

6/6
 M. Mauch
 T. Schoski/w. Helby
 LMS

LAW OFFICES OF
HUGH C. GARNER & ASSOCIATES

A PROFESSIONAL CORPORATION

SUITE 1400

310 SOUTH MAIN STREET
 SALT LAKE CITY, UTAH 84101

(801) 532-5680

HUGH C. GARNER
 A. JOHN DAVIS
 WILLIAM G. STEHLIN
 JOHN R. KUNZ
 THOMAS A. MITCHELL
 JOHN A. HARJA
 JUDITH S. H. ATHERTON

November 26, 1985

RECEIVED

NOV 27 1985

DIVISION OF OIL
 GAS & MINING

Mr. Lowell P. Braxton, Administrator
 Mineral Resource Development & Reclamation Program
 Division of Oil, Gas & Mining
 355 West North Temple
 3 Triad Center, Suite 350
 Salt Lake City, Utah 84180-1203

JNA/043/001

Re: Summit Minerals Inc.
 Coal Exploration Application
 Black Hawk Project, Summit County, Utah

Dear Mr. Braxton:

I am writing in response to your letter of November 5, 1985 to Mr. Jack Higgins, President of Summit Minerals Inc. With regard to paragraph number 1 in your November 5 letter, I have enclosed for your review copies of the following documents which Summit Minerals believes establish its right as operator for Utah Coal and Energy to access across the surface of the land between the highway and the northern boundary of the leasehold:

- a. A copy of a Right-of-Way Agreement of May, 1971, between Lyle and Helen Boyer and William and Lorine Boyer and Coalville Coal Company;
- b. A Decree Settling Final Account and Report of Administrator, etc. In the matter of the Estate of Joseph H. Boyer and Lois R. Boyer, filed in the Fourth Judicial District Court of the State of Utah in and for Summit County, Probate Division, Probate No. 1770;
- c. An assignment of the Right-of-Way Agreement referred to in a. above from Joe Lyon, Jr. to C. G. Cafarelli;
- d. An assignment of said Right-of-Way Agreement from C. G. Cafarelli to Utah Coal and Energy, Inc.; and

- e. A letter opinion dated September 15, 1977 written by Andrew John Brennan, Attorney at Law, regarding the right of access from the State Highway to the Black Hawk Mine.

With regard to the requirements under paragraph number 2 of your letter of November 5, 1985, it is my understanding that Vaughn Hansen Associates, consultants and engineers for Summit Minerals Inc. have submitted to the Division designs and plans for run-off containment and sedimentation control. In addition, it is my understanding that Mr. Richard Kopp, consulting geologist, is still in the process of documenting proposed underground development. Finally, with regard to presentation of the approximate location of pre-1970 workings and 1970 through 1977 workings; as you know there is very little information pertaining to pre-1970 workings on this mine, and, as to workings undertaken in the 1970s, there is a dearth of accurate and reliable information relating to the workings by the prior owners of Utah Coal and Energy. This lack of information is one of the primary reasons Summit has decided to conduct exploration activities at the site prior to implementation of a large scale coal mining operation.

With regard to paragraph number 3 of your November 5 letter regarding bonding for post-SMCRA disturbances, Summit Minerals understands and accepts the Division's position that it cannot approve an exploration permit prior to adequate bonding. The Division must recognize that Summit Minerals has been diligently attempting to secure bonding satisfactory to the Division. In September, it was our firm belief that Bennett Enterprises would agree to post a reclamation bond because of their interest in the property. In fact, we were told by agents of Bennetts that they would post the bond. However, in October, Bennett Enterprises decided that bonding was the responsibility of Summit Mineral as the operator of the mine and withdrew their offer to act as a co-surety. Since that time, Summit Minerals has been engaged primarily in attempting to acquire secondary financing for planning and development of the Black Hawk mine. According to reports from Mr. Higgins those efforts have been successful, and Summit Minerals has received a commitment for complete financing of the Black Hawk Mine project. It is expected that the loan will be funded within the next 30 days, and, at that time, Summit will immediately file an appropriate self-bond and surety in the amount of \$100,000.

Summit would appreciate your keeping information concerning expected funding confidential until such time as final approval is received from the lender.

I believe it is clear from the foregoing that Summit Minerals remains firm in its intent to explore the Black Hawk property and eventually develop a plan of operations for full development of the prospect. Therefore, I think it is inappropriate and premature for the Division to conclude that Summit is not pursuing an exploration permit, and it is likewise inappropriate for the Division to terminate the review process at this time.

Thank you for your continued cooperation and consideration in this matter. I will keep you informed regarding Summit's financing. If you should have any additional questions or need further information please give me a call.

Very truly yours,

A handwritten signature in black ink, appearing to read "A. John Davis", with a long horizontal flourish extending to the right.

A. John Davis

AJD:mm

cc: Jack Higgins

RECEIVED

NOV 27 1985

DIVISION OF OIL
GAS & MINING

RIGHT-OF-WAY AGREEMENT

THIS AGREEMENT, entered into this _____ day of
May, 1971, by and between LYLE BOYER and HELEN BOYER, his wife,
and WILLIAM BOYER and LORRENE BOYER, his wife, of Coalville.

Summit County, Utah, hereinafter called Grantors, and _____
COALVILLE COAL COMPANY

XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

hereinafter called Grantee:

WITNESSETH:

WHEREAS, the Grantors are the owners of certain property
located near Coalville, Utah, in Summit County, known as the Boyer Ranch,
which property is adjacent to and contiguous with a certain property
located in Summit County, upon which the old Blackhawk Coal Mining
property is located; and

WHEREAS, the Grantee is desirous of opening and working the
Blackhawk Coal Mining property, and requires a right-of-way for ingress
and egress to said property;

NOW, THEREFORE, for the considerations hereinafter set
forth, the parties agree as follows:

1. The Grantors hereby grant unto the Grantee a right-of-way
over and across their property known as the Boyer Ranch, to the Blackhawk
Coal Mining property, which right-of-way is for ingress and egress
purposes, of sufficient width to provide an adequate roadway, and to be
located as heretofore agreed by the parties, and is not to interfere with
any of the meadow or grazing properties used by the Grantors.

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ATTORNEYS AT LAW
MURRAY CITY, UTAH 84107
1971-268-3575

2. In consideration of the granting of a right-of-way hereby, the Grantee agrees to install an adequate cattle guard and gate at the entrance to the Boyer Ranch property from the State Highway, and to maintain said cattle guard and gate. Further, the Grantee agrees that the gate is to be closed and locked at all times when the mining property is not being actually operated, and when livestock is in the area. ^{SMALL LAMBS ARE} *28-31-13*

3. Grantee further agrees to install a culvert of approximately three (3) feet in diameter to accommodate the irrigation canal located inside the gate to be constructed by the Grantee.

4. Grantee further agrees to install a permanent bridge across Chalk Creek, to serve the right-of-way granted hereby.

5. Grantee further agrees to replace any and all fences removed or damaged by reason of the use of the right-of-way herein granted.

6. Grantee further agrees to level off an area at the direction of the Grantors, to be used for a lambing shed, with road access to the same. The place and time of said leveling are to be at the sole option of the Grantors herein, ^{BUT CAN BE DONE WHEN GRANTEE'S EQUIPMENT IS IN AREA.} *L.B. 1/10*

7. Grantors agree that the Grantee shall have a right-of-way from the State Highway to the Blackhawk Coal Mining area, and that in addition thereto they shall be given an adequate working area to assist in the mine operation, which working area shall be from the meadow on the Grantors' property south, into the mountain area, for such distance as may be reasonably required for the mining operations, and in a westerly direction to the dryfarm area, providing that no fenced property is interfered with or destroyed.

8. The parties stipulate and agree that all improvements made,

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ATTORNEYS AT LAW
MURRAY CITY, UTAH 84107

including the bridge, cattle guard or gate, ^{AND CULVERTS 289/LB} shall become permanent fixtures to the real property, and shall belong to and remain with said property, and shall be the property of the Grantors herein. Parties further agree that all costs of said improvement shall be exclusively the costs of the Grantee, and that the Grantee shall save and hold harmless the Grantors from any expenses involved by reason of Grantee's right-of-way and the use thereof hereunder. ~~GRANTEES MINING EQUIPMENT IS NOT INCLUDED~~ 289/LB

9. The parties stipulate and agree that the area granted to the Grantee hereunder shall be restricted to hunting and fishing, and that the Grantors only shall have the right to grant permission for hunting and fishing upon said premises. ~~NO HUNTING IN IMMEDIATE AREA~~ 289/LB

10. The parties further agree that should either party fail to conform to the terms of this agreement, or should default under the terms of this agreement, that the defaulting party shall be entitled to all costs of enforcement, including a reasonable attorney's fee.

11. The parties agree that this agreement shall enure to and be binding upon the heirs and permitted assigns of the parties.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

COALVILLE COAL COMPANY

By Warrin H. Boyer
GENERAL PARTNER,
GRANTEE

Lyle Boyer
Lyle Boyer

Heleen Boyer
Heleen Boyer

William Boyer
William Boyer

Lorrene Boyer
Lorrene Boyer

GRANTORS

RECEIVED

NOV 27 1985

DIVISION OF OIL
GAS & MINING

ASSIGNMENT

Entry No. <u>129767</u>	Book <u>M75</u>
RECORDED <u>12-10-75</u> at <u>4:36</u> M	Page <u>75</u>
REQUEST of <u>L. G. Puccinelli</u>	
FEE	WANDA Y. SPRIGGS, SUMMIT CO. RECORDER
\$ <u>2.00</u>	By <u>Wanda Y. Spriggs</u>
INDEXED	ABSTRACT

KNOW ALL MEN BY THESE PRESENTS THAT:

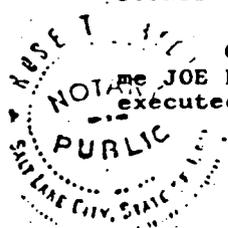
For and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, the undersigned "Assignor" does hereby sell, assign, transfer, convey and quit-claim unto C. G. CAFARELLI all of the right, title and interest of Assignor in and to all easements and rights-of-way acquired by Assignor from Robert P. Kunkel and Frances Kunkel, his wife, who in turn acquired said easements and rights-of-way from Coalville Coal Company, who in turn acquired said easements and rights-of-way from Lyle Boyer and Helen Boyer, husband and wife, and William Boyer and Lorene Boyer, husband and wife, by instruments signed by them and purporting to grant easements and rights-of-way over and across the certain property known as the Boyer Ranch in Summit County, Utah, to afford ingress and egress to the Blackhawk Mine in Section 36, Township 3 North, Range 6 East, S.L.B. & M.

This transfer and conveyance is without warranty of the rights conveyed either express or implied.

Executed as of the 1st day of October, 1975.

Joe Lyon Jr
JOE LYON, JR.

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)



On this 1st day of October 1975, personally appeared before me JOE LYON, JR., an unmarried man, who acknowledged to me that he executed the foregoing instrument.

My Commission Expires:

9/24/78

R. P. Mayeda
Notary Public
Residing at Salt Lake City, Utah

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3. That each and every allegation set forth in the report and petition of said Executors, accompanying said final account, is true.

4. That said estate has been completely administered in this state.

5. That the statutory commission payable upon the administration of said estate to the Executors is \$2,123.00, and that a reasonable attorney's fee to the attorney for said Executors is \$4,440.00.

6. That all Inheritance taxes due the State of Utah have been paid and Waivers of Lien have issued from the State of Utah. There are no Inheritance taxes due the Federal government.

7. That pursuant to the terms of the will the estate is to be distributed to the heirs as follows:

Pursuant to the terms of paragraph (a) of decedent's Last Will and Testament to Joseph LaVern Boyer, Lyle Emerson Boyer, Fay Wilde Boyer and Edison

W. Boyer, as tenants in common:

✓ Beginning at NE corner Section 25, T 3 N, R 6 E, SLM; th North 89°37' West 24.45 ch; th South 19.05 chs; th South 82°02' West 17.7 chs; th North 36°40' West 4.56 chs; th North 84°30' West 4.75 chs; th South 13°35' West 44.1 chs; th South 89°30' East 60 chs; th North 60 chs to beg. Cont. 267.47 acres, less 5.79 acres for State Highway IQC 313.

✓ E $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$; Section 24, T 3 N, R 6 E, SLM, Con. 80 acres

✓ Section 31: T 3 N, R 6 E, SLM, Cont. 623.6 acres

✓ Section 32: T 3 N, R 6 E, SLM, Cont. 640 acres

AA Section 36: T 3 N, R 5 E, SLM, Cont. 640 acres, less 4.88 acres for State Highway IQC 312

Beginning North $\frac{1}{4}$ corner Section 20, T 3 N, R 7 E, SLM; th South 27°08' West 1500.00 ft; th North 45° West 458.7 ft; th North 45°00' East 1426.5 ft to beg. Cont. 7.54 acres. ALSO beg West $\frac{1}{4}$ corner Section 20, T 3 N, R 7 E, SLM; th North 45° East 900.00 ft; th North 74°36' East 1190 ft; th South 27°08' West 295.0 ft; th South 67°18' West 1787.6 ft to beg. Cont. 9.97 acres.

Beginning at NW corner Section 20, T 3 N, R 7 E, SLM; th South 160 rods; Northeastly to quarter section corner North of Section 20; West 160 rods to beginning, containing 80 acres. ALSO beginning 2640 ft North and 900 ft North 45°0' East of SW corner Section 20; th North 45°0' East 1407 ft; th South 45°0' East 800 ft; th Southwesterly to beg. cont. 12.94 acres. Less 1.5 acres WWD 23

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✓ North $\frac{1}{4}$ Section 19; T 3 N, R 7 E, SLM, containing 320 acres.

Reserving all oil, gas, coal and other minerals to be bequeathed as hereinafter provided.

Pursuant to the terms of paragraph (b) of decedents' Last Will and Testament to

✓ Joseph LaVern Boyer, Lyle E. Boyer, William Leo Boyer, Edison Wilde Boyer

and Fay Wilde Boyer, as tenants in common:

✓ S $\frac{1}{2}$ S $\frac{1}{2}$; Section 25, T 3 N, R 6 E, SLM, containing 160 acres, less 5.91 acres and 5.79 acres

(X) ✓ All of Section 36, T 3 N, R 6 E, SLM, containing 640 acres, less 4.88 acres, State Hi//W.

✓ An undivided one half interest in the following: W $\frac{1}{2}$ NE $\frac{1}{4}$; NE $\frac{1}{4}$ NW $\frac{1}{4}$; Section 34 T 2 N, R 8 E, SLM, cont. 120 acres. Less 82.95 acres in exception, title to same in Chalk Creek-Hoytsville Water Users Corporation.

✓ Reserving all coal, oil, gas and other minerals to be bequeathed as hereinafter provided.

Any income to be distributed to William Leo Boyer and Lyle E. Boyer who have operated said ranch during the pendency of this probate proceeding, subject to their paying all expenses incident to said operation, which cost has far exceeded the income.

Pursuant to the terms of paragraph (c) of decedents' Last Will and Testament to

William Leo Boyer:

✓ An undivided one half interest in the following: Beg SE corner SW $\frac{1}{4}$; Section 17, T 3 N, R 7 E, SLM; th North 56°39' East 3163 ft; th South 1640 ft; th East 2640 ft to beg. Cont. 50.55 acres.

✓ Beginning at NW corner Section 16; T 3 N, R 7 E, SLM; th South 0°18' East 3640 ft; th North 56°39' East 1581.5 ft; th North 0°18' West 2932 ft; th West 1820 ft to beginning, cont. 94.2 acres. Less 35.31 acres WWD 35, Bal. 58.89 acres.

✓ Beginning SW corner Section 16, T 3 N, R 7 E, SLM; th North 1640.0 ft; th North 56°39' East 1581.0 ft; th North 1087.18 ft; th South 55°16' East 87.75 ft; th South 55°36' East 490.48 ft; th South 10°25' East 144.7 ft; th South 9°53' West 1314.5 ft; th South 20°21' West 654.5 ft; th South 16°56' West 286.0 ft; th South 6°23' East 910.22 ft; th South 89°11' West 1373.9 ft to the beginning. Cont. 79.29 acres.

✓ Beginning South 89°51' East 83.74 ft from the SW corner Section 7, T 3 N, R 7 E, SLM; th North 5°36' East 188.42 ft; th North 42°06' East 784.4 ft; th North 32°13' East 797.5 ft; th North 26°54' East 657.9 ft; th North 54°32' East 1252.9 ft; th South 67°55' East 485.0 ft; th South 69°36' East 493.1 ft; th North 79°43' East 764.3 ft; th North 48°20' East 160.0 ft; th South 79°47' East 1133.1 ft to Eline Section; th South along Section 2462.4 ft to SE corner Section 7; th North 89°51' West 5187.7 ft along section line to beg. Cont. 255 acres

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An undivided one half interest in the following; Beg at SW corner Section 8 T 3 N, R 7 E, SLM; th North along section line 2462.4 ft; th South 79°47' East 1398. ft; th North 79°27' East 909.0 ft; th North 85°16' East 300.9 ft; th South 42°00' East 1554.4 ft; th South 13°26' East 678.7 ft; th South 53°03' East 770.9 ft; th South 80°39' East 1599.9 ft; th South 72°41' East 309.4 ft to S line Section 8; th West along section line 5010.45 ft to beg. Cont. 146.91 acres.

Beg at SW corner Section 17, T 3 N, R 7 E, SLM; th East 2643.3 ft; th North 56°39' East 3163 ft; th North 3540 ft; th West 5280 ft; th South 5280 ft to beg, cont. 589.45 acres. Less 1.3 acres WWD 35.

An undivided one half interest in the following: Beg 1197 ft South 89°51' East of SW corner Section 18, T 3 N, R 7 E, SLM; th North 1°41' West 681 ft; th North 14°03' East 544.5 ft; th North 41°45' East 597.7 ft; th North 85°01' East 210 ft; th North 60°29' East 86.97 ft; th North 43°29' East 77.3 ft; th North 6°04' East 361.7 ft; th South 89°51' East 2710 ft; th South 2640 ft; th North 89°51' West 4083 ft to beg. Cont. 210.52 acres.

Reserving all coal, oil, gas and other mineral rights to be bequeathed as hereinafter provided.

Pursuant to paragraph (e) of decedents' Last Will and Testament to Mary Leah

Boyer Nielson:

Beginning 77 ft North 66°31' East of SW corner Block 111, Plat "B", Coalville Townsite, thence North 66°30' East 88 ft; th North 23°30' West 92.5 ft; th South 77°48' West 89.74 ft; th South 23°30' East 110.8 ft to beg. Reserving all coal, oil, gas and other mineral rights to be bequeathed hereafter. And any net income remaining to be distributed, as her own absolutely.

Pursuant to terms of paragraph (f) of decedents' Last Will and Testament to Joseph LaVern Boyer, Lyle E. Boyer, William Leo Boyer, Edison Wilde Boyer, Fay Wilde Boyer and Mary Leah B. Nielson, all coal, oil, gas and minerals being on, in or beneath the above tracts of land in Summit County, State of Utah, as tenants in common, as follows, to-wit:

Beg ay NE corner Section 25, T 3 N, R 6 E, SLM, th North 89°37' West 24.45 ch; th South 19.05 ch; th South 82°02' West 17.7 ch; th North 36°40' West 4.56 chs; th North 84°30' West 4.75 ch; th South 13°35' West 44.1 ch; th South 89°30' East 60 chs; th North 60 ch to beg. Cont. 267.47 acres, Less 5.79 acres for State Highway IQC 313.

$\frac{1}{2}E\frac{1}{2}E\frac{1}{2}$, Section 24, T 3 N, R 6 E, SLM; Cont. 80 acres

Section 31, T 3 N, R 6 E, SLM, Cont. 623.6 acres

Section 16, T 3 N, R 6 E, SLM; Cont. 640 acres

Section 32, T 3 N, R 6 E, SLM; Cont. 640 acres

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Section 36, T 3 N, R 5 E, SLM, Cont. 640 acres. Less 4.88 acres State Highway IQC 312.

Beginning $N\frac{1}{4}$ corner Section 20, T 3 N, R 7 E, SLM, th South $27^{\circ}08'$ West 1500.0 ft; th North 45° West 458.7 ft; th North $45^{\circ}00'$ East 1426.5 ft to beg. Cont. 7.54 acres. Also beg. West $\frac{1}{4}$ corner Section 20, T 3 N, R 7 E, SLM; th North 45° East 900.0 ft; th North $74^{\circ}36'$ East 1190 ft; th South $27^{\circ}08'$ West 295.0 ft; th South $67^{\circ}18'$ West 1787.6 ft to beg. Cont. 9.97 acres.

NW $\frac{1}{4}$ SE $\frac{1}{4}$

NW $\frac{1}{4}$; N $\frac{1}{2}$ NE $\frac{1}{4}$; SW $\frac{1}{4}$ NE $\frac{1}{4}$ / and Lot 2 of Section 22, Also E $\frac{1}{2}$ NE $\frac{1}{4}$; N $\frac{1}{2}$ SE $\frac{1}{4}$; SE $\frac{1}{4}$ NW $\frac{1}{4}$; NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26, all in T 3 N, R 7 E, SLM

Beg at NW corner of Section 20, T 3 N, R 7 E, SLM, th South 160 rods; th NE'ly to a quarter section corner North of Section 20 West 160 rods to beg. Cont. 80 acres. Also beginning 2640 ft North and 900 ft North $45^{\circ}0'$ East of SW corner Section 20; th North $45^{\circ}0'$ East 1407 ft; th South $45^{\circ}0'$ East 800 ft; th SW'ly to beg. Cont. 12.94 acres. Less 1.5 acres WWD 23.

N $\frac{1}{2}$, Section 19, T 3 N, R 7 E, SLM, Cont. 320 acres.

S $\frac{1}{2}$ S $\frac{1}{2}$, Section 25, T 3 N, R 6 E, SLM, Cont. 160 acres. Less 5.91 acres and 4.79 acres.

SE $\frac{1}{4}$; NE $\frac{1}{4}$; NW $\frac{1}{4}$; Section 36, T 3 N, R 6 E, SLM, and SW $\frac{1}{4}$, Cont. 640 acres, Less 4.88 acres State Highway.

Beginning at SW corner Section 17, T 3 N, R 7 E, SLM; th East 2643.3 ft; th North $56^{\circ}39'$ East 3163 ft; th North 3540 ft; th West 5280 ft; th South 5280 ft to beg. Cont. 589.45 acres. Less $\frac{1}{3}$ acres WWD 35

Beginning 77 ft North $66^{\circ}30'$ East of SW corner Block 111, Plat "B", Coalville Townsite; th North $66^{\circ}30'$ East 88 ft; th North $23^{\circ}30'$ West 92.5 ft; th South $77^{\circ}48'$ West 89.74 ft; th South $23^{\circ}30'$ East 110.8 ft to beg.

Beginning at NW corner Section 16, T 3 N, R 7 E, SLM, th South $0^{\circ}18'$ East 3640 ft; th North $56^{\circ}39'$ East 1581.5 ft; th North $0^{\circ}18'$ West 2932 ft; th West 1320 ft to beg. Cont. 94.2 acres. Less 35.31 acres WWD 35, Bal. 58.89 acres

Beginning SW corner Section 16, T 3 N, R 7 E, SLM; th North 1640.0 ft; th North $56^{\circ}39'$ East 1581.0 ft; th North 1087.18 ft; th South $55^{\circ}16'$ East 87.75 ft; th South $52^{\circ}36'$ East 490.48 ft; th South $10^{\circ}25'$ East 144.7 ft; th South $9^{\circ}53'$ West 1314.5 ft; th South $20^{\circ}21'$ West 654.5 ft; th South $16^{\circ}56'$ West 286.0 ft; th South $6^{\circ}23'$ East 910.22 ft; th South $89^{\circ}11'$ West 1373.9 ft to the beg. Cont. 79.29 acres.

Beginning South $89^{\circ}51'$ East 83.74 ft from SW corner Section 7, T 3 N, R 7 E, SLM; th North $5^{\circ}36'$ East 188.42 ft; th North $42^{\circ}06'$ East 784.4 ft; th North $32^{\circ}13'$ East 797.5 ft; th North $26^{\circ}54'$ East 657.9 ft; th North $54^{\circ}32'$ East 1252.9 ft; th South $67^{\circ}55'$ East 485.0 ft; th South $69^{\circ}36'$ East 493.1 ft; th North $79^{\circ}43'$ East 764.3 ft; th North $48^{\circ}20'$ East 160.0 ft; th South $79^{\circ}47'$ East 1133.1 ft to East line Section; th South along Section 2462.4 ft to SE corner Section 7; th North $89^{\circ}51'$ West 5187.7 ft along Section line to beginning. Cont. 255 acres.

An undivided one half interest in the following: W $\frac{1}{2}$ NE $\frac{1}{4}$; NE $\frac{1}{4}$ NW $\frac{1}{4}$; Section 34, T 2 N, R 8 E, SLM. Cont. 120 acres. Less 82.95 acres in exception.

An undivided one half interest in the following: Beg. at SW corner Section 8, T 3 N, R 7 E, SLM; th North along Section line 2462.4 ft; th South $79^{\circ}47'$

East 1398 ft; th North 79°27' East 909.9 ft; th North 85°16' East 300.9 ft; th South 42°00' East 1554.4 ft; th South 13°26' East 678.7 ft; th South 53°03' East 770.9 ft; th South 80°39' East 1599.9 ft; th South 72°41' East 309.4 ft to South line section 8; th West along section line 5010.45 ft to beg. Cont. 146.91 acres.

An undivided one half interest in the following: Beg E½NE¼; N½SE¼; SE¼NW¼; NE¼SW¼, Section 26, T 3 N, R 7 E, SLM. Cont. 240 acres.

An undivided one half interest in the following: Beg SE corner SW¼, Section 17, T 3 N, R 7 E, SLM; th North 56°39' West 3163 ft; th South 1640 ft; th East 2640 ft to beg. Cont. 50.55 acres.

An undivided one half interest in the following: Beg 1197 ft South 89°51' East of SW corner Section 18, T 3 N, R 7 E, SLM; th North 1°42' West 681 ft; th North 14°03' East 544.5 ft; th North 41°45' East 597.7 ft; th North 85°01' East 210 ft; th North 60°29' East 86.97 ft; th North 43°29' East 777.3 ft; th North 6°04' East 361.7 ft; th South 89°51' East 2710 ft; th South 2640 ft; th North 89°51' West 4083 ft to beg. Cont. 210.52 acres.

Pursuant to the terms of paragraph FOURTH of decedents' Last Will and Testament to Mary Leah B. Nielson:

All of the clothing and personal effects, household furniture and fixtures of every kind and nature situated in the home at Coalville, Utah, and she may distribute the same among the other children as she sees fit in accordance with wishes as have been discussed with her and entirely at her discretion.

Pursuant to the terms of paragraph FIFTH of decedents' Last Will and Testament to Joseph LaVern Boyer, Lyle E. Boyer, William Leo Boyer, Edison Wilde Boyer, Fay Wilde Boyer and Mary Leah B. Nielson:

All of the rest, residue and remainder of the estate, both personal and real, of every name and nature, wheresoever located, in equal shares to share and share alike.

Also, any other property not now known or discovered, which may belong to said estate.

8. That pursuant to the provisions of the Last Will and Testament of the decedents, the name and residence of each of the heirs of the decedents and share of the estate that each is entitled to (after all costs of probate, claims and expenses) is as follows:

<u>NAME</u>	<u>SHARE OF ESTATE</u>	<u>ADDRESS</u>
Joseph LaVern Boyer	1/6	Coalville, Utah
Lyle E. Boyer	1/6	Coalville, R.D., Utah

William Leo Boyer	1/6	Coalville, R.D., Utah
Edison Wilde Boyer	1/6	Coalville, R.D., Utah
Fay Wilde Boyer	1/6	3579 Porter Avenue Ogden, Utah
Mary Leah B. Nielson	1/6	Roosevelt, Utah

IT IS, THEREFORE, ORDERED, ADJUDGED, and DECREED:

1. That the final account of said Executors be, and the same hereby is, finally settled, allowed and approved.
2. That the property of the estate, as described in paragraph seven above, be, and the same is hereby, distributed to the above named heirs in the manner indicated in paragraphs seven and eight.
3. That the attorney for said Executors be, and he is hereby, allowed the sum of \$4,440.00 for conducting the probate proceedings, and that the Executors be, and are hereby allowed, the statutory commission payable upon the administration of said estate of \$2,123.00.
4. That upon filing of this decree, the said William Leo Boyer and Mary Leah B. Nielson be discharged from their trust.

DATED this 20th day of December, 1974.

BY THE COURT:

George E. Beck
JUDGE

State of Utah, }
County of Summit } ss

BOOK M63 PAGE 299

I, Reed D. Pace, Clerk of the District Court In and for Summit County, State of Utah, do hereby certify that the foregoing is a true and correct copy of the Deed Settling account in the matter of the entitled #1770 as the same appears of record and upon file in my office.

IN WITNESS WHEREOF I have here unto set my hand affix the seal of said Court this 13 day of Jan, 1975

Reed D Pace Clerk
By _____ Deputy Clerk



RECEIVED

NOV 27 1985

DIVISION OF OIL
GAS & MINING

INDEXED: _____
GRANTOR: d
GRANTEE: d
RELEASED: _____
ABSTRACTED: _____
STAMPED: _____

ASSIGNMENT

Entry No. 129769 Book M75
RECORDED 12-10-75 at 4:28M Page 78
REQUEST of Leo J. Cafarelli
BY Wanda Y. Spriggs WANDA Y. SPRIGGS, SUMMIT CO. RECORDER
INDEXED _____ ABSTRACT _____

KNOW ALL MEN BY THESE PRESENTS, THAT:

For and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, the undersigned "Assignors" do hereby sell, assign, transfer, convey and quit-claim unto UTAH COAL & ENERGY, INC., a Nevada Corporation, all of the right, title and interest of Assignors in and to all easements and rights-of-way acquired by Assignors from Joe Lyon, Jr., who in turn acquired said easements and rights-of-way from Robert P. Kunkel and Frances Kunkel, his wife, who in turn acquired said easements and rights-of-way from Coalville Coal Company, who in turn acquired said easements and rights-of-way from Lyle Boyer and Helen Boyer, husband and wife, and William Boyer and Lorene Boyer, husband and wife, by instruments signed by them and purporting to grant easements and rights-of-way over and across the certain property known as the Boyer Ranch in Summit County, Utah, to afford ingress and egress to the Blackhawk Mine in Section 36, Township 3 North, Range 6 East, S.L.B. & M.

This transfer and conveyance is without warranty of the rights conveyed either express or implied.

Executed as of the 7th day of October, 1975.

C. G. Cafarelli
C. G. CAFARELLI

Beth E. Cafarelli
BETH E. CAFARELLI, his wife

STATE OF UTAH)
 : SS.
COUNTY OF SALT LAKE)

On this 7th day of October, 1975, personally appeared before me G. G. CAFARELLI and BETH E. CAFARELLI, his wife, who acknowledged to me that they executed the foregoing instrument.



My Commission Expires: 9/24/78

R. T. Maguire
Notary Public
Residing in Salt Lake City, Utah

BOOK M75 PAGE 78

ANDREW JOHN BRENNAN
ATTORNEY AT LAW
~~XXXXXXXXXXXXXXXXXXXX~~
SALT LAKE CITY, UTAH

REC- 27

NOV 27

DIVISION OF
GAS & MINING

September 15, 1977

Mssrs. Joe Lyon, Jr. and George D. Fehr
Phillips Petroleum Building
Salt Lake City, Utah 84101

Re: Blackhawk Mine, Summit County

Gentlemen:

You have requested an opinion regarding the existence, in fact and in law, of a haulage road or right of way to and from the Blackhawk Mine, situated in the South Half of the NorthEast Quarter and the North Half of the South East Quarter, of Section 36 in Township 3 North, Range 6 East, Salt Lake Base Meridian, to and from a state road along Chalk Creek, which road traverses Section 36 as herein mentioned for location of the mine.

Investigation establishes the permanent existence of a right of way of long duration and extensive use, not only for coal haulage and maintenance of the mine but also for the removal of gravel and ranching.

Additional detail may be obtained; however, the following was ascertained through summary examination of old maps and surveys, copying records in the offices of the Summit County Courthouse at Coalville, Utah, and through conversations with old-time residents and by examination of aerial photographs taken some twenty five years ago and of some more recent photos.

A map "Showing Prominent Exposures of Rock Ledges and Associated Coal Seams in the Weber Coal Field, Summit Co. Utah" compiled and drawn from Surveys made by Horace R. Burritt, Mine Inspector, 10th Field Division, General Land Office, June, 1911, has notes in the North East Half of Section 36, "Boyer Mine coal 7'-0" at dip 12° at South 75°W" and notes in the South half of the Section 36, "N. B. Morby shaft sunk 57 feet through gravel and conglomerate. Cut 6'10" good coal. drifted 100 feet on dipot seam. Coal 8'0" Sandstone Roof Clay floor. Sunk 1879."

In the records of the Recorder of Summit County appears a written copy of Coal Certificate No. 81 issued by the General Land Office which recites:

"Alma Eldridge did on the 12th day of February, 1890, enter and pay for the South half of the NE quarter and the North half of the SE quarter, Section 36, in Township 3 North of Range Six East, embracing 160 acres of land, more or less, as shown in the official survey of said lands returned to the General Land Office by the Surveyor General. The same being Coal Entry No. 81 in the series of said office. **"

In the records of the Recorder of Summit County also appears a written copy of Coal Certificate No. 34 issued by the General Land Office which recites:

"William Boyer did on the 19th day of November, 1891, enter and pay for the North half of the NE quarter of Section 36 in Township 3 North of Range 6 East, embracing 80 acres of land more or less as shown by survey of said land returned to the General Land Office by the Surveyor General. The same being coal entry No. 34 in the series of said office." And the certificates as here noted, each recites the following conditions:

"Now Know Ye, That the United States of America, in consideration of the premises and in conformity with said Act of Congress, have given and granted and by these presents do give and grant unto the said Willaim Boyer (or Alma Eldridge as the case may be) the said tract above described--subject to any accrued water rights for mining, agricultural, manufacturing or other purposes, and also subject to the right of the proprietor of a vein or lode to abstract and remove his ore therefrom should the same be found to penetrate or intersect premises hereby granted, as provided by law."

Entry to the Blackhawk Mine is located in the 160 acres covered by the Coal Entry issued to Eldridge and a few feet of the right of way from the mine to the state road crosses the 80 Acres covered by the Coal Entry issued to Boyer.

The Morby shaft sunk in 1879 preceded the entry made by Eldridge in February of 1890 and the entry made by Boyer in November of 1891. There were undoubtedly additional mines previously worked in the area which would under the Coal Lands Act of 1873 give an individual right of entry upon not to exceed 160 acres of vacant coal lands of the United States, by legal subdivisions.

The Supreme Court of the United States early decided, in Colorado Coal and Iron Co. v. United States (1887) 123 US 307, that the Act of 1873 removed from the operation of the Preemption Act of 1841 and the later Homestead law only those lands upon which were situated "known mines" of coal. (See American Mining Law Vol 1 pg 213) The Supreme Court of the United States concluded in its opinion: "We hold therefore, that to constitute the exemption contemplated by the preemption act under the heads of 'known mines', there should be upon the land ascertained coal deposits of such an extent and value as to make the land more valuable to be worked as a coal mine, under the conditions existing at the time, than for merely agricultural purposes."

The court continued:

"The circumstances that there are on the surface indications of the existence of veins of coal does not constitute a mine... If upon the premises at the time there were not actual 'known mines' capable of being profitably worked for their product, so as to make the land more valuable for mining than for agriculture, a title to them acquired under the preemption act cannot be successfully assailed." (This test so set by the Court was later modified in 1911).

The law and the Supreme Court at the time of the Coal Entries made by Eldridge and Boyer required the existence of a known mine and so it is to be concluded that the predecessor in interest to the present owners relied upon the Blackhawk Mine for qualification and the only right of way for haulage of coal was by use of the way as it appears to-day, with an alignment set for the convenience of all the parties in interest.

Through the mesne conveyances bringing the title to the 80 acres down to its present owners, which will be more particularly discussed, the conveyances uniformly recite: "Subject however to the exceptions, reservations and conditions set forth in the U. S. Patent to

said land also a reservation of coal underlying the surface of any of said land.

Likewise through mesne conveyances the 160 acres originally entered by Eldridge were transferred to J. C. Penney and the Kimbal Investment Company which Penney controlled.

The files of the Recorder of Summit County also show that by Indenture dated May 12, 1930, J. C. Penney and the Kimball Investment Company sold and conveyed the 160 acres to Joseph H. Boyer, and therein reserved to themselves and their successors and assigns "all the oil, gas, coal and minerals in, on or under the surface of said lands and all the rights of ownership therein according to the privileges and customs of the field that may be developed about said land."

Thereafter, Joseph Boyer, by warranty deed dated November 24, 1953, acquired the remaining one-quarter interest in the 80 acres, subject "to any existing right of way, canals, ditches or roads over and across said premises."

It is apparent that the predecessors in title to Joseph Boyer recognized the existence of the right of way.

Residents of the area and people who worked in the mine verify the workings, the formation of tunnels in the mine and the hauling of the coal over the right of way.

Joseph Boyer died March 11, 1967 and his wife, Lois R. Boyer passed away on July 8, 1971. Their joint will was probated in the Fourth Judicial District Court of Summit County, State of Utah in probate case number 1770. During the pendency of the proceedings, two sons, William Leo Boyer and Lyle E. Boyer, managed and operated the Boyer Ranch.

The records of the probate cases in the office of the Summit County Clerk disclose that by Decree of Distribution :

Pursuant to the terms of paragraph (b) of decedents' Last Will and Testament all of Section 36, T 3 N, R 6 E, SLM, together with other properties was distributed to the following as tenants in common:

Joseph LaVern Boyer, Lyle E. Boyer, William Leo Boyer, Edison Wilde Boyer and Faye Wilde Boyer.

Following the description of the properties to be so held as tenants in common, the decree further states:

"Any income to be distributed to William Leo Boyer and Lyle E. Boyer, who have operated said ranch during the pendency of this probate proceeding, subject to their paying all expenses incident to said operation, which cost has far exceeded the income."

William and Lyle Boyer, as operators of the Boyer Ranch made an agreement with the Coalville Coal Company placing certain conditions to be observed in the use of the right of way, including the installation and maintenance of an adequate gate and cattle guard at the entrance to the right of way from the state highway, installation of a three foot culvert to accommodate the irrigation canal located inside the gate, leveling for a lambing shed and maintenance of the fencing. The re-alignment and construction of a bridge was also agreed upon.

Both parties have since used the right of way for ingress and egress to the mine location and operations and the haulage of gravel from the area.

There have been no questions between the interested parties, except discussions as to the best location for the cattle guard, until the demand made by one of the Boyers above named, to-wit, Fay Wilde Boyer, who has been presenting demands for an increased rental for use of the right of way and who asserts that William and Lyle Boyer were not authorized by the court or the other heirs to make any agreement.

Fay W. Boyer may be estopped to deny the agreement made by William and Lyle Boyer since the decree under which he claims title recognized the Boyer Ranch had been under the operation of William and Lyle Boyer or that he had any knowledge of the existence of a right of way so apparent and obvious and which his own interests used, as improved, for gravel haulage.

It would needlessly prolong this writing to relate the state-

ments made by residents of the area and previous workers at the Blackhawk Mine concerning the volume of coal taken from the mine all of which was hauled out over the right of way.

The Coalville Coal Company, as lessees and operators of the property, were in position to work out arrangement with the Boyer Ranch for use of the right of way. The leesees were not authorized by David S. Perry, et al., the owners of the mine, to subject them to any agreement purporting to grant and initiate a right of way already owned and held by the Perrys. Counsel for the owners of the mine would join the present operators in resisting the claims of Fay W. Boyer.

In conclusion, it is to be accepted from the records in the Summit County Courthouse that the Boyers as the surface right owners and Perrys as the owners of the mining rights rely upon a chain of title once held by J. C. Penney and the Kimbal Investment Company.

The law is best stated in the language used by one of the recognized legal texts:

"Where, during the unity of title, an apparently permanent and obvious servitude is imposed on one part of an estate in favor of another part, which servitude is in use at the time of severance and is necessary for the reasonable enjoyment of the other part, on a severance of the ownership a grant of the right to continue such use arises by implication of law."

It is my opinion, as above stated, that the right of way in to the Blackhawk Mine has been well established and has been used by both the owners of the mining rights and the owners of the surface rights for ingress and egress from the property and for haulage of machinery and equipment for mining and ranching and for the removal of coal and gravel.

I would be happy to discuss this matter with you at your convenience.

Yours very truly,


Andrew John Brennan

AJB/ im