



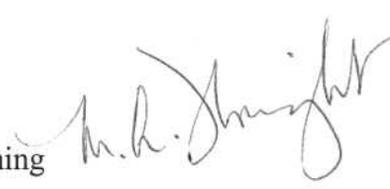
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DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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July 18, 2001

TO: Internal File

FROM: Mary Ann Wright, Associate Director, Mining 

RE: Analysis and Finding on the Lila Canyon Road, Utah American Energy, Inc., Horse Canyon Mine, C/007/013

Following is a finding and analysis of the road leading to the Lila Canyon Mine Facility which is proposed to be constructed in conjunction with the Horse Canyon Mine. This analysis and findings takes into account the regulations and policy under the Utah Coal Regulatory Program (UCRP) in regards to the "Permitting of Roads". This document will accompany and become part of the permit findings for the Lila Canyon Revision to the Horse Canyon Mine permit issued by the UCRP.

SUMMARY

Presently, there are two access routes to the proposed Lila Canyon Mine area. One route starts near the Horse Canyon Mine and extends south following the Book Cliffs escarpment. The second route heads east from U. S. Highway 191/6, passes the proposed Lila Canyon site, and eventually connects to the first route. Both of these routes, constructed in the early 1940's, have generally been called the Lila Canyon Road and have had little if any maintenance over the years. The southwestern portion of the Lila Canyon Road (from US 191/6 to the proposed mine site), is presently claimed as part of the Emery County road system (Lila Canyon Road #126) and is planned to be upgraded to provide better access to the mine as well as other multiple use activities. Emery County plans to realign and improve the Lila Canyon Road #126, from its current condition to an engineered and upgraded condition. Emery County will be responsible for the alignment, construction and maintenance of the road which will total approximately 4.8 miles in length. There are no plans to alter the road that leads from the Horse Canyon Mine to the Lila Canyon Mine although the County may choose to conduct maintenance on the road consistent with its RS2477 designation. After the Lila Canyon Mine opens, the Lila Canyon Road #126 will remain a public road, allowing access by multiple purpose users up to, and ending at, the proposed disturbed area boundary (mine surface facilities area). The Lila Canyon Road #126 up to the mine disturbed area boundary is found under this analysis to be

exempt from regulation according to the State of Utah Coal Mining Rules, R645, et seq. and the Utah Division of Oil, Gas and Mining (UDOGM) July 3, 1995, policy on roads.

POLICY

This analysis implements the July 3, 1995, permitting policy on roads (see Reference #1 of the attached Reference List). In deciding to exempt the Lila Canyon road from regulation, UDOGM herein makes written findings as to whether:

1. The road was properly acquired by the governmental entity and not deeded to avoid regulation;
2. The road is maintained with public funds or in exchange for taxes or fees,
3. The road was constructed in a manner similar to other public roads of the same classification; and
4. Impacts from mining on the road are not significant under Utah's definitions for "affected area" and "surface coal mining operations".

ANALYSIS AND FINDINGS

The following analysis and information is made from existing documents (see attached Reference List) and designated in the text as follows:

1. July 3, 1995, Letter from James Carter to Rick Seibel Re: Permitting of Roads.
2. UtahAmerican Energy, Inc.'s Permit Application Package (PAP),
3. Decision Record, Environmental Assessment UT-070-99-22, Bureau of Land Management.
4. Agreement between Emery County and UtahAmerican Energy Inc., October 19, 1999.
5. February 27, 2001 letter from Emery County to Lowell P. Braxton in regards to Lila Canyon Road.
6. Utah R-645 et seq. Coal Mining Rules, and
7. December 15, 1997 Interior Board of Land Appeals decision (IBLA 94-366).

Analysis #1:

- UtahAmerican Energy Inc.'s (UEI) Lila Canyon Permit Application Package (PAP) was found "Administratively Complete" on February 26, 1999, and is currently still under technical review. The PAP contains a copy of an agreement entered into between UEI and Emery County which recognizes that UEI requires extensive use of the Lila Canyon Road (#126) and that the county will improve the road to meet UEI's needs. The county will perform the upgrade and charge the operator a toll for use of the road.(2)
- The approximate description of the county road to be upgraded is as follows: The road will start from U. S. Highway 6 located in the west half of Section 6, T. 17 S., R. 14 E. and proceed northeasterly to the NE 1/4 NE 1/4 of Section 32, T. 16 S., R. 14 E. The road will then proceed to the NW 1/4 of Section 28 and then to the NE 1/4 NE 1/4 of Section 21. The road finally abuts the Lila Canyon Mine surface facilities in the SW 1/4 of Section 15. The total length of this road would be approximately 4.8 miles.(5)
- Emery County has asserted its claim on the Lila Canyon Road as a county road and has designated it Lila Canyon Road No.126. The assertions were indexed and submitted to the Bureau of Land Management (BLM) on January 8, 1993. (4)
- The surface land ownership for the Lila Canyon Road #126 is the BLM and Utah School and Institutional Trust Lands Administration (SITLA). Emery county will control all necessary rights of way for this road. (5)

Finding #1:

The Lila Canyon road has historically existed since the 1940's or earlier. Emery County asserts that it had jurisdiction over the road prior to the implementation of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), and has maintained this jurisdiction to the present. The Lila Canyon road right-of-way crosses a mix of federal and SITLA lands. The mixed land ownership that is crossed by the Lila Canyon Road #126 precludes the possibility of UtahAmerican Energy, Inc., a predecessor, or successor from deeding the right-of-way to Emery County to avoid regulation under the UCRP. Thus, the road was properly acquired by the governmental entity and was not deeded to avoid regulation.

Analysis # 2:

- Emery County is and will be responsible for the alignment, construction (upgrading) and maintenance of the Lila Canyon Road #126. (4) and (5)
- Emery County is responsible for all environmental issues relating to the alignment, and construction (upgrading) of the Lila Canyon road. (4) and (5)
- The maintenance for the Lila Canyon road will be performed by Emery County. Emery County will be responsible for funds to improve and maintain the Lila Canyon Road No.126. It is recognized that UEI and Emery County have an escrow agreement whereby contributions for the construction of the road may be made by UEI, however, it is also acknowledged that said contribution does not in any manner constitute participation by UEI in the design, construction, maintenance or operation of the road. The road will remain a county network road entirely under the authority of Emery County. The maintenance schedule will be the same as other similar Class "B" roads in Emery County. Examples of such roads: Cottonwood Canyon road No. 506 (Trail Mountain Mine), Deer Creek Road No. 304 (Deer Creek Mine), Bear Creek Road No. 305 (Bear Canyon Mine), C Canyon Road in Carbon County (West Ridge Mine). (4) & (5)

Finding # 2:

Emery County has established its jurisdiction over the alignment, maintenance, construction and environmental aspects of this road. The road is to be maintained with public funds or in exchange for taxes or fees.

Analysis # 3:

- Emery County supports the responsible development of its natural resources which is consistent with it's Comprehensive Master Plan. Emery County proposes to upgrade the Lila Canyon Road #126 to meet existing county, state and federal specifications. The road will be improved according to the plans and specifications as approved by Johansen & Tuttle Engineering, Inc., as Emery County's engineers of record. Emery County will oversee the upgrade of the Lila Canyon road. (4) & (5)
- The Lila Canyon Road #126 will be built and maintained the same as other similar Class "B" roads in Emery County, such as the Cottonwood Canyon Road No.506, the Deer Creek Road No. 304, and the Bear Creek Road No. 305.

Finding #3:

Emery County will use established professional association and state guidelines to align and surface the road as it does for other Class 'B' roads. Thus, the road was and will be constructed similar to other public roads of the same classification.

Analysis # 4:

- The Lila Canyon Road #126 is and will be a public and multiple purpose road. It is currently used by stockmen, sightseers, hunters, and mineral developers. (3) & (5)
- The Lila Canyon Road #126 is and will be a part of the Emery County road system and public use will not be denied to any portion of the road. (4) and (5)
- In order for a road to be permitted under the UCRP, the road must meet the test of being a "coal mining and reclamation operation", and fall within the UCRP's definition of "roads." Activities occurring on the Lila Canyon Road are similar to activities occurring on public roads of the same classification throughout the State. No coal mining operations are occurring that would require special jurisdiction or regulation of the road under the UCRP. (4), (5) and (6)
- A recent Interior Board of Land Appeals (IBLA) decision states the following, "*We find nothing in section 701(28)(B) of SMCRA, or its legislative history, which expressly provides that transportation facilities, especially ones that carry processed coal to a remote point of sale/use, should generally be considered "surface coal mining operation," subject to regulation under SMCRA... Congress made no specific provision for regulating the transportation of processed coal, even though that activity is itself a "major industrial sector," which encompasses railroads, barges, trucks, and pipelines "that collectively stretch over thousands of miles throughout the nation."... The fact that it did not, strongly indicates that Congress did not intend to regulate the transportation of processed coal under SMCRA, presumably leaving it to regulation pursuant to other Federal and state laws.*" (7)

Finding #4:

The uses of the Lila Canyon Road are considerably greater than the narrow, regulated activities of providing access to coal mining and reclamation operations. In addition, the environmental impacts to the Lila Canyon Road caused by coal truck traffic will not differ from the environmental impacts of other trucks of similar weight operating on this road. The trucks being used for transporting coal are licensed commercial haulers which are legal to operate on public roads of the same classification throughout the state.

The mine is not conducting any coal mining and reclamation operation on the public portion of the Lila Canyon Road that would require any special regulation under SMCRA or the UCRP. Impacts from mining on the road are not significant under Utah's definitions for "affected area" and "surface coal mining operations".

CONCLUSION

The Lila Canyon County Road #126 leading from State Highway 6 up to the Lila Canyon disturbed area boundary does not need to be included in the permitted area for the Horse Canyon Mine, and is thus exempted from the jurisdiction of the Utah Coal Regulatory Program.

UEI has no plans for upgrading, hauling coal or storing equipment on the exiting Lila Canyon Road segment that stretches from the Horse Canyon Mine to Lila Canyon. As such, there is no requirement to permit this road under the Utah Coal Regulatory Program. Should UEI decide to conduct coal mining and reclamation operations that involve the alternative road from Horse Canyon to the Lila Canyon facilities, analysis and findings will need to be made in regards to its permitted status under the Utah Coal Regulatory Program.

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cc: Clyde Borrell, Utah American Energy, Inc.
Rex Funk, Emery County
James Fulton, OSM

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REFERENCE LIST

1. July 3, 1995 letter from James W. Carter, Director of Utah Division of Oil, Gas, & Mining to Rick Seibel, Regional Director and to Jim Fulton Denver Field Office Division Chief, U.S. Dept. Of Interior, Office of Surface Mining. RE: Utah Section 733 Letter, Permitting of Roads.
2. Utah American Energy, Inc.'s Permit Application Package (PAP),
3. Decision Record, Environmental Assessment UT-070-99-22, Bureau of Land Management.
4. Agreement between Emery County and UtahAmerican Energy Inc., October 19, 1999.
5. February 27, 2001 letter from Emery County to Lowell P. Braxton in regards to Lila Canyon Road.
6. December 15, 1997 Interior Board of Land Appeals decision (IBLA 94-366) finding that a railroad and pipeline used to transport coal from surface mines are not regulated by the federal Surface Mining Control and Reclamation Act.
7. Utah R645 et. seq. Coal Mining Rules, especially definition of the terms "Affected Area", "Coal Mining and Reclamation Operations", and "Road".