

# ADDENDUM 303.o-5

SPRING CREEK COAL COMPANY

RAILROAD SPUR RIGHT OF WAY GRANT

FROM

BUREAU OF LAND MANAGEMENT

Spring Creek

**SUMMARY - RIGHT OF WAY GRANT**  
**BLM**  
**M-42398**

Township 8 South Range 40 East, M.P.M.  
Section 34: SESW

**Big Horn County, Montana**

Township 9 South Range 40 East, M.P.M.  
Section 3: NWSE

Grantor: USA - BLM

Grantee: Spring Creek Coal Company

Dated: 6-1-1979

Term: 30 years Expires: 5-31-2009  
Renewable

Grant: ...construct, operate, maintain, and terminate single track railroad spurline

Rental: \$790/30 year term

Stipulations: 1-18



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
222 North 32nd Street  
P.O. Box 30157  
Billings, Montana 59107

IN REPLY REFER TO:

Serial No. of  
Grant:

M 42398 (943.13)

June 1, 1979

## DECISION

Spring Creek Coal Company  
529 S.W. Third Avenue  
Portland, OR 97204

Right of way granted

### Details of Grant

Map designations showing the location and dimensions of grant: sheets 1 and 2 of CPR-2-IM-9  
250' width

Date filed: November 24, 1978

Permitted use by grantee: construct, operate, maintain, and terminate single track  
railroad spurline

Authority for grant: Title V, Act of October 21, 1976 (43 U.S.C. 1761)

Applicable regulations: 43 CFR 2800

Circular(s) No.: 2384

Date of Grant: June 1, 1979

Expiration date of grant: May 31, 2009

Rental: \$790/30 years. \$25 minimum advanced rental paid.  
Lands

Involved: T. 8 S., R. 40 E., P.M.M.

T. 8 S., R. 40 E., P.M.M.

*per phone con Shirley Hafner  
9/11/79 BLM Billings 6/11/79 et*

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
Billings, Montana 59101

STIPULATIONS FOR RIGHT OF WAY GRANT UNDER 43 CFR 2800

Serial No. M 42398

(REQUIREMENTS SHOWN IN CAPITALIZED PRINT ARE SPECIFIED BY REGULATION OF THE SECRETARY OF THE INTERIOR - 43 CFR 2801.1-5.  
Others are specified by this office, pursuant to authority granted by the Secretary of the Interior)

This permit is issued subject to the following conditions:

- (1) To address all matters relating to these stipulations to:  
**District Manager, Bureau of Land Management  
P. O. Box 940, Miles City, MT 59301**

who is the authorized representative of the Secretary of the Interior, or such other representative as may from time to time be designated, provided that such designation shall be in writing and delivered to the permittee or his agent.

- (2) If the permittee constructs any camp on the land, such camp shall be located at a place approved by the authorized representative of the Secretary of the Interior, and such representative shall have authority to require that such camp be kept in a neat and sanitary condition.
- (A) TO COMPLY WITH STATE AND FEDERAL LAWS APPLICABLE TO THE PROJECT FOR WHICH THE RIGHT-OF-WAY IS APPROVED, AND TO THE LANDS WHICH ARE INCLUDED IN THE RIGHT-OF-WAY, AND LAWFUL EXISTING REGULATIONS THEREUNDER.
- (B) TO CLEAR AND KEEP CLEAR THE LANDS WITHIN THE RIGHT-OF-WAY TO THE EXTENT AND IN THE MANNER DIRECTED BY THE SUPERINTENDENT IN CHARGE; AND TO DISPOSE OF ALL VEGETATIVE AND OTHER MATERIAL CUT, UPROOTED, OR OTHERWISE ACCUMULATED DURING THE CONSTRUCTION AND MAINTENANCE OF THE PROJECT IN SUCH MANNER AS TO DECREASE THE FIRE HAZARD AND ALSO IN ACCORDANCE WITH SUCH INSTRUCTIONS AS THE SUPERINTENDENT IN CHARGE MAY SPECIFY.
- (C) TO TAKE SUCH SOIL AND RESOURCE CONSERVATION AND PROTECTION MEASURES, INCLUDING WEED CONTROL, ON THE LAND COVERED BY THE RIGHT-OF-WAY AS THE SUPERINTENDENT IN CHARGE OF SUCH LANDS MAY REQUEST.
- (1) To reseed the entire disturbed soil area, if any, on the lands within the right of way to ~~see special stipulations~~. Seeding is to be done by seed drill, preferably disked. The seed is to have a minimum of 90 to 95 percent purity and 90 percent germination. The seeding is to be done at a depth of approximately one inch. The seeding is to be accomplished during the months of September or October or April or May, immediately following construction on the right of way. The seeding is to be at the rate of ~~see special stipulations~~ viable seed per acre. In the event the reseeding is deemed a failure by the local District Manager, during a period of one to three years after the seed is drilled in the ground, the permittee shall reseed again the entire area of disturbed soil under the same standards and rates as specified above.
- (2) In the location, design, construction and maintenance of all authorized works, buildings, plants, waterways, roads, telegraph or telephone lines, pipelines, reservoirs, tanks, pumping stations, or other structures or clearances, the permittee shall do all things reasonably necessary to prevent or reduce to the fullest extent scarring and erosion of the land, pollution of the water resources and any damage to the watershed. Where construction, operation, or maintenance of any of the facilities on or connected with this permit causes damage to the watershed or pollution of the water resources, the permittee shall repair such damage and shall take such corrective measures to prevent further pollution or damage to the watershed as are deemed necessary by the authorized representative of the Secretary of the Interior.
- (D) TO DO EVERYTHING REASONABLY WITHIN HIS POWER, BOTH INDEPENDENTLY AND ON REQUEST OF ANY DULY AUTHORIZED REPRESENTATIVE OF THE UNITED STATES, TO PREVENT AND SUPPRESS FIRES ON OR NEAR THE LANDS TO BE OCCUPIED UNDER THE RIGHT-OF-WAY, INCLUDING MAKING AVAILABLE SUCH CONSTRUCTION AND MAINTENANCE FORCES AS MAY BE REASONABLY OBTAINABLE FOR THE SUPPRESSION OF SUCH FIRES.
- (1) To do all in his power to prevent and suppress forest, brush, or grass fires on the permitted land and in its vicinity, and to require his employees, contractors, subcontractors, and employees of contractors and subcontractors to do likewise. Unless prevented by circumstances over which he has no control, the permittee shall place his employees, contractors, subcontractors, and employees of contractors and subcontractors employed on the permitted land at the disposal of any authorized officer of the Department of the Interior for the purpose of fighting forest, brush, or grass fires on or originating on the permitted lands or on adjacent areas or caused by the negligence of the permittee or his employees, contractors, subcontractors and employees of contractors and subcontractors, with the understanding that payment for such services shall be made at rates to be determined by the authorized representative of the Secretary of the Interior, which rates shall not be less than the current rates of pay prevailing in the vicinity for services of a similar character: Provided, that if the permittee, his employees, contractors, subcontractors, or employees of contractors and subcontractors, caused or could have prevented the origin or spread of said fire or fires, no payment shall be made for services so rendered.
- (2) During periods of serious fire danger to forest, brush, or grass, as may be specified by the authorized representative of the Secretary of the Interior, the permittee shall prohibit smoking and the building of camp and lunch fires by his employees, contractors, subcontractors, and employees of contractors and subcontractors within the permitted area except at established camps, and shall enforce this prohibition by all means within his power: Provided, that the authorized representative of the Secretary of the Interior may designate safe places where, after all inflammable materials have been cleared away.

## SPECIAL STIPULATIONS

M 42398

1. This right-of-way may be renewed. If renewed, the right-of-way will be subject to regulations existing at the time of renewal and such other terms and conditions deemed necessary to protect the public interest.
2. There is hereby reserved to the Secretary of the Interior, or his lawful delegate, the right to grant additional rights-of-way or permits for compatible uses on, over, under, or adjacent to the land involved in this grant.
3. The Grantee will immediately bring to the attention of the BLM District Manager any and all antiquities or other values of cultural or scientific interest, including but not limited to, historic and prehistoric ruins, fossils, and artifacts discovered as a result of his operations, and shall leave such discoveries intact until told to proceed by the District Manager.
4. The Montana Department of Natural Resources and Conservation holds Reservoir Right-of-Way Bil 037880 on portions of the subject lands and reserves the right to flood its land without being held liable for any damages; all structures be removed if deemed necessary for the purpose of increased storage of the Tongue River Reservoir. This type of action might be a result of raising the Tongue River Dam or constructing a new dam; all structures will be removed upon the completion of the mining operations or upon the deterioration or nonusefulness of the structures. The applicant will be required to adhere to any additional stipulations identified by the Montana Department of Natural Resources and Conservation as it relates to the lands under Reservoir Right-of-Way Bil 037880.
5. The U. S. Geological Survey withdrew portions of the subject lands for Reservoir-site Reserve No. 20, pursuant to the Act of June 25, 1910, and required the following stipulation be placed in right-of-way grants as it related to a portion of the subject lands: "This action shall be subject to the retention of prior rights for reservoir development, and subject to the condition that in the event the said land is required for such purposes, any improvements or structures placed thereon which shall be found to interfere with such development shall be removed or relocated as may be necessary to eliminate interference with reservoir development at no cost to the United States, its present permittees or licensees."
6. The permittee will ensure that the right-of-way be located and designed to prevent soil erosion on slopes on cut and fill areas, and place rock gabions or concrete pads or both below culverts to ensure there is no channel or headcutting below culverts.
7. Any facility relocations identified in the application are to be relocated, constructed and maintained in such a manner as to prevent erosion both within the right-of-way area and on adjacent public lands. The grantee will cause a minimum of vegetative or soil disturbance consistent with practical construction and maintenance operations, and will smooth all disturbed areas to conform as closely as practical to the adjacent terrain. Adequate water drainage will be provided for the rights-of-way in order to minimize erosion.
8. The grant authorizes removal of materials immediately adjacent to the right-of-way (railroad bed area) for construction purposes only, and for use on public land. This authorization will not exceed the right-of-way width. No materials will be removed from subject lands for repair or maintenance of the facilities under the terms of this grant. The grantee will consult with the BLM District Manager concerning the purchase of material from the public lands for maintenance purposes.

9. The grantee will notify the BLM District Manager of the date when actual construction operations are to begin at least 3 days in advance to permit adequate inspections by BLM personnel.

10. Any deviation from the standards, design, and location set forth in permittee's right-of-way application is subject to the written approval of the BLM District Manager.

11. In all his action under this grant, the Grantee shall comply with:

A. All provisions of the State and Federal Water Quality Standards as they may apply to any waterway, stream, lake or reservoir, on or near the permit area, together with all applicable State and Federal laws and regulations. The permittee shall also undertake every reasonable measure to minimize damage to waterways, streams, lakes or reservoirs on or near the permit area in connection with any operation under this permit.

B. All applicable State and Federal laws and regulations concerning the use of poisonous substances, including insecticides, herbicides, fungicides, rodenticides and other similar substances. Prior to the use of such substances on or near the right-of-way, the permittee shall obtain from the Authorized Officer approval of a written plan for such use. The plan shall state the type and quantity of material to be used, the pest to be controlled, the method of application and such other information as the Authorized Officer may require. All use of such substances on or near the right-of-way shall be in accordance with the approved plan. If the use of a poison is limited by the Secretary of the Interior, it shall be used only in accordance with that limitation.

C. All other applicable State and Federal environmental laws, regulations and standards.

12. The Grantee should not submit an affidavit of proof of construction as required in 43 CFR 2802.2-2 until his own inspection of the right-of-way shows that all rehabilitation work is complete and that reseeded vegetation per the following specifications has been satisfactorily established.

<u>Seed Mixture</u>	<u>Lbs. of Pure Live Seed</u>
Thickspike wheatgrass	5*
Slender wheatgrass	1
Green needlegrass	2
Pubescent wheatgrass	1
Sanfoin	0.5
Four-wing saltbush	0.5
	10.0 lbs/acre

\*May substitute 7 lbs. pure live seed Western wheatgrass if thickspike wheatgrass is unavailable.

Seed\* should be drilled on all slopes no steeper than 3:1. Slopes steeper than this should be broadcast with a hydroseeder and a mulch applied afterward as a separate step. Mulch is to be applied also by the same method. All drilling should be done on the contour. \*Four-wing saltbush should be broadcast in all areas. The seed is to have a minimum of 90% purity for all species and a minimum of 80% germination rating for all species, except for four-wing saltbush. This should have a minimum germination rating of 30%. All seed should be certified and tested within a year prior to use.

The seeding is to be done a depth of 3/8"-1/2". Four-wing saltbush should not be drilled, as this depth would be too deep for this shrub.

The seeding is to be accomplished in late fall after the first week of November, but prior to ground freezing; or seed in early spring prior to mid-May.

In the event the reseeding is deemed a failure by the local District Manager, during a period of 1 to 3 years after the seed is drilled in the ground, the permittee shall reseed again the entire area of disturbed soil under the same standards and rates as specified above and below.

The top 6 inches of soil should be removed and stockpiled for later use on all areas to be reseeded following disturbance. Stockpiles of topsoil which won't be used for over a year should be seeded with an annual cover crop, such as millet. All topsoil stockpiles should be located where they would be protected from high winds.

Apply needed fertilizer (nitrogen, phosphorous, potassium) as determined by soil tests conducted only after topsoiling operations are complete. Nitrogen should normally be applied during the second growing season following vegetation establishment. Phosphorous and potassium are often applied during late fall or winter prior to the second growing season as it takes longer to change chemically into a form available for root uptake.

13. Where practical, existing roads or trails will be used for construction and maintenance. No new roads will be constructed or land bladed outside the limits of the right-of-way without prior approval of the BLM District Manager.

14. The Grantee will survey and clearly mark the exterior limits of the right-of-way by use of flagging or lath. All vehicles and construction equipment will be confined to the right-of-way area, as well as all activities directly or indirectly associated with the construction or maintenance of the rail spur.

15. The Grantee will slope all embankments, excavations, and borrow areas involved in the construction at a 2:1 ratio, except where rock cuts make it impractical. Excavation and borrow areas will be sloped to drain, thus eliminating any pooling of water.

16. The Grantee will install adequate drainage structures, including culverts and ditches in the railroad road bed and any service roads to allow for the movement of water through the area and to prevent its accumulation in low-lying areas along the right-of-way.

17. The Grantee will remove topsoil from the road bed and stockpile it during construction, after which it will be replaced on side slopes and ditch areas.

18. Air pollution during construction will be reduced by sprinkling.

SPECIAL STIPULATIONS FOR NON-FEDERAL LANDS

Description of Lands:

SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 28, T. 8 S., R. 40 E. (Site 24 BH 1606); E $\frac{1}{2}$  Section 10 and W $\frac{1}{2}$ , Section 11, T. 9 S., R. 40 E., (Site 24 BH 591). P.M.M. Big Horn County, Montana.

Authorities for Special Stipulations:

E.O. 11593, 36 C.F.R. 800, and BLM Manual 8100.07

Stipulations: Prior to completion of data recovery no construction or earth disturbance shall take place within the highway relocation, railroad and powerline corridor.

The corridor has been declared a part of the Spring Creek Archaeological District by the Keeper of the National Register of Historic Places. The entire District has been determined eligible for nomination to National Register. The corridor passes through 24 BH 591, a large tipi ring site, making data recovery necessary. Site 24 BH 1606 may also be affected by construction of the powerline. If it is later found that this is the case, then data recovery will have to be undertaken on 24 BH 1606 prior to construction.

The data recovery plan as agreed upon by the BLM and Montana S.H.P.O. has been sent to the Advisory Council on Historic Preservation for their comment and finding of effect. They must concur with the plan before data recovery can proceed.