0001

STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

355 W. North Temple • 3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

December 20, 1985

Mr. Richard Kopp
11336 High Mesa Drive
Sandy, Utah 84091

Dear Dick:

RE: Blackhawk Mine, INA/043/001, Summit County, Utah

Per our conversation of December 16, enclosed please find the following documents relative to the above-captioned mine.

1. Findings of Fact and Conclusions of Law and Order (Board Hearing of December 5 and 6, 1985).

2. Letter from Kenneth E. May, Division of Oil, Gas and Mining (DOGM), to LaMar Bishop (Mesa) regarding portal sealing at the Blackhawk Mine.

3. Letter from DOGM (Dianne Nielson) to Jack Higgins regarding portal closures, Blackhawk Mine, Summit Minerals, Inc.

4. Letter from DOGM (Lowell P. Braxton) to Jack Higgins regarding status of Blackhawk exploration project.

Dick, I hope this is helpful to you in your continuing review of the Blackhawk Mine. If DOGM can provide any additional information that will aid your filing of a Mining and Reclamation Plan, please advise.

Sincerely,

Lowell P. Braxton

Lowell P. Braxton
Administrator
Mineral Resource Development
and Reclamation Program

btb
Enclosures
0168R-23

Mine file
LPB
Marie Moench
Dick Kopp

LAW OFFICES OF
PARSONS, BEHLE & LATIMER
A PROFESSIONAL CORPORATION
185 SOUTH STATE STREET, SUITE 700
POST OFFICE BOX 11898
SALT LAKE CITY, UTAH 84147-0898
TELEPHONE (801) 532-1234
TELECOPIER (801) 532-1234, EXT. 273

1801 "K" STREET, N.W., SUITE 1109L
WASHINGTON, D.C. 20006
TELEPHONE (202) 659-0862

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DICKSON, ELLIS, PARSONS & McCREA
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JAMES B. LEE
SCOTT M. MATHESON
GORDON L. ROBERTS
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KENT W. WINTERHOLLER
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RANDY L. DRYER
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DAVID W. TUNDERMANN
JAMES M. ELEGANTE
DAVID P. HIRSCHI
VAL R. ANTCZAK
PATRICK J. GARVER
SPENCER E. AUSTIN

C.C. PARSONS
1907-1968

CALVIN A. BEHLE
1947-

OF COUNSEL
GEORGE W. LATIMER
CONSTANCE K. LUNDBERG
†LYNNE D. FINNEY

JOHN B. WILSON
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MICHAEL L. LARSEN
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HAL J. POS
W. MARK GAVRE
†ADMITTED IN CALIFORNIA AND DISTRICT OF COLUMBIA ONLY

RECEIVED
DEC 11 1985
DIVISION OF OIL, GAS & MINING

December 9, 1985

Mr. Lowell 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

Re: Summit Minerals, Inc. -- Coal Exploration or Mining and Reclamation Plan Permit Applications -- Black Hawk Mine in Summit County, Utah

Dear Mr. Braxton:

Mark Moench of the Attorney General's Office has provided me a copy of a letter dated November 26, 1985, from the law offices of Hugh C. Garner & Associates. The letter was in response to your letter of November 5, 1985, to Mr. Jack Higgins, and included certain materials which Summit Minerals claims establishes its right to access across the surface of the land owned, in part, by my client, Joseph LaVerne Boyer. Specifically, it included a copy of a Right-of-Way Agreement of May, 1971; Decree Settling Final Account and Report of Administrator; Assignment of Right-of-Way; and a letter opinion dated September 15, 1977.

It is not clear from the documents submitted where the right-of-way in question purportedly is located. Neither the Right-of-Way Agreement nor other materials contains any property description. We would like to call to your attention, however, that that portion of the Boyer's property that is presently burdened with the recently constructed road to the Black Hawk Mine from the State Highway was not owned by the grantors under the Right-of-Way Agreement at the time that it was executed in May, 1971. Instead, that property was part of the Estates of Joseph H. Boyer and Lois R. Boyer. Accordingly, if the Right-of-Way Agreement sent to you is purported to refer to the now existing road, it was not obtained from the appropriate person. Joseph LaVerne Boyer received the property in question directly from the estate of his father, Joseph H. Boyer. Mr. Boyer has never entered into a right-of-way agreement concerning the mine.

Also included in the subject materials is a legal opinion by one Andrew John Brennan dated September 15, 1977. If you are inclined to give the slightest credence to the analysis and/or conclusions expressed in that opinion, I suggest that you provide a copy of it for the review of the Utah Attorney General's Office. Our criticism of and disagreement with the facts, reasoning and conclusions set forth in the opinion are too numerous to note here. However, we will be pleased to discuss the opinion with the Attorney General's Office in detail at their convenience.

There is no right-of-way of record in Summit County, Utah and no credible legal opinion to the effect that the present owners of the Black Hawk Mine have any road access to the subject property. Although we recognize the fact that the Division of Oil, Gas and Mining is not in the business of adjudicating property disputes, an applicant's showing of access to the mine site must achieve some measure of specificity and credibility before the Division may accept it as "legal access" under the rules.

This is the first time that anyone has recently asserted any rights of access under either of the bases apparently claimed in the attachments to the November 26, 1985, letter. We are contemplating filing an action to quiet title against the applicants if they persist in their claims. We will keep you advised of the progress in that matter.

Finally, if the Division determines that the papers submitted are thought to constitute a valid right of access, please let me know what the basis for and location of that access is. Thank you very much.

Very truly yours,

Patrick J. Garver

PJG/kc

BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

IN AND FOR THE STATE OF UTAH

---ooOoo---

IN THE MATTER OF THE PETITION OF THE DIVISION OF OIL, GAS AND MINING FOR AN ORDER REQUIRING CERTAIN ENFORCEMENT ACTIONS AGAINST JACK HIGGINS; SUMMIT MINERALS, INC.; SUMMIT ENERGY, INC.; UTAH COAL AND ENERGY, INC.; AND BENNETT LEASING CO.; AS OPERATORS OF THE BLACK HAWK MINE IN SUMMIT COUNTY, UTAH	:	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER Docket No. 85-070 Cause No. INA/043/001
IN RE: JACK HIGGINS, CESSATION ORDER C85-1-2-1, BLACK HAWK MINE, SUMMIT COUNTY, UTAH	:	Docket No. 85-055 Cause No. INA/043/001

---ooOoo---

Pursuant to the Petitions of the Division of Oil, Gas and Mining ("Division" or "Petitioner") and Gary Boyer, Stephen Boyer and Joseph LaVerne Boyer (the "Boyers"), these causes came on for hearing before the Board of Oil, Gas & Mining, ("Board"), Department of Natural Resources and Energy, State of Utah, on Thursday, December 5, 1985, at 10 o'clock a.m. in the Board Room of the Division of Oil, Gas & Mining, 355 West North Temple, 3 Triad Center, Suite 301, Salt Lake City, Utah. The following Board members were present and participated in the hearing:

Gregory P. Williams, Chairman
James W. Carter
John M. Garr
E. Steele McIntyre
Charles R. Henderson

The Board was represented by Barbara W. Roberts, Assistant Attorney General for the State of Utah.

Appearances for the Division of Oil, Gas & Mining were made by:

Dr. Dianne R. Nielson, Division Director
Kenneth May, Associate Director, Mining

The Division was represented by Mark C. Moench, Assistant Attorney General for the State of Utah.

Respondents Jack Higgins and Summit Minerals, Inc. ("Summit Minerals") were not present but were represented by A. John Davis and Thomas A. Mitchell of Hugh C. Garner and Associates, 310 South Main, Suite 1400, Salt Lake City, Utah 84101.

Respondents Utah Coal and Energy, Inc. ("Utah Coal") and Summit Energy, Inc. ("Summit Energy") were not present or represented at the hearing.

Respondent Bennett Leasing Co. ("Bennett Leasing") was represented by Mark S. Swan of Corbridge, Baird & Christensen, 215 South State Street, Suite 800, Salt Lake City, Utah 84101.

The Boyers were represented by Patrick J. Garver of Parsons, Behle and Latimer, 185 South State Street, Suite 700, Salt Lake City, Utah 84101.

Testimony was given on behalf of the Division by Joseph C. Helfrich, Randy Harden, and Lowell P. Braxton; Gary Boyer on behalf of the Boyers; and Richard Kopp on behalf of Jack Higgins and Summit Minerals.

NOW, THEREFORE, the Board having fully considered the petitions of the Division and the Boyers and the testimony adduced and the exhibits received in said hearing, and being fully advised in the premises, now makes and enters the following:

FINDINGS OF FACT AND

CONCLUSIONS OF LAW

1. Notice of the time and place for the public hearing was given to all parties according to law and the rules of the Board and no objection to said notice was heard.

2. The Board has jurisdiction over all matters covered by said petitions and over all parties named in the petitions.

3. At the hearing the petition of the Division in Docket No. 85-070 and of the Boyers in Docket No. 85-055 were consolidated for hearing.

4. The Boyers' motions to Intervene and file Boyers Reply to Jack Higgins and Summit Minerals' Response to Petition were granted.

5. The area at issue in the hearing was the Black Hawk Mine located in Section 36, T. 3 N. R. 6 E., Summit County, Utah.

6. The Board issued an order on January 23, 1980, which inter alia required that Utah Coal post a $15,000 performance bond and submit a complete mining and reclamation plan by April 23, 1980, or pay a civil penalty of $4250. Neither the bond nor a complete mining and reclamation plan has been filed with the Division by Utah Coal or any party acting on behalf of Utah Coal.

7. The Respondent Utah Coal knowingly and wilfully violated the Board's order of January 23, 1980, in that Utah Coal has failed to post a bond or file a complete mine plan and thus should be assessed a civil penalty in the amount of $4250, which sum is due immediately from Utah Coal.

8. On August 14, 1985, Cessation Order C85-1-2-1 was issued to Jack Higgins based upon the failure of the operator of the Blackhawk Mine to abate Cessation Order C85-1-1-1 within the time provided therein.

9. On September 17, 1985 the Board issued an Order granting Mr. Higgins' Petition for Temporary Relief from the daily $750.00 penalties imposed by C85-1-2-1 during the period September 9 to September 30, 1985. Although the Division terminated C85-1-2-1, the temporary relief Order required that Mr. Higgins file a reclamation bond in the amount of $100,000.00 on or before September 30, 1985. Mr. Higgins failed to post a bond.

10. Summit Minerals, Summit Energy, Jack Higgins and Utah Coal have failed to comply with the terms of the Board's temporary relief Order dated September 17, 1985, in that they have failed to post the required reclamation bond. Pursuant to § 40-10-20, Utah Code Ann. (1981, as amended), the above-named persons or entities have wilfully and knowingly violated a final order issued by this Board and thus should be jointly and severally assessed a civil penalty of $5,000, which sum is due immediately.

11. The operation of the Black Hawk Mine is in violation of § 40-10-9, Utah Code Ann. (1981, as amended) in that it is and since 1976 has been unpermitted and unbonded and has been engaged in surface coal mining operations

12. Jack Higgins, Summit Minerals, Summit Energy, and Utah Coal each is or has been an owner or operator of the Black Hawk Mine or has otherwise been responsible for and has exercised control over its operations, and has failed to obtain an approved mining and reclamation plan and bond and each of said parties is jointly and severally liable for reclamation of all existing disturbances.

13. Bennett Leasing is or has been an owner or operator of the Black Hawk Mine or has otherwise been responsible for or has exercised control over its operation and is jointly and severally liable for reclamation of all disturbances existing as of the date of Bennett Leasing's sale of the stock of Utah Coal to Summit Minerals.

14. With respect to the matter of a reclamation bond, Jack Higgins, Utah Coal, Summit Minerals, and Summit Energy are responsible for posting a reclamation bond within ten days, such bond to be in the amount of $50,000. Such parties are also responsible for posting an additional bond in the additional amount of $70,300 within 30 days, in order that within 30 days the total amount of the bond will be $120,300. Such bonds must be in a form and from a surety acceptable to the Board.

15. If said parties shall fail to post either or both bonds as ordered, appropriate action for enforcement to insure reclamation of the mine site is necessary. Until such time as acceptable bonds in the amount of $120,300 have been posted, all respondents should, on the basis of a history of past violations of Division and Board orders, be barred from occupancy of the Black Hawk Mine property except for the purposes of maintaining the security of the property and equipment thereon, this provision to be effective to the maximum extent permitted by law.

16. During the 30-day period prior to the posting of the bonds, no respondent or person acting on their behalf should be permitted to occupy the property, except to the extent they may be directed to do so by the Division to accomplish the closing of the portal if the Division deems that action appropriate for safety reasons.

17. At such time as approved sureties in the amount of $120,300 have been posted, Jack Higgins, Utah Coal and Energy, Summit Minerals, and Summit Energy shall be allowed to have such access to and occupancy of the mine area as may be required for the limited purposes of gathering data and information as may be necessary in order to file a mining and reclamation plan with the Division. Those parties should file such a plan within 90 days, and the bond amounts shall be adjusted in accordance with the mining and reclamation plan in accordance with normal practices upon filing of such a plan.

ORDER

IT IS HEREBY ORDERED as follows:

1. Pursuant to § 40-10-20, Utah Code Ann. (1981, as amended) the Respondent Utah Coal is assessed a civil penalty in the amount of $4250 relating to the failure to comply with the Board's Order of January 23, 1980, which sum is due immediately from Utah Coal.

2. Pursuant to § 40-10-20(6), Utah Code Ann. (1981, as amended) Summit Minerals, Summit Energy, Jack Higgins and Utah Coal are jointly and severally assessed a civil penalty of $5,000 relating to the failure to comply with the Board's Order of September 17, 1985, which sum is due immediately.

3. The civil penalties owed hereunder may be recovered in a civil action by the Attorney General of the State of Utah in any appropriate district court of the state, pursuant to § 40-10-20(4), Utah Code Ann. (1981, as amended).

4. Jack Higgins, Summit Minerals, Summit Energy, and Utah Coal are jointly and severally liable for reclamation of all existing disturbances.

5. Bennett Leasing is jointly and severally liable for reclamation of all disturbances existing as of the date of the sale of the stock of Utah Coal from Bennett Leasing to Summit Minerals.

6. Jack Higgins, Utah Coal, Summit Minerals, and Summit Energy shall post a reclamation bond within ten days from December 6, 1985, such bond to be in the amount of $50,000. Such

parties shall post an additional bond in the additional amount of $70,300 within 30 days of December 6, 1985, in order that within 30 days the total amount of the bond will be $120,300. Such bonds shall be in a form and from a surety acceptable to the Board.

7. If said parties shall fail to post either or both bonds as ordered, the Division is directed to take immediate appropriate action for enforcement of this Order. Until such time as acceptable bonds in the amount of $120,300 have been posted, all respondents are barred from occupancy of the Black Hawk Mine property except for the purposes of maintaining the security of the property and equipment thereon, this provision to be effective to the maximum extent permitted by law.

8. During the 30-day period prior to the posting of the bonds, those parties may occupy the property to the extent they may be directed to do so by the Division. We have in mind the closing of the portal if the Division deems that appropriate for safety reasons and if the Division so determines. Our order is not intended to prevent those parties from complying with such a determination.

9. At such time as approved sureties in the amount of $120,300 have been posted, Jack Higgins, Utah Coal, Summit Minerals, and Summit Energy shall be allowed to have such access to and occupancy of the property as may be required for the limited purposes of gathering data and information as may be necessary in order to file a reclamation plan with the Division.

Those parties are ordered to file such a plan within 90 days, and the bond amounts shall be adjusted in accordance with normal practices upoon filing such a ~~claim~~ plan.

10. The effective date of this order shall be December 6, 1985, the concluding date of the hearing in this matter.

11. This is a final order of the Board.

DATED this 13th day of December, 1985.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

By: _____
GREGORY P. WILLIAMS, Chairman

APPROVED AS TO FORM:

_____
PATRICK J. GARVER, ESQ.
Attorney for the Boyers

_____
JOHN DAVIS
Attorney for Jack Higgins and
Summit Minerals, Inc.

_____
MARK SWAN, ESQ.
Attorney for Bennett Leasing Co.

_____
MARK C. MOENCH
Assistant Attorney General
Attorney for the Division

_____
BARBARA W. ROBERTS
Assistant Attorney General
Attorney for the Board

STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

355 W. North Temple • 3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

December 13, 1985

Mr. Lamar Bishop
Subdistrict Manager
Price MSHA Office
P. O. Box 856
Price, Utah 84501

Dear Mr. Bishop:

Attached for your review is a letter written to Mr. Jack Higgins, President of Summit Minerals, Inc. Summit Minerals is the responsible entity at the Blackhawk Mine near Coalville, Utah.

As stated in the attached letter, the Utah Division of Oil, Gas and Mining is requiring Summit Minerals to access the property to facilitate the closure of a portal(s) that may currently be open. Your assistance with an initial inspection and follow-up involvement in this matter will be greatly appreciated and will correct a potentially dangerous situation.

If additional information is required, please contact Lowell Braxton or myself at your convenience.

Sincerely,

Kenneth E. May

Kenneth E. May
Associate Director of Mining

jb
Attachment
cc: D. R. Nielson
L. P. Braxton
0372Q-8

STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

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December 13, 1985

CERTIFIED RETURN RECEIPT REQUESTED
NO. P 592 431 238

Summit Minerals, Inc.
Jack Higgins, President
2783 Holiday Ranch Loop Road
Park City, Utah 84060

Dear Mr. Higgins:

Re: Portal Closures, Blackhawk Mine, Summit Minerals, Inc., INA/043/001, Summit County, Utah

In concert with the Board Order of December 6, 1985, the Division of Oil, Gas and Mining hereby authorizes you to access the Blackhawk Mine site for the purpose of closing any open mine portal(s) that may exist. This authorization does not give the operator permission to conduct any other site activity unless approved by the Division. Since the mine has been inactive for more than 90 days, and it is unlikely that the operator will secure a mine reclamation permit in the near future, the Division requires that the method of closure shall be in accordance with 30 CFR Part 75.1711 and Part 75.1711-2.

The operator shall notify the Mine Safety and Health Administration ("MSHA") prior to initiating closure (Lamar Bishop - 637-3052) and shall obtain from MSHA approval of the method in which the portal(s) are to be closed. The Division further requires that MSHA inspect the Blackhawk Mine both pre- and post-closure of the mine openings.

The operator shall notify MSHA within one working day of receipt of this letter as to their intent to seal the mine openings at the Blackhawk Mine and to request that MSHA inspect the mine site as soon as practicable so that closure of the openings may occur in a timely manner.

The operator shall then contact the Division (Kenneth May or Lowell Braxton) by phone, or in person, within five working days of receipt of this letter to report the outcome of the discussion with MSHA concerning the request for portal closure and inspection of the Blackhawk Mine.

The Division shall then determine a schedule for the operator to follow for closure of the mine openings. At a minimum, the operator shall submit to the Division copies of correspondence concerning the closure of the mine openings--in particular--the method proposed and approved for the closure of the mine openings, preinspection reports by MSHA, and any other concerns, conditions, or violations observed or issued by MSHA during the inspection of the Blackhawk Mine.

Best regards,

Dianne R. Nielson

Dianne R. Nielson
Director

JRH:jb
cc: Jack Higgins
Summit Energy, Inc.
Utah Coal & Energy, Inc.
Mark Moench
Ken May
Lowell Braxton
Randy Harden
Joe Helfrich
1010R-40-41

STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

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December 13, 1985

CERTIFIED RETURN RECEIPT REQUESTED
NO. P 592 431 238

Summit Minerals, Inc.
Jack Higgins, President
2783 Holiday Ranch Loop Road
Park City, Utah 84060

Dear Mr. Higgins:

Re: Portal Closures, Blackhawk Mine, Summit Minerals, Inc., INA/043/001, Summit County, Utah

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Best regards,

Dianne R. Nielson

Dianne R. Nielson
Director

JRH:jb
cc: Jack Higgins
Summit Energy, Inc.
Utah Coal & Energy, Inc.
Mark Moench
Ken May
Lowell Braxton
Randy Harden
Joe Helfrich
1010R-40-41

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December 11, 1985

CERTIFIED RETURN RECEIPT REQUESTED
(P402 457 276)

Mr. Jack Higgins, President
Summit Minerals, Inc.
2783 Holiday Ranch Loop Road
Park City, Utah 84060

Dear Mr. Higgins:

RE: Blackhawk Exploration Project, CEP/043/004, Summit County, Utah

The Division has reviewed the information submitted by Summit Minerals and their consultants November 20 and 27, 1985 for the Blackhawk project in Summit County, Utah. The November 20, 1985 submittal of the hydrology plans and the November 27, 1985 submittal of the right-of-entry information were given a preliminary review. Based on the review of the information submitted and the existing coal exploration application, the Division provides the following comments:

1. The right-of-entry information adequately demonstrates Summit Minerals' right to access the surface between the limits of the lease boundaries and the highway.

2. The hydrology plans are deficient in the following areas:

   A. The plans are certified only for the hydrology and hydraulics. There is no certification of the embankment structure as required by UMC 817.46(r).

   B. The crest width of the embankment is indicated to be five feet. According to regulation UMC 817.46(l), the top width must be at least 7.9 feet.

3. The plans must be submitted, as required in the Division's September 23, 1985 letter, which address:

A. the reclamation of the proposed exploration activities, in the event that a full mining operation is not practical;

B. the nature and extent of underground exploration operations and the volume of coal which is to be extracted as a result of these operations;

C. correction of the contradictions between the two submissions in the exploration application.

4. The Division will not consider approval of the exploration permit until a Mining and Reclamation Plan (MRP) and surety is in place covering the existing disturbance. Any additional disturbance resulting from the proposed exploration operation must be addressed by adequate reclamation plans and bonds.

The Division will suspend review of the coal exploration permit application for the Blackhawk project because the applicant has failed to provide sufficient and complete information by the November 29, 1985 deadline, and because adequate reclamation plans and bonds for disturbed areas are lacking. When these conditions are met, and upon your request, review of the application will recommence upon receipt of information addressing all deficiencies outlined above.

If you should have any questions regarding the required information for the exploration permit, please call me or Tom Suchoski of the Division. If you have any questions pertaining to the temporary suspension of the exploration permit review, please call me.

Sincerely,

Lowell P. Braxton
Administrator
Mineral Resource Development
and Reclamation Program

TJS/btb
cc: Allen Klein
John Davis
Mark Moench
Ken May
Wayne Hedberg
0031R-84 & 85