

Diana

Speed Message

Date 10-13-86

From

Jo

Subject

Mark is reviewing the attached document and will meet w/ me on Wed. discuss his findings.

Signed

Jo

0006

file-min

cc Lowry BRAXTON
- Diane Nielson
- Ken
Telephone (801) 359-2928 11-12-86

Law Offices of

C. Van Drunen

Suite 800 Boston Building
Salt Lake City, Utah 84111

RECEIVED
NOV 06 1986

DIVISION OF
OIL, GAS & MINING

November 5, 1986

Mr. Ken May
Assistant Director
Division of Oil, Gas & Mining
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

RE: SUMMIT MINERALS, INC. - No. 1 Mine INA/043/001, Summit
County, Utah

Dear Mr. May:

I have been asked to comment on the right of entry and your letter dated October 30, 1986, addressed to Ms. Barbara Filas.

Enclosed herewith please find what we consider to be adequate documentation giving Summit Minerals, Inc., a right of entry to their coal mine. In the above referenced letter you mentioned the lack of complete concurrence on the part of the surface owner that said documentation constitute an uncontested right of access. This lack of concurrence was communicated to the Division in a letter dated December 9, 1985, on behalf of the Boyers through their counsel, Ed Garver. In view of the past record of the Boyers in this matter, this lack of concurrence is understandable.

Your attention is invited to UMC 782-15 Right of Entry and Operation Information, wherein a written agreement between the surface owner and mine operator is not essential when other avenues are open to the mine owner. In any event, it is recommended that the matter be submitted to the Attorney General for his opinion rather than accede to the wishes and demands of the surface owner.

In addition, your attention is invited to Utah Code Annotated, 1953, 78-34-1 which confers on the mine operator the right of condemnation through eminent domain. This statutory power seems to be absolute.

Mr. Ken May
November 4, 1986
Page 2

It appears that several approaches to obtaining a right of way, if one does not exist, are available to Summit Minerals, Inc., and it would appear to the undersigned that a written concurrence by the surface owner seems to overstate their importance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "C. Van Drunen".

C. VAN DRUNEN
Attorney at Law

CVD/cn
Enclosures

cc: Mr. Mark Moench

ANDREW JOHN BRENNAN

ATTORNEY AT LAW

~~XXXXXXXXXXXXXXXXXXXX~~

SALT LAKE CITY, UTAH

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, "BoyerMine 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 160₄ 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 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 Eldrige 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 Josph 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 existance 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.

Josph 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 Judcial 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.

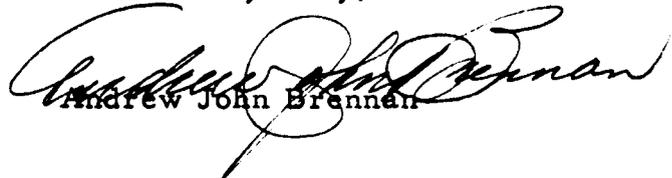
The law is best stated in the language used by one of the recognized legal texts:

"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

Original
File
DPA
JTB
JCH

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JAMES B. LEE
SCOTT M. MATHESON
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TONI MARIE SUTLIFF

August 26, 1986

Mr. Kenneth May
State of Utah Natural Resources
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180

RECEIVED
AUG 27 1986

**DIVISION OF
OIL, GAS & MINING**

Re: Blackhawk Mine

Dear Ken:

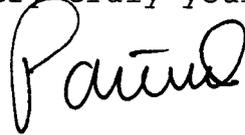
I have been advised by my clients, Tom Boyer and Gary Boyer, that there has been additional new activity at the Blackhawk Mine site during the past week. It has apparently included the movement of a fair amount of sand and gravel and topsoil with earthmoving equipment, as well as the deposit of quite a bit of such material in Chalk Creek.

It was my understanding that no activity of this kind is permitted under the terms of the various orders applicable to the Blackhawk Mine and under Utah law generally. Please consider this to be a formal request for the Division to investigate whether this activity has occurred, and whether it is in violation of state laws and regulations and the terms of the various orders and directives of your office to the following parties: Summit Minerals, Summit Energy, Utah Coal & Energy, Jack Higgins and Bennett Leasing Company. Please also consider it as a request to take appropriate enforcement action to remedy any violation that may have occurred. In addition, in the event that you determine that a violation of the Board's order has occurred, please treat this as a request for a referral to the Criminal Division of the Attorney General's Office under Section 40-10-20(5).

Mr. Kenneth May
Augustu 26, 1986
Page Two

Please contact me at your earliest convenience to let me know what action is being taken in connection with this request. Thank you very much.

Very truly yours,

A handwritten signature in cursive script that reads "Patrick".

Patrick J. Garver

PJG/kc

cc: Joe Helfrich
Tom Boyer
Gary Boyer
Mark Moench, Esq.



January 23, 1986

Dear :

Re: Determination of Completeness, Summit Minerals Inc., Summit Minerals #1, (Blackhawk Mine), INA/043/001, Folder No. 2 and 6, Summit County, Utah

The Utah Division of Oil, Gas and Mining (Division) has completed a review of the Reclamation Plan (RP) for the Blackhawk Mine. The Division has determined the plan to be apparently complete. In compliance with Section UMC 786.11(b) and (c) of the Utah Coal Mining Reclamation Act (UMC, Section 40-10-1 et seq), notice is hereby given to all appropriate agencies having a jurisdiction over or an interest in the area of the operations that a complete plan is available for public review.

Summit Minerals Inc. is proposing to reclaim approximately 12.6 acres of land previously disturbed by coal mining activities within a permit boundary encompassing 14.4 acres of privately owned surface approximately 11 miles east of Coalville, Utah on Chalk Creek Road. The permit area is located on the Upton, Utah U. S. Geological Survey 7.5 minute quadrangle map.

The following areas will comprise the reclamation permit area if the RP is approved:

Township 3 North, Range 6 East, SLBM

Section 36: SE 1/4 NE 1/4

The Division of Oil, Gas and Mining will now prepare a Technical Analysis (TA) to determine whether the plan meets all the criteria of the Permanent Program Performance Standards according to the requirements of UCA, Section 40-10-1 et seq.

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INA/043/001
January 23, 1986

Upon completion of the TA for said plan, a decision will be made as to approval or disapproval of the permit application. No decision will be taken by the Director for a minimum period of 30 days after submission of this Notice of Availability to the appropriate agencies. This plan is available for public review at: Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah 84180-1203.

Comments on the RP may be addressed to the Director of this Office:

Dr. Dianne Nielson, Director
Division of Oil, Gas and Mining
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
Attention: Mr. Lowell P. Braxton

For further information, please contact: Mr. Lowell P. Braxton, Administrator, Mineral Resource Development and Reclamation Program; or Ms. Susan C. Linner, Permit Supervisor/Reclamation Biologist at the above address.

Sincerely,



L. P. Braxton
Administrator
Mineral Resource Development
and Reclamation Program

jvb
cc: S. Linner
R. Harden
0028R-58

Mr. William H. Geer, Director
Division of Wildlife Resources
1596 West North Temple
Salt Lake City, Utah 84116 Mr. Geer_

Mr. Dale Parker, Assistant Director
Utah Department of Health
Division of Environmental Health
P. O. Box 16700
Salt Lake City, Utah 84116-0700 Mr. Parker_

Mr. Max J. Evans
State Historic Preservation Officer
Utah State Historical Society
300 Rio Grande
Salt Lake City, Utah 84101 Mr. Evans_

Mr. Robert L. Morgan
State Engineer
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Mr. Ralph Miles, Director
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Western Technical Center
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