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*Copy Muddy Tract Pam 6/1
7/16/01*



United States
Department of
Agriculture

Forest
Service

Manti-La Sal
National Forest

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

File Code: 2820-4
Date: July 9, 2001

Mr. Tom Faddies
Assistant Director
School & Institutional Trust Land Administration
675 East 500 South
Suite 500
Salt Lake City, UT 84102

[Redacted signature]
[Redacted signature]

Dear Mr. Faddies:

Enclosed you will find one copy each of the Forest Service Decision Memo and Special Use Permit for the Muddy Tract Coal Exploration Drilling Project.

The Forest Service has obtained a bond from Canyon Fuel Company to ensure surface reclamation at the time of project completion. We understand that your agency, the School & Institutional Trust Lands Administration, will secure a bond to ensure sub-surface reclamation, i.e., hole abandonment procedures; please let us know if you have a different understanding.

If you have any questions please feel free to contact Carter Reed or Karl Boyer at the above address and telephone number.

Thank you for your assistance in this matter.

Sincerely,

[Signature]
ELAINE J. ZIEROTH
Forest Supervisor

Cc: Mary Ann Wright, Department of Oil, Gas and Mining
Dick Manus, Bureau of Land Management, Price Field Office

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DIVISION OF
OIL, GAS AND MINING



**U.S. DEPARTMENT OF AGRICULTURE
Forest Service
SPECIAL USE PERMIT
AUTHORITY:
ORGANIC ADMINISTRATION ACT June 4, 1897**

CANYON FUEL COMPANY, LLC of HC 35 BOX 380 , HELPER, UT 84526 (hereinafter called the Holder) is hereby authorized to use or occupy National Forest System lands, to use subject to the conditions set out below, on the Manti-La Sal National Forest.

This permit covers 4 acres, and/or 0 miles and is described as T.21 S., R. 5 E., Salt Lake Base and Meridian, Sections 4, 7, 8, and 9 as shown on the location map attached to and made a part of this permit, and is issued for the purpose of:

Three exploration holes with corresponding drill pads. At each drill site a 100 ft. x 60 ft. drill pad will be constructed. Excavation will include grubbing of some areas, removal and separate storage of the soil A horizon and, if needed, removal and separate storage of material below the soil A horizon to make a level drill site. Drilling mud pits will be excavated in the material below the soil A horizon if there is sufficient depth. Where mud pits cannot be constructed, portable containers will be used and the drilling fluids and cuttings will be hauled to an approved disposal site. The three exploration holes will be plugged and abandoned following completion and the drill pads reclaimed.

National Forest Trail (NFT) 025 will be converted to a temporary road for 2.7 miles until the project is completed and then be reclaimed, narrowed to 50 inches, and returned to National Forest Trail status.

Staging area at the intersection of NFT 025 and FR 50044 with related facilities detailed in the application dated May 5, 2001.

Camp site located at the dispersed recreation site in the head of Link Canyon for two camp trailers, portable toilets, and personal vehicles. The disturbed site will be cleaned up, raked, and seeded if determined necessary by the Authorized Officer.

All stipulations in Attachment 2 of the Ark Land Company, Muddy Tract 2001 Coal Exploration Decision Memo are attached and made part of this permit.

The above described or defined area shall be referred to herein as the "permit area".

TERMS AND CONDITIONS

I. AUTHORITY AND GENERAL TERMS OF THE PERMIT

A. Authority. This permit is issued pursuant to the authorities enumerated at Title 36, Code of Federal Regulations, Section 251 Subpart B, as amended. This permit, and the activities or use authorized, shall be subject to the terms and conditions of the Secretary's regulations and any subsequent amendment to them.

B. Authorized Officer. The authorized officer is the Forest Supervisor or a delegated subordinate officer.

C. License. This permit is a license for the use of federally owned land and does not grant any permanent, possessory interest in real property, nor shall this permit constitute a contract for purposes of the Contract Disputes Act of 1978 (41 U.S.C. 611). Loss of the privileges granted by this permit by revocation, termination, or suspension is not compensable to the holder.

D. Amendment. This permit may be amended in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary or desirable to incorporate new terms, conditions, and stipulations as may be required by law, regulation, land management plans, or other management decisions.

E. Existing Rights. This permit is subject to all valid rights and claims of third parties. The United States is not liable to the holder for the exercise of any such right or claim.

F. Nonexclusive Use and Public Access. Unless expressly provided for in additional terms, use of the permit area is not exclusive. The Forest Service reserves the right to use or allow others to use any part of the permit area, including roads, for any purpose, provided, such use does not materially interfere with the holder's authorized use. A final determination of conflicting uses is reserved to the Forest Service.

G. Forest Service Right of Entry and Inspection. The Forest Service has the right of unrestricted access of the permitted area or facility to ensure compliance with laws, regulations, and ordinances and the terms and conditions of this permit.

H. Assignability. This permit is not assignable or transferable. If the holder through death, voluntary sale or transfer, enforcement of contract, foreclosure, or other valid legal proceeding ceases to be the owner of the improvements, this permit shall terminate.

I. Permit Limitations. Nothing in this permit allows or implies permission to build or maintain any structure or facility, or to conduct any activity unless specifically provided for in this permit. Any use not specifically identified in this permit must be approved by the authorized officer in the form of a new permit or permit amendment.

II. TENURE AND ISSUANCE OF A NEW PERMIT

A. Expiration at the End of the Authorized Period. This permit will expire at midnight on **09/30/2004**. Expiration shall occur by operation of law and shall not require notice, any decision document, or any environmental analysis or other documentation.

B. Minimum Use or Occupancy of the Permit Area. Use or occupancy of the permit area shall be exercised at least 15 days each year, unless otherwise authorized in writing under additional terms of this permit.

C. Notification to Authorized Officer. If the holder desires issuance of a new permit after expiration, the holder shall notify the authorized officer in writing not less than six (6) months prior to the expiration date of this permit.

D. Conditions for Issuance of a New Permit. At the expiration or termination of an existing permit, a new permit may be issued to the holder of the previous permit or to a new holder subject to the following conditions:

1. The authorized use is compatible with the land use allocation in the Forest Land and Resource Management Plan.
2. The permit area is being used for the purposes previously authorized.
3. The permit area is being operated and maintained in accordance with the provisions of the permit.
4. The holder has shown previous good faith compliance with the terms and conditions of all prior or other existing permits, and has not engaged in any activity or transaction contrary to Federal contracts, permits, laws, or regulation.

E. Discretion of Forest Service. Notwithstanding any provisions of any prior or other permit, the authorized officer may prescribe new terms, conditions, and stipulations when a new permit is issued. The decision whether to issue a new permit to a holder or successor in interest is at the absolute discretion of the Forest Service.

F. Construction. Any construction authorized by this permit may commence by July 15, 2001 and shall be completed by November 1, 2001. If construction is not completed within the prescribed time, this permit may be revoked or suspended.

III. RESPONSIBILITIES OF THE HOLDER

A. Compliance with Laws, Regulations, and other Legal Requirements. The holder shall comply with all applicable Federal, State, and local laws, regulations, and standards, including but not limited to, the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Comprehensive Environmental Response, Control, and Liability Act, 42 U.S. C. 9601 et seq.,

and other relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, construction, operation, and maintenance of any facility, improvement, or equipment on the property.

B. Plans. Plans for development, layout, construction, reconstruction, or alteration of improvements on the permit area, as well as revisions of such plans, must be prepared by a qualified individual acceptable to the authorized officer and shall be approved in writing prior to commencement of work. The holder may be required to furnish as-built plans, maps, or surveys, or other similar information, upon completion of construction.

C. Maintenance. The holder shall maintain the improvements and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer and consistent with other provisions of this authorization. If requested, the holder shall comply with inspection requirements deemed appropriate by the authorized officer.

D. Hazard Analysis. The holder has a continuing responsibility to identify all hazardous conditions on the permit area which would affect the improvements, resources, or pose a risk of injury to individuals. Any non-emergency actions to abate such hazards shall be performed after consultation with the authorized officer. In emergency situations, the holder shall notify the authorized officer of its actions as soon as possible, but not more than 48 hours, after such actions have been taken.

E. Change of Address. The holder shall immediately notify the authorized officer of a change in address.

F. Change in Ownership. This permit is not assignable and terminates upon change of ownership of the improvements or control of the business entity. The holder shall immediately notify the authorized officer when a change in ownership or control of business entity is pending. Notification by the present holder and potential owner shall be executed using Form FS-2700-3, Special Use Application and Report, or Form FS-2700-3a, Request for Termination of and Application for Special-Use Permit. Upon receipt of the proper documentation, the authorized officer may issue a permit to the party who acquires ownership of, or a controlling interest in, the improvements or business entity.

IV. LIABILITY

For purposes of this section, "holder" includes the holder's heirs, assigns, agents, employees, and contractors.

A. The holder assumes all risk of loss to the authorized improvements.

B. The holder shall indemnify, defend, and hold the United States harmless for any violations incurred under any such laws and regulations or for judgments, claims, or demands assessed against the United States in connection with the holder's use or occupancy of the property. The holder's indemnification of the United States shall include any loss by personal injury, loss of life or damage to property in connection with the occupancy or use of the property during the term of this permit. Indemnification shall include, but is not limited to, the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. This paragraph shall survive the termination or revocation of this authorization, regardless of cause.

C. The holder has an affirmative duty to protect from damage the land, property, and interests of the United States.

D. In the event of any breach of the conditions of this authorization by the holder, the authorized officer may, on reasonable notice, cure the breach for the account at the expense of the holder. If the Forest Service at any time pays any sum of money or does any act which will require payment of money, or incurs any expense, including reasonable attorney's fees, in instituting, prosecuting, and/or defending any action or proceeding to enforce the United States rights hereunder, the sum or sums so paid by the United States, with all interests, costs and damages shall, at the election of the Forest Service, be deemed to be additional fees hereunder and shall be due from the holder to the Forest Service on the first day of the month following such election.

E. With respect to roads, the holder shall be proportionally liable for damages to all roads and trails of the United States open to public use caused by the holder's use to the same extent as provided above, except that liability shall not include reasonable and ordinary wear and tear.

F. The Forest Service has no duty to inspect the permit area or to warn of hazards and, if the Forest Service does inspect the permit area, it shall incur no additional duty nor liability for identified or non-identified hazards. This covenant may be enforced by the United States in a court of competent jurisdiction.

V. TERMINATION, REVOCATION, AND SUSPENSION

A. General. For purposes of this permit, "termination", "revocation", and "suspension" refer to the cessation of uses and privileges under the permit.

"Termination" refers to the cessation of the permit under its own terms without the necessity for any decision or action by the authorized officer. Termination occurs automatically when, by the terms of the permit, a fixed or agreed upon condition, event, or time occurs. For example, the permit terminates at expiration. Terminations are not appealable.

"Revocation" refers to an action by the authorized officer to end the permit because of noncompliance with any of the prescribed terms, or for reasons in the public interest. Revocations are appealable.

"Suspension" refers to a revocation which is temporary and the privileges may be restored upon the occurrence of prescribed actions or conditions. Suspensions are appealable.

B. Revocation or Suspension. The Forest Service may suspend or revoke this permit in whole or part for:

1. Noncompliance with Federal, State, or local laws and regulations.
2. Noncompliance with the terms and conditions of this permit.
3. Reasons in the public interest.
4. Abandonment or other failure of the holder to otherwise exercise the privileges granted.

C. Opportunity to Take Corrective Action. Prior to revocation or suspension for cause pursuant to Section V (B), the authorized officer shall give the holder written notice of the grounds for each action and a reasonable time, not to exceed 90 days, to complete the corrective action prescribed by the authorized officer.

D. Removal of Improvements. Prior to abandonment of the improvements or within a reasonable time following revocation or termination of this authorization, the holder shall prepare, for approval by the authorized officer, an abandonment plan for the permit area. The abandonment plan shall address removal of improvements and restoration of the permit area and prescribed time frames for these actions. If the holder fails to remove the improvements or restore the site within the prescribed time period, they become the property of the United States and may be sold, destroyed or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all cost associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

VI. FEES

A. Termination for Nonpayment. This permit shall automatically terminate without the necessity of prior notice when land use rental fees are 90 calendar days from the due date in arrears.

B. The holder shall pay an annual fee of One Hundred Twenty-Six Dollars (\$126.00) for the period from June 25, 2001 to December 31, 2001 and thereafter annually on January 1, One Hundred Twenty-Six Dollars (\$126.00): Provided, charges for this use shall be made or readjusted whenever necessary to place the charges on a basis commensurate with the fair market value of the authorized use.

C. Payment Due Date. The payment due date shall be the close of business as noted on the bill for collection of each calendar year payment is due. Payments due the United States for this use shall be deposited at USDA - FS, C/O Bank of America, File 71652, P.O. Box 60000, San Francisco, CA 94160-1652, in the form of a check, draft, or money order payable to "Forest Service, USDA." Payments shall be credited on the date received by the designated Forest Service collection officer or deposit location. If the due date for the fee or fee calculation statement falls on a non workday, the charges shall not apply until the close of business on the next workday.

D. Late Payment Interest, Administrative Costs and Penalties Pursuant to 31 U.S.C. 3717, et seq., interest shall be charged on any fee amount not paid within 30 days from the date the fee or fee calculation financial statement specified in this authorization becomes due. The rate of interest assessed shall be the higher of the rate of the current value of funds to the U.S. Treasury (i.e., Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly or at the Prompt Payment Act rate. Interest on the principal shall accrue from the date the fee or fee calculation financial statement is due.

In the event the account becomes delinquent, administrative costs to cover processing and handling of the delinquency will be assessed.

A penalty of 6 percent per annum shall be assessed on the total amount delinquent in excess of 90 days and shall accrue from the same date on which interest charges begin to accrue.

Payments will be credited on the date received by the designated collection officer or deposit location. If the due date for the fee or fee calculation statement falls on a non-workday, the charges shall not apply until the close of business on the next workday.

Disputed fees are due and payable by the due date. No appeal of fees will be considered by the Forest Service without full payment of the disputed amount. Adjustments, if necessary, will be made in accordance with settlement terms or the appeal decision.

If the fees become delinquent, the Forest Service will:

Liquidate any security or collateral provided by the authorization.

If no security or collateral is provided, the authorization will terminate and the holder will be responsible for delinquent fees as well as any other costs of restoring the site to its original condition including hazardous waste cleanup.

Upon termination or revocation of the authorization, delinquent fees and other charges associated with the authorization will be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 et seq. Delinquencies may be subject to any or all of the following conditions:

Administrative offset of payments due the holder from the Forest Service.

Delinquencies in excess of 60 days shall be referred to United States Department of Treasury for appropriate collection action as provided by 31 U.S.C. 3711 (g), (1).

The Secretary of the Treasury may offset an amount due the debtor for any delinquency as provided by 31 U.S.C. 3720, et seq.)

VII. OTHER PROVISIONS

A. **Members of Congress**. No Member of or Delegate to Congress or Resident Commissioner shall benefit from this permit either directly or indirectly, except when the authorized use provides a general benefit to a corporation.

B. **Appeals and Remedies**. Any discretionary decisions or determinations by the authorized officer are subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto.

C. **Superior Clauses**. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provision thereof, the preceding printed clauses shall control.

D. **NONDISCRIMINATION IN EMPLOYMENT AND SERVICES: (B1):**

During the performance of this authorization, the holder agrees:

1. In connection with the performance of work under this authorization, including construction, maintenance, and operation of the facility, the holder shall not discriminate against any employee or applicant for

employment because of race, color, religion, sex, national origin, age, or disability. (Ref. Title VII of the Civil Rights Act of 1964, as amended).

2. The holder and employees shall not discriminate by segregation or otherwise against any person on the basis of race, color, religion, sex national origin, age, or disability, by curtailing or refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally. (Ref. Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; Title IX of the Education Amendments, and the Age Discrimination Act of 1975).

3. The holder shall include and require compliance with the above nondiscrimination provisions in any subcontract made with respect to the operations under this authorization.

4. When furnished by the Forest Service, signs setting forth this policy of non discrimination will be conspicuously displayed at the public entrance to the premises, and at other exterior or interior locations as directed by the Forest Service.

5. The Forest Service shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or by any other available remedy under the laws of the United States of the Sate in which the breach or violation occurs.

E. BONDING (C3): As a further guarantee of the faithful performance of the provisions of terms and conditions of this authorization, the holder agrees to deliver and maintain a surety bond or other acceptable security in the amount of \$7,000. Should the sureties or the bonds delivered under this authorization become unsatisfactory to the Forest Service, the holder shall, within thirty (30) days of demand, furnish a new bond with surety, solvent and satisfactory to the Forest Service. In lieu of surety bond, the holder may deposit into a Federal depository, as directed by the Forest Service, and maintain therein, cash in the amounts provided for above, or negotiable securities of the United States having a market value at time of deposit of not less than the dollar amounts provided above.

The holder's surety bond shall be released, or deposits in lieu of bond, shall be returned thirty (30) days after certification by the Forest Service that priority installations under the development plan are complete, and upon furnishing by the holder of proof satisfactory to the Forest Service that all claim for labor and material on said installations have been paid or released and satisfied. The holder agrees that all moneys deposited under this authorization may, upon failure on his or her part to fulfill all and singular the requirements herein set forth or made a part hereof, be retained by United States to be applied to satisfy obligations assumed here under, without prejudice whatever to any rights and remedies of the United States.

Prior to undertaking additional construction or alteration work not provided for in the terms and conditions or when the improvements are to removed and the area restored, the holder shall deliver and maintain a surety bond in an amount set by the Forest Service, which amount shall not be in excess of the estimated loss which the Government would suffer upon default in preformance of this work.

F. ARCHAEOLOGICAL-PALEONTOLOGICAL DISCOVERIES (X17): The holder shall immediately notify the authorized officer of any and all antiquities or other objects of historic or scientific interest. These include, but are not limited to, historic or prehistoric ruins, fossils, or artifacts discovered as the result of operations under this authorization, and shall leave such discoveries intact until authorized to proceed by the authorized officer. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the holder.

G. ADVISE AUTHORIZED OFFICER (X88): Before actively initiating work under this authorization, the holder's or holder's representative shall advise the authorized officer of the date upon which active field work will be initiated. Approval for the work shall be issued in writing by the authorized officer. The approval shall list local restrictions pertaining to fire hazard, off-road vehicles, camp locations, etc.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082.

This information is needed by the Forest Service to evaluate requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the Secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service. Public reporting burden for collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This permit is accepted subject to the conditions set out above.

Date June 29, 2001 CANYON FUEL COMPANY, LLC

(CORPORATE SEAL)

By [Signature]
(Vice) President

ATTEST:

(Assistant) Secretary

The following certificate shall be executed by the Secretary or Assistant Secretary of the Corporation:

I _____ certify that I am the _____
Secretary of the Corporation that executed the above permit; that _____
who signed said permit on behalf of said Corporation was then _____ of
said Corporation; that I know his/her signature on said permit is genuine; and that said permit was duly
signed, sealed, and attested to for and on behalf of said Corporation by authority of its governing body

(CORPORATE SEAL)

(Assistant Secretary)

U. S. DEPARTMENT OF AGRICULTURE
Forest Service

By [Signature]
(Authorized Officer Signature)

FOREST SUPERVISOR
(Title)

July 3, 2001
(Date)

ATTACHMENT 2

STIPULATIONS

- 1) Reclamation efforts will be diligently pursued to insure that a minimum ground cover is established on all disturbed areas. Revegetation will be considered successful when 90% of the predisturbance ground cover is re-established over the entire disturbed area, with no noxious weeds. Adjacent undisturbed areas will be used as a basis for comparison of ground cover. Of the vegetative ground cover, at least 90% must consist of seeded or other desirable species. The 90% of pre-disturbance ground cover must be maintained for three years.
- 2) The operator will be held responsible for control of noxious weed infestations found to be a result of this project, until acceptance of vegetative restoration.
- 3) The operator shall take all reasonable/appropriate measures to prevent the introduction and proliferation of exotic plants and/or noxious weeds for all operations on the land surface. Measures must include cleaning vehicles and equipment before entry onto Federal lands, pre-treatment of areas approved for surface disturbing activities, use of weed free materials (straw, fill materials, gravel, etc.), and control and eradication of exotic species and/or noxious weeds in disturbed/reclaimed areas until liability/bond release. Proposed control/eradication measures for surface operations are subject to approval by the surface management agency.
- 4) The seed mix to be used for reclamation will be as follows:

		<u>Pounds PLS/acre</u>
Western Wheatgrass	Elymus smithii	2
Basin Wild Rye	Elymus cinereus	1
Intermediate Wheatgrass	Elymus hispidus	2
"Paiute" Orchardgrass	Dactylis glomeratus	2
Yellow Sweet Clover	Melilotus officinalis	1
"Rambler" Alfalfa	Medicago sativa	1
Blue Leaf Aster	Aster glaucodes	0.25
Lewis Flax	Linum lewisii	0.50
Small Burnet	Sanguisorbia minor	1
Mountain Big Sage	Artemisia tridentata vaseyana	0.25
Bitterbrush	Purshia tridentata	1

- 5) Disturbed Areas must be reclaimed by the end of the 2001 field season. Exceptions require Forest Service approval.
- 6) The project, including reclamation, is to be completed in one field season. If additional time is needed the Forest service should be advised so the permit can be amended.

- 7) Drill rigs and heavy equipment (not including water trucks) must not be transported in or out of the project area during the opening weekends of the general elk hunt, general deer hunt, or during holiday weekends. This restriction lasts from Friday at noon through Sunday. Water trucks must be preceded by a pilot vehicle when hauling water for the project during the above noted periods.
- 8) Contaminated soil and gravel must be stripped and hauled off the Forest prior to site reclamation.
- 9) Drill sites and the mud pits when they are dry must be reclaimed by selectively backfilling excavated materials, topsoil last, such that the disturbed area is replaced to the approximate original contour. The disturbed area must be seeded with the seed mix specified in stipulation 4.
- 10) Upon completion of the project, compacted soils must be scarified and seeded with the specified seed mix.
- 11) All disturbed drainages must be replaced to their approximate original configuration when the project area is reclaimed.
- 12) Reclaimed roads must be signed and blocked off to discourage vehicle access by the public.
- 13) The operator/agent will immediately notify the Forest Service should raptor nests be discovered.
- 14) Any dogs on the project site must be kept on a leash.
- 15) Heavy equipment, drilling equipment, and transport vehicles must be cleaned of mud/debris that could potentially transport noxious weed seeds prior to entering the National Forest.
- 16) Unauthorized off-road motorized access, other than along the trail, is prohibited.
- 17) A Road Use Permit must be obtained from the Forest Service before equipment is transported onto National Forest System lands. No construction may begin prior to approval. Any modifications or changes to approved locations are also subject to review and approval.
- 18) Following completion of the field work the travel width of National Forest Trail 025 will be reduced to 50 inches. The excess width will be recontoured and revegetated.
- 19) A goshawk survey in the vicinity of drill hole 01-7-1 will be completed by the Forest Service in the spring prior to the commencement of field operations. If active goshawk nests are found in areas that could be affected by operations, the operations must be moved or postponed until after fledglings would no longer be adversely affected (after October 1).
- 20) All water bearing zones encountered in the process of drilling will be recorded on the drilling logs. Any zone which is producing a large continuous flow will be reported to the Forest Service prior to abandonment procedures taking place.
- 21) Construction and operations will be restricted to the time period between July 15 and November 1 to prevent effects to big-game migration.

copy

Decision Memo

ARK LAND COMPANY MUDDY TRACT 2001 COAL EXPLORATION

USDA Forest Service, Intermountain Region
Manti-La Sal National Forest
Ferron-Price Ranger District
Sevier County, Utah

I. INTRODUCTION

The Manti-La Sal National Forest has evaluated a proposal submitted by Ark Land Company (a subsidiary of Arch Coal Inc.) on behalf of Canyon Fuel Company in order to obtain approval to conduct coal exploration and reclamation activities in the summer of 2001. The exploration activities would take place on the SITLA Muddy Coal Tract located within the Ferron Ranger District of the Manti-La Sal National Forest and would involve unleased coal resources. The exploration project would occur within Sevier County, T. 21 S., R. 5 E., Salt Lake Base and Meridian, Sections 7, 8, and 9 (refer to the map, Attachment 1).

Exploration holes would be drilled at three locations for stratigraphic correlation and coal quality assessment. The three holes have been designated 01-7-1, 01-8-1, and 01-9-1. The total depth of the exploration holes is expected to be between approximately 2,000 to 2,300 feet. Two cores would be retrieved from each exploration hole, one from the Upper Hiawatha Coal Seam and one from the Lower Hiawatha Coal Seam. The three exploration holes would be plugged and abandoned following completion. At each drill site a 100 ft X 60 ft drill pad would be constructed (constituting less than 1 acre of total disturbed area for all three drill sites). Earth excavation would primarily be accomplished for the drill sites using a D-6 Cat bulldozer and road grader. Excavation would include grubbing of some areas, removal and separate storage of the soil A horizon and, if needed, removal and separate storage of material below the soil A horizon to make a level drill site. Drilling mud pits would also need to be excavated in the material below the soil A horizon if there is sufficient depth. When mud pits cannot be constructed, portable containers would be used and the drilling fluids and cuttings would be hauled to an approved disposal site. The exploration holes are all located along National Forest Trail (NFT) 025 and access to the drill sites would be via the existing trail. NFT 025 would be reclassified as a temporary road for the duration of this project and would require surface preparation to remove earthen mounds (constructed to act as traffic barriers and to re-direct drainage). The temporary access would be approximately 2 ½ miles long and 10 feet wide, comprising 3 acres of disturbed land. At project completion the temporary road would be reclaimed, narrowed to 50 inches, and returned to National Forest Trail status.

The Forest Supervisor has determined that the project qualifies for categorical exclusion from preparation of an EA or EIS because no extraordinary circumstances have been identified, the total disturbed land surface area is approximately 3 ½ acres and the operation clearly falls under FSH 1909.15, Section 31.2 Item 3, "Approval, modification, or continuation of minor special uses of National Forest System lands that require less than 5 contiguous acres of land."

II. DECISION

The coal estate is owned by the Utah School and Institutional Trust Lands Administration (SITLA). SITLA has approved the coal exploration project.

I have decided to authorize occupancy of National Forest System lands for the coal exploration project by issuing a Special-Use Permit to Ark Land Company subject to the terms and conditions of the permit and provisions of the plan as altered by the attached stipulations (Attachment 2).

It is my determination that this decision may be categorically excluded from preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) under Forest Service Handbook 1909.15, Chapter 30, Section 31.2(3): "Approval, modification, or continuation of minor special uses of National Forest System lands that require less than five contiguous acres of land." This category was determined appropriate because the area affected by this decision is less than 5 acres, no extraordinary circumstances were identified during scoping, and surface uses would remain essentially the same.

The proposal, with stipulations, would provide adequate protection of Forest resources. The proposal is consistent with all Forest Plan requirements.

My decisions will be implemented via transmittal of this Decision Memo to SITLA and issuance of the Special-Use Permit to Ark Land Company.

III. DECISION RATIONALE

This decision was made after careful consideration of the proposal, public involvement, and the entirety of the supporting record. No one fact or single piece of information led to the decisions. Rather, a combination of factors contributed to it. The key considerations are discussed in the following sub-parts.

Attainment of Agency Goals:

The general purpose and need for this project is to accomplish the following goal of the Forest Plan: "Provide appropriate opportunities for and manage activities related to locating, leasing, development, and production of mineral and energy resources." (Forest Plan, p. III-4). Another related goal of the Forest Plan is: "Manage geologic resources, common variety minerals, ground water, and underground spaces (surficial deposits, bedrocks, structures, and processes) to meet resource needs and minimize adverse effects."

The project-specific purpose and need of the proposed action is to permit Ark Land Company and SITLA to acquire data on the available coal resources on the Muddy tract to provide access to non-Federal mineral estates on National Forest System lands with outstanding rights, while protecting natural resources of the National Forest consistent with Forest Service policy and Forest Plan direction.

The decision wholly meets the project's purpose and need.

Absence of Extraordinary Circumstances:

Existing resource conditions and potential extraordinary circumstances have been considered in making the decisions.

Steep slopes or highly erosive slopes. The proposed project areas are located at the top of ridge on stable lands and soils.

Threatened and endangered species or their critical habitat. The project will not affect any Threatened and Endangered Species (see Attachment 3, Biological Assessment).

Floodplains, wetlands, or municipal watersheds. The project will not affect floodplains, wetlands, or municipal watersheds.

Congressionally designated areas, such as wilderness, wilderness study areas, or National Recreation Areas. There are no wilderness, wilderness study areas, or National Recreation Areas in the project area.

Inventoried roadless areas. The project area is not within an inventoried roadless area but lies within an unroaded area of 1000 acres or more contiguous to the White Mountain RARE II area.

The project is not subject to the requirements of Section 7712.16 of the Interim Roads Rule as discussed below:

- No new temporary or permanent road construction is required.
- Approval of the project would not in any way impair or change the character of the unroaded area and would result in a net-benefit to the public and Forest by conducting reclamation on the old roadbed and narrowing it to 50-inch trail width after operations are completed.
- The project area is not a logical extension of the White Mountain RARE II area and ecological zone. The boundaries were drawn to include the top and major slopes and toes of White Mountain and the associated ecological area. This area is considered to be a "High Plateau, Mixed Conifer-Aspen Vegetation Community". The project area and Big Ridge lie in lowlands east of White Mountain described as a "Ridge Top, Mountain Brush Vegetation Community". The eastern boundary of the White Mountain RARE II area was drawn to approximate the change in the vegetation communities.
- Operations would not be allowed to start before July 15 or extend beyond November 1. This would prevent effects to big-game migrations since the important use period occurs after November 1 and lasts until July 15.

Research Natural Areas. The project area is not located within any Research Natural Areas (RNAs).

Native American religious or cultural sites, archeological sites, or historic properties or areas. Professional archaeological staff have determined that the project does not have the potential to affect historic properties. Consultation with Native American groups has disclosed no religious or cultural sites (see Attachment 4, Utah Division of State History Concurrence Letter).

Relationship to Public Involvement:

Public comments were sought and considered throughout the planning process for this project. One response was received in the form of a letter from the Emery Stockgrowers Association. They expressed their interest in utilizing any subsurface water found in the exploratory drill holes in order to better manage the grazing of livestock in the forest. Their concerns were addressed at the Water Users

Meeting held at the Forest Service office in Price, UT on February 8, 2001. It was pointed out that due to the nature of the geologic deposits in the area it was unlikely that an economical source of water would be found. However, in the event that a large underground reservoir was found, the Emery Stockgrowers Association would be notified.

IV. PUBLIC INVOLVEMENT

Legal notices describing the proposal and requesting issues/comments were published in the Sun Advocate (Price, Utah) on December 28, 2000 and the Emery County Progress (Castle Dale, Utah) on December 26, 2000. Letters describing the proposal and requesting issues/comments were mailed to 17 interested individuals/agencies on December 22, 2000. One question was received and is described in the Decision Rationale section above. Native American consultation was conducted and no issues were identified.

V. FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS

To the best of my knowledge, the decision complies with all applicable laws and regulations. In the following, the association of the decision to some pertinent legal requirements are summarized.

National Forest Management Act of 1976: The Forest Plan was approved November 5, 1986, as required by this Act. This long-range land and resource management plan provides guidance for all resource management activities in the Forest. The National Forest Management Act requires all projects and activities to be consistent with the Forest Plan. The Forest Plan has been reviewed in consideration of this project. The decision will be consistent with the Forest Plan.

National Historic Preservation Act: The proposal would not result in any impacts for cultural or historic resources.

Endangered Species Act: The Biological Assessment/Biological Evaluation (Attachment 3) has disclosed that this project will not result in impacts to threatened, endangered, or sensitive plant or animal species. Therefore the Forest Biologist determined there is no need to further evaluate threatened, endangered, or sensitive plant or animal species.

Sensitive Species: As discussed in the attached Biological Evaluation, there is potential for a goshawk nest to occur in the vicinity of proposed drill hole 01-7-1. A goshawk survey will be conducted in the spring prior to any operations to determine if there is an active nest within ½ mile. If an active nest is found, required measures to protect the goshawks would be implemented.

National Environmental Policy Act: The entirety of documentation for this project supports that the project analysis complies with this Act.

Environmental Justice: Based on experience with similar projects on the Ferron-Price Ranger District, it is believed that this project would not have any disparate impacts on individual groups of peoples or communities. Implementation of this project will produce no adverse effects on minorities, low-income individuals, Native Americans or women. No civil liberties will be affected.

VI. IMPLEMENTATION DATE AND APPEAL OPPORTUNITY

Implementation of these decisions may occur upon issuance of the Special-Use Permit and not prior to July 15, 2001.

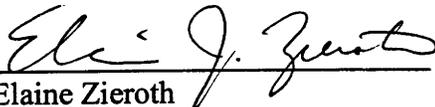
This decision is not subject to appeal by the public in accordance with the Code of Federal Regulations Title 36 part 215.

This decision is subject to appeal by the applicant under Code of Federal Regulations Title 36 part 251.

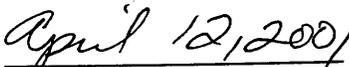
VII. CONTACT PERSON

For additional information concerning the Forest Service decision, please contact Dale Harber at the USDA Forest Service, Manti-La Sal National Forest (address: 599 West Price River Drive, Price, UT 84501; telephone: 435-637-2817).

VIII. SIGNATURE AND DATE



Elaine Zieroth
Forest Supervisor
Manti-La Sal National Forest


Date

ATTACHMENT 1
LOCATION MAP

ATTACHMENT 2

STIPULATIONS

- 1) Reclamation efforts will be diligently pursued to insure that a minimum ground cover is established on all disturbed areas. Revegetation will be considered successful when 90% of the predisturbance ground cover is re-established over the entire disturbed area, with no noxious weeds. Adjacent undisturbed areas will be used as a basis for comparison of ground cover. Of the vegetative ground cover, at least 90% must consist of seeded or other desirable species. The 90% of pre-disturbance ground cover must be maintained for three years.
- 2) The operator will be held responsible for control of noxious weed infestations found to be a result of this project, until acceptance of vegetative restoration.
- 3) The operator shall take all reasonable/appropriate measures to prevent the introduction and proliferation of exotic plants and/or noxious weeds for all operations on the land surface. Measures must include cleaning vehicles and equipment before entry onto Federal lands, pre-treatment of areas approved for surface disturbing activities, use of weed free materials (straw, fill materials, gravel, etc.), and control and eradication of exotic species and/or noxious weeds in disturbed/reclaimed areas until liability/bond release. Proposed control/eradication measures for surface operations are subject to approval by the surface management agency.
- 4) The seed mix to be used for reclamation will be as follows:

		<u>Pounds PLS/acre</u>
Western Wheatgrass	Elymus smithii	2
Basin Wild Rye	Elymus cinereus	1
Intermediate Wheatgrass	Elymus hispidus	2
"Paiute" Orchardgrass	Dactylis glomeratus	2
Yellow Sweet Clover	Melilotus officinalis	1
"Rambler" Alfalfa	Medicago sativa	1
Blue Leaf Aster	Aster glaucodes	0.25
Lewis Flax	Linum lewisii	0.50
Small Burnet	Sanguisorbia minor	1
Mountain Big Sage	Artemisia tridentata vaseyana	0.25
Bitterbrush	Purshia tridentata	1

- 5) Disturbed Areas must be reclaimed by the end of the 2001 field season. Exceptions require Forest Service approval.
- 6) The project, including reclamation, is to be completed in one field season. If additional time is needed the Forest service should be advised so the permit can be amended.

- 7) Drill rigs and heavy equipment (not including water trucks) must not be transported in or out of the project area during the opening weekends of the general elk hunt, general deer hunt, or during holiday weekends. This restriction lasts from Friday at noon through Sunday. Water trucks must be preceded by a pilot vehicle when hauling water for the project during the above noted periods.
- 8) Contaminated soil and gravel must be stripped and hauled off the Forest prior to site reclamation.
- 9) Drill sites and the mud pits when they are dry must be reclaimed by selectively backfilling excavated materials, topsoil last, such that the disturbed area is replaced to the approximate original contour. The disturbed area must be seeded with the seed mix specified in stipulation 4.
- 10) Upon completion of the project, compacted soils must be scarified and seeded with the specified seed mix.
- 11) All disturbed drainages must be replaced to their approximate original configuration when the project area is reclaimed.
- 12) Reclaimed roads must be signed and blocked off to discourage vehicle access by the public.
- 13) The operator/agent will immediately notify the Forest Service should raptor nests be discovered.
- 14) Any dogs on the project site must be kept on a leash.
- 15) Heavy equipment, drilling equipment, and transport vehicles must be cleaned of mud/debris that could potentially transport noxious weed seeds prior to entering the National Forest.
- 16) Unauthorized off-road motorized access, other than along the trail, is prohibited.
- 17) A Road Use Permit must be obtained from the Forest Service before equipment is transported onto National Forest System lands. No construction may begin prior to approval. Any modifications or changes to approved locations are also subject to review and approval.
- 18) Following completion of the field work the travel width of National Forest Trail 025 will be reduced to 50 inches. The excess width will be recontoured and revegetated.
- 19) A goshawk survey in the vicinity of drill hole 01-7-1 will be completed by the Forest Service in the spring prior to the commencement of field operations. If active goshawk nests are found in areas that could be affected by operations, the operations must be moved or postponed until after fledglings would no longer be adversely affected (after October 1).
- 20) All water bearing zones encountered in the process of drilling will be recorded on the drilling logs. Any zone which is producing a large continuous flow will be reported to the Forest Service prior to abandonment procedures taking place.
- 21) Construction and operations will be restricted to the time period between July 15 and November 1 to prevent effects to big-game migration.