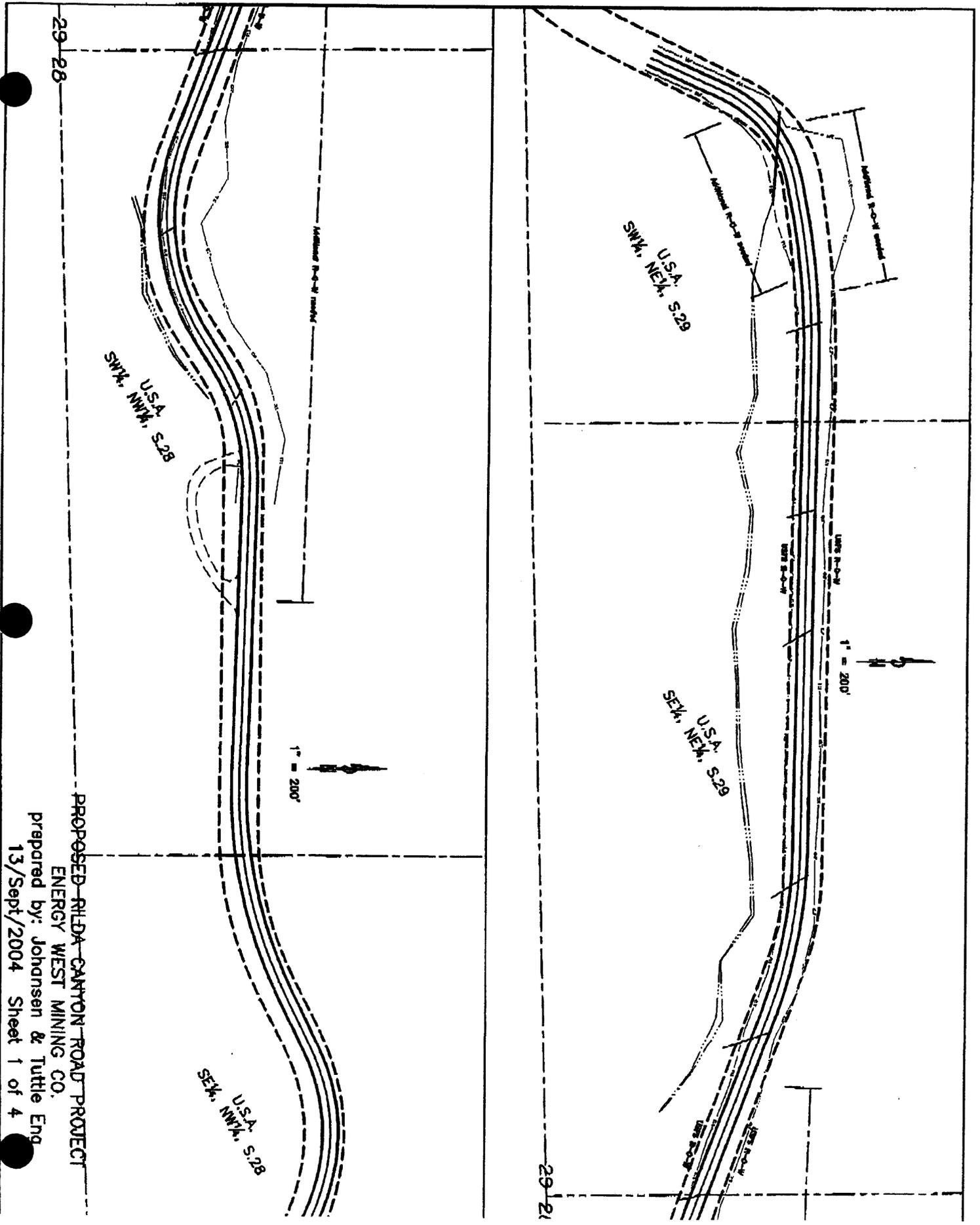
*John W. F. [Signature]*

Date

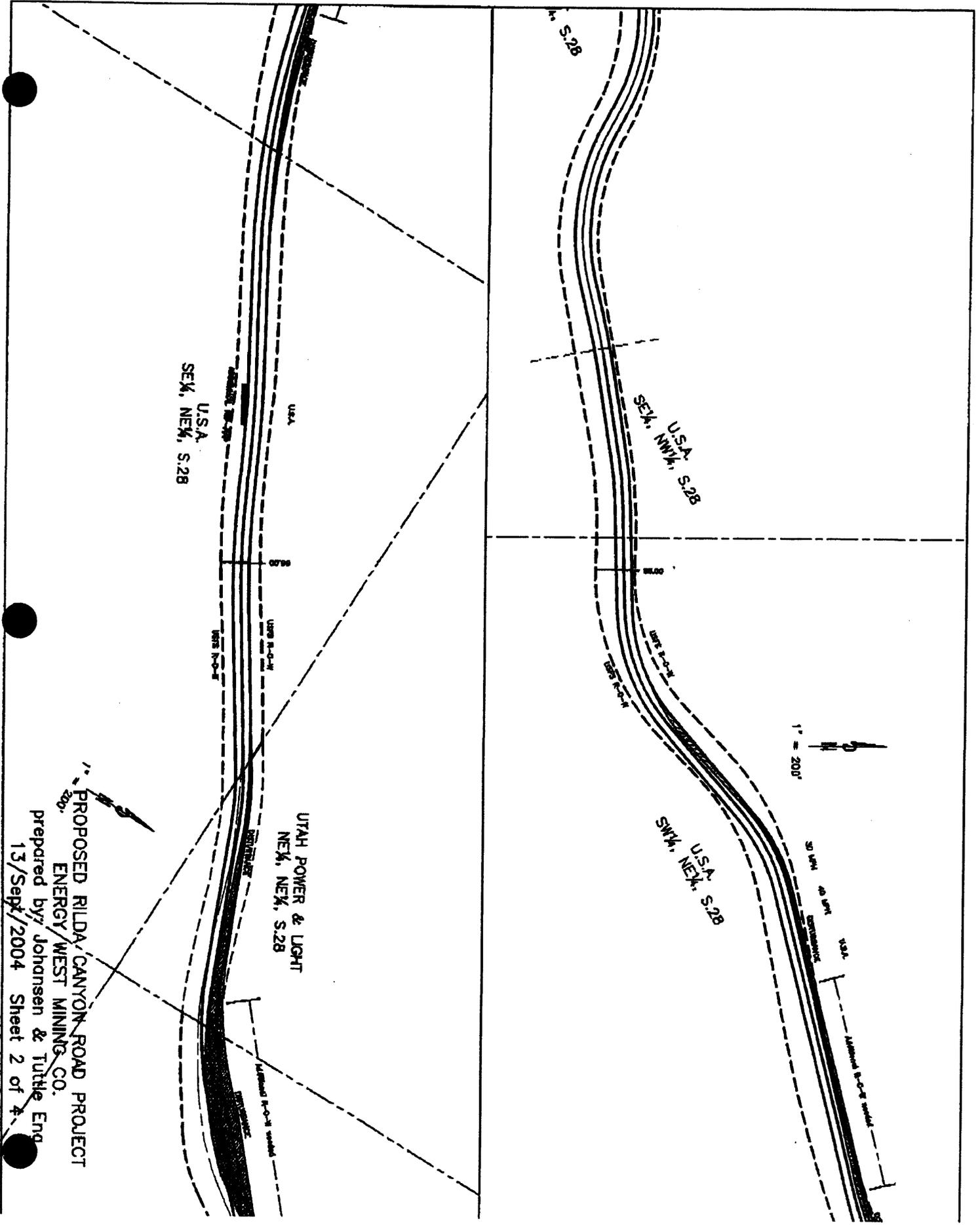
9-13-04

Title 18, U.S.C. Section 1001 and Title 43 U.S.C. Section 1212, make it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

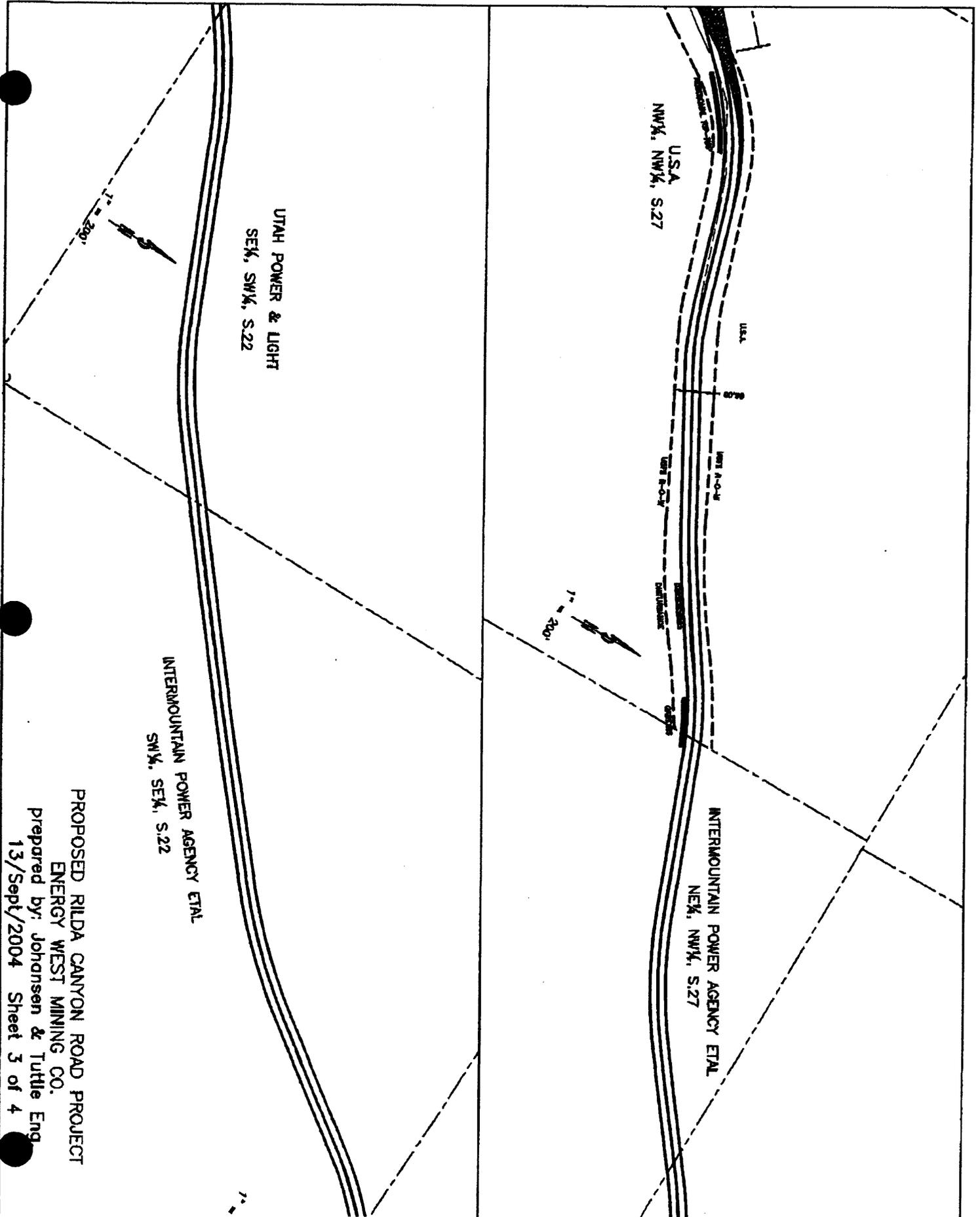
(Continued on page 3)



PROPOSED RILDA CANYON ROAD PROJECT  
 ENERGY WEST MINING CO.  
 prepared by: Johansen & Tuttle Eng  
 13/Sept/2004 Sheet 1 of 4



PROPOSED RILDA CANYON ROAD PROJECT  
 ENERGY/WEST MINING CO.  
 Prepared by: Johansen & Tuttle Eng.  
 13/Sept/2004 Sheet 2 of 4



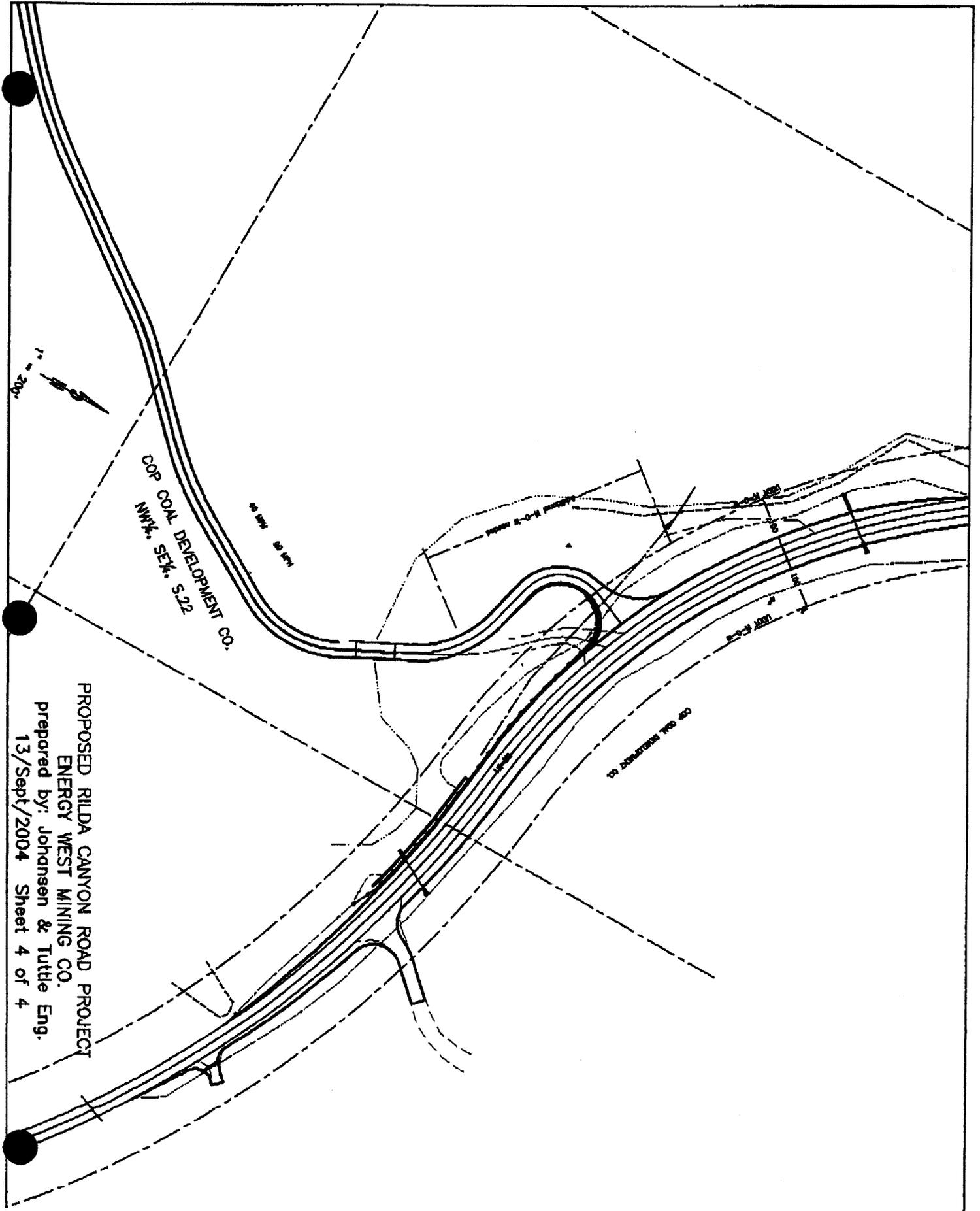
UTAH POWER & LIGHT  
SE¼, SW¼, S.22

INTERMOUNTAIN POWER AGENCY ETAL  
SW¼, SE¼, S.22

USA  
NW¼, NW¼, S.27

INTERMOUNTAIN POWER AGENCY ETAL  
NE¼, NW¼, S.27

PROPOSED RILDA CANYON ROAD PROJECT  
ENERGY WEST MINING CO.  
prepared by: Johansen & Tuttle Eng.  
13/Sept/2004 Sheet 3 of 4



## US FOREST SERVICE

Beginning at a point which is S 86°27'40" W, 2165.00 feet from the Northeast corner of the Southeast quarter of Section 29, T. 16 S., R. 7 E., SLM, said point being at the existing centerline of Rilda Canyon Road at the beginning of a non-tangent circular curve to the left having a central angle of 27°46'26" and an arc length of 294.10 feet (chord bears N 39°29'10" E, 291.23 feet); Thence Northeasterly, 294.10 feet along said curve; Thence N 25°35'57" E, 244.99 feet to the beginning of a circular curve to the right having a central angle of 55°00'00" and an arc length of 184.40 feet (chord bears N 53°05'57" E, 177.40 feet); Thence Northeasterly, 184.40 feet along said curve; Thence N 80°35'57" E, 38.32 feet to the beginning of a circular curve to the right having a central angle of 10°27'34" and an arc length of 299.17 feet (chord bears N 85°49'44" E, 298.75 feet); Thence Easterly, 299.17 feet along said curve; Thence S 88°56'29" E, 851.65 feet to the beginning of a circular curve to the right having a central angle of 18°45'00" and an arc length of 145.04 feet (chord bears S 79°33'59" E, 144.39 feet); Thence Easterly, 145.04 feet along said curve; Thence S 70°11'29" E, 612.58 feet to the beginning of a circular curve to the left having a central angle of 20°28'00" and an arc length of 128.61 feet (chord bears S 80°25'29" E, 127.93 feet); Thence Easterly, 128.61 feet along said curve; Thence N 89°20'31" E, 0.00 feet to the beginning of a circular curve to the left having a central angle of 31°29'20" and an arc length of 155.95 feet (chord bears N 73°35'51" E, 153.99 feet); Thence Easterly, 155.95 feet along said curve; Thence N 57°51'11" E, 93.37 feet to the beginning of a circular curve to the right having a central angle of 32°41'28" and an arc length of 162.54 feet (chord bears N 74°11'55" E, 160.35 feet); Thence Easterly, 162.54 feet along said curve; Thence S 89°27'21" E, 624.95 feet to the beginning of a circular curve to the left having a central angle of 26°59'32" and an arc length of 282.66 feet (chord bears N 77°02'53" E, 280.06 feet); Thence Easterly, 282.66 feet along said curve; Thence N 63°33'07" E, 100.97 feet to the beginning of a circular curve to the right having a central angle of 53°51'27" and an arc length of 352.50 feet (chord bears S 89°31'09" E, 339.66 feet); Thence Easterly, 352.50 feet along said curve; Thence S 62°35'26" E, 32.11 feet to the beginning of a circular curve to the left having a central angle of 37°42'28" and an arc length of 246.80 feet (chord bears S 81°26'40" E, 242.37 feet); Thence Easterly, 246.80 feet along said curve; Thence N 79°42'06" E, 284.91 feet to the beginning of a circular curve to the right having a central angle of 13°30'31" and an arc length of 200.40 feet (chord bears N 86°27'21" E, 199.94 feet to the beginning of a circular curve to the left having a central angle of 46°33'55" and an arc length of 304.77 feet (chord bears N 69°55'39" E, 296.45 feet); Thence Easterly, 304.77 feet along said curve; Thence N 46°38'42" E, 92.62 feet to the beginning of a circular curve to the right having a central angle of 32°02'38" and an arc length of 260.06 feet (chord bears N 62°40'01" E, 256.69 feet); Thence Northeasterly, 260.06 feet along said curve; Thence N 78°41'20" E, 253.31 feet to the beginning of a circular curve to the left having a central angle of 18°51'59" and an arc length of 656.91 feet (chord bears N 69°15'21" E, 653.95 feet); Thence Easterly, 656.91 feet along said curve; Thence N 59°49'21" E, 202.23 feet to the beginning of a circular curve to the right having a central angle of 05°31'25" and an arc length of 96.41 feet (chord bears N 62°35'04" E, 96.37 feet); Thence Northeasterly, 96.41 feet along said curve to the beginning of a circular curve to the left having a central angle of 10°45'07" and an arc length of 370.05 feet (chord bears N 59°58'13" E, 369.50 feet); Thence Northeasterly, 370.05 feet along said curve to the beginning of a circular curve to the right having a central angle of 07°17'26" and an arc length of 190.87 feet (chord bears N 58°14'22" E,

190.74 feet) to the North line of the Southeast quarter of the Northeast quarter of section 28, T. 16 S., R. 7 E., SLM.

#### UTAH POWER AND LIGHT

Beginning at a point which is N89°59'59" W, 405.53 feet from the Southeast corner of the Northeast quarter of the Northeast quarter of Section 28, T. 16 S., R. 7 E., SLM, said point being at the existing centerline of Rilda Canyon Road at the a point on a non-tangent circular curve to the right having a central angle of 10°47'46" and an arc length of 282.64 feet (chord bears N 67°16'59" E, 282.23 feet); Thence Northeasterly, 282.64 feet along said curve to the beginning of a circular curve to the left having a central angle of 11°05'07" and an arc length of 154.78 feet (chord bears N 67°08'18" E, 154.54 feet); Thence Northeasterly, 154.54 feet along said curve to the East line of said section 28.

#### UNITED STATES FOREST SERVICE

Beginning at a point which is N00°06'00" W, 171.52 feet from the Southwest corner of the Northwest quarter of the Northwest quarter of Section 27, T. 16 S., R. 7 E., SLM, said point being at the existing centerline of Rilda Canyon Road at a point on a non-tangent circular curve to the left having a central angle 06°05'36" and an arc length of 85.08 feet (chord bears N 58°32'57" E, 85.04 feet); Thence Northeasterly, 85.08 feet along said curve; Thence N 55°30'09" E, 99.11 feet to the beginning of a circular curve to the left having a central angle of 23°09'08" and an arc length of 101.02 feet (chord bears N 43°55'35" E, 100.33 feet); Thence Northeasterly, 101.02 feet along said curve; Thence N 32°21'01" E, 83.47 feet to the beginning of a circular curve to the right having a central angle of 39°18'24" and an arc length of 205.81 feet (chord bears N 52°00'13" E, 201.80 feet); Thence Northeasterly, 205.81 feet along said curve; Thence N 71°39'25" E, 210.91 feet to the beginning of a circular curve to the left having a central angle of 08°33'57" and an arc length of 44.85 feet (chord bears N 67°22'27" E, 44.81 feet); Thence Northeasterly, 44.85 feet along said curve; Thence N 63°05'28" E, 328.30 feet to the beginning of a circular curve to the left having a central angle of 09°29'29" and an arc length of 198.79 feet (chord bears N 58°20'44" E, 198.56 feet); Thence Northeasterly, 198.79 feet along said curve; Thence N 53°35'59" E, 34.57 feet to the beginning of a circular curve to the right having a central angle of 13°02'43" and an arc length of 182.15 feet (chord bears N 60°07'21" E, 181.75 feet); Thence Northeasterly, 182.15 feet along said curve to the East line of the Northwest quarter of the Northwest quarter of said section 27.

#### INTERMOUNTAIN POWER AGENCY AND ANDALEX

Beginning at a point which is S00°02'31" E, 319.26 feet from the Northwest corner of the Northeast quarter of the Northwest quarter of Section 27, T. 16 S., R. 7 E., SLM, said point being at the existing centerline of Rilda Canyon Road at a point on a non-tangent circular curve to the right having a central angle of 02°35'57" and an arc length of 36.29 feet (chord bears N 67°56'51" E, 36.29 feet); Thence Northeasterly, 36.29 feet along said curve; Thence N 69°14'39" E, 230.79

feet to the beginning of a circular curve to the left having a central angle of  $16^{\circ}50'50''$  and an arc length of 235.23 feet (chord bears  $N 60^{\circ}49'14'' E$ , 234.39 feet); Thence Northeasterly, 235.23 feet along said curve; Thence  $N 52^{\circ}23'49'' E$ , 152.65 feet to the beginning of a circular curve to the right having a central angle of  $01^{\circ}04'08''$  and an arc length of 22.38 feet (chord bears  $N 52^{\circ}55'53'' E$ , 22.38 feet); Thence Northeasterly, 22.38 feet along said curve to the North line of said section 27.

#### UTAH POWER AND LIGHT

Beginning at a point which is  $N89^{\circ}59'25'' W$ , 716.72 feet from the Southeast corner of the Southwest quarter of Section 22, T. 16 S., R. 7 E., SLM, said point being at the existing centerline of Rilda Canyon Road at a point on a non-tangent circular curve to the right having a central angle of  $12^{\circ}47'57''$  and an arc length of 268.07 feet (chord bears  $N 59^{\circ}51'55'' E$ , 267.51 feet); Thence Northeasterly, 268.07 feet; Thence  $N 66^{\circ}15'54'' E$ , 207.78 feet to the beginning of a circular curve to the left having a central angle of  $14^{\circ}08'40''$  and an arc length of 296.24 feet (chord bears  $N 59^{\circ}11'34'' E$ , 295.49 feet); Thence Northeasterly, 296.24 feet along said curve; Thence  $N 52^{\circ}07'14'' E$ , 62.80 feet to the East line of the Southwest quarter of said section 22.

#### INTERMOUNTAIN POWER AGENCY AND ANDALEX

Beginning at a point which is North, 411.41 feet from the Southwest corner of the Southeast quarter of section 22, T. 16 S., R. 7 E., SLM, said point being at the existing centerline of Rilda Canyon Road; Thence  $N 52^{\circ}07'14'' E$ , 396.27 feet to the beginning of a circular curve to the left having a central angle of  $07^{\circ}49'45''$  and an arc length of 273.28 feet (chord bears  $N 48^{\circ}12'22'' E$ , 273.07 feet); Thence Northeasterly, 273.28 feet along said curve; Thence  $N 44^{\circ}17'29'' E$ , 143.58 feet to the beginning of a circular curve to the left having a central angle of  $12^{\circ}43'18''$  and an arc length of 177.63 feet (chord bears  $N 37^{\circ}55'50'' E$ , 177.26 feet); Thence Northeasterly, 177.63 feet along said curve; Thence  $N 31^{\circ}34'11'' E$ , 101.77 feet to the beginning of a circular curve to the right having a central angle of  $17^{\circ}06'27''$  and an arc length of 179.15 feet (chord bears  $N 40^{\circ}07'24'' E$ , 178.48 feet); Thence Northeasterly, 179.15 feet along said curve; Thence  $N 48^{\circ}40'38'' E$ , 19.51 feet to the north line of the Southwest quarter of the Southeast quarter of said section 22.

E 369529 B 310 P 696  
Date 3-FEB-2005 11:05am  
Fee No Fee Cash  
DIXIE SWABEY, Recorder  
Filed By DKS  
For EMERY COUNTY ROAD DEPT  
EMERY COUNTY CORPORATION

**ROAD CONSTRUCTION AND MAINTENANCE EASEMENT**

**EXHIBIT 16**

C.O.P. Coal Development Company, 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 Rilda Canyon Road, Emery County road number 306, including a utility corridor 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 and corridor along with the right to remove trees, bushes, and undergrowth and the obstructions interfering with the location, construction, and maintenance of said road and corridor. The above referred-to land is situated in Emery County, Utah, and is particularly described as follows, to-wit:

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.

Containing 3.077 acres more or less.

Basis of bearing: N 89°57'01" W along the south line of the Northwest quarter of the Southeast quarter of said Section 22.

WITNESS the hand of the Grantor the 30 day of December, 2004

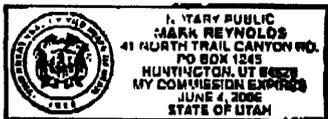
C.O.P. Coal Development Company

By J.O. Kingston

Title PRESIDENT

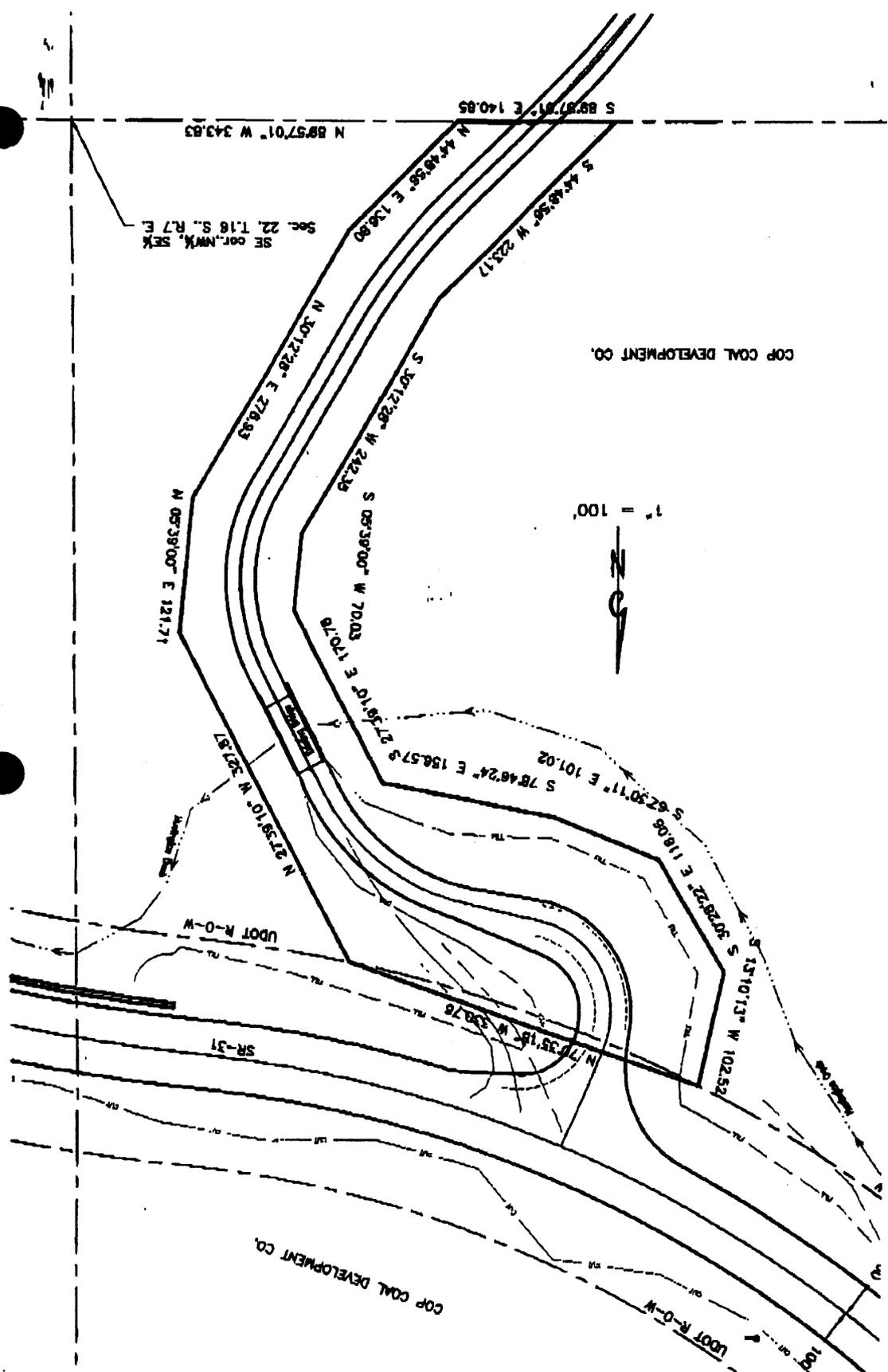
STATE OF Utah )  
                                  ) SS  
COUNTY OF Emery )

On the 30<sup>th</sup> day of December, 2004, personally appeared before me J.O. Kingston, who being by me duly sworn did say that he is the President of said C.O.P. Coal Development Company, and that the within and foregoing instrument was signed in behalf of said company and that said company executed the same.



Mark Reynolds  
Notary Public

RECEIVED  
JUN 30 2005  
DIV. OF OIL, GAS & MINING



RECEIVED

JUN 30 2005

DIV. OF OIL, GAS & MINING

**AGREEMENT**  
**(Rilda Canyon Road – Temporary Suspension)**

This Agreement is made and entered into this 17<sup>th</sup> day of May, 2005 by and between Emery County, a political subdivision of the State of Utah, having an address of P.O. Box 629, Castle Dale, Utah 84513 and PacifiCorp, an Oregon corporation, c/o of Interwest Mining Company, a wholly owned subsidiary, as its managing agent, Energy West Mining Company, its wholly owned subsidiary, as mine operator, collectively having an address c/o Interwest Mining Company, 201 South Main Street, Suite 2100, Salt Lake City, Utah 84111.

**RECITALS**

WHEREAS, Emery County, owns and maintains a road known as the Rilda Canyon Road, identification No. 306, which runs approximately 3.0 miles from the Huntington Canyon Road, Highway 31, to the turn around area in the left fork of Rilda Canyon; and

WHEREAS, PacifiCorp presently makes use of the Rilda Canyon Road for purposes relating to its mining operations; and

WHEREAS, Emery County accomplishes the construction and improvements of its roads through the Emery County Special Services District No. 1; and

WHEREAS, PacifiCorp and the Emery County Special Services District, No. 1 (“District”) have made and entered into an agreement dated August 9, 2004 relating to the “Rilda Canyon Road Upgrade”; and

WHEREAS, PacifiCorp and Emery County desire now to enter into an Agreement regarding the temporary suspension of the public’s use of a portion of the Rilda Canyon Road for access in order to allow PacifiCorp and EnergyWest Mining Company to conduct operations within an area currently utilized by Emery County.

**WITNESSETH:**

NOW THEREFORE, for and in consideration of the premises, the mutual covenants and agreements of the parties hereto, and the consideration in favor of Emery County described below, the parties hereto agree as follows:

1. Emery County agrees that PacifiCorp may relocate, reconstruct, restructure and otherwise temporarily suspend use of the Rilda Canyon Road from a point identified in accordance with Johansen & Tuttle Engineering, Inc. Road Design as the “Gate” at approximately survey station 1+70 to survey station 25+00 (the new “Trailhead Parking Area”). Such temporary suspension shall allow PacifiCorp to deny the use of the county road for purposes of public access from the new Trailhead Parking Area depicted on attached Exhibit A to its termination at the existing “Gate.” The temporary suspension authorized by this

Agreement shall become effective upon receipt by PacifiCorp of the approval by all governmental agencies having jurisdiction over such operations to conduct the operations referred to herein.

2. PacifiCorp shall be obligated to construct, operate and maintain a county road right-of-way for its mining related purposes along a new alignment approximately as depicted in Exhibit A. Said roadway shall not be available for public access but shall be available for restricted 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 agency purposes only.

3. Public access shall not extend beyond the new Trailhead Parking Area as more fully depicted on Exhibit A. Public access beyond the Trailhead Parking Area for areas outside the mine operations will be limited to use of the "Forest Development Trail" which extends beyond PacifiCorp's facilities approximately as depicted on Exhibit A.

4. Upon completion of PacifiCorp's mining operations in the area of the Rilda Canyon Road and prior to final release of the reclamation bond posted by PacifiCorp with the State of Utah Division of Oil, Gas & Mining, PacifiCorp shall restore and reestablish the Rilda Canyon Road as presently located. Said road reestablishment shall follow the reconstruction plans outlined in PacifiCorp's mining and reclamation plan as approved by the Utah Division of Oil, Gas & Mining subject to the discretion of Emery County. This plan includes such things as the eradication of the Forest Development Trail and the reclamation of all mining facilities which necessitated said restricted access and alignment changes including Trailhead Parking Area and Forest Development Trail. The Trail Head Parking Area may be retained at the option of Emery County.

5. PacifiCorp agrees that Emery County shall incur no financial obligations in connection with the realignment of the Rilda Canyon Road for the period of PacifiCorp's mining operations nor the future reestablishment of the Rilda Canyon Road to its present location at the conclusion of mining operations. This Agreement shall constitute a temporary right of way easement for the purpose of restricting public access in accordance with the terms of this Agreement, but it shall not constitute a permanent relocation of the Rilda Canyon Road or the creation of a permanent realignment of the Rilda Canyon Road.

6. Any notice given under this Agreement shall be in writing and shall be delivered personally or sent by certified mail, return receipt requested. If notice is given by mail, it shall be deemed received seventy-two (72) hours following the time of deposit to the United States mail as evidenced by the postmark on such notice, and such time shall be the effective time of the notice for the purpose of calculating any time periods provided herein. Any such notice shall be delivered or mailed to the following addresses:

If to Emery County:  
Emery County  
c/o Chairman of the Board of Commissioners  
P.O. Box 629  
Castle Dale, Utah 84513

If to PacifiCorp:

PacifiCorp  
c/o Interwest Mining Company  
Attn: President  
201 South Main Street – Suite 2100  
Salt Lake City, Utah 84111

With a copy to:

Energy West Mining Company  
Attn: Manager, Administration & Technical Services  
P.O. Box 310  
Huntington, Utah 84528

7. PacifiCorp shall give written notice to Emery County prior to commencement of the relocation and reconstruction work contemplated by this Agreement. In the event the temporary suspension provided for in this Agreement has not become effective and the relocation and reconstruction of the Rilda Canyon Road anticipated by this Agreement has not been commenced on or before December 31, 2007 either party may terminate this Agreement upon 30 days written notice to the other party. Once the actual work of reconstruction has commenced, this Agreement shall terminate at the time the parties agree that the initial reconstruction and final restoration of the Rilda Canyon Road has been satisfactorily completed.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

EMERY COUNTY

By: \_\_\_\_\_  
Its: \_\_\_\_\_

*Don W. Hatch*  
TRA W HATCH  
CHAIRMAN EMERY COUNTY  
COMMISSION

PACIFICORP

By: \_\_\_\_\_  
Its: \_\_\_\_\_

*D. W. Jense*  
D. W. JENSE  
PRESIDENT, INTERWEST MINING CO.

RECEIVED

July 13, 2005

JUL 13 2005

## RILDA CANYON ROAD IMPROVEMENT PROJECT

DIV. OF OIL, GAS &amp; MINING

## EASEMENT DESCRIPTIONS

## 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°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°08'44" E, 330.63 feet); thence N 57°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°34'47" E, 177.65 feet); thence S 88°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°02'19" E, 380.67 feet); thence N 64°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°42'32" E, 317.97 feet); thence S 61°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°23'34" E, 235.97 feet); thence N 78°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°01'11" E, 108.18 feet); thence N 89°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°12'27" E, 201.08 feet); thence N 51°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°25'36" E, 168.29 feet); thence N 75°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°31'16" E, 280.05 feet); thence N 59°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°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°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°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°14'41" E, 174.84 feet); thence N 42°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°42'33" E, 294.50 feet); thence N 74°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.

RILDA CANYON ROAD IMPROVEMENT PROJECT

EASEMENT DESCRIPTIONS

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.

## RILDA CANYON ROAD IMPROVEMENT PROJECT

### EASEMENT DESCRIPTIONS

#### 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.

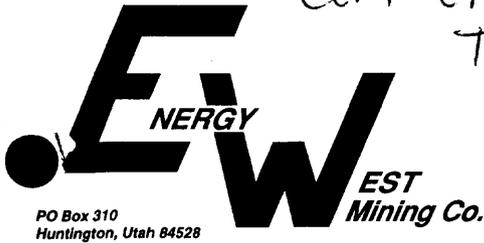
RILDA CANYON ROAD IMPROVEMENT PROJECT

EASEMENT DESCRIPTIONS

COP Coal Development Co.

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.

COPY OF ORIGINAL COVER LETTER  
TRANSMITTING REVISED/NEW  
PERMIT APPLICATION



December 17, 2004

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

**Subject: Response to Deficiencies in the Deer Creek Mine, Volume 11 Replacement, PacifiCorp, Deer Creek Mine, C015/018, Task ID 2032, Emery County, Utah**

PacifiCorp, by and through its wholly-owned subsidiary, Energy West Mining Company ("Energy West") as mine operator, hereby submits responses to the deficiencies of the Deer Creek Mine, Volume 11 North Rilda Canyon Portal Facilities amendment (refer to attached chronology related North Rilda amendment process). PacifiCorp appreciates the cooperation of the Division's technical staff to correct the identified deficiencies.

Energy West received the Technical Analysis document on October 19, 2004. This document found the amendment application contained deficiencies to the Utah R645 Coal Regulations. Attached with this document are the permittee's responses to the deficiencies accompanied with amended volumes to the permit. Six (6) copies are attached as required along with the required C1/C2 forms for the correct placement of the amended text into the MRP.

If you have any questions or concerns regarding this document, please contact myself at (435) 687-4720 or Dennis Oakley at (435) 687-4825.

Sincerely,

Charles A. Semborski  
Manger Permitting/Geology

Enclosure: Response to Technical Analysis Deficiencies  
C1/C2 Forms

Cc: Doug Johnson (EWMC, w/o encl.)  
File

RECEIVED  
DEC 21 2004  
DIV. OF OIL, GAS & MINING

Huntington Office:  
(435) 687-9821  
Fax (435) 687-2695  
Purchasing Fax (435) 687-9092

Deer Creek Mine:  
(435) 687-2317  
Fax (435) 687-2285

Trail Mountain Mine:  
(435) 748-2140  
Fax (435) 748-5125

## CHRONOLOGY OF NORTH RILDA CANYON PORTAL FACILITIES

- + July 1997, PacifiCorp received approval to expand its mining operations to include the North Rilda Area.
- + PacifiCorp acquired the Mill Fork Lease and entered into a COAL MINING LEASE AND AGREEMENT with the State of Utah on April 1, 1999. The coal tract as described in the lease contains approximately 5,562.82 acres, more or less. With the leasing of the Mill Fork Tract in 1999, PacifiCorp controls through ownership and leasing certain fee coal lands together with assigned federal coal leases nearly 30,000 acres of contiguous minable property located in Emery County, Utah. PacifiCorp submitted an application to include the Mill Fork Lease within the Deer Creek Mine permit in November 2001. The application was approved on March 5, 2003. This expansion involved increasing the acreage of the Deer Creek permit by 5,562.82 acres. Because of the geographic location, the proposed new area of expansion is referred to as the "Mill Fork Permit Area", refer to Volume 12.
- + Mine plans were developed based on results of the coal exploration programs to access to the Mill Fork lease through a set of main entries developed in the Hiawatha seam driven in a westerly direction along the southern most lease boundary.
- + PacifiCorp evaluated long term options to improve overall underground transportation and economic considerations.
  - Options investigated included:
    - Acquisition of Crandall Canyon Mine
    - New portal facilities in Mill Fork Canyon
    - New portal facilities in Rilda Canyon
      - In-seam horizontal drilling was conducted to evaluate potential location of portal facilities.
  - As a result of extensive investigation, PacifiCorp selected Rilda Canyon as the best option based on the following:
    - Environmental Considerations
    - Facilities are located in an area previously disturbed by mining
    - Surface facilities are designed to accommodate men and materials only. Coal mined from the Hiawatha (lower) and Blind Canyon (upper) seams will continue to be shipped through the existing Deer Creek mine workings to the portal in Deer Creek Canyon. From this point, the coal will be transported to the Huntington Power Plant coal storage area via the existing overland beltline. Only surplus production beyond the Huntington Plant needs will be trucked on the highway from the plant.
    - Engineering Considerations
    - Facilities designed to minimize surface disturbance (only 13.1 acres of which 4.4 acres have been previously disturbed [roads and historical mining])

- Utilization of existing infrastructures (roads, powerline)

- + PacifiCorp submitted an application (Volume 11) on November 4, 2003 for a 10.2-acre facilities pad in Rilda Canyon for miners and materials access. The facilities were proposed in an area disturbed by previous mining operations. This application was withdrawn, largely because of anticipated problems in getting permits to place 1,500 feet of Rilda Creek into a large diameter culvert.

- + On September 2, 2004, the PacifiCorp submitted a revised application for the facilities pad area in a new location, approximately ½ mile farther up the canyon, near the intersection of the Right and Left forks of Rilda Canyon. Relocation of the facilities will not require culverting of the Rilda Creek.

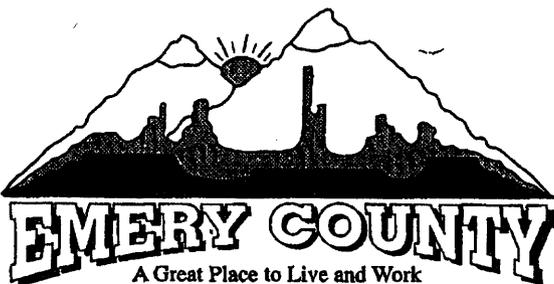
The proposed North Rilda Portal Facilities consisted of two separate areas. The main facilities will consist of 9 acres, with an additional 3.13 acres (outside the current permit boundary) for soil and subsoil storage down the canyon, a total disturbed area of 12.13 acres. This will bring the total disturbed area for Rilda Canyon, including the Left Fork fan area, to 14.46 acres and total disturbed area for the Deer Creek Mine to 96.47 acres: the total permit area remains unchanged at 22,769.06 acres.

- + The Division responded with the Administrative Completeness Review on October 11, 2004 and followed up with the Technical Analysis document on October 19, 2004. The Division determined the application incomplete during there review and required Energy West to supply more detailed information.

- + During permit review meetings held on November 1-2, 2004, regulatory agencies requested that PacifiCorp review the current application and relocate the soil storage piles within the permit boundary utilizing areas previously disturbed by historic mining.

- + On December 6, 2004, to simplify revisions to Volume 11: Deer Creek Mine North Rilda Portal Facilities, PacifiCorp requested that the September 2, 2004 amendment be withdrawn from public record.

## Road Department



## PERMIT

Permit#200424

Application having been made by Emery County Special Service District #1 (District) through Merrill Swasey, its authorized agent, and fees and a bond being waived, and the Application having been reviewed and accepted, permission is hereby granted Applicant to proceed with Roadway improvement beginning at the location of: Intersection of State Hwy 31 and Rilda Canyon Rd. (County #306) thence Westerly on Rd #306 to vicinity of the East edge of the proposed Energy West (EW) portal facility.

Stipulations:

1. \*The District shall assist Emery County (County) with Rights of Way and Property Acquisitions including, but not limited to, Amendments to existing Road Easements and necessary modifications to Hwy 31 as may be required by UDOT to assure proper relocation and reattachment of County Rd. #306.
2. The District shall enter into a binding agreement with Energy West (EW) for the purposes of improving said Road #306.
3. Dust control during construction period, including County dirt or gravel roads used for haulage.
4. Signing per the Federal Highway Administration Manual on Uniform Traffic Control Devices while construction is in effect.
5. Posting for safety during construction and traffic control if needed.
6. Road repairs in the event of damages, which may include blading of County dirt or gravel roads used for haulage.
7. Strict compliance with Encroachment Ordinance 8-7-85A or as amended, the Road Supervisor and County Engineers.
8. Final inspection and approval upon completion of project.
9. Upon project completion, the District will provide Emery County with a Licensed Professional Engineer's (PE) Project Certification and complete set of "As-Built" Project Drawings.

\*The District may act as an agent of the Emery County Road Department for the sole purpose of assisting the Department in obtaining, in the name of Emery County, any rights-of-way, easements or permits. Invoices shall be submitted directly to the District for payment.

DATED this 14th day of Sept. 2004.

## EMERY COUNTY ROAD DEPARTMENT

  
 \_\_\_\_\_  
 REX FUNK, Supervisor

RECEIVED

JUL 15 2005

### INSPECTION AND RELEASE

The Emery County Road Department Supervisor inspected said site on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, finds the following:

Deficiencies which must be corrected before release can be considered.

Released

#### EMERY COUNTY ROAD DEPARTMENT

\_\_\_\_\_  
REX FUNK, Supervisor

Person to Contact:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone #: \_\_\_\_\_

A G R E E M E N T  
(Rilda Canyon Road Upgrade)

This Agreement is made and entered into this 09 day of August, 2004, by and between Emery County Special Services District, No. 1 ("District") having an address of P.O. Box 1055, Castle Dale, Utah 84513 and PacifiCorp, an Oregon corporation, c/o Interwest Mining Company, a wholly owned subsidiary, as its managing agent, Energy West Mining Company, its wholly owned subsidiary, as mine operator and collectively having an address c/o Interwest Mining Company, 201 South Main Street, Suite 2100, Salt Lake City, Utah 84111.

R E C I T A L S

WHEREAS, Emery County owns and maintains a road known as the Rilda Canyon Road, identification No. 306, which runs approximately 3.0 miles from the Huntington Canyon Road, SR 31, to the mine gate in the left fork of Rilda Canyon; and

WHEREAS, Emery County Special Service District #1 was established by resolution of the Emery County Board of Commissioners to construct, repair and maintain roads within Emery County; and

WHEREAS, the District acting as agent for Emery County and the Emery County Road Department assists the County in obtaining rights-of-way, easements or permits associated with the Emery County roads; and

WHEREAS, PacifiCorp presently makes use of the Rilda Canyon Road for purposes relating to its mining operations; and

WHEREAS, the parties have come to a mutual agreement with regard to the need for certain improvements to the Rilda Canyon Road.

NOW THEREFORE, for and in consideration of the premises, the mutual covenants and agreements of the parties hereto, and the consideration in favor of the District described below, the parties hereto agree as follows:

1. PacifiCorp shall provide to the District such information as the District may request with respect to the anticipated future use by PacifiCorp of the Rilda Canyon Road in connection with the construction and use of new surface facilities related to its mining operations.
2. The District shall utilize such information provided by PacifiCorp in determining the nature and extent of any improvements that may be required to the Rilda Canyon Road.

3. The parties anticipate that the improvements to the Rilda Canyon Road will consist of one or more of the following actions:
  - The reconstruction and/or reconfiguration of the intersection/ turnout from SR 31 to the Rilda Canyon Road.
  - The reconstruction, realignment, widening and surfacing of the Rilda Canyon Road to allow for increased speed and increased traffic.
  - The construction of a trailhead parking area and turnaround area at the end of the reconstructed portion of the Rilda Canyon Road. The area will provide public access to a forest trail system to extend beyond PacifiCorp's facilities.
  - The relocation of the existing water supply pipeline owned by North Emery Water Users Special Service District, as needed.
4. The District, will be responsible for the design of any improvements to the Rilda Canyon Road. The District will assist in the acquisition of any rights-of-way necessary to accomplish such reconstruction. The District will also be responsible for the reconstruction of the Rilda Canyon Road as well as the relocation of pipelines as required by the road relocation. The preliminary cost estimate for the Rilda Canyon Road Improvement Project is attached as Exhibit "A."
5. PacifiCorp agrees to pay to the District upon submission of progress invoices supporting the requests for payment, all costs associated with the permitting, engineering, design, and reconstruction of the Rilda Canyon Road. PacifiCorp's obligations for payment shall be subject to the following limitations:
  - The District will provide PacifiCorp with project cost estimates for permitting, engineering, design and reconstruction prior to the time the costs are incurred. Once approved, the cost estimates will not be exceeded without PacifiCorp approval.
  - The District will obtain PacifiCorp's prior permission before issuing a change order that will cause the total expenditures with respect to the Rilda Canyon Road to exceed the amount originally approved by PacifiCorp.
  - The District will provide to PacifiCorp a copy of the Partial Pay Estimates from time to time as issued for any and all costs incurred in connection with the reconstruction of the Rilda Canyon Road.

- PacifiCorp shall be given the opportunity to audit the records with respect to such Partial Pay Estimates and the final close out of the Construction Contract.
  - Payments: 30 days net.
6. The parties understand and agree that the Rilda Canyon Road is a county road for which Emery County is now and will in the future will be responsible. Furthermore, the District agrees to indemnify and hold PacifiCorp, Energy West, Interwest and each of their directors, officers, employees, agents and members of their respective boards and affiliates (indemnities) harmless of and from any liability, cost or expense, including defense costs, from any claim, demand or action which may be brought against indemnities and which arises out of or alleges any negligence or responsibility on the part of indemnities in the design or construction of the Rilda Canyon Road including any claim or demand which may be made by PacifiCorp, Interwest and/or Energy West employees. This obligation to indemnify and hold harmless commences upon execution of this Agreement and shall terminate upon completion of the reconstruction of the Rilda Canyon Road.
7. In the event the District requires immediate approval (within 24 to 48 hours) of a change order or other similar operational decision, notice may be given to PacifiCorp by personal delivery, facsimile or email as follows:

PacifiCorp  
Attn: Carl Pollastro, Director of Technical Services  
and Project Development  
One Utah Center, Suite 2100  
201 South Main Street  
Salt Lake City, Utah 84111

Telephone: 801-220-4695 435-650-2863  
Facsimile: 801-220-4725  
Email: [carl.pollastro@pacificorp.com](mailto:carl.pollastro@pacificorp.com)

Or such other delegated representative as PacifiCorp may from time to time designate by written notice to the District.

Any other notice given under this Agreement shall be in writing and shall be delivered personally or sent by certified mail, return receipt requested. If notice is given by mail, it shall be deemed received seventy-two (72) hours following the time of deposit to the United States mail as evidenced by the postmark on such notice, and such time shall be the effective time of the notice for the purpose of calculating any time periods provided herein. Any such notice shall be delivered or mailed to the following addresses:

If to District:

Emery County Special Service District No.1  
c/o Chairman of the Board  
95 East Main Street  
P.O. Box 1055  
Castle Dale, Utah 84513

If to PacifiCorp:

c/o Interwest Mining Company  
Attn: President  
201 South Main Street – Suite 2100  
Salt Lake City, Utah 84111

With a copy to:

Energy West Mining Company  
Attn: Manager, Administration & Technical Services  
15 North Main  
P.O. Box 310  
Huntington, Utah 84528

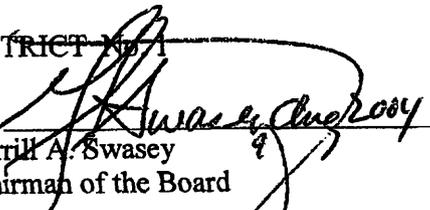
- 8. In the event the work of reconstruction of the Rilda Canyon Road anticipated by this Agreement has not been commenced on or before December 31, 2006 either party may terminate this Agreement upon 30 days written notice to the other party. Once the actual work of reconstruction has commenced this Agreement shall terminate at the time the parties agree that the reconstruction of the Rilda Canyon Road has been satisfactorily completed.
- 9. This Agreement may be amended by a written agreement signed by a duly authorized representative of each of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

EMERY COUNTY SPECIAL SERVICE

PACIFICORP

DISTRICT No. 1

By:   
Merrill A. Swasey  
Chairman of the Board

By:   
Its: PRESIDENT, INTERWEST MINING CO.

By:   
Bevan Wilson  
Vice Chairman