

Herb
 1435-259-7049
 Jay Marshall
 740-926-1351 Ohio
 435-637-5032 Ex 724 price

Tam
 Darn
 Susan
 Wyatt H.
 Lowell
 Steve Alder
 Alism Gauer
 5/27/04
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Fax

To: Mary Ann Wright (801) 359-3940

From: SUWA (435) 259-7049

6 pgs incl. cover

* Req. for Ing. Cons./Lila Cny Mine

~~Also - team -~~
 Dave Dorn
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 Jerrian
 5/27/04

File in:

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Refer to Record No. 0019 Date 05262004

In C 00700138004 On coming
For additional information

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MAY 26 2004

DIV. OF OIL, GAS & MINING



southern
utah
wilderness
alliance

July 7th
30 days from
date of letter
July 8th
10:00
10:50

May 26, 2004

Mary Ann Wright
Utah Division 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: Comments, Objections and Request for Informal Conference Pertaining to the Determination of Administrative Completeness for the Lila Canyon Extension, UtahAmerican Energy, Inc., Horse Canyon Mine, C/007/0013, Task ID #1859

Dear Ms. Wright,

Pursuant to Rules 645-300-122.200 and 645-300-123, the Southern Utah Wilderness Alliance ("SUWA") timely comments and requests that the Division of Oil, Gas and Mining ("Division") hold an informal conference on the UtahAmerican Energy Inc. ("UEI") permit application package ("PAP") for the Lila Canyon Mine that the Division determined to be "administratively complete" on March 26, 2004 ("Determination"). SUWA requests that such conference be held at the Division offices located in Salt Lake City. See R645-300-123.120.

According to the rules, in order to be considered administratively complete, a PAP must contain information addressing each application requirement of the State Program and all information necessary to initiate processing and public review. See R645-100-200. SUWA contends that the PAP cannot be deemed administratively complete since it fails to contain all the information required under the rules, as set forth below. Indeed, the Division itself has recognized that the PAP failed to include required information in certain categories, while in other categories it makes no comment on the adequacy of the information. See Administrative Completeness Worksheet, dated March 26, 2004.

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MAY 26 2004

DIV. OF OIL, GAS & MINING

Moab Office
P.O. Box 968
76 South Main, #9
Moab, Utah 84532
Phone: 435-259-5440
Fax: 435-259-9151
Email: suwa@suwa.org

Regardless, the Division is clear that the PAP is not technically adequate at this time, and that its Determination does not mean that the Division has found that all data required by law has been submitted. As stated in the Determination, a technical review has merely been "initiated," "issues raised will need to be resolved prior to permit issuance," and the Division anticipates "that additional information may be necessary to make [UEI's] application technically complete. . . ." See Determination. Thus, the Division contemplates requesting and receiving additional information during its review for technical completeness and correctness, and the Division's administrative completeness Determination has only "initiated" the technical review process on the most recent PAP. However, because the Division has already completed two technical reviews of previous PAP submittals, SUWA's comments incorporate those reviews and we may discuss issues addressed in those reviews during the informal conference. See TAs dated July 19, 2002 and April 8, 2003.

In addition to the Division's TAs, the comments below briefly summarize the issues SUWA intends to raise at the informal conference. R645-300-123.110. As allowed under the rules, our comments summarize the issues; they are not exhaustive for any particular issue, as SUWA understands that the conference will provide an opportunity to address each issue in greater detail. We may supply the Division with exhibits during the informal conference that help explain or support our concerns. Further, as we discussed, the process of the informal conference alone may disclose other concerns, which can be addressed at that time or through additional comments submitted by SUWA during the Division's technical review process. It should be noted that the citations below are for reference, and do not represent an exhaustive list of the rules, regulations, or laws applicable to SUWA's concerns.

- 1. Acid- or toxic-forming materials.** The PAP does not contain an analysis of acid- or toxic-forming material from the strata immediately above and below the coal seam to be mined. There are no data or analysis of material collected from the permit area. R645-301-624.300.
- 2. Subsurface water resource maps.** The PAP does not contain maps and cross-sections showing the areal and vertical distribution of aquifers, and portrayal of seasonal differences of head in different aquifers within the permit area. R645-301-722.100.
- 3. Surface water resources.** The PAP does not contain baseline information on seasonal flow

rates for Lila Canyon, Little Park Wash, or Stinky Spring Wash, three intermittent streams within the permit area. *R645-301-724.200.*

4. **Ground water quantity.** The PAP does not contain information on the location, seasonal quantity, or approximate rates of discharge for each water-bearing stratum above and potentially impacted stratum below the coal seam for the permit and adjacent areas. *R645-301-724.100.*
5. **Ground water quality.** The PAP does not contain descriptions of water quality for all ground-water resources within the permit and adjacent areas. *R645-301-724.100.*
6. **Coal mine waste.** The PAP is not clear on where underground development waste will be placed and how much coal processing waste will be placed in the refuse pile.
7. **Inadequate ground water monitoring.** The PAP indicates that there is only one proposed monitoring site (L-7-G / Cottonwood Spring) in the permit area for which baseline data exists. *R645-301-731.211.*
8. **No baseline data for surface water monitoring plan.** There is no baseline data for surface flows in Lila Canyon, Little Park Wash, or Stinky Spring Wash; thus, there will be no basis for comparison during monitoring. *R645-301-731.221.*
9. **The PHC is flawed.** The PHC determination and findings presented in the PAP are not based on baseline hydrologic, geologic and other information collected for the permit application. *R645-301-728.200; -728.300.*
10. **Water consumption.** The PAP does not contain a comprehensive description of the quantities of water that will be consumed by the proposed mining operation, the source of the water, and the impacts associated with this water loss.
11. **Cumulative Impact Area.** The information provided by UEI is not sufficient to allow the Division to establish a hydrologically reasonable CIA boundary.
12. **Operation Plan.** The plan presented in the PAP is not specific to the local hydrologic conditions and does not describe steps that will be taken to minimize disturbance to the hydrologic balance within the permit and adjacent areas or to prevent material damage outside the permit area. *R645-301-731.*
13. **Survey Data.** The PAP fails to contain certain survey data required under the rules. *R645-301-131.*
14. **Vegetation Survey.** The PAP fails to include an adequate description of the vegetative

communities and productivity throughout the affected area. *R645-301-321; -323.*

15. Site-Specific Resource Information. The PAP does not contain the site-specific resource information required by the rules, and the information presented in the PAP is not sufficient to design a protection and enhancement plan. *R645-301-322.*

16. Subsidence Impacts to Plants and Animals. The PAP fails to include information on subsidence adequate to assess impacts to plant and wildlife species. *R645-301-332; -358.*

17. Impacts to Fish and Wildlife. The PAP fails to include information necessary to adequately assess impacts to fish and wildlife and related environmental values, including the sensitive fish species identified by the U.S. Fish and Wildlife Service. *R645-301-333; -358.*

18. Disturbance, Monitoring, and Protection of Habitat. The PAP fails to comply with the rules requiring the operator to avoid disturbance of wildlife habitats, and fails to describe how wildlife will be monitored and protected from hazardous materials. *R645-301-358.400; -358.530; -526.222.*

19. Land Use/ Unsuitable for Mining. The PAP fails to include information that accurately describes the capability of the land affected by the coal mining and reclamation operations, and fails to demonstrate that the land will be returned to its premining land-use capability. Mining in the proposed permit area may, at a minimum, affect productivity of water supply, scientific and aesthetic values, and natural systems. *R645-301-411.100; -411.120; -412; -414; and R645-301-115.*

20. Cultural. The PAP fails to include information from a complete cultural resource survey, coordination with the State Historic Preservation Officer, and a plan that describes measures to prevent adverse impacts to such resources. *R645-301-411.140--144.*

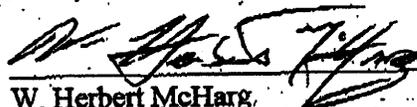
21. Subsidence Control. The PAP fails to include information necessary to adequately assess the quantity and quality of all State-appropriated water supplies that could be impacted by subsidence, and fails to include an adequate plan for repair, replacement, or restoration of such supplies or surface lands. *R645-301-525.130; -525.400; 525.480; -525.510; -731.530.*

22. Coal Haul Road. The PAP must include the coal haul road within the "affected area" and include all information necessary for the permitting process. *R645-100-200.*

23. New Permit. The proposed mine must be processed and approved through application of a new permit. *R645-303-222.*

SUWA appreciates your time in considering these comments and looks forward to working with the Division at the informal conference and during the technical review process. Please contact me if you have any questions.

Sincerely,



W. Herbert McHarg
Southern Utah Wilderness Alliance

CERTIFICATE OF MAILING

I hereby certify that on May 26, 2004, I caused a true and correct copy of the foregoing Comments and Request for Informal Conference, to be sent by facsimile and certified mail return receipt to the following:

Mary Ann Wright
Utah Division 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

Courtesy copy mailed first class to:
Denise A. Drago, Esq.
SNELL & WILMER
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101



Fax:

To: Vickie Southwick (801) 359-3940

From: Herb 435-259-7049

2 pgs incl cover

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JUN 02 2004
DIV. OF OIL, GAS & MINING



southern
utah
wilderness
alliance

June 2, 2004

VIA FACSIMILE AND MAIL

Vickie Southwick
Division of Oil, Gas & Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801

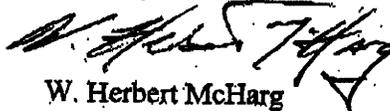
Re: Informal Conference Date -- Lila Canyon Extension, UtahAmerican Energy,
Inc., Horse Canyon Mine, C/007/0013, Task ID #1859

Dear Ms. Southwick,

As we discussed, July 7, 2004 appears to be a mutually agreeable date, for all concerned, to hold the Informal Conference in the above matter. According to my calculations, the thirty day time period runs June 28. Although July 7 falls beyond the thirty days, SUWA agrees with this date.

Thank you for your time in scheduling this conference.

Sincerely,



W. Herbert McHarg

cc: Denise Drago, Esq.

RECEIVED

JUN 02 2004

DIV. OF OIL, GAS & MINING

Moab Office
P.O. Box 968
76 South Main, #9
Moab, Utah 84532
Phone: 435-259-5440
Fax: 435-259-9151
Email: suwa@suwa.org



southern
utah
wilderness
alliance

June 2, 2004

VIA FACSIMILE AND MAIL

Vickie Southwick
Division of Oil, Gas & Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801

Re: Informal Conference Date -- Lila Canyon Extension, Utah American Energy,
Inc., Horse Canyon Mine, C/007/0013, Task ID #1859

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Sincerely,



W. Herbert McHarg

cc: Denise Dragoo, Esq.

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JUN 04 2004

DIV. OF OIL, GAS & MINING

Moab Office
P.O. Box 968
76 South Main, #9
Moab, Utah 84532
Phone: 435-259-5440
Fax: 435-259-9151
Email: suwa@suwa.org

LPB

BEFORE THE DIVISION OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

Emery Co
SUWA

---ooOoo---

IN THE MATTER OF THE
LILA CANYON EXTENSION,
HORSE CANYON MINE,
CARBON COUNTY, UTAH

NOTICE OF INFORMAL
CONFERENCE

CAUSE NO. C/007/013

---ooOoo---

THE STATE OF UTAH TO ALL PERSONS INTERESTED IN THE ABOVE
ENTITLED MATTER.

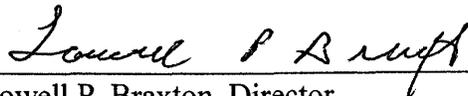
Notice is hereby given that the Division of Oil, Gas and Mining (A Division@) will conduct an informal conference on July 7, 2004, beginning at 10:00 a.m., at the Department of Natural Resources, Room 1050, 1594 West North Temple, Salt Lake City, Utah. The informal conference will be conducted in accordance with the Utah Code Ann. '40-10-13 (1953, as amended) and Utah Admin. R645-300-100.

Persons interested in this matter may participate pursuant to Utah Admin.R645-300-123. The application, subsequent public comments, and request for informal conference may be inspected in the office of the undersigned, 1594 West North Temple, Suite 1210, Salt Lake City, Utah.

Pursuant to the Americans with Disabilities Act, persons requiring auxiliary communicative aids and services to enable them to participate in this conference should call Vickie Southwick at 538-5304, at least three working days prior to the hearing date.

DATED this 11 day of June 2004.

STATE OF UTAH
DIVISION OF OIL, GAS AND MINING



Lowell P. Braxton, Director
Division of Oil, Gas and Mining
State of Utah

A representative of the Division shall conduct the conference. R645-300-123.240. This representative, or presiding officer, may accept written or oral statements and any other relevant information from any party to the conference. *Id.* If necessary, the presiding officer shall have the authority to place time limits on the parties' presentations of oral comments. The presiding officer does not issue a decision document at the close of the informal conference. The conference is not adjudicatory in nature, but administrative, and for purposes of receiving factual and legal objections and comments on the permit application.

The rules and procedures for the conduct of the conference are somewhat confusing and circuitous. The Coal Act provides that the conference shall be held in accordance with the procedures described in Utah Code Ann. § 40-10-13 (2)(b), "irrespective of the requirements of Section 63-46b-5." Utah Code Ann. § 40-10-13. Section 63-46b-5, part of the Utah Administrative Procedures Act, sets out the procedures for informal adjudicative proceedings. The Utah Administrative Code states that the requirements of the Procedural Rules of the Board of Oil, Gas and Mining (R641 Rules) shall apply to the conduct of the informal conference. R645-300-123.240. The R641 Rules include the Conduct of hearings, including providing for the Rules of Evidence, sworn testimony, the order and presentation of evidence, a record of the hearing and discovery rules. The R641 Rules also state that the scope of the R641 Rules "will govern all proceedings before the Board of Oil, Gas & Mining or any hearing examiner designated by the Board. These rules provide the procedures for formal adjudicative proceedings. The rules for informal adjudicative proceedings are in the Coal Program Rules." R641-100-100. However, the Coal Program Rules provide that the R641 Rules apply. R645-300-123.240.

Accordingly, DOGM recommends the parties agree as to an informal procedure, combining the requirements of § 40-10-13, R645-300-123 and the R641 rules. A suggested agenda is as follows:

1. Welcome, Introduction, Background and Purpose
2. Presentation of the Mining and Reclamation Plan
3. Status of the Plan and the Division's Technical Review
4. Public Identification of Issues
5. Addressing Concerns
6. Adjournment

An electronic or stenographic record of the conference is created and maintained for reference of all the parties. R645-300-123.240. No findings of fact, conclusions of law or order are necessary as a result of the informal conference, except to close the conference, as appropriate.

Within 60 days of the close of the informal conference, the Division staff reviews the PAP, written comments and objections submitted, and the record of the informal conference and the Division issues a written decision, either granting, requiring modification of, or denying the application. R645-300-131.100. This is a decision on the application under R645-300-131, and is not a decision of the presiding officer. This 60-day limitation is mandatory, but is difficult to coordinate with the TA review that may need to be supplemented after the informal conference. DOGM recommends the presiding officer leave the conference open, then close the conference at a later date after giving public notice of the closure. DOGM also recommends the parties stipulate to a 30-day limit for submission of additional comments and evidence by the parties to the conference.



State of Utah

Department of
Natural Resources

ROBERT L. MORGAN
Executive Director

Division of
Oil, Gas & Mining

LOWELL P. BRAXTON
Division Director

OLENE S. WALKER
Governor

GAYLE F. McKEACHNIE
Lieutenant Governor

June 13, 2004

Facsimile Transmittal
(435) 637-2716

Sun Advocate
Emery County Progress
845 East Main
P. O. Box 870
Price, Utah 84501-0870

Re: Notice of Informal Conference

Enclosed is a notice of Informal Conference from the Division of Oil, Gas and Mining, Department of Natural Resources, State of Utah.

It is requested that this notice be published ONCE ONLY as soon as possible, but no later than **Thursday, June 24, 2004**, in the Sun Advocate, and no later than **Tuesday June 22, 2004** in the Emery County Progress. In the event that said notice cannot be published by this date, please notify me immediately by calling (801) 538-5304.

Upon completion of this request, please send proof of publication and statement of cost to the Division of Oil, Gas and Mining, P. O. Box 145801, Salt Lake City, Utah 84114-5801.

Sincerely,

Vickie Southwick
Executive Secretary

vs
Enclosure
H:\NEWSLETT.NEW.wpd

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0070013
CC: Informal con. JKH

AFFIDAVIT OF PUBLICATION

COPY COPY

STATE OF UTAH)

SS.

County of Carbon,)

I, Ken Larson, on oath, say that I am the Publisher of the Sun Advocate, a twice-weekly newspaper of general circulation, published at Price, State a true copy of which is hereto attached, was published in the full issue of such newspaper for 1 (One) consecutives issues, and the the first publication was on the 22nd of June, 2004, and that the last publication of such notice was in the issue of such newspaper dated the 22nd day of June, 2004.

Ken G. Larson
Ken G Larson - Publisher

Subscribed and sworn to before me this 22nd day of June, 2004.

Linda Thayn

Notary Public My commission expires January 10, 2007 Residing at Price, Utah

Publication fee, \$ 91.52

NOTICE OF INFORMAL CONFERENCE
CAUSE NO. C/007/013

BEFORE THE DIVISION OF OIL, GAS AND MINING
 DEPARTMENT OF NATURAL RESOURCES
 STATE OF UTAH

IN THE MATTER OF THE
 LILA CANYON EXTENSION
 HORSE CANYON MINE,
 CARBON COUNTY, UTAH

THE STATE OF UTAH TO ALL PERSONS INTERESTED IN THE ABOVE ENTITLED MATTER.

Notice is hereby given that the Division of Oil, Gas and Mining (A Division @) will conduct an informal conference on July 7, 2004, beginning at 10:00 a.m., at the Department of Natural Resources, Room 1050, 1594 West North Temple, Salt Lake City, Utah. The informal conference will be conducted in accordance with the Utah Code Ann. '40-10-13 (1953, as amended) and Utah Admin. R645-300-100.

Persons interested in this matter may participate pursuant to Utah Admin. R645-300-123. The application, subsequent public comments, and requests for informal conference may be inspected in the office of the undersigned, 1594 West North Temple, Suite 1210, Salt Lake City, Utah.

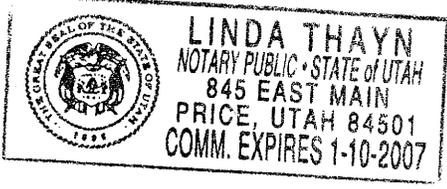
Pursuant to the Americans with Disabilities Act, persons requiring auxiliary communicative aids and services to enable them to participate in this conference should call Vickie Southwick at 538-5304, at least three working days prior to the hearing date.

DATED this 11 day of June 2004.

STATE OF UTAH
 DIVISION OF OIL, GAS AND MINING
 s-Lowell P. Braxton, Director
 Division of Oil, Gas and Mining
 State of Utah

Published in the Sun Advocate June 22, 2004.

2841/REE/6131/X5HC/GCF3/NCPM R036



CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Finding, Conclusions and Order for Cause No. C/007/013 to be mailed by certified mail, postage prepaid, on the 14th day of June 2004 to the following:

Jay Marshall
UtahAmerican Energy, Inc.
P.O. Box 986
Price, Utah 84501

Denise Dragoo
Snell & Wilmer
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101

W. Herbert McHarg
Southern Utah Wilderness Alliance
Moab Office
76 South Main #9
Moab Utah, 84532

Kathy C. Weinberg, Esq.
JENNER & BLOCK
1717 Main Street, Suite 3150
Dallas, TX 75201

Mary Ann Wright
Division Oil, Gas & Mining
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84114-5801
HAND DELIVERED


Vickie Southwick
Executive Secretary
Division of Oil, Gas and Mining



State of Utah

Department of
Natural Resources

Division of
Oil, Gas & Mining

ROBERT L. MORGAN
Executive Director

LOWELL P. BRAXTON
Division Director

OLENE S. WALKER
Governor

GAYLE F. McKEACHNIE
Lieutenant Governor

UTAH DIVISION OF OIL, GAS & MINING
FACSIMILE COVER SHEET

DATE: June 15, 2004
FAX: (435) 637-2716
ATTENTION: Publication
COMPANY: Emery County Progress, Sun Advocate

DEPARTMENT:

NUMBER OF PAGES: (Including this one)3

FROM: Vickie Southwick DIVISION OIL, GAS & MINING (801) 538-5304

If you do not receive all of the pages, or if they are illegible, please call (801) 538-5304. We are sending from a sharp facsimile machine. Our Telecopier number is (801) 359-3940.

MESSAGE:

Please publish this informal conference. If you cannot published please let me know

Thanks

Important: This message is intended for the use of the individual or entity of which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return this original message to us at the above address via regular postal service. Thank you

H:\Fax cover sheet.doc

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JUL 22 2004

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CC: Informal con. folder

DIV. OF OIL, GAS & MINING

COPY

STATE OF UTAH)

ss.

County of Emery,)

I, Ken Larson, on oath, say that I am the Publisher of the Emery County Progress, a weekly newspaper of general circulation, published at Castle Dale, State and County aforesaid, and that a certain notice, a true copy of which is hereto attached, was published in the full issue of such newspaper for 1 (One) consecutive issues, and that the first publication was on the 22nd day of June, 2004 and that the last publication of such notice was in the issue of such newspaper dated the 22nd day of June, 2004.

Ken G. Larson

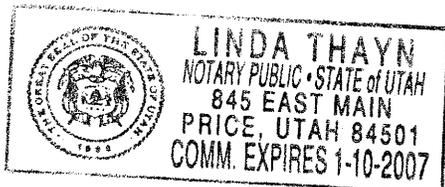
Ken G Larson - Publisher

Subscribed and sworn to before me this 22nd day of June, 2004.

Linda Thayne

Notary Public My commission expires January 10, 2007 Residing at Price, Utah

Publication fee, \$ 65.56



NOTICE OF INFORMAL CONFERENCE

CAUSE NO. C/007/013

BEFORE THE DIVISION OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

IN THE MATTER OF THE
LILA CANYON EXTENSION
HORSE CANYON MINE
CARBON COUNTY, UTAH

THE STATE OF UTAH TO ALL PERSONS INTERESTED IN THE ABOVE ENTITLED MATTER.

Notice is hereby given that the Division of Oil, Gas and Mining (A Division @) will conduct an informal conference on July 7, 2004, beginning at 10:00 a.m., at the Department of Natural Resources, Room 1050, 1594 West North Temple, Salt Lake City, Utah. The informal conference will be conducted in accordance with the Utah Code Ann. '40-10-13 (1953, as amended) and Utah Admin. R645-300-100.

Persons interested in this matter may participate pursuant to Utah Admin. R645-300-123. The application, subsequent public comments, and requests for informal conference may be inspected in the office of the undersigned, 1594 West North Temple, Suite 1210, Salt Lake City, Utah.

Pursuant to the Americans with Disabilities Act, persons requiring auxiliary communicative aids and services to enable them to participate in this conference should call Vickie Southwick at 538-5304, at least three working days prior to the hearing date.

DATED this 11 day of June 2004.

STATE OF UTAH
DIVISION OF OIL, GAS AND MINING
-s-Lowell P. Braxton, Director
Division of Oil, Gas and Mining
State of Utah

Published in the Emery County Progress June 22, 2004.

2841/REE/6131/X5HC/GCF3/NCPMR036

**Thacker + Co LLC****Court Reporters***Utah's Leader in Litigation Support*

801-983-2180

Fax: 801-983-2181

DEPOSITION CONFIRMATION

DATE: June 25, 2004
TO: Vicky
FIRM: Division of Oil Gas and Mining
FAX NO: 359-3940
FROM: Evelyn Merrill
RE: Confirmation of Assignment

On behalf of Thacker + Co, this is to confirm your request for a deposition scheduled on the date and at the time shown below. We will have a court reporter present for the following:

CASE NOTICE INFORMATION

Assignment Date/Time: July 7, 2004 @ 10:00 am
Location: 1594 West North Temple
Case Name: Informal Hearing
Deponent:
Special Requests: Scott Knight requested as reporter

QUESTIONS / CHANGES REGARDING THIS ASSIGNMENT

In the interest of time, accuracy and consistency, please notify our office with any changes, additions or specific requests you may have regarding this assignment

Thank you for your confidence in our services and if we can assist you further in any way regarding this or any other assignment, please call us.

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, UT 84101

RECEIVED
JUN 25 2004
DIV. OF OIL, GAS & MINING

INCOMING
0070013

CC: Informal CONF Folder
SM 8-19-04

MEMORANDUM

TO: Steve Alder, Mary Ann Wright, Lowell Braxton, Herb McHarg, Denise Dragoo, Katherine Weinberg

FROM: Alison Garner

DATE: July 1, 2004

RE: Informal Conference, July 7, 2004

This memo outlines DOGM's understanding of the procedures for the informal conference to be held on July 7, 2004, regarding the Lila Canyon Extension, UtahAmerican Energy, Inc., Horse Canyon Mine.

The purpose of the informal conference is to allow "any person having an interest that is or may be adversely affected by the permit application," to raise issues for consideration by the Division in making its decision as to the permit application. R645-300-123.100. It is an information gathering opportunity for all parties. The conference is not a chance for objections, responses and replies, nor is it an occasion for argument. Rather, it is an opportunity for interested parties to raise issues for the Division's consideration. *Id.*

The request for an informal conference briefly summarizes the issues to be raised by the requestor at the conference. R645-300-123.110. Here, SUWA has requested a conference on the determination of administrative completeness pertaining to the Lila Canyon Extension, UtahAmerican Energy, Inc., Horse Canyon Mine. SUWA alleges the application is not technically adequate and also raises 23 separate issues in its request for an informal conference. SUWA may discuss any or all of the issues summarized in greater detail, and submit information and comment on the application.



UtahAmerican Energy, Inc.

July 7, 2004

HAND DELIVERED

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

**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 ("DOG M") 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 Responses 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.

Director Lowell Braxton

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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
Denise Dragoo, Esq.
Michael Gardner, Esq.
Michael McKown, Esq.

July 7, 2004

Coal Regulatory Program
Division of Oil, Gas, and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801

Re: Lila Canyon Extension to the Horse Canyon Mine permit application informal hearing.

Emery County appreciates the opportunity today to express our support for granting the permit. In keeping with the spirit of our letter of support dated April 26, 2004, we urge that the permit be issued.

It is our position that concerns identified in the public scoping process have been adequately addressed in the mining plan. Opposition to the proposed project was mostly concentrated on the impact the project would have on a Wilderness Study Area and "wilderness quality lands." The Environmental Assessment (EA) completed by BLM in October of 2000 specifically addresses the concern of undermining the Turtle Canyon WSA. The EA states that

Minimal impacts in the form of minor subsidence is expected. The incorporation of the original IMP (interim management policy) stipulations for actions resulting from mining of the pre-FLPMA coal leases under the Turtle Canyon WSA would be incorporated for all areas deemed to be affected by surface actions. No surface facilities authorized by the BLM would be located within the WSA and no actions approved by BLM would impact the WSA.

The other wilderness quality lands in the form of Wilderness Inventory Areas (WIAs) and areas submitted by citizen groups have since been found invalid and should have no bearing on this permitting process.

The three issues resulting in changes to the proposed action, grazing, cultural resources and wildlife, have been suitably dealt with and in our determination should not deter the issuance of the permit.

Emery County has reviewed the proposed operation plan and the also the reclamation plan and find no reason for the permit not to be issued to UtahAmerica Energy Inc.



southern
utah
wilderness
alliance

INCOMING
C0070013

CC: Informal Con.

July 7, 2004

VIA HAND DELIVERY AT THE INFORMAL CONFERENCE

Lowell P. Braxton, Director
Utah Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801

RE: Outline of Comments and Objections Presented During the Informal Conference
for the Lila Canyon Extension, UtahAmerican Energy, Inc., Horse Canyon Mine,
C/007/0013, Task ID #1859

Dear Mr. Braxton,

The Southern Utah Wilderness Alliance (SUWA) appreciates the opportunity to provide you with an outline of the comments we presented during the Informal Conference in the above referenced matter. In addition to the comments outlined below, SUWA is confident that the Division will require UtahAmerican Energy Inc. (UEI) to correct all of the deficiencies that either they or the Board have previously recognized. The informal conference held today, as well as the continued submissions by UEI and analyses by the Division, may disclose other concerns related to the technical adequacy of the permit application package (PAP) that SUWA may address through additional comments submitted during the technical review process. It should be noted that the citations below are for reference, and do not represent an exhaustive list of the rules, regulations, or laws applicable to SUWA's concerns.

1. Acid- or toxic-forming materials. Rule 624.300 requires the applicant to collect samples from test borings or drill holes and analyze these samples for acid- or toxic-forming materials. Specifically, Rule 624.320 requires the applicant to perform chemical analyses for acid- or toxic-forming or alkalinity-producing materials and their content in the strata immediately above and below the coal seam to be mined.

Under Rule 626, an applicant may request the Division to waive in whole or in part the requirements of 624.300. However the waiver may be granted only if the Division finds in writing that the collection and analysis of such data is unnecessary because other information having equal value or effect is available to the Division in a satisfactory form.

UEI has not provided the data and analyses required under Rule 624, and have instead requested an exemption from the Division under Rule 626. UEI cites the following reasons for its request:

1. UEI claims that there has been no problem with acid- or toxic-forming materials at the nearby Sunnyside Mine. In fact the record is very clear that there has been a problem with acid-generation at the Sunnyside refuse pile. Acidic water carrying iron and other minerals seeped from the base of the refuse pile into a channel.
2. UEI has provided analyses from boreholes S-24 and S-25, located 2 miles from the permit area. However, inspection of the logs and analytical results for the strata above the coal seam down to the Mancos Shale indicate that in S-24, 7 out of 18 samples (40 percent) have greater than 1% total sulfur with the highest sample containing 4.61%. The logs of S-25 indicate that 6 out of 13 samples (46 percent) have greater than 1% total sulfur with the highest sample containing 2.72 %. Thus, these data indicate that there is an acid-generation potential.
3. UEI states that all material brought from the mine will be tested and treated as though it is acid- or toxic-forming. However this does not satisfy Rule 626, which requires "information having equal value or effect" as chemical analysis of samples collected from test borings or drill holes.

Our concerns are that:

1. UEI has not provided data and analysis required under Rule 624, or information having equal value, as required under Rule 626.
2. All indications are that the material removed from the mine will be acid-generating. It was at Sunnyside, chemical analyses and logs of drill holes off the permit area indicate high sulfur content, and even logs of holes drilled in the permit area report the presence of pyrite.
3. UEI proposes to use this material, the underground development waste, as structural fill for

surface facilities.

2. Subsurface water resource maps. Rule 722.100 requires submission of cross sections and maps showing the location and extent of subsurface water, including the areal and vertical distribution of aquifers and portrayal of seasonal differences of head. While UEI has identified both what it calls a "regional aquifer" and several "perched aquifers," it has not complied with this requirement.

In response to this Rule, UEI has submitted Figures 7-1 and 7-2; however:

Figure 7-1 shows water levels for only a very small portion of the mine site between the three IPA wells. The area for which data exist only covers about 162 acres, which is approximately 3.5 percent of the 4,664-acre permit area.

Figure 7-2 is not a cross-section. It depicts water level changes thru time, not thru the permit area.

3. **Surface water resources.** Rule 724.200 requires the applicant to submit information on surface-water quality and quantity sufficient to demonstrate seasonal variation. The Rule further requires the collection, at a minimum, of baseline data on specified parameters for the water quality description and of baseline information on seasonal flow rates for the water quantity description. For years, the Division has interpreted this Rule to require the submission of baseline information collected quarterly for a minimum of two years prior to permit issuance.

In addition to numerous ephemeral washes, there are six intermittent streams within the permit area: Lila Canyon, Little Park Wash, Stinky Spring Wash, IPA #1 Wash, Pine Springs Wash, and No Name Wash.

UEI has never submitted any data on surface water quantity or quality for any of the washes.

UEI and the Division know that these drainages flow intermittently in response to snow melt runoff and/or rainfall events. In fact, Division personnel have documented evidence of flows in

all drainages, including the drainage through the middle of the proposed disturbed area.

UEI only reports several observations of "no flow"; however these do not provide the data required under Rule 724.200.

UEI has never attempted to collect these data even though remote methods for collecting both water quality and flow depth are well within the state of the art, are standard practice by the U.S. Geological Survey, and have been used in the permitting of other coal mines in Utah.

4. Ground water quantity. Rule 724.100 requires the applicant to submit data on the seasonal quantity of ground water. Ground-water quantity descriptions will include, at a minimum, approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam. As with surface water, the Division's own guidance interprets this rule to require collection of baseline data quarterly for two years. UEI has failed to submit data required under this rule.

For the regional aquifer:

- UEI does not provide two years of seasonal baseline data from IPA-1, -2, and -3, or from L-16-G and L-17-G. (Table 1)
- UEI's description of the piezometric surface is clearly flawed in that it is depicted as a uniformly dipping planar surface over the entire permit area. UEI has extrapolated a piezometric surface to the 4,664-acre permit area on the basis of water level data in the IPA wells, an area that only covers 3.5 percent of the permit area.
- UEI provides no information on the rates of discharge of ground water, the hydraulic conductivity, the recharge area, or incredibly, the discharge area.
- UEI fails to address the effect of lithology, regional structure, or faults on the movement, discharge, depth, etc. of the ground water in the regional aquifer.

For the perched aquifer:

- UEI does not provide two years of seasonal baseline data from the seeps and springs (L-6-G through L-12-G). (Table 1)

5. Ground water quality. Rule 724.100 requires the applicant to submit data on the seasonal quality of ground water. Water quality descriptions will include, at a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron and total manganese. Again, the Division's own guidance interprets this rule to require collection of baseline data quarterly for two years. UEI has failed to submit data required under this rule.

For the regional aquifer:

- UEI has never collected, or attempted to collect, any water quality samples from the IPA wells.
- UEI has provided some data from Redden Spring (RS-2). However; Redden Spring is in the area of the Horse Canyon mine and therefore it does not represent pre-mining baseline conditions, it is not proposed for monitoring, and there are not two years of seasonal baseline data.
- UEI has provided some data from L-16-G and L-17-G. However, it is not clear, based on the information presented by UEI, whether or not these springs are connected to the regional aquifer, and the effect, if any, of the Central Graben Fault. In addition, there are not two years of seasonal baseline data for these springs (Table 1).

For the perched aquifer:

- UEI has not submitted two years of seasonal baseline data from the seeps and springs (L-6-G through L-12-G). (Table 1)

6. **Coal mine waste.** "Coal mine waste" means coal processing waste and underground development waste. Rule 528.320 requires that all coal mine waste will be placed in new or existing disposal areas within a permit area which are approved by the Division for this purpose. Coal mine waste will meet the design criteria of R645-301-536, however, placement of coal mine waste by end or side dumping is prohibited.

UEI proposes to dump coal mine waste (underground development waste), and use it as structural fill upon which the shop and warehouse will be built. This handling of the coal mine waste is in violation of Rule 528.320. In addition, it is unclear how UEI proposes to construct the shop and warehouse on this material when it is supposed to be placed in a disposal area.

7. **Inadequate ground water monitoring plan.** According to Rule 731.211, the permit application will include a ground-water monitoring plan based upon the analysis of all baseline hydrologic, geologic and other information in the permit application. Where there are no baseline data, or incomplete baseline data, there can be no determination of impacts and no effective monitoring.

With regard to the regional aquifer:

- UEI proposes to monitor only ground water depth, not water quality, from the IPA wells. In addition, the IPA wells will be destroyed during mining. UEI proposes to monitor ground water quantity and quality from only two sites, L-16-G and L-17-G. However; these springs may not even be connected to the regional aquifer, they are not within the permit area, they are only 400 feet apart, and there are incomplete baseline data (see number 4 and 5 above, and Table 1).

With regard to the perched aquifer:

- UEI proposes to monitor ground water from only 5 seeps and springs (L-7-G, L-8-G, L-9-G, L-11-G, and L-12-G). While this plan is inadequate on its face, the problem is made worse by the facts that: 1) there are incomplete baseline data for all these proposed monitoring sites (see number 4 and 5 above, and Table 1); 2) L-8 G and L-9-G are located outside the permit area; and 3) L-11G is a spring above the Horse Canyon Mine, and

there are no pre-mining baseline data. Thus, there are only two proposed monitoring sites in the permit area, and only partial baseline data exist for these sites.

8. **No baseline data for surface water monitoring plan.** According to Rule 731.221 the permit application will include a surface-water monitoring plan based upon the analysis of all baseline hydrologic, geologic and other information in the permit application. Where there are no baseline data, there can be no determination of impacts and no effective monitoring.

There are no baseline data, either water quality or water quantity, for surface flows in Lila Canyon, Little Park Wash, Stinky Spring Wash, IPA #1 Wash, Pine Springs Wash, or No Name Wash (see number 3 above). Thus, there will be no basis for comparison during monitoring.

9. **The PHC is flawed.** Rule 728.200 requires that the PHC determination will be based on baseline hydrologic, geologic and other information collected for the permit application. As discussed in numbers 1 through 5 above, there are no baseline data, or incomplete baseline data upon which the PHC can include findings. Specifically, there can be no determinations or findings on:

- Whether adverse impacts may occur to the hydrologic balance (728.310)
- Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface- or ground-water supplies (728.320)
- What impact the proposed coal mining and reclamation operation will have on:
 - Sediment yield from the disturbed area (728.331)
 - Acidity, total suspended and dissolved solids and other important water quality parameters of local impact (728.332)
 - Flooding or stream flow alteration (728.333)
 - Ground-water and surface-water availability (728.334)

10. Water consumption. The PAP does not consider all sources of water that will be consumed by the proposed mining operation, and contains an error in calculating the coal moisture loss. When dust suppression is included in the water consumption, and the stated mining rate of 4.5 M tons/year is used, the amount of water consumed will be approximately 112 acre-feet per year, not the 62 acre-feet per year calculated by UEI. This is in excess of the amount of water consumption that has been identified by the USFWS that requires mitigation. UEI has not demonstrated that this water consumption will not jeopardizing the continued existence of and/or adversely modify the critical habitat of the Colorado River endangered fish species: the Colorado pikeminnow, humpback chub, bonytailed chub, and razor back sucker.

UEI states that this process water will be hauled from the Price River. However, nowhere in the PAP is the effect of removing 112 ac-ft/yr from the Price River analyzed. There are no baseline data on water quality or water quantity above and below the proposed point of diversion, and therefore it will be impossible to determine the impacts from this withdrawal. In addition, there are no baseline data or analyses of the potential impacts to vegetation and/or wildlife. Finally, it is not clear from the information in the PAP whether or not UEI has a water right for the Price River.

11. Cumulative Impact Area. The information provided by UEI is not sufficient to allow the Division to establish a hydrologically reasonable CIA boundary. Specifically;

1. The recharge and discharge areas of the regional aquifer have not been identified. Without this information, the Division cannot establish the CIA boundary.
2. The effect of the faults on the occurrence, movement, and discharge of water in the regional aquifer is not addressed.
3. There is no explanation for the occurrence of ground water in the Mancos Shale (L-16-G and L-17-G)
4. The CIA boundary must include the Price River because UEI intends to divert up to 112 ac-ft/yr and because it is a potential discharge area for the regional aquifer.

12. Operation Plan. According to Rule 731, the permit application will include a plan, with maps and descriptions, specific to the local hydrologic conditions. It will contain the steps to be taken during coal mining and reclamation operations through bond release to minimize disturbance to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area, and to support approved postmining land use.

The plan submitted by UEI fails to minimize disturbance to the hydrologic balance for the following reasons.

1) With regard to subsidence impacts, UEI claims that there will be no impacts to surface or groundwater resources based on the fact that, although subsidence has occurred at the Horse Canyon Mine, there were no impacts. This is of course impossible to demonstrate because there is no pre-mining hydrologic baseline data to which the data on existing water resources can be compared. UEI does acknowledge that subsidence has occurred at the Horse Canyon Mine, and it is therefore only logical to conclude that it will occur at the Lila Canyon Mine.

UEI also claims that there will be no impacts to the surface streams from subsidence because of the overburden thickness. However, parts of Little Park Wash have overburden thickness of 500 feet, and several reaches of other streams in the permit area have overburden thickness of approximately 1,000 feet. A cursory review of the literature provides documentation that under similar geologic conditions and mining methods, subsidence has occurred at coal mines where the overburden thickness was as much as 1,500 feet.

At the Deer Creek Mine, the U.S. Bureau of Mines reports "A maximum of 2.7 feet of subsidence over the two longwall panels mined at a depth of 1,500 feet." (Surface subsidence over longwall panels in the Western United States: Monitoring program and preliminary results at the Deer Creek Mine, Utah: Information Circular 8896).

At the Cyprus Plateau Mine, the U.S. Geological Survey reports "Land surface subsided and moved several feet horizontally. The perennial stream and a tributary upstream from the mined area were diverted into the ground by surface fractures where the overburden thickness above the Wattis coal seam is about 300 to 500 feet." (Hydrology of the North Fork of the Right Fork of

Miller Creek, Carbon County, Utah, before, during, and after underground mining: U.S.G.S. Water-Resources Investigations Report 95-4025, prepared in cooperation with the Utah Division of Oil, Gas, and Mining)

At the Geneva Mine, in the Sunnyside Mining District, the U.S. Geological Survey reports that "Large tension cracks, some of which are hundreds of feet long and range from about 0.06 inch to as much as three feet in width formed in massive sandstone at the top of the Mesaverde Group about 900 feet above the mine area. These cracks divert all surface- and ground-water flow in this area to lower strata or to the mine workings." (Some engineering geologic factors controlling coal mine subsidence in Utah and Colorado: U.S. Geological Survey Professional paper 969).

Based on the evidence of subsidence at the Horse Canyon Mine, and the well-documented evidence of subsidence at nearby mines in similar geologic strata, it is obvious that subsidence will occur at the Lila Canyon Mine. Subsidence fractures will impact several streams, seeps and springs. Unfortunately, as stated above in numbers 3-5, there are absolutely no baseline data for the surface streams within the permit area, and incomplete baseline data on the ground water resources, so it will be impossible to determine the impacts that subsidence will have to the hydrologic balance within the permit and adjacent areas, whether or not there will be material damage outside the permit area, and the limitation on supporting the approved postmining land use.

2) With regard to stream buffer zones, Rule 731.610 states that no land within 100 feet of an intermittent stream will be disturbed by coal mining and reclamation operations unless the Division specifically authorizes coal mining and reclamation operations closer to, or through, such a stream. The Division may authorize such activities only upon finding that:

731.611. Coal mining and reclamation operations will not adversely affect the water quantity and quality or other environmental resources of the stream.

UEI proposes to conduct mining operations within 100 feet of the Lila Canyon channel. Because there are no baseline data on the water quality or water quantity in Lila Canyon, the Division cannot determine whether or not the mining operation will adversely affect the water quantity and quality or other environmental resources of the stream. Thus, the Division cannot

support a decision to authorize mining within the stream buffer zone.

13. The PAP lacks required survey data. The PAP fails to contain certain survey data required under the rules. According to the rules, “[a]ll technical data submitted in the permit application will be accompanied by the names of persons or organizations that collected and analyzed the data, dates of the collection and analysis of the data, and descriptions of the methodology used to collect and analyze the data,” and “[t]echnical analyses will be planned by or under the direction of a professional qualified in the subject to be analyzed.” *R645-301-131 and 132.*

UEI and DOGM cannot “agree” to discard the requirement under the rules to provide such information, as they apparently attempt to for certain surveys. Further, it appears that no information is provided for the vegetation survey of the permit area beyond the proposed disturbed area. SUWA reserves the right to request the information required under the rules for all technical data submitted in the PAP.

14. Vegetation survey is not adequate. The PAP fails to include a description of the vegetative communities and productivity throughout the affected area adequate to predict the potential for reestablishing vegetation. *R645-301-321; -323.*

- * Surveys were conducted only within the proposed mine site location, rather than throughout the entire affected area including the Range Creek and Price River drainages.

- * Although Plate 3-2 illustrates the plant communities, the PAP fails to include discussions regarding such communities and lacks detail with regard to the species within each community.

- * The vegetative survey should have been conducted in the spring, rather than July through August, especially during a drought.

- * The descriptions of the vegetative communities around the seeps, springs and reaches is cursory, and does not represent adequate baseline information.

15. Site-specific resource information is not adequate. The PAP does not contain the site-specific resource information required by the rules, and the information presented in the PAP is not sufficient to design a protection and enhancement plan. *R645-301-322*. Site specific resource information is required where, as here, the permit area or adjacent areas include listed or proposed threatened and endangered plant and animal species; high value habitats including riparian areas, cliffs, migration routes, and wintering areas; or other species or habitats of agency concern. *R645-301-322.200 et. seq.* Despite these rules, either UEI has failed to provide, or the Division has apparently not required such site specific information. For example:

Amphibians: Division should require formal survey for amphibians. Noting the lack of amphibian observation is not sufficient under the regulations requiring site specific information. UEI merely inserts "The permittee has never observed amphibians at or near this location." This does not confirm whether or not amphibians actually live in these locations, but only implies that someone from UEI had not seen any at a particular time. Obviously, it is in UEI's best interest to claim that no amphibians are present. The rules require a formal survey and monitoring plan to ensure protection of amphibians and their habitat. Further, "the permittee" does not meet the requirement to provide the names of the people making the observations, whether or not they were qualified, the dates, and the data collection methodology. *R645-301-131, 132.*

Mexican Spotted Owls: As recognized by the Division, UEI must conduct MSO surveys and provide results of the ground-truthing surveys. UEI states that it will not inventory areas "where the depth of mining is so deep as not to cause any surface effects." As discussed previously, 1,000 feet of overburden may not be sufficient. Thus, all areas of potential impact must be surveyed.

Raptors: There is no explanation of the details of the raptor survey, which fails to comply with *R645-301-131, 132*. Further, the flight path illustrated in Appendix 3-5 shows that the survey did not cover the entire area of potential affect.

Southwest willow flycatcher: As discussed above, we are concerned with impacts to Range Creek and the Price River. Because these waters may be impacted, the PAP must address the potential impacts to the Southwest willow flycatcher.

Endangered Fish Species: Due to the impacts of mine discharge and water consumption, the PAP must evaluate the impacts to the Bonytailed Chub, Colorado Pikeminnow, Humpback Chub, and Razorback sucker.

Sensitive Plant Species: None of the surveys conducted extend throughout the entire potentially affected area. Those that were conducted may not have been conducted at the appropriate time, or by qualified individuals. See attached declaration of Dr. Ron Kass, 11/29/2001.

Appendix 7-7 and 7-8: The information on plant, fish and wildlife species contained in Appendices 7-7 and 7-8 are not sufficient to comply with the regulations. The level of detail must be sufficient to design the protection and enhancement plan required under 301-333.

16. Subsidence impacts to plants and animals are not adequately assessed. The PAP fails to include information on subsidence adequate to assess impacts to plant and wildlife species. R645-301-332; -358.

As discussed above, subsidence may impact seeps and springs throughout the affected area, including areas where there is more than 1000 feet of cover. If springs and seeps are dewatered, impacts to various wildlife species would be extensive. UEI's discussion of subsidence is incorrectly limited to its effect on snake dens, and fails to describe how it will minimize disturbances using the best technology currently available.

17. Impacts to fish and wildlife are not adequately assessed. The PAP fails to include information necessary to adequately assess impacts to fish and wildlife and related environmental values, including the sensitive fish species identified by the U.S. Fish and Wildlife Service. R645-301-333; -358.

As discussed above, UEI's quantitative water consumption assessment is not accurate. In actuality, UEI will be taking 112 acre feet of water directly from the Price River, which may adversely affect the endangered fish in the Upper Colorado River Basin. Further, mine waste will discharge into the Price River, increasing selenium. Thus, consultation with FWS must occur, and UEI must fully describe how it intends to comply with the Endangered Species Act, and to prevent dewatering, increased selenium, and other impacts to these species.

18. Disturbance, monitoring, and protection of habitat. The PAP fails to comply with the rules requiring the operator to avoid disturbance of wildlife habitats, and fails to describe how wildlife will be monitored and protected from hazardous materials. R645-301-358.400; -358.530; -526.222.

Again, as discussed above, the proposed mining operation may impact seeps, springs, drainages, Range Creek, the Price River, and other high value wildlife habitats, and fails to include an adequate plan to avoid such disturbances or restore such habitats should they be harmed. This directly violates the rules. Locating surface facilities near a relatively high concentration of Golden Eagle nest sites risks the taking of such eagles, nests, or eggs, also in violation of the rules. Further, in direct contradiction to the Division's concerns, UEI intends to develop the drainage located in the southwest portion of the mine site area that communicates with the Price River. This drainage is an important wildlife corridor, and the regulations require that disturbances and adverse impacts to wildlife be minimized. The PAP fails to explain using the best technology available why this location is the "most logical taking into consideration both the engineering and environmental aspects."

19. Land use capability is not accurately described, the reclamation plan is not adequate, and the area is unsuitable for mining. The PAP fails to include information that accurately describes the capability of the land affected by the coal mining and reclamation operations, and fails to demonstrate that the land will be returned to its premining land-use capability, or a higher or better use. Mining in the proposed permit area may, at a minimum, affect productivity of water supply, scientific and aesthetic values, and natural systems. R645-301-411.100, -411.120; -412; -414; and R645-301-115. The rules do not contemplate the *current management* of the

lands, but rather the uses that the lands are *capable of supporting*, or even higher uses. The Bureau of Land Management found the proposed mining area, including the lands on which UEI proposes to construct surface facilities, to have wilderness character. See attached BLM 1999 Wilderness Inventory. In other words, the lands are capable of supporting wilderness, regardless of how they are currently managed.

20. Cultural resources have not been adequately surveyed for and protected. The PAP fails to include information from a complete cultural resource survey, a plan that describes measures to prevent adverse impacts to such resources, and a determination of "No Historic Properties" by the State Historic Preservation Office. R645-301-411.140--144. The PAP still fails to include a complete cultural survey of the entire affected area, including Range Creek -- an area that is extremely culturally significant. The discussion on cultural resources contains uncertainties and assumptions, and fails to provide any confidence that all cultural resources in the affected area have been identified and will be protected from harm.

21. Subsidence control is not adequately addressed. The PAP fails to include information necessary to adequately assess the quantity and quality of all state-appropriated water supplies that could be impacted by subsidence, and fails to include an adequate plan for repair, replacement, or restoration of such supplies or surface lands. R645-301-525.130; -525.400; 525.480; -525.510; -731.530.

UEI's discussion regarding the need to replace, repair, or restore state appropriated water sources damaged by subsidence is both inaccurate and inadequate. First, the presumption is that subsidence caused the damage, and UEI's statement attempts to shift the burden of proof ("after proof of damage by mining in Lila Canyon . . ."). Second, the PAP merely lists ways to replace the water, without describing a plan for doing so. There is no discussion regarding the potential impacts of these replacement measures. For example, trucking water could have additional impacts to wildlife and wilderness qualities, and may be impossible during the winter. Constructing wells may dewater other natural sources, cause impacts to vegetation surrounding the wells, and impact wilderness resources.

22. The coal haul road must be included as part of the permit area. The PAP must include the coal haul road within the "affected area" and include all information necessary for the permitting process. *R645-100-200*. The rules require the Division to include within the "affected area," "every road used for purposes of access to or for hauling coal to or from coal mining operations," unless the road is found exempt. The so called Emery County road 126 does not exist beyond the 2.6 mile section listed in the Emery county road log, and there is no evidence of maintenance by the County of the remaining "route" to the proposed mine. The present alignment and condition of the route cannot sustain the intensity of traffic and type of vehicles for the proposed mining operation. The route would need new right of way permits from the BLM, realignment, and reengineering to construct a substantial paved road capable of safely handling the heavy traffic associated with an active coal mine that ships coal by truck.

Obviously, none of these "improvements" would be contemplated "but for" the proposed mine, and the "road" fails the primary criteria for exemption from permitting. Therefore, the Division must analyze the impacts on the various resources from road construction as part of the permitting process.

23. The proposed Lila Canyon Mine must be applied for, noticed and processed as a new permit. The proposed mine must be processed and approved through application of a new permit. *R645-303-222*. Although the text of the public notice states that the application "is being processed as a new permit," everything else in the notice operates against this statement. Specifically, the public notice is titled "HORSE CANYON MINE EXTENSION" (emphasis added), and states that permit is being processed under the Horse Canyon permit number. Further, the map included in the notice depicts the Horse Canyon mine in solid black, while the Lila Canyon mine is outlined. The result fails to display the fact that the proposed Lila Canyon mine "extension" is actually over three times the coal ownership acreage of the Horse Canyon mine permit area, and involves new surface facilities. Thus, the public has not been effectively notified of the impending processing of a new permit for a completely new mine three times the size of the Horse Canyon mine.

Further, although the rules contemplate application for, and issuance of, a new permit, using the

procedures for a new permit is not the same as issuing a new permit. Indeed, UEI has not applied for a new permit, and the Division is not reviewing the application in contemplation of issuing a new permit. Rather, UEI has requested, and the Division contemplates issuing, an extension, that will be known as part "B" to the existing Horse Canyon mine permit. This does not comply with the Division's rules.

SUWA appreciates your time considering these comments and those presented during the informal conference, and looks forward to working with the Division throughout the technical review process. Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. Herbert McHarg", written over a horizontal line.

W. Herbert McHarg
Southern Utah Wilderness Alliance

Table 1 Lila Canyon ground water sampling dates – proposed monitoring sites.

Water											
Monitoring Station	Autumn 2001	Winter 2002	Spring 2002	Summer 2002	Autumn 2002	Winter 2003	Spring 2003	Summer 2003	Autumn 2003	Winter 2004	Spring 2004
Regional Aquifer											
L-16-G				6/15; 8/14	10/16		3/30	6/17	9/11; 11/3		3/31
L-17-G				6/15; 8/14	10/16		3/30	6/17	9/11; 11/3		3/31
IPA-1	9/21; 10/10		3/27	6/4; 8/13	10/15			6/16	9/10; 11/2		
IPA-2	9/21; 10/10		3/27	6/4; 8/13	10/15			6/16; 8/21	11/2		
IPA-3	9/21; 10/10		3/27	6/4; 8/13	10/15			6/16; 8/29	11/2		
Perched Aquifer											
L-6-G											
L-7-G	10/10			6/4; 8/13	10/15			6/16	9/10		
L-8-G	10/10			6/4; 8/13	10/15			6/16	9/12; 11/2		
L-9-G	10/10			6/4	10/15			6/16			
L-10-G	10/10		3/27	6/4; 8/13	10/14			6/16	9/12; 11/2		
L-11-G	10/10		3/27	6/4				6/16	9/10		
L-12-G	10/10		3/27	6/4; 8/13	10/14			6/16	9/10		

 = NO DATA
 = No Access 3/30/04

Winter - December, January, and February
 Spring - March, April, and May
 Summer - June, July, and August
 Autumn - September, October, November

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

In the Matter of the)	
Request for Agency Action)	
By Petitioner Southern Utah)	Docket No. 2001-027
Wilderness Alliance Regarding the)	
Division of Oil, Gas and Mining's)	
Approval of the Lila Canyon)	Cause No. C/007/013-SR98(1)
Significant Permit Revision)	
C/007/013-SR98(1))	
Filed by UtahAmerican Energy, Inc.)	

DECLARATION OF DR. RON KASS

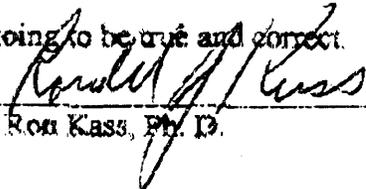
Dr. Ron Kass declares the following:

1. My name is Dr. Ron Kass, I am of over twenty-one years of age, of sound mind, capable of making this declaration, and I am personally acquainted with the facts herein stated.
2. My curriculum vitae is attached and incorporated herein. I am currently a resident of Springville, Utah. I am a graduate of New Mexico State University with a doctorate degree in plant ecology, and I have a Masters degree in taxonomy from Brigham Young University. I have conducted research, consulted, and have taught university classes in plant identification at BYU and New Mexico State University. I have worked for the Bureau of Land Management, and have been employed by Dr. Stanley Welsh, professor of botany at BYU. Since 1988 I have owned Intermountain Ecosystems, a consulting firm. This Declaration is filed in support of Petitioner's Request for Agency Action in the above captioned matter.
3. I have approximately ten years field experience in the Carbon and Emery County area, and I am familiar with the Lila Canyon area and its plant resources.
4. Based on my knowledge and a review of the relevant documents, I believe that the information in the permit application for the proposed Lila Canyon Mine is insufficient to adequately assess the threatened, endangered and sensitive plant species, and the impact to such species.

5. In particular the search for Despain footcactus (*Pediocactus despainii*) should have been conducted during the last week of April or 1st week of May. This species is very difficult to locate in its vegetative condition and only a real expert should conduct these searches during non-flowering times.
6. The Book Cliff's blazing star (*Adonizelia multicaulis* var. *librina*) should have been included in the inventory of this area, as it is known to exist at the mouth of Horse Canyon and is a Colorado Plateau endemic. This species is on the Bureau of Land Management (BLM) special status list, and it was also listed as G3T1 by the Utah Rare Plant Workshop in 2000.
7. I, and other botanists in the state, recommend that only highly qualified botanists should conduct rare plant surveys, especially during sub-optimal times. The May 1998 inventory prepared by EIS Consulting reveals that that the specimen of canyon sweetvetch (*Hedysarum occidentale* var. *canone*) was taken to the BLM to be positively identified. If qualified botanists were doing the field work for EIS Consulting, there should be no need to consult the BLM for positive identification. Regardless, there are no botanists on staff at the BLM in Price. Indeed it is imperative that a qualified botanist performs the field work in order to identify new taxa, range extensions, and other rare and disjunct taxa possible at a given site.
8. In addition, although the documentation indicates that the proposed project may dewater seeps and springs, there is no indication that such seeps and springs were inventoried for baseline information on plant species dependant on these water sources. Such water sources are important refugia for locating disjunct species and extensions on habitat, and should be inventoried throughout July and August.
9. In summary, because the surveys performed for the proposed action either neglected to consider certain species, or were performed inadequately and at inappropriate times during the year, there is no possible way to determine the potential impacts due to the mining activities.

I DECLARE, under penalty of perjury, the foregoing to be true and correct.

Date 11-29-2001



Dr. Ron Kass, Ph. D.

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I DECLARE, under penalty of perjury, the foregoing to be true and correct.

Date _____

Dr. Ron Kass, Ph. D.

CURRICULUM VITAE

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EDUCATION

- Ph.D.** New Mexico State University, Las Cruces, NM. Depart. of Biology, Plant Community Ecology, 1992.
- M.S.** Brigham Young University, Provo, UT. Depart. of Botany and Range Science, Plant Taxonomy, 1983.
- B.S.** Brigham Young University, Provo, UT. Depart. of Zoology, Wildlife Ecology, 1978.

PROFESSIONAL EXPERIENCE

Principal--Intermountain Ecosystems, LLC.

25 years experience in: Endangered Species Inventory and Monitoring, Quantitative Vegetation Sampling and Reclamation, Botanical and Wildlife inventory, Wetland Delineation and Mitigation. Compliance with NEPA, USACOE, EPA, FERC, SMCRA, BLM, USFS and USFWS guidelines.

PRINCIPLE PROJECTS

ENDANGERED SPECIES

- 2001** SWCA/Northwest Pipeline. Rockies Displacement Expansion, Wyo. and Idaho.
- HDR/UDOT Engineering, SLC, Ut. Southern Corridor EIS. St. George, Ut.
- RB&G Engineering, Provo, Ut. American Fork Trail T&E inventory.
- Sear-Brown Group/UDOT. US 191 EIS, Moab Ut.
- Sear-Brown Group, Salt Lake City, Ut. Man of War Bridge BA. St George, Ut.
- City of St. George, Ut. T& E clearance for Southwestern willow flycatcher.
- UDOT Roadside Vegetation Inventory, Region 2.
- BLM. Price Area Office. Status reports for *S. wrightiae* and *C. creutzfeldtii*.
- Private Fuels Storage Facility, LLC. Expert witness for rare plants and vegetation.
- 2000** Sear-Brown Group, Salt Lake City, Ut. T & E clearance for Riverdale Bike Path.
- Sear-Brown Group, Salt Lake City, Ut. T & E clearance for Man of War Bridge, St. George, Ut.
- RB&G Engineering/UDOT, Provo, Ut. T&E clearance for Orem Center St. Project.
- RB&G Engineering/UDOT Provo, Ut. T&E clearance for 4 Utah County Bridges.

- SWCA, Salt Lake City, Ut. Solitude & DMB ski resort rare plant inventory.
- Entranco, Salt Lake City, Ut. Atkinville Interchange T&E inventory. St George, Ut.
- Entranco, Salt Lake City, Ut. Southern Corridor Biological Assessment. St George, Ut.
- Environmental Management Associates, Elko Nevada. BLM Land Exchange T&E inventory.
- W. W. Clyde, Springville, Ut. Wolf Creek Rd. T&E & raptor clearance, Tabiona, Ut.
- W. W. Clyde, Springville, Ut. North Glendale Gravel Pit. T&E clearance, Kane, Co., Ut.
- Pentacore, Midvale, Ut. *Spiranthes diluvialis* monitoring for American Fork Mall.
- Pentacore, Midvale, Ut. *Spiranthes diluvialis* inventory Provo Industrial Park.
- SWCA, Salt Lake City, Ut. Williams Corps. Aspen pipeline T&E inventory.
- Sear-Brown Group, Salt Lake City, Ut. T & E clearance for Provo 800 North.
- 1999** USDA, Unita National Forest. King's woody aster (*Machaeranthera kingii*) inventory.
- Michael Baker Jr., Salt Lake City. T&E clearance for fiber optic line-Colo.& Ut.
- Sear-Brown Group, Salt Lake City, Ut. T&E clearance River Road Project, St. George, Ut.
- W. W. Clyde, Springville, Ut. T&E clearance Green River gravel pit. Green River, Ut.
- W. W. Clyde, Springville, Ut. T&E clearance for Snow Basin-Trapper Loop Road. Odgen, Ut.
- Stone & Webster, Denver, Co. Rare plant inventory. Skull Valley Private Storage Facility, Tooele Ut.
- UDOT & Entranco, Salt Lake City, Ut. Southern Corridor Desert Tortoise (*Gopherus agassizii*) inventory: St George, Ut.
- Williams Corp. Salt Lake City, Ut. Southwestern willow flycatcher (*Empidonax traillii extimus*). Mancos Loop Pipeline. Mancos, Co.
- SWCA. Salt Lake City, Ut. Williams Pipeline Co. Aspen Pipeline T& E.
- 1998** Orem City, Ut. Ute ladies tresses (*Spiranthes diluvialis*) inventory, restoration, and monitoring.
- Burns & McDonnell Kansas City, Mo. *Spiranthes diluvialis* inventory for DM&E railroad. Wyo. & S. Dakota.
- Engineering Planning Group, Draper, Ut. *Spiranthes diluvialis* inventory, American Fork, Ut.
- Stone & Webster, Denver, Co. Rare plant, burrowing owl, and loggerhead shrike inventory. Skull Valley Private Storage Facility.
- BLM. Richfield District, Ut. Rare plant, burrowing owl, Utah prairie dog and noxious weed inventory. Wayne Co.
- HDR, & Baseline Data. Legacy Highway BA. Salt Lake City, Ut.

- Pic-Technologies, Denver, Co. Wetlands & T& E. Ultra Natural Gas EIS. Pinedale, Wy.
- SWCA, Salt Lake City, Ut. Williams Pipeline Co. Aspen T&E inventory, Price, Ut.
- SWCA, Salt Lake City, Ut. Questar Gas Co., Rare plant inventory, Price, Ut.
- 1997** Continental Lime Co., Delta, Ut. Rare plant inventory Cricket Mt. Mine Expansion.
- SWCA., Salt Lake City, Ut. Questar Pipeline. *Spiranthes diluvialis* inventory. Genola, Ut.
- River Gas Inc. Northport, Al. T&E inventory: Price Coalbed Methane.
- BLM. Ferron Gas EIS Rare plant inventory. Price, Utah.
- Northern Geophysical of America, Englewood, Co. Rare plant inventory Salina, Ut.
- BLM. Wright fishhook cactus (*Sclerocactus wrightiae*) demographic monitoring.
- HDR & Baseline Data. Legacy Highway EIS., Salt Lake City, Ut.
- 1996** McMurry Oil Company, Big Piney, Wy. Rare plant and logger head shrike inventory: Jonah EIS.
- Continental Lime Co., Delta, Ut. Rare plant inventory. Cricket Mt. Mine Expansion.
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- 1979** Endangered Plant Studies & NPI, Salt Lake City, Ut. Vegetation sampling and monitoring: Alaska pipeline: Prudoe Bay to Fairbanks to Tok.
- 1977-78** BLM, Moab District Office. Range technician. Vegetation mapping and sampling (SVIM).
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- 1976** Brigham Young University and Dow Chemical Co. Gambel oak control.

PUBLICATIONS

5 scientific publications and 100 non-refereed reports.

PROFESSIONAL AFFILIATIONS

Society of Wetland Scientists, Natural Areas Assoc., Utah & Wyoming Native Plant Society.

CERTIFICATIONS

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UTAH

*Wilderness
Inventory*



1999

U.S. Department of the Interior • Bureau of Land Management

Desolation Canyon

Findings

INVENTORY UNIT ACRES

Federal	State	Total
With Wilderness Characteristics		
182,320	28,900	211,220 (97%)
Without Wilderness Characteristics		
5,700	0	5,700 (3%)
Inventory Unit Total		
188,020	28,900	216,920
Contiguous Area—Wilderness Characteristics		
Desolation Canyon WSA		290,845
(UT-060-068A)		
Floy Canyon WSA (UT-060-068B)		72,605

About 211,220 acres of the nine Desolation Canyon inventory units have wilderness characteristics. These units are a continuation of the many features and landforms found throughout the contiguous Desolation Canyon Wilderness Study Area (WSA) and enhance its magnificent wilderness qualities. In combination with the WSA, the nine units represent one of the largest blocks of roadless BLM public lands within the continental United States. This is a place where a visitor can experience true solitude—where the forces of nature continue to shape the colorful, rugged landscape.

Approximately 5,700 acres in three places along the fringe of the inventory units are unnatural and do not have wilderness characteristics.

The Floy Canyon and Desolation Canyon inventory units are physically connected at the end of the Right Hand Tusher Canyon Road within the state section.

Unit Description

Desolation Canyon is located in Grand, Emery, Carbon, Duchesne, and Uintah Counties. The southern boundary of the inventory unit is five miles north of Green River, Utah, while the northern boundary is located some 38 miles southwest of Vernal. The Green River bisects the unit on the north. The Uintah and Ouray Indian Reservation forms a part of the boundary

of the north end of the unit. Various roads, pipelines, and private lands form the boundaries of the remainder of the unit.

The terrain varies dramatically, from river bottoms and flood plains at about 4,200 feet elevation to the high ridges of the Tavaputs Plateau at 9,500 feet. Numerous mesas, ridges, plateaus, canyons, and deep remote drainages intersect with the Green River. The south and southwest portion of the inventory unit is defined by a 32-mile portion of the Book Cliffs. The units contain a wide diversity of vegetation, ranging from riparian zones along the river, to piñon and juniper woodlands; areas dominated by saltbush/sagebrush/ shadscale plant communities; and high ridges and plateaus forested with aspen, spruce, and fir.

Recreation is a dominant, use with some 7,000 boaters a year floating the Green River through Desolation Canyon. Many more recreationists utilize the accessible lower stretch of Gray Canyon for camping, fishing, hiking, and water sports. Hunting and sightseeing occur in outlying areas along the boundaries. Some cattle grazing takes place, and remnants of past oil and gas exploration are also present.

Wilderness Characteristics

Naturalness

Nearly all of the inventory units appear natural. While there are many scattered human imprints, their individual and cumulative impact on the natural character of most of the inventory units is minor. The imprints are in various stages of rehabilitation, with most being substantially unnoticeable in the area as a whole. The expansive landscape, diverse topography, and vegetation screens the scattered human intrusions within the units. Minor remnants of past oil and gas exploration, livestock grazing, and recreation pursuits remain, but most disturbance has been erased over time by the forces of wind, water and vegetation regrowth. Most of the significant or noticeable intrusions are located outside the boundaries.

Three areas do lack natural character. A small area in Unit 1 on the northern boundary near Fourmile Wash and Fourmile Bottom on the Green River lacks naturalness because of roads, old seismic lines, and reclaimed drill pads. Two small areas in Unit 8 also lack naturalness because of extensive off-highway vehicle use.

Outstanding Opportunities

Solitude

All nine units are contiguous to Desolation Canyon WSA and enhance the outstanding opportunities found in the WSA. Units 1 and 7 are of sufficient size and configuration to provide outstanding opportunities for solitude on their own. All of the units, together with the Desolation Canyon WSA, comprise a large, remote area where a visitor is truly isolated from the outside world. The vast size, configuration, numerous scenic vistas, diversity of vegetation, and rugged topography provide the visitor with numerous places and opportunities to become isolated from others. Most of the units are remote, accessible only by foot, horseback, or boat.

Primitive and Unconfined Recreation

The inventory units are contiguous to and are an extension of the Desolation Canyon WSA. They enhance the outstanding opportunities provided by the WSA, including multiple-day river float-boating trips in a primitive setting, hiking, hunting, horseback riding, backpacking, back-country camping, climbing, fishing, swimming, photography, viewing of cultural and historic sites as well as a diversity of wildlife, nature study, and viewing of scenic landscapes. The large size and configuration of this vast, wild area enhances the variety and extent of activities available.

Supplemental Values

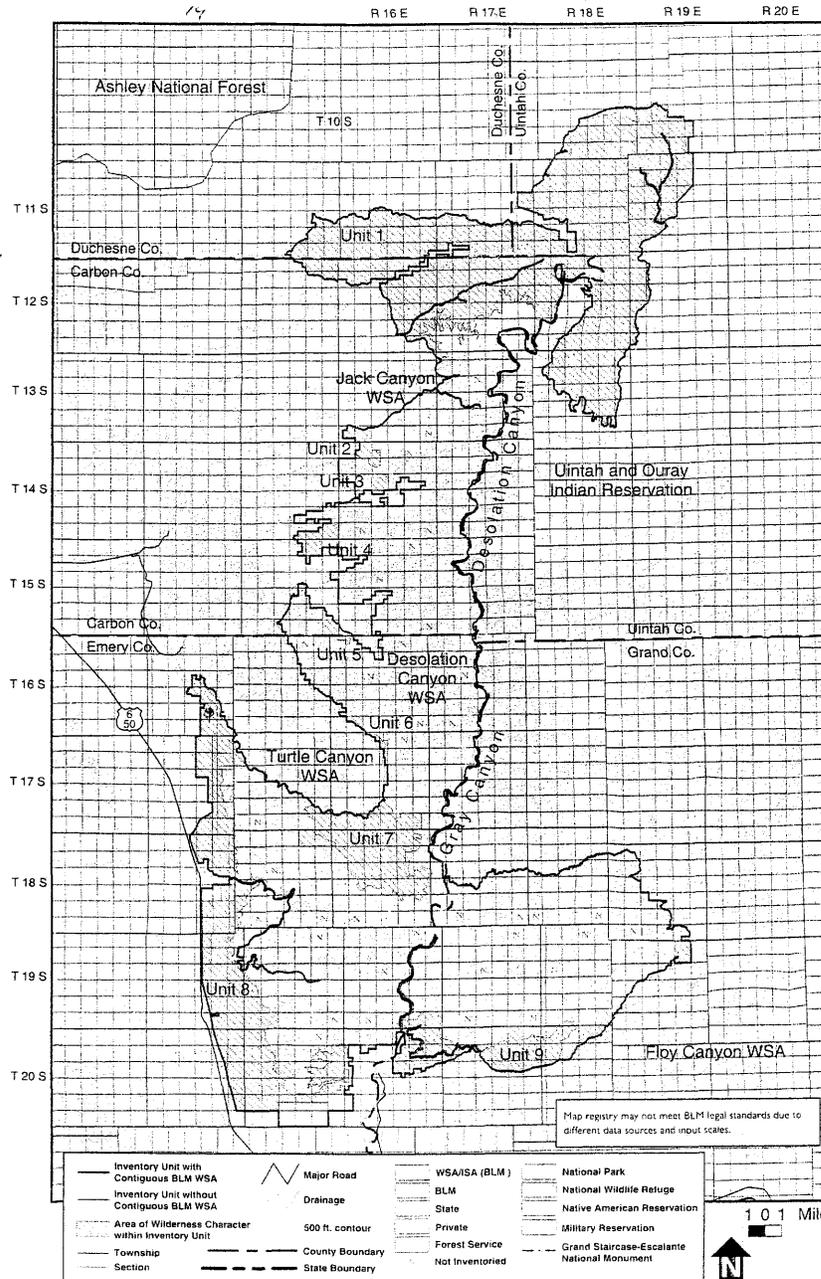
The inventory unit contains cultural, scenic, geologic, botanical, and wildlife values. Elevations and topography in the units vary from desert canyons to high mountain environments. Vegetation and wildlife habitats and species also vary greatly because of the diversity of terrain. Six endangered animal species occur or may occur in the units, including the peregrine falcon, black-footed ferret, bald eagle, Colorado squawfish, humpback chub, and bonytail chub. Ten special status animal species and six special status plant species also occur or may occur in some of the units.

DESOLATION CANYON—
The Green River flows by Nutters Hole through Desolation Canyon; the inventory unit is on the right side of the river.



BLM photo

Desolation Canyon



NORTHEAST REGION—Desolation Canyon

Turtle Canyon

Findings

INVENTORY UNIT ACRES

Federal	State	Total
With Wilderness Characteristics		
4,860	3,860	8,720 (100%)
Without Wilderness Characteristics		
0	0	0 (0%)
Inventory Unit Total		
4,860	3,860	8,720
Contiguous Area-Wilderness Characteristics		
Turtle Canyon WSA (UT-060-067)		33,690

All five Turtle Canyon inventory units (8,720 acres) have wilderness characteristics when considered in conjunction with the contiguous Turtle Canyon Wilderness Study Area (WSA). The units appear to be in a natural state, affected primarily by the forces of nature. A few short vehicle ways exist near the boundary, but they are in various stages of reclamation through erosional processes and revegetation, and thus do not significantly impact the natural character of the units. The scenic, steep, and jagged topography and dense vegetation provide outstanding opportunities to experience solitude and to engage in a variety of primitive and unconfined recreation activities. The inventory units also contain cultural, wildlife, and scenic values.

Unit Description

The Turtle Canyon inventory units are located about eight miles southeast of Sunnyside. They are on a divide between the Little Park Plateau above the Book

Cliffs to the west and Range Creek Canyon to the northeast. The units are contiguous to and extend the landforms of the Turtle Canyon WSA, an extremely steep and rugged area cut by canyons that are 1,000 to 3,000 feet deep. Elevations range from 4,800 feet in Turtle Canyon to 9,327 feet south of Little Horse Canyon near the head of Bear Canyon in the WSA. Vegetation is predominantly piñon and juniper woodland, with Douglas fir and mountain shrub communities scattered along the higher elevations and northern slopes. Much of the area has colorful rock outcrops of reds, greens, yellows, and grays. Uses of the units include coal exploration, cattle grazing, hunting, and hiking.

Wilderness Characteristics

Naturalness

The intrusions within the inventory units are widely scattered and related to ranching and coal exploration drilling. All of these intrusions are minor, have been reclaimed or are in various stages of natural rehabilitation, are well screened by vegetation and topography, and are substantially unnoticeable. The units appear to be in a natural state, affected primarily by the forces of nature as perceived by the average visitor on the ground.

Outstanding Opportunities

Solitude

The inventory units possess outstanding opportunities for solitude because they

are contiguous to and are extensions of the Turtle Canyon WSA, which provides outstanding opportunities for solitude. The steep and rugged terrain, numerous side canyons, and piñon and juniper woodlands all provide ample screening. Scenic views within the canyons and from the ridgetops enhance the feeling of being isolated and alone.

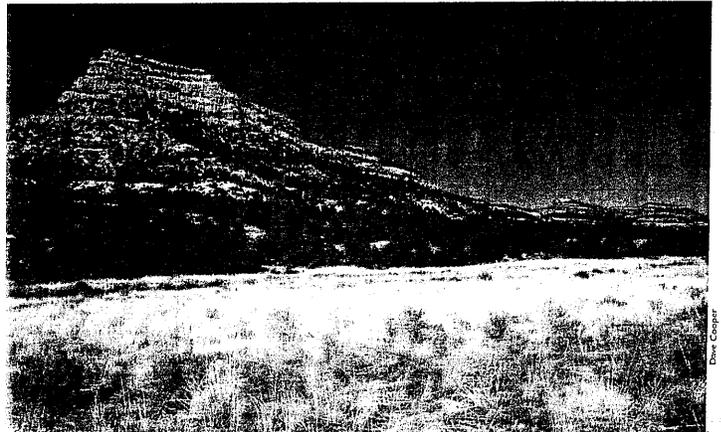
Primitive and Unconfined Recreation

The inventory units are contiguous to and are extensions of the Turtle Canyon WSA, where opportunities for primitive and unconfined recreation are outstanding. The WSA provides opportunities for hiking, climbing, camping, hunting, and sightseeing. These opportunities are outstanding because of the size and configuration of the WSA as well as the quality of the scenic, geologic, wildlife, and cultural features. The contiguous inventory units enhance and extend the primitive and unconfined recreation opportunities found within the Turtle Canyon WSA.

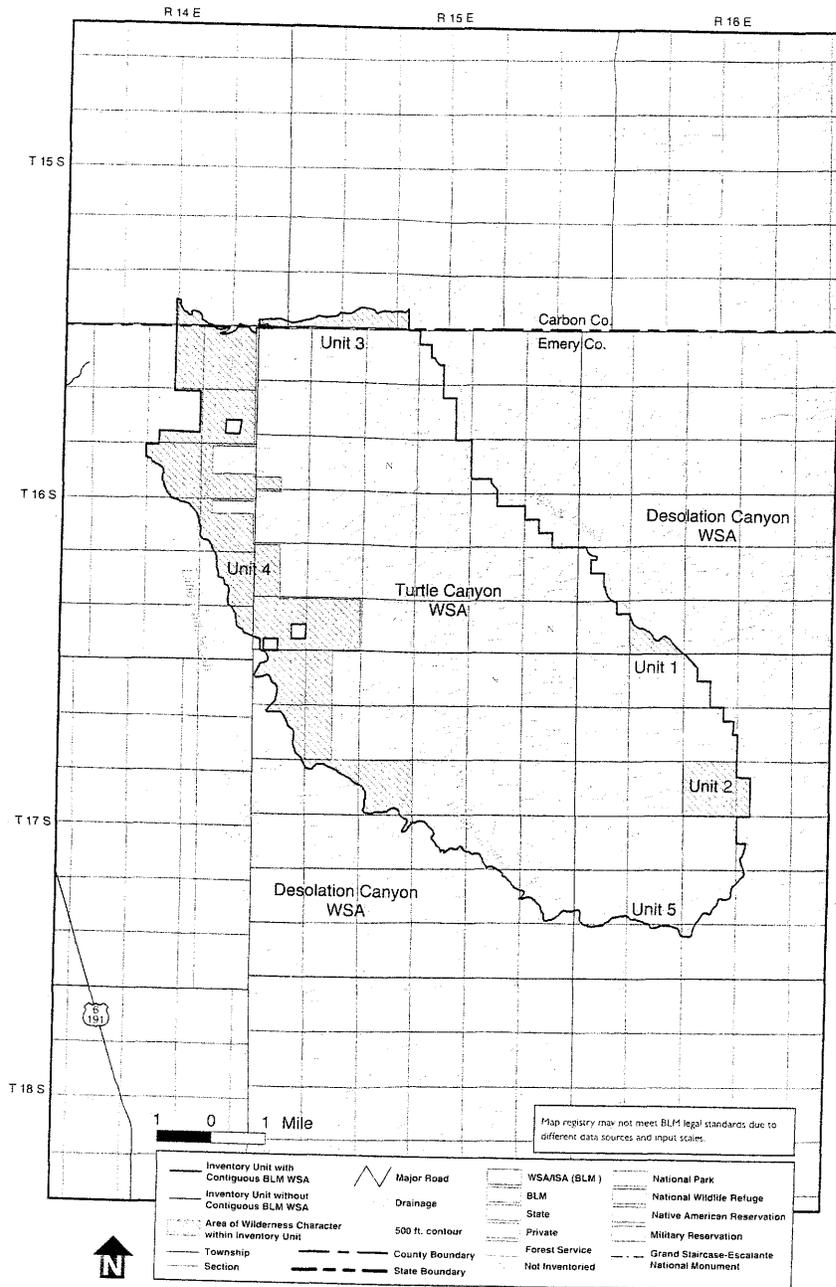
Supplemental Values

The WSA and inventory units have outstanding scenic quality, and significant Fremont period artifacts could be present. There are populations of mountain lion, elk, Rocky Mountain bighorn sheep, and black bear. Endangered peregrine falcons and bald eagles may frequent the area; six other special status animal species and three plant species could be present as well. Overall, the differences in terrain and vegetation and the variety of wildlife and wildlife habitat that exist here are seldom found in an area the size of the Turtle Canyon WSA.

TURTLE CANYON—Varied landforms and vegetation extend the outstanding opportunities for solitude found in the Turtle Canyon WSA into the inventory unit.



Turtle Canyon



NORTHEAST REGION—Turtle Canyon

**BEFORE THE DIVISION OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

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IN THE MATTER OF THE LILA CANYON EXTENSION TO THE HORSECANYON MINE, CARBON AND EMERY COUNTIES, UTAH		INFORMAL CONFERENCE FINDINGS, CONCLUSIONS AND ORDER CAUSE NO. C/007/013
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On July 7, 2004, the Division of Oil, Gas and Mining ("Division") held an informal conference concerning Utah American Energy Inc's (UEI's) application for a new Coal Mining and Reclamation Permit (MRP) for the Lila Canyon Extension to the Horse Canyon Mine, Carbon and Emery Counties, Utah. The request for an informal conference was made by Southern Utah Wilderness Alliance (SUWA) by Fax to the Division, May 26, 2004.

The following individuals attended:

Presiding: Lowell P. Braxton
Director
Division of Oil, Gas and Mining

Petitioner: W. Herb McHarg and Elliot W. Lipps
For Southern Utah Wilderness Alliance

Applicant: Denise Dragoo and Jay Marshall
For UtahAmerican Energy Inc.

Interested
Party: Ray Peterson and Ira Hatch, for
Emery County

FINDINGS OF FACT

1. The administrative completeness determination for the subject permit that triggered this informal conference was made by the Division on March 26, 2004.
2. The opportunity for the public to provide written comments or request an informal conference for this decision closed May 27, 2004.
3. By Fax dated May 26, 2004, SUWA requested an informal conference to discuss issues of concern regarding the Utah Division of Oil, Gas and Mining's determination of Administrative Completeness for the subject permit application package.
4. The Division made an earlier administrative completeness determination for this same permit application package that resulted in an informal conference being held May 21, 2002.
5. The protracted permitting activity that occurred between the earlier determination of administrative completeness prompted the Division to make the Division a second administrative completeness determination on March 26, 2004, thereby re-opening the public comment opportunity referenced in 1, above.
6. Notice of the July 7, 2004 informal conference was properly given.
7. The request for an informal conference was timely.
8. Prior to the conference, a telephone conference call was held by attorneys for the Division, the Petitioner, and the Applicant (Emery County was not a party at that time), to discuss the agenda and timeline for conduct of the July 7, 2004 informal conference.
9. All parties to the conference call agreed to the agenda.
10. Pursuant to Utah Code Ann. Section 40-10-13 and Utah Administrative Rule R645-300-123, an informal conference in the matter was held on July 7, 2004.
11. A record of the informal conference was made by Scott M. Knight, RPR, Thacker & Co., Salt Lake City, UT.
12. The record referenced at 11, above, and a list of those attending the informal conference will be maintained in the conference file.
13. The participants in this informal conference were Southern Utah Wilderness Alliance, Emery County, and Utah American Energy, Inc.
14. The Division and Applicant may require additional time to complete the TA review of the application and to consider the additional information provided at the informal conference.
15. A final decision on the application may require more than 60 additional days, allowed by rule, from the date of closing of the conference.

CONCLUSIONS OF LAW

1. Utah Administrative Rule R645-300-123 grants affected parties an opportunity to request an informal conference on the application for a new permit.
2. Utah Administrative Rule R 645-300-120 et sec., provides for public participation and comment on a PAP at the time an administrative completeness determination is published.
3. At the informal conference on July 7, 2004 the public was provided an opportunity to comment on the application for the Lila Canyon Extension to the Horse Canyon Mine in the manner anticipated by R645-300-123.
4. R645-300-131.100 requires that a decision on the application be made within 60 days of the closing of the informal conference.
5. The Divisions may require additional time beyond 60 days to review the TA in light of the status of the current review and the additional information provided at the informal conference and may require additional public comment.
6. The hearing examiner may reconvene the informal conference if he determines that additional public comment is necessary.

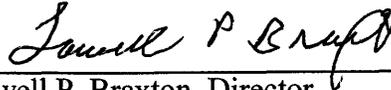
ORDER

NOW THEREFORE, it is ordered that:

1. The materials submitted by the participants at the July 7, 2004 informal conference and the record created at this conference shall be reviewed and considered by the Division in the normal course of its ongoing review of the new permit for the Lila Canyon Extension of the Horse Canyon Mine.
2. The Division's determination of Technical Adequacy (the TA) shall consider technical issues raised by parties to this conference.
3. Where appropriate, the TA may describe the Division's basis for not incorporating a party's materials or requests into the PAP.
4. The Division shall provide a copy of the final TA to the parties to this Conference.

5. The informal conference shall remain open, and be continued without date during the pendency of the Division's review of the technical adequacy of the Lila Canyon Extension of the Horse Canyon Mine to accommodate the need for additional public comment.
6. If within 15 days of the Division's notification to a party in this conference of the completion of the final TA a party requests an opportunity to discuss the TA with the Division, the Division will schedule and conduct such a meeting within 30 working days of a party's notification.

SO DETERMINED AND ORDERED this 30 day of, July 2004



Lowell P. Braxton, Director
Division of Oil, Gas and Mining
State of Utah

vs.

cc: Lowell Braxton
Mary Ann Wright
Herb McHarg, SUWA
Denise Dragoo, UEI
Jay Marshall, UEI
Ira Hatch, Emery Co

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CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Finding, Conclusions and Order for Cause No. C/007/013 to be mailed by certified mail, postage prepaid, on the 3rd day of August 2004 to the following:

Jay Marshall
UtahAmerican Energy, Inc.
P.O. Box 986
Price, Utah 84501

Denise Drago
Snell & Wilmer
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101

W. Herbert McHarg
Southern Utah Wilderness Alliance
Moab Office
76 South Main #9
Moab Utah, 84532

Kathy C. Weinberg, Esq.
JENNER & BLOCK
1717 Main Street, Suite 3150
Dallas, TX 75201

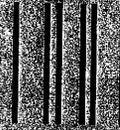
Ira Hatch
Emery County
P.O. Box 629
Castle Dale, Utah 84513

Mary Ann Wright
Division Oil, Gas & Mining
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84114-5801
HAND DELIVERED



Vickie Southwick
Executive Secretary
Division of Oil, Gas and Mining

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1594 W North Temple, Suite 1210
Salt Lake City, Utah 84114-5809

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August 2, 2004 C/007/6013

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<p>1. Article Addressed to:</p>	<p>B. Received by (Printed Name) <i>Julie McKenzie</i></p> <p>C. Date of Delivery <i>8-9-04</i></p>
<p>DENISE DRAGOO SNELL & WILLIMER GATEWAY TOWER WEST 15 WEST SOUTH TEMPLE SUITE 1200 SALT LAKE CITY UTAH 84101</p>	<p>D. Is delivery address restricted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below: RECEIVED AUG 18 2004 DIV. OF OIL, GAS & MINING</p>
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ALLIANCE MOAB OFFICE
MOB UTAH 84532

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[Signature] 8/10
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L. Jurgitt Addressee

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