

GREAT WESTERN MINING COMPANY, LLC  
August 17, 2010

VIA U.S. MAIL AND ELECTRONIC MAIL

Wasatch Cache National Forest Service  
Troy Warburton, Regional Program Leader  
Boundary and Title Management  
324 25<sup>th</sup> Street, #5317  
Ogden, Utah 84401

Re: 28 U.S.C.A. 2409 a Quiet Title Actions for all properties owned by Great Western Mining Company, LLC

Dear Mr. Warburton:

Under 28 U.S.C.A. § 2409a, Great Western Mining Company, LLC, submits the following claims for review and determination.

As a general rule, the United States, as the sovereign, is immune from suit; however, the United States, in some circumstances, has chosen to waive its sovereign immunity. In 1972, the Real Property Quiet Title Act, 28 U.S.C.A. § 2409a (herein "QTA") was enacted. The QTA provides an exception to the sovereign immunity of the United States and allows for quiet title actions against the federal government, which provides in pertinent part:

The United States may be named as party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest...

28 U.S.C.A. § 2409a.

28 U.S.C.A. provides the means and methods, which shall be used to file a complaint pursuant to this Section, and provides in pertinent part

The complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances Under which it was acquired, and the right, title, or interest claimed by the United States.

28 U.S.C.A. § 2409d Note 6 of 28 U.S.C.A. § 2409a, citing *Burdess v. U.S.*, D.C. Ark. 1982, 553 F. Supp. 646

Note 6 of 28 U.S.C.A. § 2409a regarding choice of law states: Federal Quiet Title Act [28 U.S.C.A. § 2409a], because it is a federal statute, must be interpreted in accordance with principles of federal law, and while federal courts may properly look to state law as

an aid in determining application of statutory language to specific facts, state law should be compatible with purpose of legislation so as to find a rule that will best effectuate federal policy.

28 U.S.C.A. § 2409a Note 6, citing Vincent Murphy Chevrolet Co., Inc. v. U.S., C.A. 10 (Colo.) 1985, 766 F.2d449

Note 13 of 28 U.S.C.A. § 2409a regarding claims for right-of-way provides:

Claims for a right-of-way, easement, implied easement of necessity or other estate less than a fee simple may properly be subject of quiet title action against United States.

28 U.S.C.A. § 2409a Note 6, citing Burdess v. U.S., D.C. Ark. 1982, 553 F. Supp. 646

#### FACTUAL CONTEXT:

This claim of title concerns roads; roads at the top of Big Cottonwood Canyon in the Brighton Bowl area of the Wasatch Mountain Range, east of the greater Salt Lake City area. These roads travel due west toward Alta in Little Cottonwood canyon, as well as serve to connect Brighton with Snake Creek in Wasatch County and American Fork Canyon in Utah County to the south and southwest.

In the late 1800s, a network of roads was constructed by mining companies which included the Great Western Mines Company. These roads were constructed in order to work mines, graze livestock and transport ore and timber. Early pioneers and settlers also constructed many mountain homes and cabins coming and going as they pleased year round. The roads traverse multiple canyons and mountain peaks involving the following counties: Salt Lake, Wasatch and Utah. Big Cottonwood, Little Cottonwood, Snake Creek and American Fork Canyons all contain large sections of private property that were patented out of federal ownership into private hands. Rights of way were granted by the federal government in the patent language and signed by authority of various presidents of the United States of America. Even prior to the issuance of patents, mineral location notices were conducted also under federal authority granting rights of way across federal lands. These mineral location notices conveyed certain access rights across federal lands to mining companies and private individuals who needed and were granted access for the purpose of searching for and discovering minerals. Federal permission was granted therefore not just for the location notices but also to comply with federal patent work requirements in anticipation of obtaining private ownership of the land from the federal government.

The rights of way used by the Great Western Mines Company (our predecessors in interest) have not been extinguished. **In fact, they are real property interests and are, therefore, not subject to Forest Service regulation.**

Because the Forest Service has both made false claims of ownership and/or erroneously

asserted regulatory control over these roads, and, has recently chosen to embark on the ill-conceived, ill-advised and unreasonable path of criminally citing landowners who wish to access their private properties, and having not properly or legally conducted the necessary title research and examination of all valid outstanding property rights, Great Western Mining Company, LLC definitively asserts its rights and authority to use all of the historic roads leading to and through its properties from various points of origin and intersection throughout the three counties above-mentioned in T2S R3E and T3S R3E. This Quiet Title Action (QTA) represents the first in a staged series of QTAs against the federal government for all of the Great Western Properties' roads.

These roads (as the undeniably prodigious public records show) existed prior to the proclamation reserving public lands in 1904, which created the Salt Lake Forest Reserve, which later became the Wasatch-Cache National Forest and which, just recently, has now merged with the Uinta National Forest.

The fact that these roads were constructed and built prior to 1904 when the Forest Service was created is important in factual terms to unmistakably establish and prove that these are not Forest Service Roads. However, the bulk and the force of this current Quiet Title Action is to **claim by authority of deed** (i.e. by Presidential authority in the grant of patent), that Great Western Mining Company, LLC holds the fee title to its properties and all of the historic roads going to and through its properties. In those instances where Great Western's predecessors sold the surface rights of some of Great Western's land to the Department of Agriculture, Great Western claims and asserts that it still owns the dominant estate while the Department of Agriculture (Forest Service) received the servient estate. The deed language is clear that the Forest Service bought the Great Western land subject to the roads and subject to all of Great Western's deed reservations. The Forest Service does not hold the whole fee to those lands purchased from Great Western Mines Company and therefore as the servient estate holder has no authority to regulate Great Western's (the dominant estate holder's) access to its own roads and to rights of way granted in the patent and mineral location notices. Similarly, the Forest Service has no basis or authority to charge Great Western money for a Special Use Permit right of way rental for valid existing real property rights already vested in Great Western.

#### NATURE OF RIGHTS, INTERESTS, AND CIRCUMSTANCES GIVING RISE TO THE QTA CLAIM

As provided below, Great Western Mining Company, LLC (hereafter Great Western), hereby asserts ownership of all historic roads contained in Section 35, T2S R3E and the un-surveyed public domain in T3S R3E SLB and M situated to the south of Section 35, T2S R3E situated in Salt Lake, Utah and Wasatch Counties.

Great Western has enclosed, herewith, an affidavit of title examiner Mark Charles Haik of Land Services, Inc., laying forth the title evidence and other pertinent and relevant evidence to this Quiet Title Action. Great Western has provided a hard copy as well as an electronic version in the form of a computer memory stick of the documents Mr. Haik has

assembled and analyzed which contains a large database of historic maps, deeds, road commission records, Forest Service records obtained through the Freedom of Information Act, United States Attorney General legal opinions and other public records.

Clearly, the conveyance deeds enclosed herein deriving from federal grants of patent together with documents and maps contained in the Haik Affidavit provide sufficient evidence for Great Western's assertion that it owns the rights, title and interest to the roads in question. Salt Lake County also holds easements to roads through many of the Brighton-Catherine's Pass-Alta properties for the purpose of constructing a county Highway from Brighton Highway 190 to Alta Highway 210. Great Western held and continues to hold the dominant estate to properties through which Salt Lake County's Highway traverses. In other words, in many cases it was Great Western who granted Salt Lake County non-exclusive easement rights to certain of its properties for the express purpose of a county highway from Brighton to Alta. All of those Salt Lake County Highway easements currently exist. The Forest Service is now legally bound to recognize and abide by both Great Western's and Salt Lake County's private property rights and interests even and especially in the case where it subsequently purchased some of the surface interests in the full bundle of rights to Brighton/Alta properties from Great Western as re-acquired Forest Service lands. That purchase was acknowledged and signed off by multiple federal officials including then Attorney General John Mitchell of the Nixon White House who recognized and accepted the road reservations and other real property interests retained by Great Western in the Forest Service purchase.

The Forest Service Manual (herein "FSM") 2734 governs the "construction, reconstruction, use, and maintenance of roads, trails, and highways across National Forest System lands."

FSM 2734 provides that all highways across forest lands "require some form of authorization" unless the authorization already exists through a deed reservation or an outstanding right." As discussed below, Great Western obtained patents by federal grant to the deeded lands in question and acquired express as well as appurtenant access rights to roadways to and through its properties. These access rights represent valid legally established rights that existed before the applicable land became National Forest System land, and are outstanding real property rights held by Great Western. Therefore, Great Western, and not the forest service, owns the rights, title and interest to those roads and permits the forest service as the servient estate holder to use its roads as conveyed in the deed language. Because Great Western is in possession of the rights to all the historic roads in question, it (Great Western), not the Forest Service, is in driver's seat to decide road use and authorization issues. FSM 2734 simply acknowledges the legally obvious that the Forest Service cannot require authorization in the form of a Forest Service special use permit of Great Western because Great Western's authority to use all of its roads already exists.

Great Western believes that the State of Utah and Salt Lake County possess all rights, title and interest to Highway 190 (Big Cottonwood Canyon Road) and Salt Lake County owns additional non-exclusive rights to the road from the Brighton Loop to and through

certain properties in the Brighton/Alta area whose fee estate is split between Great Western and the Department of Agriculture (Forest Service). FSM 2734.2 provides that the “holder of outstanding rights perfected on acquired land prior to Forest Service acquisition...may exercise those rights without obtaining a special use authorization...” Because the State of Utah and Salt Lake County possess all rights, title and interest in the Highway, they, not the Forest Service, may exercise those preexisting rights. Similarly, Great Western holds title to the land through which these roads traverse and/or retained all of the rights in the conveyance deeds to the Forest Service to use these roads and connect then-existing roads to future roads at Great Western’s sole discretion across lands now owned by the Forest Service. Therefore, Great Western holds the rights of access to its properties which stem from the patent (and which have been retained by Great Western even in the split estate properties it shares with the Forest Service), but it also has access rights which flow from the Salt Lake County Highway from Alta to Brighton (i.e. The Catherine’s Pass Highway). In either case, the Forest Service’s rights to its acquired properties in the Catherine’s Pass area, which derive from the three conveyance deeds (with Great Western as the Grantor and the Forest Service as the Grantee), unmistakably and without question establish that the Forest Service is subject to Great Western’s senior rights, not the other way around.

Salt Lake County purchased countless easements that were collected by several counties to create a **multi-canyon highway system** which was intended to connect Heber City, Park City, Brighton and Alta. It appears this effort extended over many years and included legislative reclassifications of all of the routes involved.<sup>1</sup>

The vast majority of this multi-canyon highway system was completed. Utah State Route 224<sup>2</sup> comprising twenty-two (22) miles between Wasatch Mountain State Park and Park City, was completed and is currently in use as a public Highway. Utah State Route 152<sup>3</sup> between Park City and Brighton (guardsman Pass) was also completed and is currently in use as a public Highway.

In 1969, the Utah Code described the Route between Alta and Brighton as “[f]rom...Little Cottonwood Canyon and Alta to Brighton Loop (roadway from near Alta to Brighton Loop non-existent).”<sup>4</sup> Utah State Route 210 between Alta and Brighton was never completed. Salt Lake County collected many easements<sup>5</sup> that were specifically for the purpose of constructing a highway between Alta, Brighton, Heber City and Park City.

1. See Utah Code 72-4-121(1) (2006) and 72-4-128(1) (2006)

2. Utah Code 72-4-128(1) (2006)

3. Utah Code 72-4-121(1) (2006)

4. Utah Code 69-21-7 (1969)

5. On June 2, 1955, Salt lake County purchased a right-of-way for the express purpose of the “proposed highway between Brighton and Alta” across the following mining claims: Lafayette, Knox, Scott, Ellen, Putnam, Idamay, Magnet, Radium, Finance, Molybdinite. Salt Lake County Recorder’s Office, Book 1211, page 312

FSM 2734.2 provides that the Forest Service “[c]arefully examine the basis or grounds for a claim of right-of-way and secure a legal opinion if necessary in order to determine the extent of outstanding or reserved rights.”

As is contained in the Haik title analysis and Affidavit, Great Western obtained title to its properties by two Quit Claim Deeds recorded in Salt Lake County on November 16, 2007, Book 9538 pages 4244-4252. When Great Western Mining Company, LLC acquired the property, the rights originally reserved by Great Western Mines Company automatically transferred to Great Western Mining Company. Great Western has done nothing to disturb these reserved rights. Those rights flow from the original patent. The U.S. Government granted patents to all of Great Western’s properties as described in the Haik affidavit.

The U.S. Supreme Court has held that when a patent is “signed by the President, sealed with the seal of the General Land Officer, counter-signed by the Recorder of the Land Office, and duly recorded in the record book dept for that purpose, it becomes a solemn public act of the government of the United States and needs no further delivery or other authentication to make it perfect and valid.” (U.S. v. Schurz, 1u2 U.S. 378, 397 (1880). See also Lonabaugh v. U.S., 179 F. 476, 480 (8th Circ. 1910); Savward v . Thompson, 40 p. 379 (Wash. 1895).

**This means the Great Western owns a right of way not subject Forest Service Regulation.**

#### GREAT WESTERN’S REQUESTS OF THE FOREST SERVICE

1. Great Western respectfully requests the Forest Service follow FSM 2734.2 and [c]arefully examine the basis or ground for a claim of right-of-way.”
2. Great Western respectfully requests the Forest Service follow FSM 2734.2 and obtain a legal opinion to determine the extent and nature of the various rights, title and interest in the roads to and through Great Western’s Brighton and tri-county area. Said legal opinion should determine:
  - a. The extent, nature, width and length of Great Western’s, as well as the Forest Service’s deeded rights of way;
  - b. The extent, nature, width and length of Great Western’s ownership interest in the Dedicated Use Highway, State Highway 190, including the Brighton Loop, which was statutorily created by ten years of continuous public use;
  - c. The extent, nature, width and length of Salt Lake County and the State of Utah’s ownership interest in State Route 190;
  - d. The extent, nature, width and length of the fee ownership of Salt Lake County in “the County Road” which was purchased for the purpose of a Highway from Brighton to Alta;
  - e. The extent, nature, width and length of any interest the Forest Service possesses in any portions of the Highway;
  - f. The extent, nature, width and length of any and all interests Great Western

possesses in all portions of both the Highway, and all historic roads to and through its properties in T3SR3E and T2SR3E.

The Special Uses Management chapter of the Forest Service Manual (“F.S.M.”) governs the Forest Service’s interaction and governance of Reserved or Outstanding Rights-of-ways. Under F.S.M. 2734.2, “the holder of outstanding rights perfected on acquired land prior to Forest Service acquisition...may exercise those rights without obtaining a special use authorization...” (emphasis added).. The Forest Service has a duty to “carefully examine the basis or grounds for a claim of right-of-way and secure a legal opinion if necessary in order to determine the extent of outstanding or reserved rights.

The history of the Alta/Brighton Catherine’s Pass land acquired by the Forest Service (Department of Agriculture) is as follows: Great Western Mine Company (Grantor and Predecessor in interest to Great Western Mining Company, LLC) sold certain rights to patented land it owned, retaining certain other rights by means of three separate deeds. Two of the conveyance deeds are contained in the Mark Haik affidavit. The third is a Warranty Deed recorded November 7, 1969 at Book 2805, page 45 in Salt Lake County. All three deeds from Great Western Mines Company to the Department of Agriculture convey a servient estate interest to approximately 1328.295 acres. Great Western retained the dominant estate, “reserving unto grantor all minerals and mineral substances of every kind, character and description, including natural gas and oil now known to exist or hereafter found to exist on or in said lands and also reserving the right to enter upon the lands and to prospect for, mine and remove said minerals and mineral substances therefrom...” (emphasis added). Great Western retained the right of entry (ingress and egress) to these 1328.295 acres of re-acquired Forest Service land not only because the Forest Service obtained its servient estate interest from Great Western “subject to existing rights-of-way for roads”, but also because the conveyance deed language clearly and explicitly grants Great Western the right of entry. Great Western hereby asserts in this QTA that the mode of entry, the timing, the frequency, the season, and the type and number of motorized vehicles used to access those properties are not subject to Forest Service scrutiny, control, supervision, authority or regulation.

In the case of acquired lands, the Forest Service is no different than any other private landowner who purchases or otherwise acquires land subject to existing roads and rights of access. FSM 2734.2 provides that the “holder of outstanding rights perfected on acquired land prior to Forest Service acquisition....may exercise those rights without obtaining a special use authorization.”

As the Haik affidavit points out in great detail, the U.S. Government studied Great Western’s reservations prior to purchasing these 1328.295 acres including then U.S Attorney General John Mitchell rendering a legal opinion and acknowledging and assenting to the reservations and rights of Great Western when it took title. The Forest Service is legally bound by and subject to Great Western’s rights of access and other deed reservations. The Forest Service has a duty to carefully examine the history of the Department of Agriculture / Forest Service purchase from Great Western and to secure a legal opinion to reacquaint itself with and re-determine the extent of all of the valid, existing, outstanding road rights and all other rights of way.

With respect to those roads located within the Brighton Ski Area, Great Western's rights of access supersede all of those of the Forest Service/Brighton Ski Area Permit Holder in what is now the forest permit boundary for the Brighton Ski Resort Area. When the scoping notice was sent out and a final determination made to permit the ski area, the Forest Service was well aware that the permitted ski resort was subject to all of Great Western's existing rights, including its right of ingress, egress, and its rights to build new roads and to interconnect existing roads to future roadways at Great Western's sole discretion.

With respect to access rights to and through the Great Western properties, it is Great Western that is in the front seat and the Forest Service in the back in terms of seniority of rights. The Forest Service lacks the authority to regulate Great Western's use of its roads located within the Brighton Ski Area as well. In other words, all current Forest Service road closures and other prohibitions to motorized vehicle access within the Brighton Ski Area do not apply to Great Western. The Forest Service lacks the jurisdiction and authority necessary to regulate Great Western's unfettered access rights to its property interests using all historic roads in the Brighton Bowl/Brighton Loop area.

In view of the fact that the Forest Service does not have the authority to regulate Great Western's access to its properties, Great Western requests that the Forest Service acknowledge that Great Western possesses an unconditional right of access and that the Forest Service cease and desist from engaging in activities which block or otherwise obstruct Great Western's free and unfettered use of all of its access roads in T2S R3E and T3S R3E. Great Western also hereby requests that the Forest Service abandon its illegal actions including threats to criminally prosecute Great Western principals, employees and guests for trespassing on Forest Service lands which are burdened by and subject to Great Western's senior road rights.

Rather, the Forest Service must follow Federal and State law which requires it to acknowledge rights described in the patents by Presidential authority, to acknowledge real property rights established and conveyed by deed, and to acknowledge that under the Congressional authority in the 1897 Act (16USC 478), Great Western also possesses a statutory right of ingress and egress to patented lands within the National Forest. The Forest Service lacks sufficient authority to impose regulations against Great Western who hereby asserts its statutory rights of ingress and egress to all historic roads to and within the Brighton/Alta area.

In F.S.M 2734.57, the Government clearly states the Forest Service, "has no jurisdiction over highway related activities of the right-of-way holder. The agency is [only] responsible for ensuring the Government's servient estate does not suffer unnecessary degradation." (emphasis added)

Great Western has an absolute right of access to and through its properties by way of the clear and plain language contained in its deeds and patents. In addition, Salt Lake County has a highway interest in its Brighton to Alta Highway as well. The Forest Service has no

jurisdiction or authority over either Salt Lake County or Great Western because the Forest Service bought the servient estate to its Brighton/Alta properties subject to the existing rights of access (roads) and other Great Western reservations.

In 1969, the statutory description for State Routes 210 and 190 included the Highway ‘from near Alta’ to the ‘Brighton Loop.’ By way of background, in the late 1930’s, Salt Lake County decided to acquire rights-of-way to connect Alta, Brighton, Park City and Heber via a continuous highway. Salt Lake County purchased or otherwise acquired many easements between Alta and Brighton during the period from approximately 1936 through 1943 from Great Western Mines Company itself. The Utah Legislature placed the ‘Alta to Brighton Loop’ language in the Code to acknowledge the future Highway project planned by Salt Lake County. The necessary easements were purchased by Salt Lake County to connect Brighton, Park City and Heber City by highways that still exist today.

Salt Lake County continues to possess authority and jurisdiction over the Highway because the Highway has not been abandoned or vacated in accordance with Utah Code 3-13-2066 (1888), 25-1-1115(1898), 30-1-1115 (1907), 41-1-2802 (1917), 36-1-3 (1933) and 72-5-105 (2005). In pertinent part, 72-5-105 (2005) remains the same from the 1888 Utah Territorial Laws, and reads as follows:

[a]ll public highways, streets, or roads once established shall continue to be highways, streets, or roads until abandoned or vacated by order of the highway authorities having jurisdiction or by other competent authority 72-5-1056 (2005).

Great Western holds a private easement under Utah Law as an abutting property owner to a public highway to access its property. Under Utah law, a landowner whose private property abuts a public road, by operation of law, possesses a private easement of access to that property across the public road. *Gillmor v. Wright*, 850 P.2d 431, 437-438 (Utah 1993), citing *Mason v. State*, 656 P.2d 465, 468 (Utah 1982); *Bailey Serv. & Supply Corp. v. State Rd. Comm’n.*, 533 P.2d 882, 883 (Utah 1975). A subsequent abandonment of a public right-of-way over such a road has no effect on a private easement owned by an abutting land owner. See *Mason*, 656 P.2d at 468-9; *Hague v. Juab County Mill & Elevator Co.*, 107 P. 249, 252 (1910). The abutting property owner has an easement over the abandoned highway where it is “necessary for ingress and egress” to and from the property. *Mason v. State*, 656 P.2d 465 (Utah 1982). So even if the Forest Service were to argue that the public road was abandoned, Great Western would retain its access rights.

The Srnsky Court also held that the ANILCA regulations are inapplicable to property similar to Great Western’s Properties, regardless of whether the right of access is implied or expressly reserved in a conveyance. *Id.* In addition, the Court found that the regulations governing the grant of a special use permit support the finding that ANILCA does not apply to common law rights of access. The Court cited Section 251.114(f) of the regulations, which requires the Forest Service to review an application to find “a lack of any existing rights or routes of access available by deed or under State or common law” before a special use permit for access will be granted. See 36 C.F.R. 251.115(f).

The Ninth Circuit, in *Skranak v. United States Forest Service*, 425 F.3d 1213, 1219 (9<sup>th</sup> Cir. 2005), held that the Forest Service does not have authority to regulate access to inholder's property under ANILCA when preexisting state easements exist. The Court stated that the "Forest Service has put the matter beyond question by conceding at oral argument that 36 C.F.R. 251.114(f) does indeed require it to make an easement-ownership determination." *Id.* The Court also stated "ANILCA does not expressly refer to pre-existing easements, the Forest Service is free to interpret it as creating a means of access for those who do not own pre-existing easements at all or as requiring that pre-existing easements be taken into consideration in determining the scope of access granted." The Court found that this interpretation was accurate, citing a Senate Report indicating that ANILCA was meant to increase rather than decrease access. *Id.* At 1220, citing S.Rep. No. 413, 96<sup>th</sup> Congl, 2d Sess. 1,310, reprinted in 1980 U.S.C.C.A.N. 5070, 5254 (indicating concern that the Secretary of Interior had made access less certain).

In *United States v. Snsky*, 271 F.3d 595, 601-602 (4<sup>th</sup> Cir. 2001) the Court held that 1323 (a) of ANILCA merely authorized the Secretary to provide access to inholders who may otherwise lack access; it did not purport to affect existing rights. The Court stated, "[t]o say the very least, the statute lacks a clear statement of intent to preempt state law." *Id.* At 603.

The United States Government, namely the Forest Service, understood when they took the surface rights from Great Western that they did so subject to the roads and Great Western's other reservations including, but not limited to, the sub-surface mineral rights of all those roads which Great Western retained the unfettered right to use and other ownership interests as well.

Section 3210(a) of ANILCA applies to All National Forest System lands, not just those in Alaska. See *Montana Wilderness Ass'n v. United States*, 655 F. 2d 951, 957 (9<sup>th</sup> Cir. 1981), cert denied, 455 U.S. 989 (1982) (emphasis added). Specifically, the law provides that the Secretary "shall provide such access to nonfederally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof..." 16 U.S.C. 3210 (a) (emphasis added).

The Court found that if an inholder has access under state law, ANILCA does not apply and the Forest Service regulation of access was simply not authorized. Specifically, the Court stated that the only entities required to comply with the Secretary's rules and regulations regarding access are those to whom the Secretary provides access under ANILCA. *Id.*, see 16 U.S.C. 3210(a) ("[T]he Secretary shall provide access to nonfederally owned land...to secure the owner the reasonable use [of his land]; Provided, that such owner comply with the rules and regulations...") (emphasis added).

The *Snsky* Court also held that the ANILCA regulations are inapplicable, regardless of whether the state right of access is implied or expressly reserved in a conveyance. *Id.* In addition, the Court found that the regulations governing the grant of a special use permit support the finding that ANILCA does not apply to common law rights of access. The

Court cited Section 251.114(f) of the regulations, which require the Forest Service to review the application to find “a lack of any existing rights or routes of access available by deed or under State or common law” before a special use permit for access will be granted. See 36 C.F.R. 251.115(f).

Because Great Western possesses existing access rights to the Brighton-Alta properties in question under Presidential Grant of Patent reaffirmed by the U.S. Supreme Court and because Great Western has statutory rights of way pursuant to 16 U.S.C. 478 (1897 Act of Congress) ANILCA access is unnecessary and therefore Forest Service regulations associated with ANILCA do not apply.

Similarly, the Salt Lake County Highway from Brighton to Alta provides access; thus the Forest Service may not regulate Great Western’s existing access.

Great Western hereby makes claim to all roads in the un-surveyed public domain sections (i.e. sections 1,2,3,4,7,8,9,10,11,12) in T3S R3E and all roads contained in Section 38 T2S R3E.

**"Subject to" means the Forest Service cannot regulate what it never received which were the rights owned by Great Western.**

The Forest Service acquired the Servient estate of approximately 1328.295 acres of surface right land from Great Western’s predecessors in interest, Great Western Mines Company, “subject to all roads and rights of way”.

Great Western has an acquired property interest in all of these roads by deed. Therefore, Great Western may come and go as it pleases with unfettered access. Great Western does not need any Forest Service permit. The Haik research and affidavit establish in great detail the basis for and claim of all of these historic roads in the Brighton/Alta area (i.e. Great Western properties it holds in fee and the split estate properties held between Great Western and the Forest Service.).

The Fourth, Ninth, and Tenth Circuit Federal Courts of Appeals have all recently held that the Alaska National Interest Lands Conservation Act of 1980, 16 U.S.C. 3210 (ANILCA) does not pre-empt state property law with respect to providing access to inholders’ property. The Courts found that if the property owner possessed ingress/egress rights, then the Forest Service was not entitled to regulate the owner’s use and the owner does not need a special use permit.

In summary, Great Western already possesses all rights, title and interest to all of the historic roads leading to and through its Brighton/Alta properties from various points of origin and intersection throughout the three counties starting from State Highway 190 in Big Cottonwood Canyon located in T2S R3E and the un-surveyed public domain in T3S R3E. The overwhelming evidence provided herein and in the enclosed Haik Affidavit leave the Forest Service no room but to acknowledge that it lacks sufficient authority, jurisdiction, right, title and interest to regulate Great Western’s use of roads which either predate the very existence of the Forest Service or were the very roads built, owned, and maintained by the senior right holder Great Western who placed burdens on the Forest Service as the servient estate holder when the Forest Service purchased the surface rights

(subject to all reservations) from Great Western's predecessor in interest (the dominant estate holder).

The Forest Service is required by various federal statutes and Forest Service Manual Regulations to research and obtain legal opinions on all valid rights of way to the various properties which are the subject of this Quiet Title Action and Claim.

Therefore, the Forest Service should, in accordance with the Federal Quiet Title Act [ 28 U.S.C.A.2409 a] grant Great Western's requested Quiet Title Action as herein outlined.

Very Truly Yours,

Great Western Mining Company

Kevin Tolton, M.D., Managing Member