

Appendix 2-4A

USFS Special Use Permit for Potential Surface Effects

Revised 9/16/92

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USFS Special Use Permit for Potential Surface Effects

Revised 4/29/92

United States Department of Agriculture
Forest Service

SPECIAL USE PERMIT

Act of October 21, 1976 (FLPMA)
This permit is revocable and nontransferable

| | | |
|------------------------------|----------------------------------|-----------------------------------|
| a. Record no.(1-2) 70 | b. Region(3-4) 04 | c. Forest(5-6) 10 |
| d. District(7-8) 03 | e. User number(9-12) 4090 | f. Kind of use (13-15) 522 |
| g. State(16-17) 49 | h. County(18-20) 015 | k. Card no.(21) 1 |

Permission is hereby granted to Genwal Coal Company, Incorporated of P.O. Box 1201 - Huntington, Utah 84528, hereinafter called the permittee, to use subject to the conditions set out below, the following described lands or improvements:

50 Acres located in S 1/2 S 1/2 SW 1/4, SW 1/4 SW 1/4 SE 1/4 of Section 25 T15S., R6E., SLB&M

This permit covers 50 acres and/or - - miles and is issued for the purpose of:

A Right-of-Way authorization to acknowledge and allow for potential surface subsidence of National Forest land resulting from underground coal mining activities on adjacent state land coal leases being mined by Genwal Coal Company.

1. Construction or occupancy and use under this permit shall begin within 1 month, and construction, if any, shall be completed within N/A months, from the date of the permit. This use shall be actually exercised at least 365 days each year, unless otherwise authorized in writing.

2. In consideration for this use, the permittee shall pay to the Forest Service, U.S. Department of Agriculture, the sum of One Hundred Seventy Nine and no/100 Dollars (\$ 179.00) for the period from May 1 1992, to December 31, 1992 and thereafter annually on January 1, Two Hundred Sixty Eight and no/100 Dollars (\$ 268.00):

Provided, however, Charges for this use may be made or readjusted whenever necessary to place the charges on a basis commensurate with the value of use authorized by this permit.

3. This permit is accepted subject to the conditions set forth herein, and to conditions 18 to 24 and Attachment A attached hereto and made a part of this permit.

| | | | |
|-----------------|--|---|----------------------------|
| PERMITTEE | name of permittee <u>Genwal Coal Co.</u> | signature of authorized officer <u>R. Jay Marshall</u> | date <u>28 April 92</u> |
| | | TITLE <u>Chief Engineer</u> | |
| ISSUING OFFICER | name and signature <u>Darwin R Jensen</u> | TITLE | date |
| | <u>DARWIN R. JENSEN</u> | <u>Acting Forest Supervisor</u> | <u>28 April 1992</u> |

4. Development plans; lay-out plans; construction, reconstruction, or alteration of improvements; or revision of lay-out or construction plans for this area must be approved in advance and in writing by the forest supervisor. Trees or shrubbery on the permitted area may be removed or destroyed only after the forest officer in charge has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed will be paid for by the permittee as follows: Merchantable timber at appraised value; young-growth timber below merchantable size at current damage appraisal value; provided that the Forest Service reserves the right to dispose of the merchantable timber to others than the permittee at no stumpage cost to the permittee. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as may be approved by the forest officer in charge.
5. The permittee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the forest officer in charge.
6. This permit is subject to all valid claims.
7. The permittee, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit.
8. The permittee shall take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during the closed season established by law or regulation without a written permit from the forest officer in charge or his authorized agent.
9. The permittee shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit, and shall pay the United States for any damage resulting from negligence or from the violation of the terms of this permit or of any law or regulation applicable to the National Forests by the permittee, or by any agents or employees of the permittee acting within the scope of their agency or employment.
10. The permittee shall fully repair all damage, other than ordinary wear and tear, to national forest roads and trails caused by the permittee in the exercise of the privilege granted by this permit.
11. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.
12. Upon abandonment, termination, revocation, or cancellation of this permit, the permittee shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall restore the site, unless otherwise agreed upon in writing or in this permit. If the permittee fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that will not relieve the permittee of liability for the cost of their removal and restoration of the site.
13. This permit is not transferable. If the permittee through voluntary sale or transfer, or through enforcement of contract, foreclosure, tax sale, or other valid legal proceeding shall cease to be the owner of the physical improvements other than those owned by the United States situated on the land described in this permit and is

unable to furnish adequate proof of ability to redeem or otherwise reestablish title to said improvements, this permit shall be subject to cancellation. But if the person to whom title to said improvements shall have been transferred in either manner provided is qualified as a permittee and is willing that his future occupancy of the premises shall be subject to such new conditions and stipulations as existing or prospective circumstances may warrant, his continued occupancy of the premises may be authorized by permit to him if, in the opinion of the issuing officer or his successor, issuance of a permit is desirable and in the public interest.

14. In case of change of address, the permittee shall immediately notify the forest supervisor.

15. The temporary use and occupancy of the premises and improvements herein described may be sublet by the permittee to third parties only with the prior written approval of the forest supervisor but the permittee shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

16. This permit may be terminated upon breach of any of the conditions herein or at the discretion of the regional forester or the Chief, Forest Service.

17. In the event of any conflict between any of the preceding printed clauses or any provisions thereof and any of the following clauses or any provisions thereof, the following clauses will control.

18. (A-6) - Pursuant to the Federal Claims Collection Act of 1966, as amended, 31 USC 3101, et seq., and regulations at 7 CFR Part 3, Subpart B, an interest charge shall be assessed on any payment not made by the payment due date. Interest shall be assessed using the most current rate prescribed by the United States Department of the Treasury's Fiscal Manual (TFM-6-8025.20). Interest shall accrue from the date the fee payment was due. In addition, certain processing and handling administrative costs may be assessed in the event the account becomes delinquent and added to the amounts due.

A penalty of 6 percent per year shall be assessed on any payment overdue in excess of 90 days from the payment due date.

Payments will be credited on the date received by the designated collection officer or deposit location. If the payment due date(s) falls on a nonworkday, the interest and penalty charges shall not apply until the close of business of the next workday.

19. (B-8) - The holder shall indemnify the United States against any liability for damage to life or property arising from the occupancy or use of National Forest lands under this permit.

20. (B-24) - Avalanches, rising waters, high winds, falling limbs or trees, and other hazards are natural phenomena in the Forest that present risks which the holder assumes. The holder has responsibility of inspecting the site, lot, right-of-way, and immediate adjoining area for dangerous trees, hanging limbs, and other evidence of hazardous conditions and, after securing permission from the Forest Service, of removing such hazards.

21. (D-3) - The holder shall protect the scenic esthetic values of the area under this permit, and the adjacent land, as far as possible with the authorized use, during construction, operation, and maintenance of the improvements.

22. (E-6) - This authorization is issued for a period of five years ending on December 31, 1997.

If the right-of-way project or facility is still being used, operated, and maintained in accordance with the purpose of the authorization, and renewal is allowed under then existing law, and is consistent with the then existing resource management plans for the affected land, the authorized officer will renew the authorization for a term he deems to be reasonable under the circumstances.

23. (X-3) - Nothing in this permit shall be construed to imply permission to build or maintain any structure not specifically named on the face of this permit, or approved by the authorized officer in the form of a new permit or permit amendment.

24. (X-96) - Appeal of any provisions of this authorization or any requirements thereof shall be subject to the appeal regulations at 36 CFR 251, Subpart C (54 FR 3362, January 23, 1989), or revisions thereto.

ATTACHMENT A

SPECIAL STIPULATIONS

Federal Regulations 36 CFR 251 Subpart B pertaining to special uses make provisions for the Surface Management Agency to consent to permitting and to prescribe conditions to insure the use and protection of the lands. All of this permit contain lands the surface of which are managed by the United States Department of Agriculture, Forest Service, Manti-La Sal National Forest.

The following stipulations pertain to the Permittees responsibility for any mining-induced subsidence effects on the permit area and on adjacent areas as may be specifically designated on National Forest System lands.

These stipulations are agreed upon actions which the permittee accepts as its responsibility for the authorized use by the Forest Service, of allowing mining-induced subsidence to occur on National Forest Land, and are made a part of this permit as development and constructions plans as referred to under Clause 4 of the Special Use Permit.

Forest Service Stipulation #1.

Before undertaking activities that may disturb the surface of previously undisturbed permitted lands, the Permittee may be required to conduct a cultural resource inventory and a paleontological appraisal of the areas to be disturbed. These studies shall be conducted by qualified professional cultural resource specialists or qualified paleontologists, as appropriate, and a report prepared itemizing the findings. A plan will then be submitted making recommendations for the protection of, or measures to be taken to mitigate impacts for identified cultural or paleontological resources.

If cultural resources or paleontological remains (fossils) of significant scientific interest are discovered during operations under this permit, the Permittee prior to disturbance shall immediately bring them to the attention of the appropriate authority. Paleontological remains of significant scientific interest do not include leaves, ferns or dinosaur tracks commonly encountered.

The cost of conducting the inventory, preparing reports, and carrying out mitigating measures shall be borne by the Permittee.

Forest Service Stipulation #2.

If there is reason to believe that Threatened, Endangered, or Sensitive (TES) species of plants or animals, or migratory bird species of high Federal interest occur in the area, the Permittee shall be required to conduct an intensive field inventory of the area to be disturbed and/or impacted. The inventory shall be conducted by a qualified specialist and a report of findings will be prepared. A plan will be prepared making recommendations for the protection of these species or action necessary to mitigate the disturbance.

The cost of conducting the inventory, preparing reports and carrying out mitigating measures shall be borne by the Permittee.

Forest Service Stipulation #3.

The Permittee shall be required to perform a study to secure adequate baseline data to quantify the existing surface resources on and adjacent to the permit area. Existing data may be used if such data is adequate for the intended purposes. The study shall be adequate to locate, quantify, and demonstrate the interrelationship of the geology, topography, surface hydrology, vegetation and wildlife. Baseline data will be established so that future programs of observation can be incorporated at regular intervals for comparison.

Forest Service Stipulation #4.

The Permittee shall be required to establish a monitoring system to locate, measure and quantify the progressive and final effects of underground mining activities on the topographic surface, underground and surface hydrology and vegetation. The monitoring system shall utilize techniques which will provide a continuing record of change over time and an analytical method for location and measurement of a number of points over the permit area. The monitoring shall incorporate and be an extension of the baseline data.

Forest Service Stipulation #5.

Except at specifically approved locations, underground mining operations shall be conducted in such a manner so as to prevent surface subsidence that would: (1) cause the creation of hazardous conditions such as potential escarpment failure and landslides, (2) cause damage to existing surface structures, and (3) damage or alter the flow of perennial streams. The Permittee shall provide specific measures for the protection of escarpments, and determine corrective measures to assure that hazardous conditions are not created.

Forest Service Stipulation #6.

Existing Forest Service owned or permitted surface improvements will need to be protected, restored, or replaced to provide for the continuance of current land uses.

Forest Service Stipulation #7.

The Permittee, at the conclusion of the mining operation, or at other times as surface disturbance related to mining may occur, will replace all damaged, disturbed or displaced corner monuments (section corners, 1/4 corners, etc.) their accessories and appendages (witness trees, bearing trees, etc.) or restore them to their original condition and location, or at other locations that meet the requirements of the rectangular surveying system. This work shall be conducted at the expense of the Permittee, by a professional land surveyor registered in the State of Utah, and to the standards and guidelines found in the Manual of Surveying Instructions, United States Department of the Interior.

Forest Service Stipulation #8.

The Permittees, at their expense, will be responsible to replace any surface water identified for protection, that may be lost or adversely affected by mining operations, with water from an alternate source in sufficient quantity and quality to maintain existing riparian habitat, fishery habitat, livestock and wildlife use, or other land uses.

Forest Service Stipulation #9.

STIPULATION FOR LANDS OF THE NATIONAL FOREST SYSTEM
UNDER JURISDICTION OF
THE DEPARTMENT OF AGRICULTURE

The licensee/permittee/lessee must comply with all the rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II, of the Code of Federal Regulations governing the use and management of the National Forest System (NFS) when not inconsistent with the rights granted by the Secretary of the Interior in the license/prospecting permit/lease. The Secretary of Agriculture's rules and regulations must be complied with for (1) all use and occupancy of the NFS prior to approval of a permit/operation plan by the Secretary of the Interior, (2) uses of all existing improvements, such as Forest Development Roads, within and outside the area licensed, permitted or leased by the Secretary of the Interior, and (3) use and occupancy of the NFS not authorized by a permit/operating plan approved by the Secretary of the Interior

All matters related to this stipulation are to be addressed

to GEORGE A MORRIS, FOREST SUPERVISOR

at 599 W. PRICE RIVER DRIVE, PRICE, UTAH 84501

Telephone No.: (801) 637-2817

who is the authorized representative of the Secretary of Agriculture.

R. J. Marshall
Signature of Licensee/Permittee/Lessee