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*Copy Mary Ann*

*Aaron*

*FAM*

**FAX**

**FROM: SOUTHERN UTAH WILDERNESS ALLIANCE  
P.O. BOX 401  
MONTICELLO, UT 84535  
PH: (435)587-3636  
FX: (435)587-2193**

**TO: Elise L. Erler, Chairperson  
Board of Oil, Gas and Mining  
1594 West North Temple, Suite 1210  
P.O. Box 145801  
Salt Lake City, Utah 84114-5801  
Fax (801) 359-3940**

**5 pages including this cover**

**RECEIVED**

SEP 18 2001

DIVISION OF  
OIL, GAS AND MINING



southern  
utah  
wilderness  
alliance

September 18, 2001

Elise L. Erler, Chairperson  
Board of Oil, Gas and Mining  
1594 West North Temple, Suite 1210  
P.O. Box 145801  
Salt Lake City, Utah 84114-5801  
Fax (801) 359-3940

Re: Request for Agency Action by Petitioner Southern Utah  
Wilderness Alliance, Docket No. 2001-027, Cause No. C/007/013-  
SR98(1)

Dear Ms. Erler:

We received on or about September 14, 2001, the Board's Notice of Hearing dated setting for hearing on September 26, 2001, all pending motions and the merits of the Division's decision to grant a permit to UtahAmerican. For the reasons set forth below, we do not believe a hearing on the motions will be necessary on that date, and we do not believe a hearing on the merits would be timely on that date.

### Motions

1. *Motion for Stay - UtahAmerican Energy, Inc.'s ("UEI's"), Federal Permit No. C/007/013 (revised) dated July 27, 2001, conditions mining activity upon Federal Mine Plan Approval by the Secretary of the Interior. Further, the Bureau of Land Management ("BLM") has yet to issue notices to proceed for Rights of Way Grant Nos. UTU-76614, UTU-77122 and UTU-76617. Denise A. Dragoo, counsel for UEI, has advised us that UEI will not commence activities in connection with its proposed Lila Canyon operations until it receives all required state and federal approvals.*

Petitioner Southern Utah Wilderness Alliance ("SUWA") hereby withdraws its motion for stay, without prejudice to our right to refile should the situation change and any surface-disturbing activities be considered in connection with the Lila Canyon Mine for the near term. If this matter is still proceeding when Federal Mine Plan Approval is granted, UEI has agreed to inform SUWA of this decision within ten days of UEI's receipt of approval.

2. *Motion for discovery* - It does not presently appear that a hearing on our motion for discovery will be necessary at this point, as discovery is proceeding on a voluntary basis, and the parties anticipate applying for a Board order on discovery only if they reach an impasse in conducting voluntary discovery. If we are not able to arrange for voluntary discovery, we will immediately advise the Board.

3. *Motion for appointment of hearing examiner* - We anticipate that the Board will want to address this issue as the date for a hearing on the merits nears. For the reasons explained more fully below, this date should not be in September.

4. *Motion for Continuance* - For the reasons stated below, neither the motions nor the merits should be heard on September 26. We respectfully request that the Board set this matter for hearing on October 24.

### Hearing on the Merits

1. *September 26, 2001, hearing date* - We respectfully suggest a September 26, 2001, hearing date is inappropriate for a number of reasons. First, the Board's rules state that requests for agency action filed by the 10<sup>th</sup> day of the month "may be considered by the Board for inclusion in the schedule of matters to be heard at its regularly scheduled meeting during the following month." Utah Administrative Rules, R641-105-100. As Petitioner SUWA's Petition was filed on September 4, 2001, the date indicated by the rules would be the Board's regularly scheduled October 24 hearing date, as shown in the Board's 2001 Hearing Schedule for petitions filed before September 10, not the September 26 hearing date.

Moreover, Respondent has not yet filed its answer and is not required to do so until September 24, 2001. R641-104-141. We may not even have a copy of that answer, and certainly will not have time to adequately review it or prepare for a hearing, before September 26. Under R641-105-210, the responses to the petition and motions were not filed by September 10, and Petitioner is entitled under that rule to at least 2 weeks prior to the hearing to review any such filings. Similarly, the Board has not yet acted on UtahAmerican's request to intervene, and the same problem will be presented with respect to any answer UtahAmerican may file, as well as with respect to exhibits to be filed by any party. Also, a September 26, 2001, hearing date will not permit the Board to hold an effective pre-hearing conference as contemplated in R641-107-100.

In addition, while we anticipate proceeding with voluntary discovery as quickly as possible, we do not realistically believe that discovery will be complete in time for a September 26 hearing date.

Finally, SUWA<sup>1</sup> is also represented in this matter by Mr. David Churchill and Ms. Kathy Weinberg of Jenner & Block, LLC. Mr. Churchill and Ms. Weinberg anticipate filing notices of appearance in connection with their motions to this Board to be admitted *pro hac vice*. We currently are awaiting state bar paperwork for both motions. Both the processing of the applications and travel to Utah will be complicated by the effects of recent events on air travel and mail delivery. We would appreciate the Board's indulgence in this regard.

Other Matters

Petitioner SUWA has no objection to intervention by UtahAmerican.

We respectfully request that, should it be necessary to address any procedural issues prior to the hearing on the merits, any such matters be handled through a telephonic conference rather than a full hearing, if the Board's procedures permit.

In light of the questions raised herein about the September 26 hearing date, and the urgency of determining what, if any, matters will be heard on that date, we request a telephone conference be held with counsel for the Board, the Division, UtahAmerican, and SUWA as quickly as their respective schedules permit. We will contact counsel to try to arrange that telephone conference for late this afternoon or early tomorrow morning. If some other procedure will be preferable, please advise us as soon as possible.

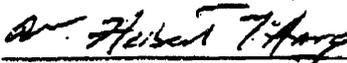
Very truly yours, -



W. Herbert McHarg  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served on the following listed addressees by facsimile and United States mail, postage prepaid, on this 19<sup>th</sup> day of September, 2001.

  
\_\_\_\_\_  
W. Herbert McHarg

Kurt E. Seel, Esq.  
Assistant Attorney General  
160 East 300 South, 5<sup>th</sup> floor  
P.O. Box 140857  
Salt Lake City, Utah 84114-0857  
Fax (801) 366-0352

Thomas A. Mitchell, Esq.  
Assitant Attorney General  
160 East 300 South, 5<sup>th</sup> floor  
P.O. Box 140857  
Salt Lake City, Utah 84114-0857  
Fax (801) 366-0352

Denise Dragoo  
SNELL & WILMER, L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101  
Fax (801) 257-1800