

Karmen King

To: Oswald, Robert
Cc: Ken Orvis
Subject: FW: Upper Mtn Top permit - USFS Road Access - P-2011-003
Attachments: upper_mtn_top_operating_plan.docx; The mining company_rd_permit.docx

Bob – Hello again!

I wanted to be sure you had copies of the completed USFS Road access permit for the UPPER Mountain Top. I'm sending physical signed copies to you in the mail.

Let me know if you have questions, and thanks much.

Karmen

From: Mauch, Liz -FS [mailto:lmauch@fs.fed.us]
Sent: Thursday, July 12, 2012 3:55 PM
To: Karmen King
Cc: Mauch, Liz -FS
Subject: Upper Mtn Top permit

RECEIVED
AUG 02 2012
Durango Field Office
Division of Reclamation,
Mining and Safety

Hello Karmen, I took some time this afternoon to look over the file on Upper Mtn Top. It looks like where we left off, was the company planned to begin exploration activities this year.

I had prepared a Forest Road SUP last year, with an expiration date of 12/31/2013. It would be good to have the expiration date coincide with expiration of the state –approved NOI, so please advise.

I have attached the permit we prepared last year, along with the Operating Plan and a map. Please review them and let me know if there are any changes to the description on the first page of the permit, and concerning the expiration date.

We will make any changes and send a bill for the annual permit fee and one time cost recovery fee, as we had planned to do last year.

I will be out of the office Friday, and in the field most of Monday, although I should return by late afternoon on Monday. I will have some office days next week as well.

Thanks Karmen, Liz

*Liz Mauch, Lands and Minerals Staff
Ouray Ranger District
2505 S Townsend, Montrose, CO 81401
970-240-5405 lmauch@fs.fed.us*

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Auth ID: OUR501
Contact ID: THE_MINING_COMPANY
Expiration Date: 12/31/2014
Use Code: 753

RECEIVED
AUG 02 2012
Durango Field Office
Division of Reclamation,
Mining and Safety

FS-2700-4b (10/09)
OMB No. 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE**

**FOREST ROAD SPECIAL USE PERMIT
AUTHORITY:
FEDERAL LAND POLICY AND MANAGEMENT ACT OF OCTOBER 21, 1976**

The Mining Company of 21599 U.S. 550, RIDGWAY, CO 81432 (hereafter called the holder) is hereby authorized to use the following described National Forest Development Road within the Grand Mesa, Uncompahgre, and Gunnison National Forests National Forest for the following purposes:

Use of NFSR 853.1b (Beginning at Camp Bird Mine) and 853.1c (Governor Basin Rd.) to access Upper Mountain Top Mine and haul ore. Approximately 800 tons of ore may be hauled over life of permit via pick up trucks. Season of use is approximately June 15 to September 15, 2012-2014.

ROW on NFSR 853.1b = 20ft. x 4000ft.

ROW on NFSR 853.1c = 10ft. x 6400ft.

The road covered by this permit is located in the County of Ouray, State of Colorado, and is shown on the attached map and identified as follows: Sec. 16, 17, 20, 21, 22, & 23 of T. 43 N., R. 8 W., NEW MEXICO PRINCIPAL MERIDIAN,

This permit authorizes use of approximately 1.96 miles of road as shown on Exhibit A.

This permit is made subject to the following terms, provisions, and conditions:

1. This permit is subject to all existing easements and valid rights existing on this date.
2. Holder shall comply with applicable Federal or State law and shall comply with State standards for public health and safety, environmental protection, and siting construction, operation, and maintenance if those standards are more stringent than applicable Federal standards.
3. The holder shall cut no timber except as authorized by construction stipulations or maintenance agreements.
4. Holder shall pay the United States for all injury, loss, or damage, including fire suppression costs, in accordance with Federal and State laws and regulations.
5. Holder shall indemnify the United States for any and all injury, loss, or damage, including fire suppression costs the United States may suffer as a result of claims, demands, losses, or judgments caused by the holder's use or occupancy under this permit.
6. Holder shall pay annually in advance a sum determined by the Forest Service to be the fair market value of the use authorized by this permit. The initial payment is set at \$ 158.81 for the remainder of the calendar year. Payments for each subsequent calendar year shall be the adjusted amount using the Implicit Price Deflator-Gross National Product index (IPD-GNP), or other factor selected by the Forest Service, to reflect more nearly the current fair market value of the use. At intervals to be determined by certain changes in the indexes used to establish the linear rights-of-way fee schedule, the fee shall be reviewed and adjusted as necessary to assure that it is commensurate with the value of the rights and privileges authorized. In addition to the annual payment, the holder shall pay its proportionate share of road costs prior to using the road for commercial use. Failure of the holder to pay the annual payment, late charges, or other fees or charges shall cause the permit to terminate.

7. 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.)

8. Holder shall pay the Forest Service for its share of maintenance cost or perform maintenance, as determined by the Forest Service for all commercial use of the road. The maintenance obligation of the holder shall be proportionate to total use and commensurate with its use. Any maintenance to be performed by the holder shall be authorized by and shall be performed in accordance with an approved maintenance plan. In the event the road requires maintenance, restoration, or reconstruction work to accommodate the holder's needs, the Forest Service shall authorize the work required in the same manner as provided herein for maintenance or in clause 10 for reconstruction. The holder shall perform such work at its own expense.

9. The exercise of the use permitted shall be subordinate to any easement on said road subsequently granted by the United States to a public road agency for operation as a public highway.

10. Any construction or reconstruction of the road shall be in accordance with plans, specifications, and written stipulations approved by the Forest Service prior to beginning such construction or reconstruction.

11. The United States shall have unrestricted use of the road and right-of-way for all purposes deemed necessary or desirable in connection with the protection, administration, management, and utilization of Federal

lands or resources, and it shall have the right alone to extend rights and privileges for use of the right-of-way and road thereon to States and local subdivisions thereof and to other users including members of the public, except users of land or resources owned or controlled by the holder. The Forest Service shall control such use to avoid unreasonable interference with use of the road by the holder.

12. The Forest Service may relocate the road to the extent necessary to accommodate the management needs of the National Forests.

13. This permit may be terminated or suspended upon breach of any of the conditions herein, or revoked at the discretion of the Regional Forester.

14. Unless sooner terminated in accordance with the provisions of the permit, or revoked by the Regional Forester, this permit shall expire and terminate on 12/31/2013. The permit shall not be reissued.

15. 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.

16. 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 condition of this permit.

17. 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.

18. 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.

19. 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.

20. Assignability. This authorization is not assignable or transferable. If Holder, through death, voluntary transfer, enforcement of contract, foreclosure, or other valid legal proceeding shall cease to be owner of the above described real property accessed by the authorized road, this authorization shall terminate.

21. 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.

22. Operation and Maintenance Plan (R2-C102). An Operation and Maintenance Plan, described as Exhibit B, is attached hereto and made a part hereof.

23. 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.

24. Disputes (X96). Appeal of any provisions of this authorization or any requirements thereof shall be subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto.

In Witness Whereof, the parties hereto have caused this permit to be duly executed.

Holder:

USDA - Forest Service:

By: _____
The Mining Company

By: _____
Auth. Officer: Tamera Randall-Parker
Ouray District Ranger

Date: _____

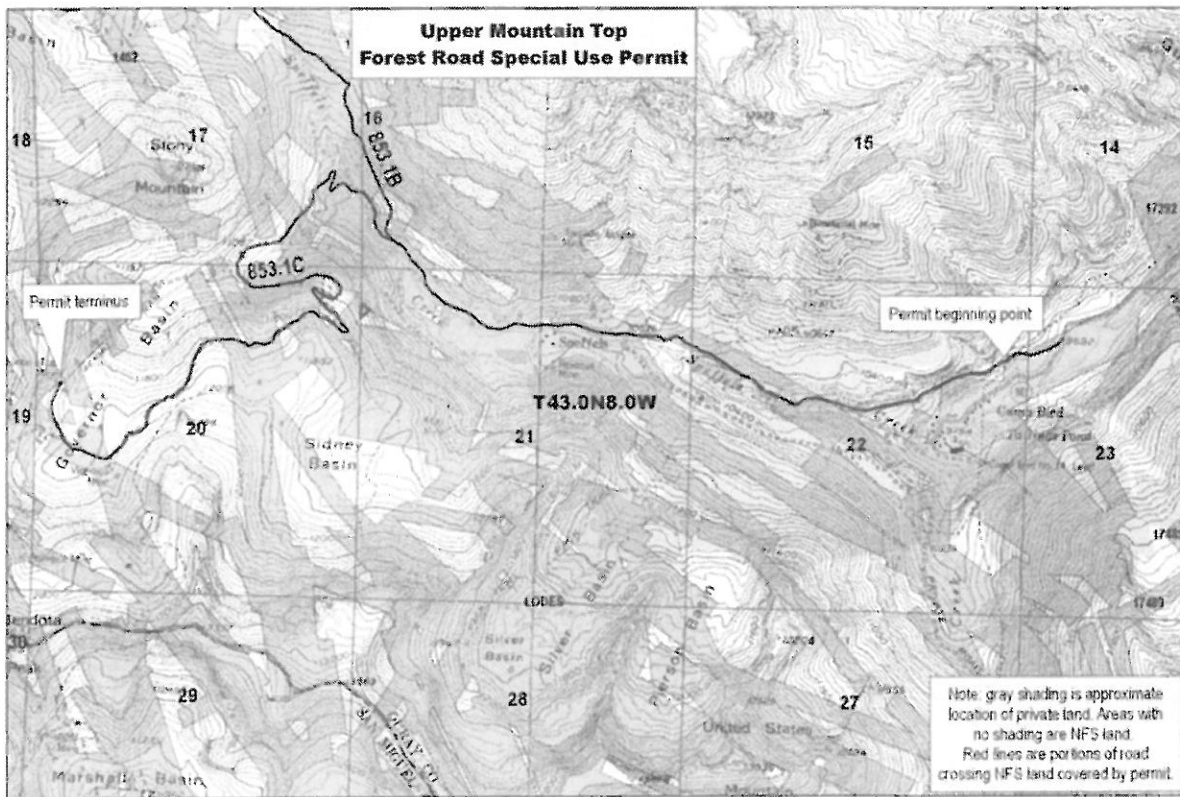
Date: _____

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not 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. The time required to complete this information collection is estimated to average one (1) hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

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.



0 0.125 0.25 0.5 Miles



1 March 8/8 2011

Exhibit B.

The Mining Company Operating Plan

Forest Road Special Use Permit OUR501

Goal: to protect the Governor Basin road surface from degradation caused by the permitted vehicular use, and to protect adjacent resources (vegetation, drainages and adjacent ground) from degradation caused by permitted road use or associated road maintenance activities.

1. Notify Ouray District Minerals administrator at 970-240-5300 at least 48 hours in advance of project start up and within 48 hours of end of season shut down.
2. Holder shall maintain the existing drainage dips and ditches so as to promote water drainage off the road surface and to minimize ponding of water on the road. Minimal maintenance to achieve these goals is preferred in order to protect soil resources.
3. Avoid undercutting backslopes.
4. Avoid sidecasting material and forming berms along the side of the road.
5. Waste material from the road such as from slides or sloughs shall not be deposited in streams or in drainages.
6. Concentrations of limbs or other vegetation, rockfall, or sloughed material that blocks water passage from the road surface or ditches, shall be removed and scattered off the roadway.
7. Remove soil contaminated by lubricants, diesel fuel or gasoline from NFS land and properly dispose of at an approved disposal facility.
8. Snowplowing is not authorized except for spot removal of snowdrifts.
9. Road widening or road improvements are not authorized.
10. This Operating Plan may be amended as needed. Contact the Ouray Ranger District Minerals Program staff at 970-240-5300.



The Mining Company

7-10-12

Date

Ouray District Ranger

Date

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In Witness Whereof, the parties hereto have caused this permit to be duly executed.

Holder:

USDA - Forest Service:

By:

The Mining Company

By:

Auth. Officer: Tamera Randall-Parker
Ouray District Ranger

Date:

7-18-12

Date:

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not 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. The time required to complete this information collection is estimated to average one (1) hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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In Witness Whereof, the parties hereto have caused this permit to be duly executed.

Holder:

USDA - Forest Service:

By: [Signature]
The Mining Company

By: [Signature]
Auth. Officer: Tamera Randall-Parker
Ouray District Ranger

Date: 7-18-12

Date: 7/18/12

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not 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. The time required to complete this information collection is estimated to average one (1) hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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The Mining Company Operating Plan


Forest Road Special Use Permit OUR501

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3. Avoid undercutting backslopes.
4. Avoid sidecasting material and forming berms along the side of the road.
5. Waste material from the road such as from slides or sloughs shall not be deposited in streams or in drainages.
6. Concentrations of limbs or other vegetation, rockfall, or sloughed material that blocks water passage from the road surface or ditches, shall be removed and scattered off the roadway.
7. Remove soil contaminated by lubricants, diesel fuel or gasoline from NFS land and properly dispose of at an approved disposal facility.
8. Snowplowing is not authorized except for spot removal of snowdrifts.
9. Road widening or road improvements are not authorized.
10. This Operating Plan may be amended as needed. Contact the Ouray Ranger District Minerals Program staff at 970-240-5300.


The Mining Company

7-15-12
Date


Ouray District Ranger

7/18/12
Date

Karmen King

From: McHugh, Alexia -FS [ammchugh@fs.fed.us]
Sent: Thursday, July 19, 2012 7:06 AM
To: kking@aquatox.us
Cc: Mauch, Liz -FS
Subject: The Mining Company
Attachments: Karmen King.pdf

Dear Ms. King

Per instructions from Liz Mauch, attached please find the signature pages for the above referenced account. If you need anything else please let us know.

Thank You

Alexia M. McHugh
USDA Forest Service
Ouray Ranger District
2505 S Townsend
Montrose, CO 81401
(970) 240-5403

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