



# UtahAmerican Energy, Inc.

Coal file

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DIV. OF OIL, GAS & MINING

**HAND DELIVERED**

Mr. Lowell Braxton  
 Director  
 Utah Division of Oil, Gas & Mining  
 1594 West North Temple, Suite 1210  
 Salt Lake City, Utah 84114

*Incoming*  
*C/007/0013*

**RE: *Response to Comments of Southern Utah Wilderness Alliance ("SUWA")  
 Regarding Determination of Administrative Completeness for the Lila Canyon  
 Extension, UtahAmerican Energy, Inc., Horse Canyon Mine C/007/013***

Dear Director Braxton:

This letter sets forth UtahAmerican Energy, Inc.'s ("UEI's") response to SUWA's letter dated May 28, 2004, regarding the determination of completeness to the Lila Canyon Permit Extension which SUWA plans to address at today's informal conference. UEI has two objections to SUWA's letter. First, the Utah Division of Oil, Gas & Mining ("DOGM") previously determined UEI's application to be "complete" on February 25, 2002, and held an informal conference on May 21, 2002, pursuant to Utah Code Ann. § 40-10-13(2) to evaluate SUWA's administrative completeness objections. DOGM's completeness determination was upheld by your Findings of Fact, Conclusions and Order in Cause No. C/007/013, dated June 18, 2002. By letter dated July 19, 2002, DOGM denied the permit application package ("PAP") in part alleging that it was not technically adequate. UEI timely appealed DOGM's determination to the Board of Oil, Gas & Mining ("Board") in Docket No. 2002-014 and SUWA intervened in this matter. The Board determination in Docket No. 2002-014 has been stayed, pursuant to stipulation of the parties dated August 27, 2002 and Board Order dated October 4, 2002. Board proceedings to review the PAP have been stayed until either: (1) DOGM issues a final decision to deny or grant the PAP; or (2) UEI seeks review of DOGM's technical review decision. In either case, it is clear that the DOGM decisionmaking process in this matter has proceeded well beyond the determination of administrative completeness stage.

UEI's second objection relates to issues raised by SUWA which go beyond the "completeness" of UEI's PAP to address the technical adequacy of the application. See R645-300-121.100. If this hearing relates to DOGM's administrative completeness determination, technical issues are premature until DOGM has issued its final technical adequacy determination ("TA"). SUWA improperly attempts to address TA reviews dated July 19, 2002 and April 8, 2003. UEI has already responded to DOGM's initial TA of March 26, 2002, with a response dated April 24, 2002, and to the DOGM's second TA of April 9, 2003, with a response dated February 24, 2004. Nonetheless, UEI hereby provides a summary of its previous responses to

SUWA from the informal conference held on May 21, 2002, and its TA responses dated April 24, 2002 and February 24, 2004, which are incorporated herein by this reference.

1. Acid or Toxic-Forming Material.

This is a technical issue, not an administrative completeness matter. UEI has submitted accurate and complete baseline information regarding this issue. *See* Chapter 5, PAP. The regulations allow an applicant to request DOGM to “waive in whole or in part the requirements of R645-301-624.200 and R645-301-624.300” regarding the testing of acid and toxic-forming material. *See* R645-301-626. By letter dated April 22, 2002, DOGM granted this waiver to UEI. *See* I.A.1., UEI letter dated May 21, 2002. *See* UEI’s TA Responses regarding Chapter 5, PAP.

2. Subsurface Water Resource Maps.

This is a technical issue, not an administrative completeness matter. In accordance with R645-301-722.100, UEI has submitted the required subsurface water resource maps which show locations of baseline data points and elevations of subsurface water. *See* Chapter 7, PAP. Specifically, the maps show aerial and vertical distribution of springs and seeps as well as the aerial and vertical distribution of the saturated zone as demonstrated by the contour lines. The lack of seasonal variation in the seasonal zone is demonstrated by analyzing the data from piezometers, IPA No. 1, 2, and 3, shown in table form as well as graphically in the PAP. *See* I.A.1., UEI letter dated May 21, 2002; PAP Fig. 7 and 7-2. *See* UEI’s TA Responses regarding Chapter 7, PAP.

3. Surface Water Resources.

This is a technical issue, not an administrative completeness matter. The PAP contains the required surface water information. *See* Chapter 7, PAP. R645-301-724.200 requires the submission of the name, location and ownership information of surface water bodies within the permit and adjacent areas as determined by DOGM. The regulation also requires submission of seasonal flow data. Specifically, information regarding Lila Canyon, Little Park Wash and Stinky Spring Wash have been provided at Chapter 7, PAP. All three springs are intermittent streams. The Stinky Spring Wash has been observed as having “no flow” on several occasions during infield investigations by UEI. *See* I.A.3., UEI letter dated May 21, 2002. The PHC has been revised to address seeps including those in the Stinky Spring Wash. *See* UEI’s TA Response, February 24, 2004.

4. Groundwater Quantity.

This is a technical issue, not an administrative completeness matter. Groundwater quantity data has been provided as required by R645-301-724.100. *See* Chapter 7, PAP. Seasonal variations are shown in table form as well as graphically and will be confirmed in DOGM’s Cumulative Hydrologic Impact Assessment (“CHIA”). *See* I.A.4., UEI letter dated May 21, 2002. *See* UEI’s TA Responses regarding Chapter 7, PAP.

5. Groundwater Quality.

This is a technical issue, not an administrative completeness matter. The PAP contains groundwater quality information as required by R645-301-724.100. *See* Chapter 7, PAP. *See* water quality information is set forth in Appendix V1-1 to the Horse Canyon plan and chapter 7 of the Lila Canyon extension. *See* I.A.5., UEI letter dated May 21, 2002, Exhibits 15-17. The PHC has been revised regarding groundwater quality issues. *See* UEI's TA Response, February 24, 2004.

6. Coal Mine Waste.

This is a technical issue, not an administrative completeness matter. The PAP has adequately addressed the placement of underground development waste and the quantity of coal processing waste to be placed in the refuse pile. *See* Chapter 5, PAP, Appendix 5-7. *See* B.7, UEI letter dated May 21, 2002, Exhibit 20; UEI's TA Response, February 24, 2004, at 12-13, Figure 2, Appendix 5-7. *See* UEI's TA Responses regarding Chapter 5, PAP.

7. Groundwater Monitoring.

This is a technical issue, not an administrative completeness matter. The PAP provides an adequate groundwater monitoring plan. *See* Chapter 7, PAP. As confirmed in the PAP, there is only one monitoring site because there is the only spring or seep located within the permit area. *See* R645-301-731.211. *See* D.14-16, UEI letter dated May 21, 2002. The operational plan for the Lila Canyon Mine includes a groundwater monitoring plan consistent with R645-301-731.200 and .211. Chapter 7, PAP. *See* UEI's TA Responses regarding Chapter 7, PAP.

8. Baseline Data for Surface Monitoring Plan.

This is a technical issue, not an administrative completeness matter. Baseline data has been provided for the Lila Canyon, Little Park Wash and the Stinky Spring Wash as set forth at 3 above. Chapter 7, PAP. *See* R645-301-731.221. *See* D.15, UEI letter dated May 21, 2002, and UEI's TA Response to Chapter 7, PAP.

9. The PHC is Adequate.

This is a technical issue, not an administrative completeness matter. UEI has submitted all required baseline data for the PHC. Chapter 7, PAP. UEI's PHC determination complies with R645-301-728.200 and is based on an adequate baseline hydrologic and geologic data as set forth at PAP, Appendix 7-1 and Appendix 7-3, *see* E.17, UEI letter dated May 21, 2002, Exhibits 16 and 26. The PHC has been revised. *See* UEI's TA Response, February 24, 2004.

10. Water Consumption.

This is a technical issue, not an administrative completeness matter. The PHC adequately addresses water consumption by the mining operator, water sources and impacts of water loss. Chapter 7, § 728 PAP. DOGM's CHIA will also address this issue. Chapter 7, § 729, PAP. *See* E.18, UEI letter dated May 21, 2002. As set forth in UEI's TA Response, February 24, 2004, the PHC has been revised.

11. Cumulative Impact Area.

This is a technical issue, not an administrative completeness matter. SUWA's comments regarding the CHIA, are premature in this completeness determination. Pursuant to R645-301-729.101, DOGM will prepare the CHIA. *See* Chapter 7, § 729, PAP. UEI has supplied DOGM with more than sufficient data to assist the State in defining the cumulative impact area and assessing the surface and groundwater systems. Adequate geologic and hydrologic data are provided by the PAP to allow DOGM to define the cumulative impact area within the CHIA and SUWA's comment should be dismissed. *See* E.18, UEI letter dated May 21, 2002; UEI's TA Responses to Chapter 7, PAP.

12. Operation Plan.

This is a technical issue, not an administrative completeness matter. UEI's plan is specific to local hydrologic conditions and is complete as submitted. Chapter 7, § 730, PAP. *See* R645-301-731. *See* I. Hydrology, UEI letter dated May 21, 2002, and UEI's TA Responses to Chapter 7, PAP.

13. Survey Data.

This is a technical issue, not an administrative completeness matter. UEI has provided the Survey Data required by R645-301-131. Chapter 5, PAP.

14. Vegetation Survey.

This is a technical issue, not an administrative completeness matter. The PAP contains a complete Vegetation Survey as required by R645-301-321; 323. Chapter 3, § 321 PAP. *See* IV.A., UEI letter dated May 21, 2002. A new baseline revegetation inventory was completed in Spring, 2003, as discussed at UEI's TA Response dated February 24, 2004.

15. Site-Specific Resource Information.

This is a technical issue, not an administrative completeness matter. The PAP contains complete site-specific resource information required by R645-301-322. Chapter 3, PAP. *See* IV.B., UEI letter dated May 21, 2002; UEI's Responses to Chapter 3, PAP.

16. Subsidence Impacts to Plants.

This is a technical issue, not an administrative completeness matter. Subsidence is thoroughly addressed in Volume 2 of the PAP, impacts on vegetation are addressed in Chapter 3, of the PAP, effects of subsidence on springs is addressed at Chapter 7, Appendix. 7-8 and subsidence is also addressed in the Environmental Assessment ("EA") prepared by the Bureau of Land Management ("BLM"). See Chapter 4.3, Geology Impacts; EA #UT-070-99022. See II.20, UEI letter dated May 21, 2002. See UEI's TA Responses dated February 24, 2004, regarding Chapter 4, PAP.

17. Impacts to Fish and Wildlife.

This is a technical issue, not an administrative completeness matter. The PAP contains all required fish and wildlife information necessary to meet the completeness requirements of R645-301-333-358. For example, in PAP, Table 3-1, lists Threatened and Endangered Species, Threatened and Endangered Species Inventory and Plate 3-1 sets forth wildlife habitat within the permit area, attached as Exhibits 33 and 37 to letter dated May 21, 2002. See PAP, Chapter 3. See IV.B., UEI letter dated May 21, 2002.

This is a technical issue, not an administrative completeness matter. The PAP contains all required information to meet the completeness requirements of R645-301-258.400; 358.530; 526.222. Chapter 3, PAP; Appendix 3-4. See IV.B., UEI letter dated May 21, 2002, UEI TA Response, February 24, 2004, regarding Chapter 3, PAP; UEI TA Responses to Chapter 3, PAP.

18. Land Use / Unsuitable for Mining.

This is a technical issue, not an administrative completeness matter. The PAP adequately addresses land use at Chapter 4, PAP. This issue was decided in favor of UEI in the December 14, 2001 Ruling of the Board of Oil, Gas & Mining in *SUWA v. DOGM*, Docket No. 2001-027, Findings of Fact, Conclusions of Law and Order. SUWA failed to timely appeal this ruling and is now barred from raising this issue. The PAP accurately describes the pre-mining land uses and sets forth a complete reclamation plan. The Utah Coal Program Rules require each permit application to include "a description of existing land uses and land-use classifications" (R645-301-411.130) and a plan to ensure that the postmining land use will be restored to "[t]he uses they were capable of supporting before any mining; or [h]igher or better uses." See R645-301-413.100, -.120. The PAP meets this legal requirements.

The PAP discloses that the pre-mining land uses in the permit area, as determined by the Bureau of Land Management's ("BLM") Price River Management Framework Plan (the "MFP"), are grazing, wildlife habitat, coal mining, and limited recreation. See Appendix 4-2. UEI has committed in the PAP to perform reclamation to restore the land to its premining land uses. The legal requirement is for an applicant to "demonstrate that the land will be returned to its premining land-use capability." R645-301-414. The land manager of the federal lands involved, BLM, has identified the uses of "wildlife habitat, grazing and incidental recreation" as being the uses to

which the land must be restored after operations. *See* PAP, Appendix 4-2. BLM has identified the post mining land uses and UEI's reclamation plan thoroughly details how UEI will restore the project area to a condition that will support the uses identified.

UEI has valid federal coal leases and the land is suitable for mining, consistent with the Price River MFP. The BLM has specifically determined that the Lila Canyon Mine Project "is in conformance with the objectives and recommendations of the Price River Area Management Framework Plan approved 1983 as amended." FONSI/Record of Decision at 9, attached as Exhibit 29, UEI letter dated May 21, 2002.

19. Cultural.

This is a technical issue, not an administrative completeness matter. UEI's PAP sets forth the required cultural and historic resources information in Chapter 4, PAP, and at Appendix 4-1 and Plate 4-3. *See* V.40, UEI letter dated May 21, 2002, at Exhibit 41. *See* UEI's TA Responses to Chapter 4, PAP.

20. Subsidence Control.

This is a technical issue, not an administrative completeness matter. Subsidence is thoroughly addressed Chapters 2, 3, 5 and 7 of the PAP and the EA prepared by the BLM. *See* Chapter 4.3, Geology Impacts, EA # UT-070-99-22; *see* Chapter 5, § 525; Chapter 7, Appendix 7-8; UEI letter dated May 21, 2002, Exhibit 30. Notably, BLM required no mitigation to address subsidence, recognizing UEI's commitment to monitoring subsidence and commitment to repair subsidence damage and concluded that subsidence "would not result in any cumulative impacts to any resource." *Id.* at page 59. All seeps and springs within the permit area have been inventoried. The permit area is essentially dry, with few seeps and springs and UEI's inventories are complete. *See* II.20; IV.26, UEI letter dated May 21, 2002; UEI TA Response dated February 24, 2004.

21. Coal Haul Road.

This is a technical issue, not an administrative completeness matter. The Utah Board of Oil, Gas & Mining has previously upheld DOGM's determination that the Lila Canyon Road is a county road which should not be included in the permit. *SUWA v. DOGM*, Docket No. 2001-027, Findings of Fact, Conclusions of Law and Order, dated December 14, 2001. SUWA's claim that the Lila Canyon Road, a public road, must be included within the permit area is contrary to Congress' intent in enacting SMCRA. As the *Harman* court observed,

[o]bviously, Congress [in enacting SMCRA] did not anticipate that operators would have to permit interstate highways or four-lane state routes, nor that they would have to permit every road used to haul coal, whether four lane or two lane, state or county, paved or unpaved, or even public or private.

*(Harman Mining Corp. v. Office of Surface Mining Reclamation & Enforcement, 659 F. Supp. 806, 811 (W.D. Va. 1987).)* Despite the absurdity of proposition of permitting a public road, SUWA argues that the Lila Canyon Road should be included within the permit area. Such a decision would subject the Lila Canyon Road to state and federal reclamation requirements and would be clearly contrary to purpose of SMCRA.

To avoid the absurd result of having a public road reclaimed under SMCRA and the Utah Coal Act, the OSM entered into a resolution with DOGM which sets forth criteria for determining whether a road should be included within a permitted area. The four criteria are:

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."

In response to the first criterion, SUWA has failed in to demonstrate that Emery County improperly acquired the Lila Canyon Road. Rather, ample evidence demonstrates that the Lila Canyon Road is owned by Emery County and that the BLM has issued the necessary authorizations to make improvements to the Lila Canyon Road.

As for the second and third criteria, Emery County will maintain the road with public funds or in exchange for taxes or fees and that Emery County will improve the road according to engineering requirements applicable to other Class "B" roads in Emery County. SUWA has not produced any evidence demonstrating that Emery County is not the party maintaining its road.

As for the final criterion, the Lila Canyon Mine is not a surface coal mining operation but is an underground coal mine. Moreover, the uses associated with the road are varied and not limited to only coal mining. There is substantial evidence demonstrating that the road is used by hunters, recreationalists, scientists and other members of the public. The road meets each of the criteria for excluding the road from the permit area.

In sum, the Lila Canyon Road is a public road that is maintained by the Emery County with public funds and is used by members of the public. To include this type of road within UEI's permitted area is contrary to the DOGM/OSM Resolution and the intent of SMCRA. Accordingly, SUWA's claim that the road need be permitted must fail.. See VII, UEI letter dated May 21, 2002.

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22. New Permit.

DOGM is properly processing the PAP as a Permit Extension under R645-303-220 and R645-303-226.

We appreciate your consideration of UEI's comments in this matter. Please let me know if you have further questions.

Sincerely,



R. Jay Marshall

JM:jmc:304985

cc: Clyde Borrell  
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