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C0070013

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ORIGINAL TRANSCRIPT

BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

IN AND FOR THE STATE OF UTAH

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

Cause No. C/007/013

HEARING IN THE MATTER OF LILA CANYON EXTENSION

TAKEN AT:

Department of Natural Resources  
1594 West North Temple  
Salt Lake City, Utah

DATE:

July 7, 2004

REPORTED BY:

Scott M. Knight, RPR

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APPEARANCES

HEARING EXAMINER:

LOWELL P. BRAXTON,

DIRECTOR, DIVISION OF OIL, GAS & MINING

FOR UTAHAMERICAN ENERGY, INC.:

DENISE DRAGOO, ESQ.,

SNELL & WILMER

15 West South Temple, Suite 1200

Salt Lake City, Utah 84101

FOR SOUTHERN UTAH WILDERNESS ALLIANCE:

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Hearing in the Matter of Lila Canyon Extension

July 7, 2004

PROCEEDINGS

MR. BRAXTON: This is the time and the place for the Lila Canyon informal conference. This is Cause No. C/007/013. Our, our procedural rules require that this conference be conducted on the record. So we have a court reporter taking minutes on this. The agenda that most of you should have in front of you--I hope all of you have in front of you kind of sets out the direction we're going in this--morning. I'm not sure I'll take all of the ten minutes that are allocated to me up front.

I wanted to welcome everyone here. This is an informal conference. And I hope we can conduct the business of the conference in an informal manner. We have some important considerations to hear this morning. We're going to be receiving some, I think, information on, on the technical aspects of the Lila Canyon permit application. I think these are very valuable bits of information that we get from the public and other parties as a permitting process goes along. So I very much endorse the process. I welcome



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1 you here, and I hope we can conclude this, this  
2 conference in an orderly manner.

3 Just as a housekeeping note, I have to  
4 do a conference call this afternoon at three  
5 o'clock so if we're still running by then, we'll  
6 recess for a while. I, I hope that we can  
7 conclude by then. But if not, we have the  
8 balance of the day set out to do this, with the  
9 exception of the recess that I need to do at  
10 three.

11 Having said that, again, from a  
12 housekeeping point of view, are there any people  
13 here that need to make presentations early in the  
14 morning rather than staying late in the day?

15 Emery County?

16 MR. HATCH: Yeah.

17 MR. BRAXTON: Okay. Then I think what  
18 we'll plan to do is, is run you early in the  
19 process down there under "Public Identification of  
20 Issues." That would be the, I think, the fourth  
21 agenda item down.

22 MR. HATCH: Appreciate that, Lowell.

23 MR. BRAXTON: Are there any other  
24 housekeeping matters that, that people would like  
25 to discuss this morning?



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1 Hearing none, then let's move to the  
2 second agenda item, the presentation of the mining  
3 and reclamation plan by UtahAmerican Energy, Inc.

4 MR. MARSHALL: Am I okay there, Lowell?

5 MR. BRAXTON: Yeah, that's the best  
6 place for you. I can see you from there, anyway.

7 MS. DRAGOO: I can see you too. I had  
8 the post.

9 MR. MARSHALL: Well, for anybody who  
10 doesn't know me, I'm Jay Marshall. I'm the  
11 project manager for the Lila Canyon Mine,  
12 UtahAmerican Energy, Inc. Denise Dragoo is our  
13 legal counsel. And I'm not going to bore  
14 everybody with a bunch of dates and times and  
15 things like that. I'm just going to basically  
16 explain the project, what we want to do, and we  
17 can move on from there.

18 Again, UtahAmerican Energy is owned by  
19 Murray Energy. Murray Energy is owned by Robert  
20 Murray. Robert Murray is the largest independent  
21 coal producer in the United States. He employs  
22 over 2,800 people. He-his mines produce over 25  
23 million tons a year, which is roughly equivalent  
24 to the state of Utah. He doesn't have any  
25 operations in Utah. He wanted to expand into



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1 Utah, so he purchased the leases from  
2 Intermountain Power Agency.

3 The leases that, that are involved in  
4 the Lila Canyon permit--there are six federal  
5 leases that were leased 1940s to 1950s. They  
6 were incorporated into a logical mining unit,  
7 logical mining unit UTU 73516 in March of '99.  
8 Encompassed in those leases are 94 million tons in  
9 place. The leases encompass 5,544 acres. We do  
10 have an approved mine reclamation plan from the  
11 BLM--not mine reclamation plan--excuse me--we do  
12 have an approved resource recovery protection  
13 plan, an R2P2 plan from the Bureau of Land  
14 Management.

15 There's been extensive drilling done on  
16 the property. There's--on the property on the  
17 lease--I'm sorry. On the permit boundary itself,  
18 there's 12 holes that were drilled between 1940s  
19 and up to 1994 in three drilling programs.  
20 Within a permit application, the permit includes  
21 5,992 acres total. When I say "the permit," I'm  
22 talking about the extension to the existing Horse  
23 Canyon permit.

24 Of those 5,992 acres, 42.6 acres is in  
25 the disturbed boundary. And within that disturbed



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1 boundary there are areas undisturbed. We propose  
2 to disturb only 25.3 acres total disturbance,  
3 surface disturbance.

4 There's been some concerns in the  
5 past--the name of the mine is Lila Canyon Mine.  
6 We are not going to mine under Lila Canyon. Lila  
7 Canyon was already mined under in 1951 to 1970.  
8 When I say already--99 percent of it. There's some  
9 permit area that is under the drainage of Lila,  
10 but Lila itself, 99 percent of it was mined out  
11 between 1951 and 19--to 1970. All surface impacts  
12 that you see with Lila Canyon have been observed  
13 over the last thirty years.

14 What we propose to do is open up a coal  
15 mine that's designed as four and a half million  
16 tons of coal to be produced, four and a half  
17 million tons of coal a year. We're going to  
18 employ between to 145 and 200 employees. That's  
19 direct employees. With a trickle-down effect,  
20 I've seen numbers 9. I've seen 14 to 1. I don't  
21 know what that ratio is, but when you--when we  
22 have 145 to 200 high-paying jobs, there's  
23 definitely a lot of service jobs that go with  
24 that.

25 We're going to have a payroll of



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1 approximately a million dollars a month. We're  
2 going to have--it's going to take between a  
3 hundred forty and a hundred fifty million dollars  
4 of capital to put the mine in. Like I said, it's  
5 designed at four and a half million tons a year.

6 When we're going to open the mine, I  
7 could tell you that if I could if you could tell  
8 me what the permit's going to be approved. I can  
9 tell you this: The mine is going to be in  
10 production within three years of approval of the  
11 permit.

12 If there's no questions, that's all I  
13 have.

14 MR. BRAXTON: Are there questions from  
15 the, from the group? Let me, let me ask a  
16 question. And then I'll turn to you, Jerri. Can  
17 everybody hear all right? We don't have  
18 microphones, and I'm wondering whether we might  
19 not want to pull these tables up a little closer  
20 and encourage folks that are in the back of the  
21 room to move up a little closer, since we don't  
22 have a PA system in here this morning.

23 MS. WHITE: Would you like me to go and  
24 get one? Would you like to set up a PA system?

25 MR. BRAXTON: If people can't hear, I



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1 think the first thing to do is just move forward.  
2 I'd encourage you to do that. If there's a  
3 general need for a PA, we'd be glad to do that.

4 What's the will of the group?

5 MR. MARSHALL: Turn the table.

6 MR. PETERSEN: Sideways.

7 MR. MARSHALL: And then we're not  
8 talking away from everybody.

9 MR. BRAXTON: Okay. Let's do that.

10 Why don't you just come up here. Maybe  
11 that's the easiest way to do it, Jay.

12 MR. MARSHALL: That could work too.

13 MR. BRAXTON: Is that satisfactory to  
14 everybody?

15 MS. WRIGHT: I think so that more than  
16 one person could sit up there, and it would be a  
17 good idea to have this set up still and be up  
18 there.

19 MS. DRAGOO: Were there any more  
20 questions for Jay or--

21 MR. BRAXTON: Jerriann, I thought you  
22 had a--

23 MS. ERNSTSEN: That was my concern. I  
24 couldn't hear.

25 MS. WRIGHT: Scott, were you able to



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hear them?

THE REPORTER: Uh-huh (Affirmative).

MR. BRAXTON: Let's move down to the, the next juncture on the agenda, and that's the status of the plan and the Division technical review. The Division of Oil, Gas & Mining will make this presentation.

MS. WRIGHT: Pam Grubaugh-Littig will make this presentation.

MS. GRUBAUGH-LITTIG: Hi. My name is Pam Grubaugh-Littig, and I'm a permit supervisor in the Coal Regulatory Program. And I want to go through a background of the Horse Canyon--well, the Lila Canyon Extension mining application just so folks can understand it from the beginning to where we are today. And so I'll just go through it kind of--just briefly.

UtahAmerican Energy acquired the Horse Canyon permit from Intermountain Power Agency on December 21, 1998. UEI submitted an application to permit the Lila Canyon Extension on December 22nd of that year. And that plan was determined to be administratively complete on February 26th of '99.

That--the state, the state issued the



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1 permit for that application on July 27th of 2001.  
2 And a mining plan approval was given on November  
3 5th of 2001. SUWA filed an appeal to the Board  
4 for the state permit on September 4th of '01.  
5 And there were Board hearings, and the Board  
6 ordered on December 14th of '01 that remanded the  
7 DOGM decision and reversed the permit. A Board  
8 hearing on January 23, 2002, ordered the Division  
9 to continue processing of the permit, and UEI  
10 resubmitted the permit application on February  
11 11th of 2002.

12 This--and the Division required UEI to  
13 republish this as a new permit. That application  
14 was determined to be administratively complete on  
15 February 25, 2002. An informal hearing was held  
16 on May 21st of 2002. And Lowell sent a decision  
17 as a result of that hearing, which said that the  
18 decision was that it was denied in part, and that  
19 was issued on July 22nd of '02. And the response  
20 was due to the, to the deficiencies on October  
21 22nd of '02, of '02 and there was a request for  
22 an extension, and UEI extended--and the extension  
23 was granted until December 6th of '02.

24 The review--they sent in the response  
25 and we reviewed it and sent out our deficiency



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1 review on April 9th of '03, 2003. On February  
2 6th of 2004, the Division sent a letter, and what  
3 it was, it was a response to a UEI letter of  
4 January 16, 2004, that notified UEI where--in the  
5 January 16th letter, notified us that UEI would be  
6 submitting a response to the 2003 technical  
7 analysis on or about February 27.

8 And what it said--and this is taken  
9 verbatim from the letter. It says, "UEI, pending  
10 submittal of the TA response for the Lila Canyon  
11 Extension permit area of the application, will  
12 make it more than ten months since the Division's  
13 TA was sent to UEI. It is Division practice to  
14 consider inactive any application that has been on  
15 our shelves for longer than 90 days and send it  
16 back. In view of this, and due to the time that  
17 has lapsed, the Division will require UEI to  
18 publish again for public comments."

19 The Division did receive the response  
20 to the deficiencies on February 26th of 2004.  
21 And due to the February 6, 2004, letter, they had  
22 to republish, and it reaffirmed administrative  
23 completeness and this was done on March 26th of  
24 '04. The end of the public comment period was  
25 May 27th of '04. And SUWA requested the informal



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1 conference, which we are holding today. And the  
2 technical review is currently being conducted.

3 Any questions?

4 MR. BRAXTON: No, I don't have  
5 questions. Are there questions from the, the  
6 group at large?

7 Who's going to reference the various  
8 diagrams that we have up there? Is that going to  
9 come up during the conduct of the hearing or did  
10 we intend to use any of those or are those SUWA's  
11 presentations?

12 MS. WRIGHT: The Division of Oil, Gas &  
13 Mining staff put them up just for general  
14 reference if people needed to point to them. We  
15 cut them from our informal conference two years  
16 ago. And we thought it might be helpful if  
17 people needed to point to maps and locations of  
18 things to put them up. But the Division isn't  
19 going to be presenting anything. They're just  
20 general information. Good question.

21 MR. BRAXTON: Okay. Thanks.

22 MS. GRUBAUGH-LITTIG: Thank you.

23 MR. BRAXTON: Thanks, Pam.

24 MR. BRAXTON: Well, this brings us to  
25 the--I think the public comments part of this



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1 informal conference. It seems to me that we have  
2 at least two people represented from the public  
3 right here. We have Ira Hatch, I guess,  
4 representing Emery County, and Southern Utah  
5 Wilderness Alliance.

6 Are there other people that want to be  
7 heard in the course of today? Other members of  
8 the public? If there's no objection from SUWA,  
9 then, I'd like Emery County to go ahead and make  
10 their presentation and then we'll turn it over to  
11 you.

12 MR. MCHARG: That's fine with us.

13 MR. HATCH: Thank you, Mr. Braxton. We  
14 appreciate the opportunity of meeting with you  
15 today. And we have a brief prepared statement  
16 that we'll leave for the record for you. And Ray  
17 Petersen is our public lands administrator from  
18 Emery County. I'm, for the record, commissioner  
19 for Emery County, one of the three commissioners  
20 for Emery County.

21 So with that, Mr. Petersen will read  
22 this statement. And then I'll just offer a  
23 couple of brief remarks.

24 MR. PETERSEN: This addressed to the  
25 Coal Regulatory Program, Division of Oil, Gas &



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1 Mining. In regard to the Lila Canyon Extension  
2 to the Horse Canyon Mine permit application and  
3 this informal hearing. We appreciate the  
4 opportunity today to express our support for  
5 granting of the permit. In keeping of the spirit  
6 of our letter of support dated April 26 of 2004,  
7 we urge that the permit be issued.

8 It is our position that concerns  
9 identified in the public scoping process have been  
10 adequately addressed in the mining plan,  
11 opposition to the proposed project is mostly  
12 concentrated on the impact the project would have  
13 on one wilderness study area and wilderness  
14 quality lands. The environmental assessment  
15 completed by BLM in October of 2000 specifically  
16 addresses the concern of undermining of Turtle  
17 Canyon WSA, which you can see on the map.

18 The EA states that "Minimal impacts in  
19 the form of minor subsidence is expected. The  
20 incorporation of the original interim management  
21 policy stipulations for actions resulting from  
22 mining of the pre-FLPMA coal leases under Turtle  
23 Canyon WSA would be incorporated for all areas  
24 deemed to be affected by surface actions. No  
25 surface facilities authorized by the BLM would be



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1 located within the WSA, and no actions approved by  
2 the BLM would impact that WSA." That's the end  
3 of the quote.

4 The other wilderness quality lands in  
5 the form of wilderness inventory areas and areas  
6 submit by citizen groups have since been found  
7 invalid and should have no bearing on this  
8 permitting process. The three issues resulting in  
9 changes to the proposed action, those being  
10 grazing, cultural resources, and wildlife, have  
11 been suitably dealt with and in our determination  
12 should not deter the issuance of this permit.  
13 Emery County has reviewed the proposed operation  
14 plan and also the reclamation plan and find no  
15 reason for the permit not to be issued to  
16 UtahAmerican Energy, Inc.

17 MR. HATCH: Would desire that this  
18 statement be entered into, into the record, Mr.  
19 Braxton.

20 MR. BRAXTON: Thank you very much.  
21 We'll accept that.

22 MR. HATCH: Okay. Just brief-just two  
23 brief comments. The road issue. Road access  
24 from Utah Highway 6 to the mine has been  
25 addressed in conjunction with the BLM and Emery



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1 County. And we worked out what we feel to be a  
2 workable--a solution to the access problem to  
3 access the mine rather than coming in from the  
4 old Horse Canyon Mine then going to the south, we  
5 would come in from U.S. 6 up through BLM  
6 property. And we have addressed that with BLM  
7 already.

8 Just in light of this last day or two,  
9 a news article relative to the potential  
10 electrical production being potential to be  
11 curtailed from Lake Powell, I think this just  
12 emphasizes the need that if that does happen, that  
13 the necessity to continue the coal production  
14 program so it can be used in the production of  
15 electrical power to provide the needs of not only  
16 our area, but the total intermountain area and to  
17 fill into the grid system of the electrical power  
18 producers.

19 So with that, we're--just to  
20 reemphasize, we are--we've worked closely with  
21 the, the permittees and people have had numerous  
22 meetings with that. And we feel it's a good  
23 project and will benefit the--our county. And we  
24 can see no long-term, detrimental effects of it on  
25 the environment. We appreciate your concerns and,



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1 and the opportunity of hearing us out. If  
2 there's any questions, we'd be happy to address  
3 those.

4 MR. BRAXTON: The, the access road to  
5 this mine is going to be an Emery County road.  
6 Is that your understanding?

7 MR. HATCH: That's correct. That's  
8 correct.

9 MR. BRAXTON: Other questions--

10 MR. HATCH: Take off--if you're  
11 acquainted and you've been down there, but just  
12 after you go off the big steep hill what they  
13 call the 13 Barrel Hill there, you know, dropping  
14 off of the plateau down toward Woodside, about  
15 three-quarters of a mile from the bottom of that  
16 hill, we would take off there, and there is an  
17 existing county road up partially now. And there  
18 is an old RS 2477 road that hooks on to where we,  
19 we maintain this part on up to, to the mine site.  
20 And we would exert that right at that time and go  
21 ahead and construct it on that alignment.

22 MR. BRAXTON: Thank you. Are there  
23 questions from the audience that Commissioner  
24 Hatch can help with?

25 Thank you very much.



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1 MR. HATCH: Thank you.

2 MR. BRAXTON: Well, we'll turn the time  
3 over to Southern Utah Wilderness Alliance, then.

4 MR. LIPS: Lowell, I've got an  
5 overhead. Is it okay if I take a minute to set  
6 this up?

7 MR. BRAXTON: Sure. Go right ahead.  
8 There should be coffee and water for  
9 those that are interested in that over in the  
10 back of the room. Please help yourselves to that  
11 if that's helpful.

12 MR. MCHARG: Set?

13 MR. BRAXTON: I approve of your poor  
14 man's PowerPoint right there.

15 MR. MCHARG: Lowell, thank you. We  
16 appreciate the opportunity to present our comments  
17 and, and concerns with the permit application  
18 today, and we appreciate everybody attending.

19 Just some brief comments to begin, in  
20 addition to the comments that we'll discuss today,  
21 we're confident that the Division will require  
22 UtahAmerican Energy to correct all the  
23 deficiencies that either they or the board have  
24 previously recognized. And the informal  
25 conference that's held today, as well as continued



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1 submissions by UtahAmerican Energy and analyses by  
2 the Division may disclose other concerns related  
3 to the technical adequacy of the permit  
4 application package, and SUWA may address these  
5 technical inadequacies through additional comments  
6 submitted during the technical review process.

7 Just as you know, as we're presenting  
8 our points today, when we get to a point that you  
9 may want a citation to a rule number, we will be  
10 supplying the Division and other folks in the room  
11 with copies of an outline of what we're presenting  
12 today that has those points listed.

13 MR. BRAXTON: That'll be very helpful.  
14 Thanks.

15 MR. MCHARG: Great. And with that,  
16 I'll let Elliott begin on the hydrological issues.

17 MR. LIPS: Thank you. I'm Elliott  
18 Lips, and I'm going to be discussing some of the  
19 issues and concerns related to the hydrology and  
20 geology sections. The first, No. 1, has to do  
21 with acid- and toxic-forming minerals. Rule  
22 624.300 requires the applicant to collect samples  
23 from test borings or drill holes and analyze these  
24 samples for acid- or toxic-forming materials.  
25 Specifically, Rule 624.320 requires the applicant



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1 to perform chemical analyses for acid- or toxic-  
2 forming or alkalinity-producing materials and  
3 their content in the strata immediately above and  
4 below the coal seam to be mined.

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

13 UEI has not provided the data and  
14 analyses required under Rule 624, and have instead  
15 requested an exemption from the Division under  
16 Rule 626. UEI cites the following reasons for  
17 its request: (1) UEI claims there has been no  
18 problem with acid- or toxic-forming materials at  
19 the nearby Sunnyside Mine. In fact, the record  
20 is very clear that there has been a problem with  
21 acid generation at the Sunnyside refuse pile.  
22 Acidic water carrying iron and other minerals  
23 seeped from the base of the pile into a channel.

24 (2) UEI has provided analyses from  
25 boreholes S-24 and S-25, located two miles from



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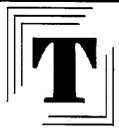
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1 the permit area. However, inspection of the logs  
2 and analytical results for the strata above the  
3 coal seam down to the Mancos Shale indicate that  
4 in S-24, 7 out of 18 samples, or 40 percent, have  
5 greater than 1 percent sulfur, with the highest  
6 sample containing 4.61 percent. The logs of S-25  
7 indicate that 6 out of 13 samples, or 46 percent,  
8 have greater than 1 percent sulfur, with the  
9 highest sample containing 2.72 percent. Thus,  
10 these data indicate that there is an acid-  
11 generation potential.

12 Third, UEI states that all material  
13 brought from the mine willing be tested and  
14 treated as though it is acid- or toxic-forming.  
15 However, this does not satisfy Rule 626, which  
16 requires, "information having equal value or  
17 effect," as chemical analysis of samples collected  
18 from test borings or drill holes.

19 Our concerns are that UEI has not  
20 provided the data and analysis provide under Rule  
21 624 or information having equal value as required  
22 under Rule 626. All the indications are that the  
23 material removed from the mine will be acid-  
24 generating. It was at Sunnyside. Chemical  
25 analysis of logs and drill holes off the permit



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1 area indicate high sulfur content, and even logs  
2 and drill holes in the permit area indicate the  
3 presence of pyrite. And third, UEI proposes to  
4 use material, this underground development waste,  
5 as structural fill for surface facilities.

6 Number 2, our second concern is  
7 subsurface water resource maps. Rule 722.100  
8 requires submission of cross sections and maps  
9 showing the location and extent of subsurface  
10 water, including the aerial and vertical  
11 distribution of aquifers and portrayal of seasonal  
12 differences in head. While UEI has identified  
13 both what it calls a regional aquifer and several  
14 perched aquifers, it has not complied with this  
15 requirement. In response to this rule, UEI has  
16 submitted Figures 7-1 and 7-2. However, Figure  
17 7-1 shows water levels for only a very small  
18 portion of the mine site between the three IPA  
19 wells. The area for which data exists only  
20 covers about 162 acres, which is approximately 3  
21 1/2 percent of the 4,664-acre permit area. Figure  
22 7-2 is not a cross section. It depicts water  
23 level changes through time, not through the permit  
24 area.

25 Number 3: Surface water resources.



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1 Rule 724.200 requires the applicant to submit  
2 information on surface water quality and quantity  
3 sufficient to, to demonstrate seasonal variation.  
4 The rule further requires the collection, at a  
5 minimum, of baseline data on specific parameters  
6 for the water quality description and a baseline  
7 information on seasonal flow rates for the water  
8 quantity description. For years the Division has  
9 interpreted this rule to require the submission of  
10 baseline information collected quarterly for a  
11 minimum of two years prior to permit issuance.

12 In addition to numerous ephemeral  
13 washes, there are six intermittent streams within  
14 the permit area: Lila Canyon, Little Park Wash,  
15 Stinky Spring Wash, IPA No. 1 Wash, Pine Springs  
16 Wash, and No Name Wash. UEI has never submitted  
17 any data on surface water quantity or quality for  
18 any of these washes. UEI and the Division know  
19 that these drainages flow intermittently in  
20 response to snow melt, runoff, and/or rainfall  
21 events. In fact, Division personnel have  
22 documented evidence of flows in all drainages,  
23 including the drainage through the middle of the  
24 proposed disturbed area.

25 UEI only reports several observations



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1 of "no flow." However, these do not provide the  
2 data required under Rule 724.200. UEI has never  
3 attempted to collect these data even though remote  
4 methods for collecting both water quality and flow  
5 depth are well within the state of the art, are  
6 standard practice by the U.S. Geological Survey,  
7 and have been used in the permitting of other  
8 coal mines in Utah.

9 Point No. 4: Ground water quantity.  
10 Rule 724.100 requires the applicant to submit data  
11 on the seasonal quantity of ground water. Ground  
12 water quantity descriptions will include, at a  
13 minimum, approximate rates of discharge or usage  
14 and depth to the water in the coal seam and each  
15 water-bearing stratum above and potentially  
16 impacted stratum below the coal seam. As with  
17 surface water, the Division's own guidance  
18 interprets this rule to require collection of  
19 baseline quarterly for two years. UEI has failed  
20 to submit data required under this rule.

21 For the regional aquifer, UEI does not  
22 provide two years of seasonal baseline data from  
23 IPA-1, -2, or -3, or L-16-G, L-17-G. That's a  
24 reference, a table. These data were obtained from  
25 the Division's online water quality database for



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1 the Horse Canyon Mine. And going back, starting  
2 in spring 2004 back to autumn of 2001, looking at  
3 quarterly sampling, dates where samples were taken  
4 at these sites, IPA-1, -2, and -3, L-16-G and  
5 L-16-G, are shown for the dates for that year.  
6 The red blocks indicate that no data exists for  
7 that quarter, and the yellow indicates that no  
8 access was obtained or achieved on 3/30/04. And  
9 as you can see for the regional aquifer, there  
10 are no data for any of the winter months, and  
11 there are no data for the spring of 2003.

12 Still talking about the regional  
13 aquifer, UEI's description of the piezometric  
14 surface is clearly flawed in that it depicts--it  
15 is depicted as a uniformly dipping planar surface  
16 over the entire permit area. UEI has extrapolated  
17 a piezometric surface to the 4,664-acre permit  
18 area on the basis of water level data in the IPA  
19 wells, an area that only covers 3 1/2 percent of  
20 the permit area.

21 UEI provides no information on the  
22 rates of discharge of ground water, the hydraulic  
23 conductivity, the recharge area, or incredibly,  
24 the discharge area. UEI fails to address the  
25 effect of lithology, regional structure or faults



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1 on the movement, discharge depth, etc., of ground  
2 water in the regional aquifer.

3 For the perched aquifer, UEI does not  
4 provide two years of seasonal baseline data from  
5 the seeps and springs, L-6-G through L-12-G. And  
6 I might reference that these are the sites in the  
7 perched aquifer, L-6-G through L-12-G, that UEI  
8 proposes for monitoring during the operation of  
9 the mine. And, again, as you can see, L-6-G has  
10 been--sampling has been suspended. But for the  
11 other springs, there are no data for the winter.  
12 In fact there's no data for the spring of 2003  
13 for any of them. And there was no access in the  
14 spring of 2004. So there is incomplete data on  
15 the perched aquifer.

16 Ground water--Point No. 5: Ground  
17 water quality. Rule 724-100 requires the  
18 applicant to submit data on the seasonal quality  
19 of ground water. Water quality descriptions will  
20 include, at a minimum, total dissolved solids or  
21 specific conductance corrected to 25 degrees C,  
22 pH, total iron, and total manganese. Again, the  
23 Division's own guidance interprets this rule to  
24 require collection of baseline data quarterly for  
25 two years. UEI has failed to submit data under



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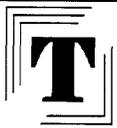
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1 the--required under this rule.

2 For the regional aquifer, UEI has  
3 never collected or attempted to collect any water  
4 quality samples from the IPA wells. UEI has  
5 provided some data from Redden Spring (RS-2).  
6 However, Redden Spring is an area of the Horse  
7 Canyon Mine, and therefore it does not represent  
8 premining baseline conditions. It is not proposed  
9 for monitoring and there are not two years of  
10 seasonal baseline data. UEI has provided some  
11 data from L-16-G and L-17-G. However, it is  
12 clear, based--it is not clear--excuse me--based on  
13 the information presented by UEI whether or not  
14 these springs are connected to the regional  
15 aquifer and the effect, if any, of the Central  
16 Graben Fault. In addition, there are not two  
17 years of seasonal baseline data for these springs.  
18 Again, reference the table for L-16-G and L-17-G  
19 for water quality. There are not two years of  
20 seasonal data for L-16-G and L-17-G.

21 Number 6: Coal mine waste. "Coal mine  
22 waste" means coal processing waste and underground  
23 development waste. Rule 528.320 requires that all  
24 coal mine waste will be placed in new or existing  
25 disposal areas within a permit area which are



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1 approved by the Division for this purpose. Coal  
2 mine waste will meet the designed criteria of  
3 R645-301-536; however, placement of coal mine  
4 waste by end or side dumping is prohibited.

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

14 Number 7: Inadequate ground water  
15 monitoring plan. According to Rule 731.211, the  
16 permit application will include a ground water  
17 monitoring plan based upon the analysis of all  
18 baseline hydrologic, geologic, and other  
19 information in the permit application. Where  
20 there are no baseline data or incomplete baseline  
21 data, there can be no determination of impacts and  
22 no effective monitoring.

23 With regard to the regional aquifer,  
24 UEI proposes to monitor only ground water depth,  
25 not ground water quality from the IPA wells. In



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1 addition, the IPA wells will be destroyed during  
2 mining. UEI proposes to monitor ground water  
3 quantity and quality from only two sites: L-16-G  
4 and L-17-G. However, these springs may not even  
5 be connected to the regional aquifer. They're not  
6 within the permit area. They're only 400 feet  
7 apart and they're incomplete baseline data. For  
8 reference, Points 4 and 5 above, and the table.

9 With regard to the perched aquifer:  
10 UEI proposes to monitor ground water from only  
11 five seeps and springs: L-7-G, L-8-G, L-9-G,  
12 L-11-G, and L-12-G. While this plan is inadequate  
13 on its face, the problem is worse by the facts  
14 that (1) there are incomplete baseline data for  
15 all these proposed monitoring sites, as I  
16 discussed in No. 4 and 5 above, and shown on the  
17 table. Second, L-8-G and L-9-G are located  
18 outside the permit area. And, third, L-11-G is a  
19 spring above the Horse Canyon Mine, and there are  
20 no premining baseline data. Thus, there are only  
21 two proposed mining sights in the permit area and  
22 only partial baseline data exists for these sites.

23 Number 8: No baseline data for the  
24 surface water monitoring plan. According to Rule  
25 731.221, the permit application will include a



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1 surface water monitoring plan based upon the  
2 analysis of all baseline hydrologic, geologic, and  
3 other information in the permit application.  
4 Where there are no baseline data, there can be  
5 no determination of impacts and no effective  
6 monitoring. There are no baseline data, either  
7 water quality or water quantity, for surface flows  
8 in Lila Canyon, Little Park Wash, Stinky Spring  
9 Wash, IPA No. 1 Wash, Pine Springs Wash, or No  
10 Name Wash, as discussed in No. 3 above. Thus,  
11 there will be no basis for comparison during  
12 monitoring.

13           Number 9: The PHC is flawed. Rule  
14 728.200 requires that the PHC determination will  
15 be based on baseline hydrologic, geologic, and  
16 other information collected for the permit  
17 application. As discussed in Nos. 1 through 5  
18 above, there are no baseline data, or incomplete  
19 baseline data upon which the PHC can include  
20 findings. Specifically, there can be no  
21 determinations or findings on whether adverse  
22 impacts may occur to the hydrologic balance  
23 (reference Rule 728.310); whether acid- and toxic-  
24 forming materials are present that could result in  
25 the contamination of surface or ground water



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1 supplies (reference Rule 728.320); what impacts  
2 the proposed coal mining and reclamation operation  
3 will have on sediment yield from the disturbed  
4 area (Rule 728.331); acidity, total suspended and  
5 dissolved solids and other important water quality  
6 parameters of local impact (Rule 728.332);  
7 flooding or stream flow alteration (728.333); and  
8 ground water and surface water availability (Rule  
9 728.334).

10                   Number 10: Water consumption. The PAP  
11 does not consider all sources of water that will  
12 be consumed by the proposed mining operation and  
13 contains an error in calculating the coal moisture  
14 loss. When dust suppression is included in the  
15 water consumption, and the stated mining rate of  
16 four and a half million tons per year is used,  
17 the amount of water consumed will be approximately  
18 112 acre-feet per year, not the 62 acre-feet per  
19 year calculated by UEI. One hundred twelve acre-  
20 feet per year is in excess of the amount of water  
21 consumption that has been identified by the U.S.  
22 Fish & Wildlife Service that requires mitigation.  
23 UEI has not demonstrated that this water  
24 consumption will not jeopardize the continued  
25 existence of and/or adversely modify the critical



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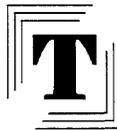
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1 habitat of the Colorado River endangered fish  
2 species: the Colorado pikeminnow, humpback chub,  
3 bonytailed chub, and razorback sucker.

4 UEI states that this process water will  
5 be hauled from the Price River. However, nowhere  
6 in the PAP is the effect of removing 112 acre-  
7 feet a year from the Price River analyzed. There  
8 are no baseline data on water quality or water  
9 quantity above and below the proposed point of  
10 diversion, and therefore it will be impossible to  
11 determine the impacts from this withdrawal. In  
12 addition, there are no baseline data or analyses  
13 of the potential impacts to the vegetation and/or  
14 wildlife. Finally, it is not clear from the  
15 information in the PAP whether or not UEI has a  
16 water right for the Price River.

17 Number 11: The cumulative impact area.  
18 The information provided by UEI is not sufficient  
19 to allow the Division to establish a  
20 hydrologically reasonable cumulative impact area  
21 boundary. Specifically: (1) the recharge and  
22 discharge areas of the regional aquifer have not  
23 been identified. Without this information, the  
24 Division cannot establish the CIA boundary; (2)  
25 the effects of the faults on the occurrence,



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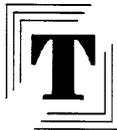
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1 movement, and discharge of water in the regional  
2 aquifer is not addressed; (3) there is no  
3 explanation for the occurrence of ground water in  
4 the Mancos Shale (L-16-G and L-17-G); and (4) the  
5 CIA boundary must include the Price River because  
6 UEI intends to divert, to divert up to 112 acre-  
7 feet per year and because it is a potential  
8 discharge area for the regional aquifer.

9           Number 12: The operation plan.

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

19           The plan submitted by UEI fails to  
20 minimize disturbance to the hydrologic balance for  
21 the following reasons: (1) with regard to  
22 subsidence impacts, UEI claims that there will be  
23 no impacts to surface or ground water resources  
24 based on the fact that although subsidence has  
25 occurred at the Horse Canyon Mine, there were no



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1 impacts. This is, of course, impossible to  
2 demonstrate because there is no premining  
3 hydrologic baseline data to which the data on  
4 existing water resources can be compared. UEI  
5 does acknowledge the subsidence has occurred at  
6 the Horse Canyon Mine, and therefore it is only  
7 logical to conclude that it will occur at the  
8 Lila Canyon Mine.

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

21 At the Deer Creek Mine, the U.S. Bureau  
22 of Mines reports "a maximum of 2.7 feet of  
23 subsidence over the two longwall panels mined at a  
24 depth of 1,500 feet."

25 At the Cyprus Plateau Mine, the U.S.



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1 Geological Survey reports, "Land surface subsided  
2 and moved several feet horizontally. The  
3 perennial stream and a tributary stream from the  
4 mined area were diverted into the ground by  
5 surface fractures where the overburden thickness  
6 above the Wattis coal seam is about 300 to 500  
7 feet."

8 At the Geneva Mine in the Sunnyside  
9 Mining District, the U.S. Geological Survey  
10 reports, "Large tension cracks, some of which are  
11 hundreds of feet long and range from about 0.06  
12 inch to as much as three feet in width formed in  
13 massive sandstone at the top of the Mesaverde  
14 Group about 900 feet above the mined area. These  
15 cracks divert all surface- and ground-water flow  
16 in this area to lower strata or to the mine  
17 workings."

18 Based on the evidence of subsidence at  
19 the Horse Canyon Mine and the well-documented  
20 evidence of subsidence at nearby mines in similar  
21 geologic strata, it is obvious that subsidence  
22 will occur at the Lila Canyon Mine. Subsidence  
23 fractures will impact several streams, seeps, and  
24 springs. Unfortunately, as discussed above in  
25 Nos. 3 through 5, there are absolutely no baseline



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1 data for the surface streams within the permit  
2 area and incomplete baseline data on the ground  
3 water resources, so it will be impossible to  
4 determine the impacts that subsidence will have to  
5 the hydrologic balance within the permit and  
6 adjacent areas, whether or not there will be  
7 material damage outside the permit area, and the  
8 limitation on supporting the approved postmining  
9 land use.

10 Second: With respect to stream buffer  
11 zones, Rule 731.610 states that no land within 100  
12 feet of an intermittent stream will be disturbed  
13 by coal mining and reclamation operations unless  
14 the Division specifically authorizes coal mining  
15 and reclamation operations closer to or through  
16 such a stream. The Division may authorize such  
17 activities only upon finding that (Rule 731.611)  
18 coal mining and reclamation operations will not  
19 adversely affect the water quantity and quality or  
20 other environmental resources of the stream.

21 UEI proposes to conduct mining  
22 operations within a hundred feet of the Lila  
23 Canyon channel. Because there are no baseline data  
24 on the water quality or water quantity in Lila  
25 Canyon, the Division cannot determine whether or



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1 not the mining operation will adversely affect the  
2 water quantity and quality or other environmental  
3 resources of the stream. Thus, the Division  
4 cannot support a decision to authorize mining  
5 within the stream buffer zone.

6 MR. McHARG: Well, Elliott has  
7 completed his presentation on the hydrological  
8 concerns that we have. I'll move on to other  
9 concerns. Point 13: The PAP lacks required  
10 survey data. The PAP fails to contain certain  
11 survey data required under the rules. According  
12 to the rules, "All technical data submitted in the  
13 permit application will be accompanied by the  
14 names of persons or organizations that collected  
15 and analyzed the data, dates of the collection,  
16 and analysis of the data and descriptions of the  
17 methodology used to collect and analyze the data,"  
18 and "technical analyses will be planned by or  
19 under the direction of professional"--"of a  
20 professional qualified and are subject to be  
21 analyzed."

22 UEI and DOGM cannot agree to discard  
23 the requirement under the rules to provide such  
24 information as they apparently attempt to for  
25 certain surveys. Further, it appears that no



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1 information is provided for the vegetation survey  
2 of the permit area beyond the proposed disturbed  
3 area. SUWA reserves the right to request the  
4 information required under the rules for all  
5 technical data submitted in the PAP.

6 Point 14: The vegetation survey is not  
7 adequate. The PAP fails to include a description  
8 of the vegetative communities and productivity  
9 throughout the affected area adequate to predict  
10 the potential for reestablishing vegetation.

11 First, ground surveys were conducted  
12 only within the proposed mine site location rather  
13 than throughout the entire affected area,  
14 including the Range Creek and Price River  
15 drainages.

16 Secondly, although Plate 3-2  
17 illustrates the plant communities, the PAP fails  
18 to include discussions regarding such communities  
19 and lacks detail with regard to the species within  
20 each community.

21 Third, the vegetative survey should  
22 have been conducted in the spring rather than July  
23 through August, especially during this drought.

24 Fourth, the descriptions of the  
25 vegetative communities around the seeps, springs,



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1 and reaches is cursory and does not represent  
2 adequate baseline information.

3 Point 15, site-specific resource  
4 information is not adequate. The PAP does not  
5 contain the site-specific resource information  
6 required by the rules. And the information  
7 presented in the PAP is not sufficient to design  
8 a protection and enhancement plan. Site-specific  
9 resource information is required where, as here,  
10 the permit area or adjacent areas include listed  
11 or proposed threatened and endangered plant and  
12 animal species; high-value habitats, including  
13 riparian areas, cliffs, migration routes, and  
14 wintering areas; or other species or habitats of  
15 agency concern. Despite these rules, either UEI  
16 has failed to provide or the Division has  
17 apparently not required such site-specific  
18 information.

19 For example: With regard to  
20 amphibians, the Division should require formal  
21 survey for amphibians. Noting the lack of  
22 amphibian observation is not sufficient under the  
23 regulations requiring site specific information.  
24 UEI merely inserts, "The permittee has never  
25 observed amphibians at or near this location."



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1 This does not confirm whether or not amphibians  
2 actually live in these locations but only implies  
3 that someone from UEI had not seen any at a  
4 particular time. Obviously, it is in UEI's best  
5 interest to claim that no amphibians are present.  
6 the rules require a formal survey in monitoring  
7 plan to ensure protection of amphibians and their  
8 habitat. Further, the permittee does not meet the  
9 requirement to provide the names of people making  
10 the observations, whether or not they were  
11 qualified, the dates and data collection  
12 methodology.

13 In regards to Mexican spotted owl: As  
14 recognized by the Division, UEI must conduct  
15 Mexican spotted owl surveys and provide results of  
16 the ground-truthing surveys. UEI states it will  
17 not inventory areas "where the depth of mining is  
18 so deep as to not cause any surface effects." As  
19 discussed previously, 1,000 feet of overburden may  
20 not be sufficient. Thus, all areas of potential  
21 impact must be surveyed.

22 In regards to raptors, there's no  
23 explanation of the details of, of the raptor  
24 survey, which fails to comply with our  
25 R645-301-131 and -132. Further, the flight path



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1 illustrated in Appendix 3-5 shows that the survey  
2 did not cover the entire area of potential effect.  
3 In regards to the Southwest willow flycatcher: As  
4 discussed above, we are concerned with impacts to  
5 Range Creek and Price River because these waters  
6 may be impacted, the PAP must address the  
7 potential impacts to the Southwest willow  
8 flycatcher.

9 In regards to endangered fish species:  
10 Due to the impacts of mine discharge and water  
11 consumption, the PAP must evaluate the impacts to  
12 the bonytailed chub, the Colorado pikeminnow,  
13 humpback chub, and razorback sucker. And this was  
14 also discussed during Elliot's presentation on  
15 hydrological impacts.

16 With regards to sensitive plant  
17 species: None of the surveys conducted extend  
18 throughout the entire potentially affected area.  
19 Those that were conducted may not have been  
20 conducted at the appropriate time or by qualified  
21 individuals. And for reference, see the attached  
22 declaration of Dr. Ron Kass, dated 11/29/2001.  
23 And that will be provided in the package that I  
24 provide to you today.

25 In regards to reliance on Appendix 7-7



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1 and 7-8, the information on plant, fish, and  
2 wildlife species contained in Appendices 7-7 and  
3 7-8 are not sufficient to comply with the  
4 regulations. The level of detail must be  
5 sufficient to design the protection and  
6 enhancement plan required under 301-333.

7 Point 16: Subsidence impacts the  
8 plants and animals are not adequately addressed.  
9 The PAP fails to include information on subsidence  
10 adequate to assess impacts to plant and wildlife  
11 species. As discussed above, subsidence may  
12 impact seeps and springs throughout the affected  
13 area including areas where there is more than  
14 1,000 feet of cover. If springs and seeps are  
15 dewatered, impacts to wildlife species would be  
16 extensive. UEI's discussion of subsidence is  
17 incorrectly limited to its effect on snake dens,  
18 and fails to describe how it will minimize  
19 disturbances using the best technology currently  
20 available.

21 Point 17: Impacts to fish and wildlife  
22 are not adequately assessed. The PAP fails to  
23 include information necessary to adequately assess  
24 impacts to fish and wildlife and related  
25 environmental values including the sensitive fish



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1 species identified by the U.S. Fish & Wildlife  
2 Service.

3 As discussed above, UEI's quantitative  
4 water consumption assessment is not accurate. In  
5 actuality, UEI will be taking 112 acre-feet of  
6 water directly from the Price River, which may  
7 adversely affect the endangered fish in the Upper  
8 Colorado River Basin. Further, mine waste will  
9 discharge into the Price River, increasing  
10 selenium. Thus, consultation with Fish & Wildlife  
11 Service must occur, and UEI must fully describe  
12 how it intends to comply with the Endangered  
13 Species Act and to prevent dewatering, increased  
14 selenium, and other impacts to these species.

15 Point 18: Disturbance, monitoring, and  
16 protection of habitat. The PAP fails to comply  
17 with the rules requiring the operator to avoid  
18 disturbance of wildlife habitat and fails to  
19 describe how wildlife will be monitored and  
20 protected from hazardous materials. Again, as  
21 discussed above, the proposed mining operation may  
22 impact seeps, springs, drainages, Range Creek, and  
23 the Price River and other high-value wildlife  
24 habitats. And it fails to include an adequate plan  
25 to avoid such disturbances or restore such



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1 habitats should they be harmed. This directly  
2 violates the rules. Locating surface facilities  
3 near a relatively high concentration of golden  
4 eagle nest sites risks the taking of such golden  
5 eagle nests or eggs also in violation of the  
6 rules.

7 Further, in direct contradiction to the  
8 Division's concerns, UEI intends to develop the  
9 drainage located in the southwest portion of the  
10 mine site area that communicates with the Price  
11 River. This drainage is an important wildlife  
12 corridor, and the regulations require that  
13 disturbances and adverse impacts to wildlife be  
14 minimized. The PAP fails to explain using the  
15 best technology available why this location is the  
16 "most logical taking into consideration both the  
17 engineering and environmental aspects."

18 Point 19: Land use capability is not  
19 accurately described, the reclamation plan is not  
20 adequate, and there is--and the area is unsuitable  
21 for mining. The PAP fails to include information  
22 that accurately describes the capability of the  
23 land affected by the coal mining and reclamation  
24 operations and fails to demonstrate that the land  
25 will be returned to its premining land use



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1 capability or a higher or better use. Mining in  
2 the proposed permit area may, at a minimum, affect  
3 productivity of water supply, scientific and  
4 aesthetic values, and natural systems. The rules  
5 do not contemplate the current management--or I'm  
6 sorry--yeah. The rules do not contemplate the  
7 current management of the lands but rather the  
8 uses that the lands are capable of supporting or  
9 even higher uses. The Bureau of Land Management  
10 found the proposed mining area, including the  
11 lands on which UEI proposes to construct surface  
12 facilities to have wilderness character. And for  
13 reference, you can note the attached BLM 1999  
14 wilderness inventory. In other words, the lands  
15 are capable of supporting wilderness, regardless  
16 of how they are currently managed.

17 Further, because of the unknown impacts  
18 to the springs and seeps that were discussed  
19 above, impacts on other land uses, including  
20 wildlife, recreation, grazing, etc., cannot be  
21 determined.

22 Point No. 20: Cultural resources have  
23 not been adequately surveyed for and protected.  
24 The PAP fails to include information from a  
25 complete cultural resource survey. A plan that



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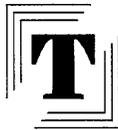
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1 describes measures to prevent adverse impacts to  
2 such resources and a determination of no historic  
3 properties by the State Historic Preservation  
4 Office. The PAP still fails to include a  
5 complete cultural survey of the entire affected  
6 area, including Range Creek, which is an area that  
7 is extremely culturally significant. The  
8 discussion on cultural resources contains  
9 uncertainties and assumptions, and fails to  
10 provide any confidence that all cultural resources  
11 in the affected area have been identified and will  
12 be protected from harm.

13 Point No. 21: Subsidence control is  
14 not adequately addressed. The PAP fails to  
15 include information necessary to adequately assess  
16 the quantity and quality of all state-appropriated  
17 water supplies that could be impacted by  
18 subsidence, and fails to include an adequate plan  
19 for repair, replacement, or restoration of such  
20 supplies or surface lands.

21 UEI's discussion regarding the need to  
22 replace, repair, or restore state-appropriated  
23 water--appropriated water sources damage by  
24 subsidence is both inaccurate and inadequate.  
25 First, the presumption is that subsidence caused



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1 the damage, and UEI's statement attempts to shift  
2 the burden of proof. They--"after proof of damage  
3 by mining in Lila Canyon," and they go on with  
4 their sentence.

5 Second, the PAP merely lists ways to  
6 replace the water, without describing a plan for  
7 doing so. There is no discussion regarding the  
8 potential impacts of these replacement measures.  
9 For example, trucking water could have additional  
10 impacts to wildlife and wilderness qualities and  
11 may be impossible during the winter. Constructing  
12 wells may dewater other natural sources, cause  
13 impacts to vegetation surrounding the wells, and  
14 impact wilderness resources.

15 Point No. 22: Despite the, the  
16 comments by Emery County this morning, it can't  
17 just be worked out. The coal haul road issue  
18 cannot be just worked out with the BLM. It is  
19 part of the permitting process. The PAP must  
20 include the coal haul road within the affected  
21 area and include all information necessary for the  
22 permitting process. The rules require the  
23 Division to include within the affected area  
24 "every road used for purposes of access to or for  
25 hauling coal to or from coal mining operations,"



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1 unless the road is found exempt.

2 The so-called Emery County Road 126  
3 does not exist beyond the 2.6-mile section listed  
4 in the Emery County road log, and there is no  
5 record of maintenance by the county of the  
6 remaining route to the proposed mine. The present  
7 alignment and condition of the route cannot  
8 sustain the intensity of traffic and type of  
9 vehicles for the proposed mining operation. The  
10 route would need new right-of-way permits from the  
11 BLM, realignment, and reengineering to construct a  
12 substantial paved road capable of safely handling  
13 the heavy traffic associated with an active coal  
14 mine that ships coal by truck.

15 Obviously, none of these improvements  
16 would be contemplated but for the proposed mine.  
17 And the road fails to--fails the primary criteria  
18 for exemption from permitting. Therefore the  
19 Division must analyze the impacts on the various  
20 resources from road construction as part of the  
21 permitting process.

22 Point No. 23: The proposed Lila Canyon  
23 Mine must be applied for, noticed, and processed  
24 as a new permit. The proposed mine must be  
25 processed and approved through application of a



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1 new permit. Although the text of the public  
2 notice states that the application "is being  
3 processed as a new permit," everything else in the  
4 notice operates against this statement.  
5 Specifically, the public notice is titled "Horse  
6 Canyon Mine Extension," and states that the permit  
7 is being processed under the Horse Canyon Mine  
8 permit number.

9 Further, the map included in the notice  
10 depicts the Horse Canyon mine in solid black while  
11 the Lila Canyon mine is outlined. The result  
12 fails to display the fact that the proposed Lila  
13 Canyon Mine Extension is actually over three times  
14 the coal ownership acreage of the Horse Canyon  
15 Mine permit area and involves new surface  
16 facilities. Thus, the public has not been  
17 effectively notified of the impending processing  
18 of a new permit for a completely new mine three  
19 times the size of the Horse Canyon Mine.

20 Further, although the rules contemplate  
21 application for, and issuance of, a new permit  
22 using the procedures, using the procedures for a  
23 new permit is not the same as issuing a new  
24 permit. Indeed, UEI has not applied for a new  
25 permit, and the Division is not reviewing the



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1 application in contemplation of issuing a new  
2 permit. Rather, UEI has requested and the  
3 Division contemplates issuing an extension that  
4 will be known as Part B to the existing Horse  
5 Canyon Mine permit. This does not comply with  
6 the rules.

7 Thanks again. We appreciate your time  
8 in considering our comments today. And we'll look  
9 forward to be working with you throughout the  
10 permitting process.

11 MR. BRAXTON: Thank you very much.  
12 Now, you're going to submit an outline of, of the  
13 comments that you've read right here?

14 MR. McHARG: We will. I'll hand them  
15 to you right now.

16 MR. BRAXTON: Okay.

17 MR. McHARG: Thank you.

18 MR. BRAXTON: Are there people in the  
19 audience that want to comment on what they've  
20 heard?

21 MR. McHARG: This is your copy. That's  
22 the original.

23 MR. BRAXTON: Thank you.

24 I'm hearing no comments. That, I  
25 guess, obviates the need for addressing concerns



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1 and dialogue from interested parties, the second-  
2 to-the-last bullet on the agenda.

3 I think what I'm going to do is take  
4 these comments into consideration. I'll, I'll  
5 provide some written findings later in the  
6 process. I think it's imperative that we do  
7 continue dialogue between interested members of  
8 the public throughout the permitting process.

9 Denise, didn't see you behind the post.

10 MS. DRAGOO: We have a response that  
11 we'll just submit for the record. So you can  
12 consider those.

13 MR. BRAXTON: Okay.

14 These are substantially what Mr.  
15 Marshall said earlier this morning or--

16 MS. DRAGOO: No, these, these respond  
17 to the specific issues that were raised by SUWA.

18 MR. BRAXTON: Okay. And do you want to  
19 comment on those on the record right now?

20 MS. DRAGOO: No. This, this speaks for  
21 itself. I think we're fine. Thank you.

22 MS. WRIGHT: We're not going to hear  
23 these?

24 MS. DRAGOO: We can summarize them for  
25 you if you like.



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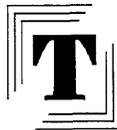
1 MR. BRAXTON: I think it would be  
2 helpful if you did.

3 (Conversation off the record.)

4 MS. DRAGOO: All right. I'm Denise  
5 Dragoo, attorney for UtahAmerican Energy. And Jay  
6 Marshall is here as well. And we just wanted to  
7 just briefly respond to the, the comments that  
8 Southern Utah Wilderness Alliance presented.

9 First of all, we, we just wanted to  
10 note that SUWA's comments primarily relate to  
11 administrative completeness. And that's what,  
12 what their letter indicated that they would be  
13 addressing. And we wanted to just point out that  
14 there was already an administrative completeness  
15 determination on this particular matter, that  
16 actually I think--if you actually issued--Mr.  
17 Braxton, the findings of fact, conclusions, and  
18 order dated June 18th. And that actually found  
19 that the permit was complete.

20 Ultimately, that permit application  
21 package was denied in part and then that was  
22 appealed to the Board. And that was, that was  
23 one issue that was left out this morning in terms  
24 of procedure, that this matter has been appealed  
25 to the Board of Oil, Gas & Mining. And there's a



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1 stipulation of the parties to stay those  
2 proceedings until the Division has finally issued  
3 its final decision to deny or grant the permit  
4 application package.

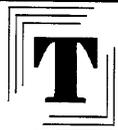
5 So--

6 MR. ALDER: Are you referring--when you  
7 said "June 18," I didn't hear--

8 MS. DRAGOO: Oh. June 18, 2002. That  
9 was the date of the findings. And then the Board  
10 order, which states this matter, was dated October  
11 4, 2002. So these matters are all--have been  
12 remanded now back to the Division. But I think  
13 we still are essentially before the Board--  
14 probably ultimately will be.

15 UtahAmerican Energy's second objection  
16 really relates to the issues that were raised by  
17 Southern Utah Wilderness Alliance, which go beyond  
18 completeness. They raised several issues, but  
19 they really were all technical adequacy issues and  
20 not completeness issues.

21 And if this is an administrative  
22 completeness determination, which, you know,  
23 SUWA's letter indicates, these technical issues  
24 are, are premature until the Division can issue  
25 its final technical adequacy determination.



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1                   There's been a lot of water that's gone  
2 under the bridge since the last administrative  
3 completeness determination. The Division has  
4 issued a couple of technical adequacy reviews.  
5 UtahAmerican Energy has responded to the initial  
6 TA of March 26, 2002, with a response April 24th  
7 of 2002. And to the Division's second technical  
8 analysis of April 9, 2003, with a response dated  
9 February 24, 2004. But, you know, basically those  
10 responses by UtahAmerican Energy and then the  
11 submittals that were provided to the previous  
12 administrative completeness determination more  
13 than adequately address the issues that were  
14 raised by SUWA. But just--we'll just briefly  
15 summarize those.

16                   First, with respect to the issues  
17 raised by Mr. Elliott Lips regarding acid- or  
18 toxic-forming materials. These, once again, are  
19 technical issues, not administrative completeness  
20 matters. They're all addressed in Chapter 5 of  
21 the permit application package. And, and also in  
22 Chapter 6. There's specifically an analysis of  
23 rock types provided at Appendix 6-1, which more  
24 than adequately address those issues.

25                   The second item concerning subsurface



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1 water resources maps are all addressed in the  
2 hydrology chapter, Chapter 7, of the permit  
3 application package. And they're also addressed  
4 in the TA responses regarding Chapter 7.

5 Item 3: Surface water resources. Once  
6 again, this is a hydrologic issue that's addressed  
7 at Chapter 7 of the permit application package.  
8 We'd like to point out that there has been a  
9 probable hydrologic consequences analysis that's  
10 been revised. And it specifically addresses the  
11 seeps. So we think that's adequately addressed.  
12 If you, if you look at UtahAmerican Energy's TA  
13 response in February 24, 2004, that's addressed.

14 In terms of ground water quality, once  
15 again, that's a hydrologic issue addressed at  
16 Chapter 7 of the permit application package. UEI  
17 has addressed that in both its submittal regarding  
18 administrative completeness in May 21st of 2002  
19 and a technical analysis responses regarding  
20 Chapter 7 of the permit application package.

21 Ground water quality, Issue 5. It's a  
22 hydrologic issue addressed at Chapter 7 of the  
23 permit application package and in UEI's TA  
24 response dated February 24, 2004.

25 Coal mine waste, that's an issue which



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1 has been addressed specifically in Chapter 5 of  
2 the permit application package, and then also in  
3 UEI's TA responses regarding Chapter 5 of the  
4 permit application package.

5 Item 7--this is getting a little bit  
6 redundant--but ground water monitoring. Once  
7 again, that's addressed at Chapter 7. It's a  
8 hydrologic issue addressed at Chapter 7 of the  
9 permit application package and in UEI's technical  
10 adequacy responses.

11 Baseline data for surface monitoring  
12 plan is addressed at Chapter 7 of the permit  
13 application plan.

14 The probable hydrologic consequences  
15 data has been revised, and that's addressed in  
16 UEI's technical adequacy response of February 24,  
17 2004.

18 Water consumption is another hydrologic  
19 issue, addressed at Chapter 7 of the permit  
20 application plan. Cumulative impact area--once  
21 again, a hydrologic issue addressed at Chapter 7  
22 of the permit application package.

23 In terms of the operation plan, that's  
24 addressed in Chapter 7. This is another  
25 hydrologic issue, which is addressed at Chapter 7



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1 of the permit application plan.

2 The survey data, Item 13 raised in  
3 SUWA's letter--once again, this is a technical  
4 issue, not an administrative completeness issue  
5 and this data has been provided by UtahAmerican  
6 Energy.

7 The vegetation survey is addressed in  
8 Chapter 3 of the permit application plan--permit  
9 application package.

10 Item 15, site-specific research  
11 information, has also been provided in Chapter 3  
12 of the permit application package.

13 Subsidence impacts to plants and  
14 animals is more than adequately addressed in  
15 several places in the permit application package:  
16 Volume 2, Chapter 3, Chapter 7, Chapter 4. It's  
17 also addressed in the Bureau of Land Management's  
18 environmental assessment.

19 Impacts to Fish & Wildlife are, once  
20 again, addressed in Chapter 3 of the permit  
21 application package.

22 Land use and unsuitability for mining--  
23 those are issues which were actually addressed by  
24 ruling of the Board of Oil, Gas & Mining, and  
25 would be res judicata at this point. That's



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1 something--an issue that SUWA did not challenge in  
2 court and cannot raise again.

3 Cultural issues are addressed  
4 adequately in Chapter 4 of the permit application  
5 package.

6 Subsidence control addressed in several  
7 chapters, Chapters 2, 3, 5, and 7, and also  
8 addressed in the environmental analysis prepared  
9 by Bureau of Land Management.

10 The coal haul road has been determined  
11 by Division of Oil, Gas & Mining to not be a--  
12 something that has to be permitted. And in terms  
13 of the, the new permit, once again, we feel the  
14 Division has adequately and properly processing  
15 the permit application package as a current  
16 extension in accordance with the rules.

17 So I guess we're available if there are  
18 any further questions regarding those issues.  
19 Maybe Jay could address.

20 MR. BRAXTON: That's helpful. Thank  
21 you for walking us through those.

22 MR. MARSHALL: Well, I'd like to make  
23 one comment.

24 MR. BRAXTON: Sure.

25 MR. MARSHALL: After the Division



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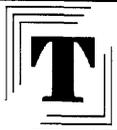
1 reviewed the public's comments and if they  
2 determine that there are deficiencies in the  
3 permit not covered or required by law, they are  
4 still deficiencies UEI will be glad to address  
5 them through a TA.

6 MR. BRAXTON: Thanks. I'm sure the  
7 process will, will be open.

8 If there are no other people that would  
9 like to be heard, I think I'm going to conclude  
10 the hearing for right now. I'll make a ruling  
11 within the required time as to where we're going.

12 Mr. McHarg?

13 MR. McHARG: Not to establish a  
14 rebuttal process or anything here, but I think  
15 it's important to just put on the record that  
16 because the, the objections submitted by  
17 UtahAmerican Energy involve some issues that were  
18 discussed between the parties yesterday during a  
19 telephonic conference and as we discussed during  
20 that telephonic conference, the issues that would  
21 be presented here today would not only relate  
22 directly to administrative completeness, but would  
23 also pertain to technical adequacy issues. And  
24 for the record, we believe that what we presented  
25 actually pertains to both. If data is missing



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1 that is required under the rules, then we believe  
2 that that box on the administrative completeness  
3 checklist should not be checked by the Division.  
4 So they--these issues are relevant to both  
5 administrative completeness and to technical  
6 adequacy.

7 MR. BRAXTON: Do you have specific  
8 instances of the inadequacy of the administrative  
9 completeness determination that you'd like to read  
10 into the record this morning? Again, I infer,  
11 infer much of what you said was technical rather  
12 than administrative completeness.

13 MR. MCHARG: And I, I agree, Mr.  
14 Braxton. I think that's how you should look at  
15 our comments as comments on technical adequacy.  
16 However, I think all of them also relate to  
17 administrative completeness. We're not  
18 challenging necessarily the administrative  
19 completeness check list that the Division did.  
20 However, any, any issue where the information  
21 provided by UEI does not comply with the rules,  
22 we believe, then, that particular box should not  
23 be checked because the Division doesn't have  
24 before it all the information necessary to proceed  
25 with the technical analysis for that particular



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1 issue.

2 So just having said, you know--or just  
3 in response to Denise's concern that this hearing  
4 should have only related to administrative  
5 completeness only and not technical adequacy, I  
6 thought it was important to make that point.

7 MR. BRAXTON: Thanks for that.

8 MR. McHARG: Thank you.

9 MR. BRAXTON: Mary Ann?

10 MS. WRIGHT: I'd just like to ask SUWA  
11 if--you know, we struggle with this. If we had a  
12 list of boxes that we check to say whether they  
13 have something to say that they have an item  
14 there so it's administratively complete for a  
15 given section of the rules, then if we had  
16 another list that then said it was technically  
17 adequate, that list of boxes that we would check  
18 would be permit issuance. And if we were able to  
19 do that, we would be at the point of completion  
20 of our review.

21 So this idea of the publication for the  
22 public to come in and look at the application, if  
23 we were to wait to check off those boxes till  
24 everything was technically adequate, then there  
25 wouldn't be time for the public to look at it.



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1 In other words, we'd be at a point of issuing it.  
2 So I'm like--feel like I'm caught.

3 MR. McHARG: I understand.

4 MS. WRIGHT: All the Division people  
5 do, you know, by your argument there, and it's  
6 causing us a lot of difficulty.

7 MR. McHARG: I understand. And that's  
8 why I did not raise that as an issue. I was  
9 simply responding to what Denise's objections were  
10 to what we raised today. So--

11 MS. WRIGHT: Okay.

12 MS. DRAGOO: Of course I was just  
13 responding to the way you had categorized your  
14 pleadings, which are entitled, SUWA's Comments  
15 Regarding Determination of Administrative  
16 Completeness.

17 MR. McHARG: If, if you look, if you  
18 look at the rules basically, the administrative  
19 completeness determination simply triggers the  
20 opportunity for the public to request an informal  
21 conference. But the informal conference, under  
22 the rules, as stated under--what is it--  
23 R645-300-123, under "Informal Conferences," it  
24 says that the Division will hold an informal  
25 conference on the application for the permit. So



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1 that is all-encompassing. So I don't think  
2 there's any discrepancy there.

3 MR. BRAXTON: Well, I think,  
4 regardless, there's value in, in hearing people's  
5 comments on the technical adequacy of a permit at  
6 any time in the process. And I think the, the  
7 rules contemplate some technical input from the  
8 public. And I think it makes for a better permit  
9 application as long as they're valid and honest  
10 comments that--

11 MR. McHARG: We agree.

12 MR. LIPS: I agree to that.

13 MR. BRAXTON: Is there additional  
14 dialogue that we need to have? I'm going to  
15 conclude this conference now. We'll go off the  
16 record. And I'll get findings out within the  
17 times provided in the rules.

18 MS. DRAGOO: Thank you.

19 MR. BRAXTON: Thanks, everybody, for  
20 coming. And I guess I'd like to recognize the  
21 efforts that Mary Ann and some of her staff did  
22 in just setting up this morning. This was a  
23 fairly major effort, and I appreciate what they've  
24 done. Thanks again.

25 (Proceedings concluded at 11:18 a.m.)



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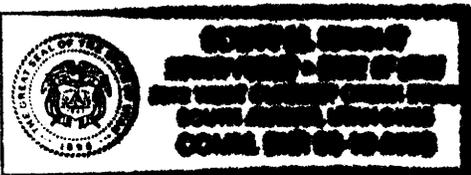
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**CERTIFICATE**

This is to certify that the foregoing proceedings were taken before me, SCOTT M. KNIGHT, a Registered Professional Reporter and Notary Public in and for the State of Utah, residing at South Jordan, Utah;

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting, and that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, inclusive.

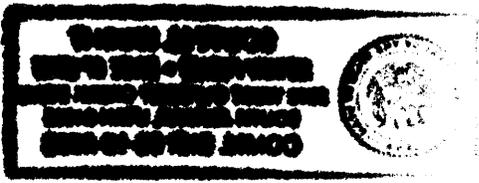
I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.



*Scott M. Knight*

Scott M. Knight, RPR  
Utah License No. 110171-7801

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1 Hearing none, then let's move to the  
2 second agenda item, the presentation of the mining  
3 and reclamation plan by UtahAmerican Energy, Inc.  
4 MR. MARSHALL: Am I okay there, Lowell?  
5 MR. BRAXTON: Yeah, that's the best  
6 place for you. I can see you from there, anyway.  
7 MS. DRAGOO: I can see you too. I had  
8 the post.  
9 MR. MARSHALL: Well, for anybody who  
10 doesn't know me, I'm Jay Marshall. I'm the  
11 project manager for the Lila Canyon Mine,  
12 UtahAmerican Energy, Inc. Denise Dragoo is our  
13 legal counsel. And I'm not going to bore  
14 everybody with a bunch of dates and times and  
15 things like that. I'm just going to basically  
16 explain the project, what we want to do, and we  
17 can move on from there.  
18 Again, UtahAmerican Energy is owned by  
19 Murray Energy. Murray Energy is owned by Robert  
20 Murray. Robert Murray is the largest independent  
21 coal producer in the United States. He employs  
22 over 2,800 people. He his mines produce over 25  
23 million tons a year, which is roughly equivalent  
24 to the state of Utah. He doesn't have any  
25 operations in Utah. He wanted to expand into

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1 Utah, so he purchased the leases from  
2 Intermountain Power Agency.  
3 The leases that, that are involved in  
4 the Lila Canyon permit--there are six federal  
5 leases that were leased 1940s to 1950s. They  
6 were incorporated into a logical mining unit,  
7 logical mining unit UTU 73516 in March of '99.  
8 Encompassed in those leases are 94 million tons in  
9 place. The leases encompass 5,544 acres. We do  
10 have an approved mine reclamation plan from the  
11 BLM--not mine reclamation plan--excuse me--we do  
12 have an approved resource recovery protection  
13 plan, an R2P2 plan from the Bureau of Land  
14 Management.  
15 There's been extensive drilling done on  
16 the property. There's on the property on the  
17 lease--I'm sorry. On the permit boundary itself,  
18 there's 12 holes that were drilled between 1940s  
19 and up to 1994 in three drilling programs.  
20 Within a permit application, the permit includes  
21 5,992 acres total. When I say "the permit," I'm  
22 talking about the extension to the existing Horse  
23 Canyon permit.  
24 Of those 5,992 acres, 42.6 acres is in  
25 the disturbed boundary. And within that disturbed

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1 boundary there are areas undisturbed. We propose  
2 to disturb only 25.3 acres total disturbance,  
3 surface disturbance.  
4 There's been some concerns in the  
5 past--the name of the mine is Lila Canyon Mine.  
6 We are not going to mine under Lila Canyon. Lila  
7 Canyon was already mined under in 1951 to 1970.  
8 When I say already--99 percent of it. There's some  
9 permit area that is under the drainage of Lila,  
10 but Lila itself, 99 percent of it was mined out  
11 between 1951 and 19--to 1970. All surface impacts  
12 that you see with Lila Canyon have been observed  
13 over the last thirty years.  
14 What we propose to do is open up a coal  
15 mine that's designed as four and a half million  
16 tons of coal to be produced, four and a half  
17 million tons of coal a year. We're going to  
18 employ between to 145 and 200 employees. That's  
19 direct employees. With a trickle-down effect,  
20 I've seen numbers 9. I've seen 14 to 1. I don't  
21 know what that ratio is, but when you when we  
22 have 145 to 200 high-paying jobs, there's  
23 definitely a lot of service jobs that go with  
24 that.  
25 We're going to have a payroll of

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1 approximately a million dollars a month. We're  
2 going to have--it's going to take between a  
3 hundred forty and a hundred fifty million dollars  
4 of capital to put the mine in. Like I said, it's  
5 designed at four and a half million tons a year.  
6 When we're going to open the mine, I  
7 could tell you that if I could if you could tell  
8 me what the permit's going to be approved. I can  
9 tell you this: The mine is going to be in  
10 production within three years of approval of the  
11 permit.  
12 If there's no questions, that's all I  
13 have.  
14 MR. BRAXTON: Are there questions from  
15 the, from the group? Let me, let me ask a  
16 question. And then I'll turn to you, Jerri. Can  
17 everybody hear all right? We don't have  
18 microphones, and I'm wondering whether we might  
19 not want to pull these tables up a little closer  
20 and encourage folks that are in the back of the  
21 room to move up a little closer, since we don't  
22 have a PA system in here this morning.  
23 MS. WHITE: Would you like me to go and  
24 get one? Would you like to set up a PA system?  
25 MR. BRAXTON: If people can't hear, I



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|--|--|
| <p style="text-align: right;">Page 9</p> <p>1 think the first thing to do is just move forward.<br/>2 I'd encourage you to do that. If there's a<br/>3 general need for a PA, we'd be glad to do that.<br/>4 What's the will of the group?<br/>5 MR. MARSHALL: Turn the table.<br/>6 MR. PETERSEN: Sideways.<br/>7 MR. MARSHALL: And then we're not<br/>8 talking away from everybody.<br/>9 MR. BRAXTON: Okay. Let's do that.<br/>10 Why don't you just come up here. Maybe<br/>11 that's the easiest way to do it, Jay.<br/>12 MR. MARSHALL: That could work too.<br/>13 MR. BRAXTON: Is that satisfactory to<br/>14 everybody?<br/>15 MS. WRIGHT: I think so that more than<br/>16 one person could sit up there, and it would be a<br/>17 good idea to have this set up still and be up<br/>18 there.<br/>19 MS. DRAGOO: Were there any more<br/>20 questions for Jay or--<br/>21 MR. BRAXTON: Jerriann, I thought you<br/>22 had a--<br/>23 MS. ERNSTSEN: That was my concern. I<br/>24 couldn't hear.<br/>25 MS. WRIGHT: Scott, were you able to</p>   | <p style="text-align: right;">Page 11</p> <p>1 permit for that application on July 27th of 2001.<br/>2 And a mining plan approval was given on November<br/>3 5th of 2001. SUWA filed an appeal to the Board<br/>4 for the state permit on September 4th of '01.<br/>5 And there were Board hearings, and the Board<br/>6 ordered on December 14th of '01 that remanded the<br/>7 DOGM decision and reversed the permit. A Board<br/>8 hearing on January 23, 2002, ordered the Division<br/>9 to continue processing of the permit, and UEI<br/>10 resubmitted the permit application on February<br/>11 11th of 2002.<br/>12 This and the Division required UEI to<br/>13 republish this as a new permit. That application<br/>14 was determined to be administratively complete on<br/>15 February 25, 2002. An informal hearing was held<br/>16 on May 21st of 2002. And Lowell sent a decision<br/>17 as a result of that hearing, which said that the<br/>18 decision was that it was denied in part, and that<br/>19 was issued on July 22nd of '02. And the response<br/>20 was due to the, to the deficiencies on October<br/>21 22nd of '02, of '02 and there was a request for<br/>22 an extension, and UEI extended--and the extension<br/>23 was granted until December 6th of '02.<br/>24 The review--they sent in the response<br/>25 and we reviewed it and sent out our deficiency</p>          |
| <p style="text-align: right;">Page 10</p> <p>1 hear them?<br/>2 THE REPORTER: Uh-huh (Affirmative).<br/>3 MR. BRAXTON: Let's move down to the,<br/>4 the next juncture on the agenda, and that's the<br/>5 status of the plan and the Division technical<br/>6 review. The Division of Oil, Gas &amp; Mining will<br/>7 make this presentation.<br/>8 MS. WRIGHT: Pam Grubaugh-Littig will<br/>9 make this presentation.<br/>10 MS. GRUBAUGH-LITTIG: Hi. My name is<br/>11 Pam Grubaugh-Littig, and I'm a permit supervisor<br/>12 in the Coal Regulatory Program. And I want to go<br/>13 through a background of the Horse Canyon--well,<br/>14 the Lila Canyon Extension mining application just<br/>15 so folks can understand it from the beginning to<br/>16 where we are today. And so I'll just go through<br/>17 it kind of--just briefly.<br/>18 UtahAmerican Energy acquired the Horse<br/>19 Canyon permit from Intermountain Power Agency on<br/>20 December 21, 1998. UEI submitted an application<br/>21 to permit the Lila Canyon Extension on December<br/>22 22nd of that year. And that plan was determined<br/>23 to be administratively complete on February 26th<br/>24 of '99.<br/>25 That--the state, the state issued the</p> | <p style="text-align: right;">Page 12</p> <p>1 review on April 9th of '03, 2003. On February<br/>2 6th of 2004, the Division sent a letter, and what<br/>3 it was, it was a response to a UEI letter of<br/>4 January 16, 2004, that notified UEI where--in the<br/>5 January 16th letter, notified us that UEI would be<br/>6 submitting a response to the 2003 technical<br/>7 analysis on or about February 27.<br/>8 And what it said--and this is taken<br/>9 verbatim from the letter. It says, "UEI, pending<br/>10 submittal of the TA response for the Lila Canyon<br/>11 Extension permit area of the application, will<br/>12 make it more than ten months since the Division's<br/>13 TA was sent to UEI. It is Division practice to<br/>14 consider inactive any application that has been on<br/>15 our shelves for longer than 90 days and send it<br/>16 back. In view of this, and due to the time that<br/>17 has lapsed, the Division will require UEI to<br/>18 publish again for public comments."<br/>19 The Division did receive the response<br/>20 to the deficiencies on February 26th of 2004.<br/>21 And due to the February 6, 2004, letter, they had<br/>22 to republish, and it reaffirmed administrative<br/>23 completeness and this was done on March 26th of<br/>24 '04. The end of the public comment period was<br/>25 May 27th of '04. And SUWA requested the informal</p> |



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1 conference, which we are holding today. And the  
 2 technical review is currently being conducted.  
 3 Any questions?  
 4 MR. BRAXTON: No, I don't have  
 5 questions. Are there questions from the, the  
 6 group at large?  
 7 Who's going to reference the various  
 8 diagrams that we have up there? Is that going to  
 9 come up during the conduct of the hearing or did  
 10 we intend to use any of those or are those SUWA's  
 11 presentations?  
 12 MS. WRIGHT: The Division of Oil, Gas &  
 13 Mining staff put them up just for general  
 14 reference if people needed to point to them. We  
 15 cut them from our informal conference two years  
 16 ago. And we thought it might be helpful if  
 17 people needed to point to maps and locations of  
 18 things to put them up. But the Division isn't  
 19 going to be presenting anything. They're just  
 20 general information. Good question.  
 21 MR. BRAXTON: Okay. Thanks.  
 22 MS. GRUBAUGH-LITTIG: Thank you.  
 23 MR. BRAXTON: Thanks, Pam.  
 24 MR. BRAXTON: Well, this brings us to  
 25 the--I think the public comments part of this

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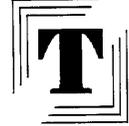
1 informal conference. It seems to me that we have  
 2 at least two people represented from the public  
 3 right here. We have Ira Hatch, I guess,  
 4 representing Emery County, and Southern Utah  
 5 Wilderness Alliance.  
 6 Are there other people that want to be  
 7 heard in the course of today? Other members of  
 8 the public? If there's no objection from SUWA,  
 9 then, I'd like Emery County to go ahead and make  
 10 their presentation and then we'll turn it over to  
 11 you.  
 12 MR. MCHARG: That's fine with us.  
 13 MR. HATCH: Thank you, Mr. Braxton. We  
 14 appreciate the opportunity of meeting with you  
 15 today. And we have a brief prepared statement  
 16 that we'll leave for the record for you. And Ray  
 17 Petersen is our public lands administrator from  
 18 Emery County. I'm, for the record, commissioner  
 19 for Emery County, one of the three commissioners  
 20 for Emery County.  
 21 So with that, Mr. Petersen will read  
 22 this statement. And then I'll just offer a  
 23 couple of brief remarks.  
 24 MR. PETERSEN: This addressed to the  
 25 Coal Regulatory Program, Division of Oil, Gas &

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1 Mining. In regard to the Lila Canyon Extension  
 2 to the Horse Canyon Mine permit application and  
 3 this informal hearing. We appreciate the  
 4 opportunity today to express our support for  
 5 granting of the permit. In keeping of the spirit  
 6 of our letter of support dated April 26 of 2004,  
 7 we urge that the permit be issued.  
 8 It is our position that concerns  
 9 identified in the public scoping process have been  
 10 adequately addressed in the mining plan,  
 11 opposition to the proposed project is mostly  
 12 concentrated on the impact the project would have  
 13 on one wilderness study area and wilderness  
 14 quality lands. The environmental assessment  
 15 completed by BLM in October of 2000 specifically  
 16 addresses the concern of undermining of Turtle  
 17 Canyon WSA, which you can see on the map.  
 18 The EA states that "Minimal impacts in  
 19 the form of minor subsidence is expected. The  
 20 incorporation of the original interim management  
 21 policy stipulations for actions resulting from  
 22 mining of the pre-FLPMA coal leases under Turtle  
 23 Canyon WSA would be incorporated for all areas  
 24 deemed to be affected by surface actions. No  
 25 surface facilities authorized by the BLM would be

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1 located within the WSA, and no actions approved by  
 2 the BLM would impact that WSA." That's the end  
 3 of the quote.  
 4 The other wilderness quality lands in  
 5 the form of wilderness inventory areas and areas  
 6 submit by citizen groups have since been found  
 7 invalid and should have no bearing on this  
 8 permitting process. The three issues resulting in  
 9 changes to the proposed action, those being  
 10 grazing, cultural resources, and wildlife, have  
 11 been suitably dealt with and in our determination  
 12 should not deter the issuance of this permit.  
 13 Emery County has reviewed the proposed operation  
 14 plan and also the reclamation plan and find no  
 15 reason for the permit not to be issued to  
 16 UtahAmerican Energy, Inc.  
 17 MR. HATCH: Would desire that this  
 18 statement be entered into, into the record, Mr.  
 19 Braxton.  
 20 MR. BRAXTON: Thank you very much.  
 21 We'll accept that.  
 22 MR. HATCH: Okay. Just brief just two  
 23 brief comments. The road issue. Road access  
 24 from Utah Highway 6 to the mine has been  
 25 addressed in conjunction with the BLM and Emery



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1 County. And we worked out what we feel to be a  
2 workable--a solution to the access problem to  
3 access the mine rather than coming in from the  
4 old Horse Canyon Mine then going to the south, we  
5 would come in from U.S. 6 up through BLM  
6 property. And we have addressed that with BLM  
7 already.  
8 Just in light of this last day or two,  
9 a news article relative to the potential  
10 electrical production being potential to be  
11 curtailed from Lake Powell, I think this just  
12 emphasizes the need that if that does happen, that  
13 the necessity to continue the coal production  
14 program so it can be used in the production of  
15 electrical power to provide the needs of not only  
16 our area, but the total intermountain area and to  
17 fill into the grid system of the electrical power  
18 producers.  
19 So with that, we're--just to  
20 reemphasize, we are--we've worked closely with  
21 the, the permittees and people have had numerous  
22 meetings with that. And we feel it's a good  
23 project and will benefit the--our county. And we  
24 can see no long-term, detrimental effects of it on  
25 the environment. We appreciate your concerns and,

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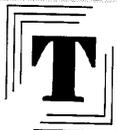
1 and the opportunity of hearing us out. If  
2 there's any questions, we'd be happy to address  
3 those.  
4 MR. BRAXTON: The, the access road to  
5 this mine is going to be an Emery County road.  
6 Is that your understanding?  
7 MR. HATCH: That's correct. That's  
8 correct.  
9 MR. BRAXTON: Other questions--  
10 MR. HATCH: Take off--if you're  
11 acquainted and you've been down there, but just  
12 after you go off the big steep hill what they  
13 call the 13 Barrel Hill there, you know, dropping  
14 off of the plateau down toward Woodside, about  
15 three-quarters of a mile from the bottom of that  
16 hill, we would take off there, and there is an  
17 existing county road up partially now. And there  
18 is an old RS 2477 road that hooks on to where we,  
19 we maintain this part on up to, to the mine site.  
20 And we would exert that right at that time and go  
21 ahead and construct it on that alignment.  
22 MR. BRAXTON: Thank you. Are there  
23 questions from the audience that Commissioner  
24 Hatch can help with?  
25 Thank you very much.

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1 MR. HATCH: Thank you.  
2 MR. BRAXTON: Well, we'll turn the time  
3 over to Southern Utah Wilderness Alliance, then.  
4 MR. LIPS: Lowell, I've got an  
5 overhead. Is it okay if I take a minute to set  
6 this up?  
7 MR. BRAXTON: Sure. Go right ahead.  
8 There should be coffee and water for  
9 those that are interested in that over in the  
10 back of the room. Please help yourselves to that  
11 if that's helpful.  
12 MR. MCHARG: Set?  
13 MR. BRAXTON: I approve of your poor  
14 man's PowerPoint right there.  
15 MR. MCHARG: Lowell, thank you. We  
16 appreciate the opportunity to present our comments  
17 and, and concerns with the permit application  
18 today, and we appreciate everybody attending.  
19 Just some brief comments to begin, in  
20 addition to the comments that we'll discuss today,  
21 we're confident that the Division will require  
22 UtahAmerican Energy to correct all the  
23 deficiencies that either they or the board have  
24 previously recognized. And the informal  
25 conference that's held today, as well as continued

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1 submissions by UtahAmerican Energy and analyses by  
2 the Division may disclose other concerns related  
3 to the technical adequacy of the permit  
4 application package, and SUWA may address these  
5 technical inadequacies through additional comments  
6 submitted during the technical review process.  
7 Just as you know, as we're presenting  
8 our points today, when we get to a point that you  
9 may want a citation to a rule number, we will be  
10 supplying the Division and other folks in the room  
11 with copies of an outline of what we're presenting  
12 today that has those points listed.  
13 MR. BRAXTON: That'll be very helpful.  
14 Thanks.  
15 MR. MCHARG: Great. And with that,  
16 I'll let Elliott begin on the hydrological issues.  
17 MR. LIPS: Thank you. I'm Elliott  
18 Lips, and I'm going to be discussing some of the  
19 issues and concerns related to the hydrology and  
20 geology sections. The first, No. 1, has to do  
21 with acid- and toxic-forming minerals. Rule  
22 624.300 requires the applicant to collect samples  
23 from test borings or drill holes and analyze these  
24 samples for acid- or toxic-forming materials.  
25 Specifically, Rule 624.320 requires the applicant



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| Page 21 | <p>1 to perform chemical analyses for acid- or toxic-</p> <p>2 forming or alkalinity-producing materials and</p> <p>3 their content in the strata immediately above and</p> <p>4 below the coal seam to be mined.</p> <p>5 Under Rule 626, an applicant may</p> <p>6 request the Division to waive in whole or in part</p> <p>7 the requirements of 624.300. However, the waiver</p> <p>8 may be granted only if the Division finds in</p> <p>9 writing that the collection and analysis of such</p> <p>10 data is unnecessary because other information</p> <p>11 having equal value or effect is available to the</p> <p>12 Division in satisfactory form.</p> <p>13 UEI has not provided the data and</p> <p>14 analyses required under Rule 624, and have instead</p> <p>15 requested an exemption from the Division under</p> <p>16 Rule 626. UEI cites the following reasons for</p> <p>17 its request: (1) UEI claims there has been no</p> <p>18 problem with acid- or toxic-forming materials at</p> <p>19 the nearby Sunnyside Mine. In fact, the record</p> <p>20 is very clear that there has been a problem with</p> <p>21 acid generation at the Sunnyside refuse pile.</p> <p>22 Acidic water carrying iron and other minerals</p> <p>23 seeped from the base of the pile into a channel.</p> <p>24 (2) UEI has provided analyses from</p> <p>25 boreholes S-24 and S-25, located two miles from</p> | Page 23 | <p>1 area indicate high sulfur content, and even logs</p> <p>2 and drill holes in the permit area indicate the</p> <p>3 presence of pyrite. And third, UEI proposes to</p> <p>4 use material, this underground development waste,</p> <p>5 as structural fill for surface facilities.</p> <p>6 Number 2, our second concern is</p> <p>7 subsurface water resource maps. Rule 722.100</p> <p>8 requires submission of cross sections and maps</p> <p>9 showing the location and extent of subsurface</p> <p>10 water, including the aerial and vertical</p> <p>11 distribution of aquifers and portrayal of seasonal</p> <p>12 differences in head. While UEI has identified</p> <p>13 both what it calls a regional aquifer and several</p> <p>14 perched aquifers, it has not complied with this</p> <p>15 requirement. In response to this rule, UEI has</p> <p>16 submitted Figures 7-1 and 7-2. However, Figure</p> <p>17 7-1 shows water levels for only a very small</p> <p>18 portion of the mine site between the three IPA</p> <p>19 wells. The area for which data exists only</p> <p>20 covers about 162 acres, which is approximately 3</p> <p>21 1/2 percent of the 4,664-acre permit area. Figure</p> <p>22 7-2 is not a cross section. It depicts water</p> <p>23 level changes through time, not through the permit</p> <p>24 area.</p> <p>25 Number 3: Surface water resources.</p> |
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| Page 22 | <p>1 the permit area. However, inspection of the logs</p> <p>2 and analytical results for the strata above the</p> <p>3 coal seam down to the Mancos Shale indicate that</p> <p>4 in S-24, 7 out of 18 samples, or 40 percent, have</p> <p>5 greater than 1 percent sulfur, with the highest</p> <p>6 sample containing 4.61 percent. The logs of S-25</p> <p>7 indicate that 6 out of 13 samples, or 46 percent,</p> <p>8 have greater than 1 percent sulfur, with the</p> <p>9 highest sample containing 2.72 percent. Thus,</p> <p>10 these data indicate that there is an acid-</p> <p>11 generation potential.</p> <p>12 Third, UEI states that all material</p> <p>13 brought from the mine willing be tested and</p> <p>14 treated as though it is acid- or toxic-forming.</p> <p>15 However, this does not satisfy Rule 626, which</p> <p>16 requires, "information having equal value or</p> <p>17 effect," as chemical analysis of samples collected</p> <p>18 from test borings or drill holes.</p> <p>19 Our concerns are that UEI has not</p> <p>20 provided the data and analysis provide under Rule</p> <p>21 624 or information having equal value as required</p> <p>22 under Rule 626. All the indications are that the</p> <p>23 material removed from the mine will be acid-</p> <p>24 generating. It was at Sunnyside. Chemical</p> <p>25 analysis of logs and drill holes off the permit</p> | Page 24 | <p>1 Rule 724.200 requires the applicant to submit</p> <p>2 information on surface water quality and quantity</p> <p>3 sufficient to, to demonstrate seasonal variation.</p> <p>4 The rule further requires the collection, at a</p> <p>5 minimum, of baseline data on specific parameters</p> <p>6 for the water quality description and a baseline</p> <p>7 information on seasonal flow rates for the water</p> <p>8 quantity description. For years the Division has</p> <p>9 interpreted this rule to require the submission of</p> <p>10 baseline information collected quarterly for a</p> <p>11 minimum of two years prior to permit issuance.</p> <p>12 In addition to numerous ephemeral</p> <p>13 washes, there are six intermittent streams within</p> <p>14 the permit area: Lila Canyon, Little Park Wash,</p> <p>15 Stinky Spring Wash, IPA No. 1 Wash, Pine Springs</p> <p>16 Wash, and No Name Wash. UEI has never submitted</p> <p>17 any data on surface water quantity or quality for</p> <p>18 any of these washes. UEI and the Division know</p> <p>19 that these drainages flow intermittently in</p> <p>20 response to snow melt, runoff, and/or rainfall</p> <p>21 events. In fact, Division personnel have</p> <p>22 documented evidence of flows in all drainages,</p> <p>23 including the drainage through the middle of the</p> <p>24 proposed disturbed area.</p> <p>25 UEI only reports several observations</p> |
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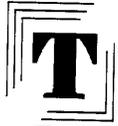
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| <p style="text-align: right;">Page 25</p> <p>1 of "no flow." However, these do not provide the<br/>2 data required under Rule 724.200. UEI has never<br/>3 attempted to collect these data even though remote<br/>4 methods for collecting both water quality and flow<br/>5 depth are well within the state of the art, are<br/>6 standard practice by the U.S. Geological Survey,<br/>7 and have been used in the permitting of other<br/>8 coal mines in Utah.</p> <p>9 Point No. 4: Ground water quantity.<br/>10 Rule 724.100 requires the applicant to submit data<br/>11 on the seasonal quantity of ground water. Ground<br/>12 water quantity descriptions will include, at a<br/>13 minimum, approximate rates of discharge or usage<br/>14 and depth to the water in the coal seam and each<br/>15 water-bearing stratum above and potentially<br/>16 impacted stratum below the coal seam. As with<br/>17 surface water, the Division's own guidance<br/>18 interprets this rule to require collection of<br/>19 baseline quarterly for two years. UEI has failed<br/>20 to submit data required under this rule.</p> <p>21 For the regional aquifer, UEI does not<br/>22 provide two years of seasonal baseline data from<br/>23 IPA-1, -2, or -3, or L-16-G, L-17-G. That's a<br/>24 reference, a table. These data were obtained from<br/>25 the Division's online water quality database for</p> | <p style="text-align: right;">Page 27</p> <p>1 on the movement, discharge depth, etc., of ground<br/>2 water in the regional aquifer.</p> <p>3 For the perched aquifer, UEI does not<br/>4 provide two years of seasonal baseline data from<br/>5 the seeps and springs, L-6-G through L-12-G. And<br/>6 I might reference that these are the sites in the<br/>7 perched aquifer, L-6-G through L-12-G, that UEI<br/>8 proposes for monitoring during the operation of<br/>9 the mine. And, again, as you can see, L-6-G has<br/>10 been--sampling has been suspended. But for the<br/>11 other springs, there are no data for the winter.<br/>12 In fact there's no data for the spring of 2003<br/>13 for any of them. And there was no access in the<br/>14 spring of 2004. So there is incomplete data on<br/>15 the perched aquifer.</p> <p>16 Ground water--Point No. 5: Ground<br/>17 water quality. Rule 724-100 requires the<br/>18 applicant to submit data on the seasonal quality<br/>19 of ground water. Water quality descriptions will<br/>20 include, at a minimum, total dissolved solids or<br/>21 specific conductance corrected to 25 degrees C,<br/>22 pH, total iron, and total manganese. Again, the<br/>23 Division's own guidance interprets this rule to<br/>24 require collection of baseline data quarterly for<br/>25 two years. UEI has failed to submit data under</p>        |
| <p style="text-align: right;">Page 26</p> <p>1 the Horse Canyon Mine. And going back, starting<br/>2 in spring 2004 back to autumn of 2001, looking at<br/>3 quarterly sampling, dates where samples were taken<br/>4 at these sites, IPA-1, -2, and -3, L-16-G and<br/>5 L-16-G, are shown for the dates for that year.<br/>6 The red blocks indicate that no data exists for<br/>7 that quarter, and the yellow indicates that no<br/>8 access was obtained or achieved on 3/30/04. And<br/>9 as you can see for the regional aquifer, there<br/>10 are no data for any of the winter months, and<br/>11 there are no data for the spring of 2003.</p> <p>12 Still talking about the regional<br/>13 aquifer, UEI's description of the piezometric<br/>14 surface is clearly flawed in that it depicts--it<br/>15 is depicted as a uniformly dipping planar surface<br/>16 over the entire permit area. UEI has extrapolated<br/>17 a piezometric surface to the 4,664-acre permit<br/>18 area on the basis of water level data in the IPA<br/>19 wells, an area that only covers 3 1/2 percent of<br/>20 the permit area.</p> <p>21 UEI provides no information on the<br/>22 rates of discharge of ground water, the hydraulic<br/>23 conductivity, the recharge area, or incredibly,<br/>24 the discharge area. UEI fails to address the<br/>25 effect of lithology, regional structure or faults</p>       | <p style="text-align: right;">Page 28</p> <p>1 the--required under this rule.</p> <p>2 For the regional aquifer, UEI has<br/>3 never collected or attempted to collect any water<br/>4 quality samples from the IPA wells. UEI has<br/>5 provided some data from Redden Spring (RS-2).<br/>6 However, Redden Spring is an area of the Horse<br/>7 Canyon Mine, and therefore it does not represent<br/>8 premining baseline conditions. It is not proposed<br/>9 for monitoring and there are not two years of<br/>10 seasonal baseline data. UEI has provided some<br/>11 data from L-16-G and L-17-G. However, it is<br/>12 clear, based--it is not clear--excuse me--based on<br/>13 the information presented by UEI whether or not<br/>14 these springs are connected to the regional<br/>15 aquifer and the effect, if any, of the Central<br/>16 Graben Fault. In addition, there are not two<br/>17 years of seasonal baseline data for these springs.<br/>18 Again, reference the table for L-16-G and L-17-G<br/>19 for water quality. There are not two years of<br/>20 seasonal data for L-16-G and L-17-G.</p> <p>21 Number 6: Coal mine waste. "Coal mine<br/>22 waste" means coal processing waste and underground<br/>23 development waste. Rule 528.320 requires that all<br/>24 coal mine waste will be placed in new or existing<br/>25 disposal areas within a permit area which are</p> |



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| Page 29 | <p>1 approved by the Division for this purpose. Coal<br/>                 2 mine waste will meet the designed criteria of<br/>                 3 R645-301-536; however, placement of coal mine<br/>                 4 waste by end or side dumping is prohibited.<br/>                 5 UEI proposes to dump coal mine waste<br/>                 6 (underground development waste), and use it as<br/>                 7 structural fill upon which the shop and warehouse<br/>                 8 will be built. This handling of the coal mine<br/>                 9 waste is in violation of Rule 528.320. In<br/>                 10 addition, it is unclear how UEI proposes to<br/>                 11 construct the shop and warehouse on this material<br/>                 12 when it's supposed to be placed in a disposal<br/>                 13 area.<br/>                 14 Number 7: Inadequate ground water<br/>                 15 monitoring plan. According to Rule 731.211, the<br/>                 16 permit application will include a ground water<br/>                 17 monitoring plan based upon the analysis of all<br/>                 18 baseline hydrologic, geologic, and other<br/>                 19 information in the permit application. Where<br/>                 20 there are no baseline data or incomplete baseline<br/>                 21 data, there can be no determination of impacts and<br/>                 22 no effective monitoring.<br/>                 23 With regard to the regional aquifer,<br/>                 24 UEI proposes to monitor only ground water depth,<br/>                 25 not ground water quality from the IPA wells. In</p> | Page 31 |
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| Page 30 | <p>1 addition, the IPA wells will be destroyed during<br/>                 2 mining. UEI proposes to monitor ground water<br/>                 3 quantity and quality from only two sites: L-16-G<br/>                 4 and L-17-G. However, these springs may not even<br/>                 5 be connected to the regional aquifer. They're not<br/>                 6 within the permit area. They're only 400 feet<br/>                 7 apart and they're incomplete baseline data. For<br/>                 8 reference, Points 4 and 5 above, and the table.<br/>                 9 With regard to the perched aquifer:<br/>                 10 UEI proposes to monitor ground water from only<br/>                 11 five seeps and springs: L-7-G, L-8-G, L-9-G,<br/>                 12 L-11-G, and L-12-G. While this plan is inadequate<br/>                 13 on its face, the problem is worse by the facts<br/>                 14 that (1) there are incomplete baseline data for<br/>                 15 all these proposed monitoring sites, as I<br/>                 16 discussed in No. 4 and 5 above, and shown on the<br/>                 17 table. Second, L-8-G and L-9-G are located<br/>                 18 outside the permit area. And, third, L-11-G is a<br/>                 19 spring above the Horse Canyon Mine, and there are<br/>                 20 no premining baseline data. Thus, there are only<br/>                 21 two proposed mining sights in the permit area and<br/>                 22 only partial baseline data exists for these sites.<br/>                 23 Number 8: No baseline data for the<br/>                 24 surface water monitoring plan. According to Rule<br/>                 25 731.221, the permit application will include a</p> | Page 32 |
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| <p style="text-align: right;">Page 33</p> <p>1 habitat of the Colorado River endangered fish<br/>2 species: the Colorado pikeminnow, humpback chub,<br/>3 bonytailed chub, and razorback sucker.<br/>4 UEI states that this process water will<br/>5 be hauled from the Price River. However, nowhere<br/>6 in the PAP is the effect of removing 112 acre-<br/>7 feet a year from the Price River analyzed. There<br/>8 are no baseline data on water quality or water<br/>9 quantity above and below the proposed point of<br/>10 diversion, and therefore it will be impossible to<br/>11 determine the impacts from this withdrawal. In<br/>12 addition, there are no baseline data or analyses<br/>13 of the potential impacts to the vegetation and/or<br/>14 wildlife. Finally, it is not clear from the<br/>15 information in the PAP whether or not UEI has a<br/>16 water right for the Price River.<br/>17 Number 11: The cumulative impact area.<br/>18 The information provided by UEI is not sufficient<br/>19 to allow the Division to establish a<br/>20 hydrologically reasonable cumulative impact area<br/>21 boundary. Specifically: (1) the recharge and<br/>22 discharge areas of the regional aquifer have not<br/>23 been identified. Without this information, the<br/>24 Division cannot establish the CIA boundary; (2)<br/>25 the effects of the faults on the occurrence,</p>                  | <p style="text-align: right;">Page 35</p> <p>1 impacts. This is, of course, impossible to<br/>2 demonstrate because there is no premining<br/>3 hydrologic baseline data to which the data on<br/>4 existing water resources can be compared. UEI<br/>5 does acknowledge the subsidence has occurred at<br/>6 the Horse Canyon Mine, and therefore it is only<br/>7 logical to conclude that it will occur at the<br/>8 Lila Canyon Mine.<br/>9 UEI also claims that there will be no<br/>10 impacts to the surface streams from subsidence<br/>11 because of the overburden thickness. However,<br/>12 parts of Little Park Wash have overburden<br/>13 thickness of 500 feet, and several reaches of<br/>14 other streams in the permit area have overburden<br/>15 thicknesses of approximately 1,000 feet. A<br/>16 cursory review of the literature provides<br/>17 documentation that under similar geologic<br/>18 conditions and mining methods, subsidence has<br/>19 occurred at coal mines where the overburden<br/>20 thickness was as much as 1,500 feet.<br/>21 At the Deer Creek Mine, the U.S. Bureau<br/>22 of Mines reports "a maximum of 2.7 feet of<br/>23 subsidence over the two longwall panels mined at a<br/>24 depth of 1,500 feet."<br/>25 At the Cyprus Plateau Mine, the U.S.</p>                                      |
| <p style="text-align: right;">Page 34</p> <p>1 movement, and discharge of water in the regional<br/>2 aquifer is not addressed; (3) there is no<br/>3 explanation for the occurrence of ground water in<br/>4 the Mancos Shale (L-16-G and L-17-G); and (4) the<br/>5 CIA boundary must include the Price River because<br/>6 UEI intends to divert, to divert up to 112 acre-<br/>7 feet per year and because it is a potential<br/>8 discharge area for the regional aquifer.<br/>9 Number 12: The operation plan.<br/>10 According to Rule 731, the permit application will<br/>11 include a plan with maps and descriptions specific<br/>12 to the local hydrologic conditions. It will<br/>13 contain the steps to be taken during the coal<br/>14 mining and reclamation operations through bond<br/>15 release to minimize disturbance to the hydrologic<br/>16 balance within the permit and adjacent areas, to<br/>17 prevent material damage outside the permit area,<br/>18 and to support approved postmining land use.<br/>19 The plan submitted by UEI fails to<br/>20 minimize disturbance to the hydrologic balance for<br/>21 the following reasons: (1) with regard to<br/>22 subsidence impacts, UEI claims that there will be<br/>23 no impacts to surface or ground water resources<br/>24 based on the fact that although subsidence has<br/>25 occurred at the Horse Canyon Mine, there were no</p> | <p style="text-align: right;">Page 36</p> <p>1 Geological Survey reports, "Land surface subsided<br/>2 and moved several feet horizontally. The<br/>3 perennial stream and a tributary stream from the<br/>4 mined area were diverted into the ground by<br/>5 surface fractures where the overburden thickness<br/>6 above the Wattis coal seam is about 300 to 500<br/>7 feet."<br/>8 At the Geneva Mine in the Sunnyside<br/>9 Mining District, the U.S. Geological Survey<br/>10 reports, "Large tension cracks, some of which are<br/>11 hundreds of feet long and range from about 0.06<br/>12 inch to as much as three feet in width formed in<br/>13 massive sandstone at the top of the Mesaverde<br/>14 Group about 900 feet above the mined area. These<br/>15 cracks divert all surface- and ground-water flow<br/>16 in this area to lower strata or to the mine<br/>17 workings."<br/>18 Based on the evidence of subsidence at<br/>19 the Horse Canyon Mine and the well-documented<br/>20 evidence of subsidence at nearby mines in similar<br/>21 geologic strata, it is obvious that subsidence<br/>22 will occur at the Lila Canyon Mine. Subsidence<br/>23 fractures will impact several streams, seeps, and<br/>24 springs. Unfortunately, as discussed above in<br/>25 Nos. 3 through 5, there are absolutely no baseline</p> |



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| <p style="text-align: right;">Page 37</p> <p>1 data for the surface streams within the permit<br/>                 2 area and incomplete baseline data on the ground<br/>                 3 water resources, so it will be impossible to<br/>                 4 determine the impacts that subsidence will have to<br/>                 5 the hydrologic balance within the permit and<br/>                 6 adjacent areas, whether or not there will be<br/>                 7 material damage outside the permit area, and the<br/>                 8 limitation on supporting the approved postmining<br/>                 9 land use.</p> <p>10 Second: With respect to stream buffer<br/>                 11 zones, Rule 731.610 states that no land within 100<br/>                 12 feet of an intermittent stream will be disturbed<br/>                 13 by coal mining and reclamation operations unless<br/>                 14 the Division specifically authorizes coal mining<br/>                 15 and reclamation operations closer to or through<br/>                 16 such a stream. The Division may authorize such<br/>                 17 activities only upon finding that (Rule 731.611)<br/>                 18 coal mining and reclamation operations will not<br/>                 19 adversely affect the water quantity and quality or<br/>                 20 other environmental resources of the stream.</p> <p>21 UEI proposes to conduct mining<br/>                 22 operations within a hundred feet of the Lila<br/>                 23 Canyon channel. Because there are no baseline data<br/>                 24 on the water quality or water quantity in Lila<br/>                 25 Canyon, the Division cannot determine whether or</p> | <p style="text-align: right;">Page 39</p> <p>1 information is provided for the vegetation survey<br/>                 2 of the permit area beyond the proposed disturbed<br/>                 3 area. SUWA reserves the right to request the<br/>                 4 information required under the rules for all<br/>                 5 technical data submitted in the PAP.</p> <p>6 Point 14: The vegetation survey is not<br/>                 7 adequate. The PAP fails to include a description<br/>                 8 of the vegetative communities and productivity<br/>                 9 throughout the affected area adequate to predict<br/>                 10 the potential for reestablishing vegetation.</p> <p>11 First, ground surveys were conducted<br/>                 12 only within the proposed mine site location rather<br/>                 13 than throughout the entire affected area,<br/>                 14 including the Range Creek and Price River<br/>                 15 drainages.</p> <p>16 Secondly, although Plate 3-2<br/>                 17 illustrates the plant communities, the PAP fails<br/>                 18 to include discussions regarding such communities<br/>                 19 and lacks detail with regard to the species within<br/>                 20 each community.</p> <p>21 Third, the vegetative survey should<br/>                 22 have been conducted in the spring rather than July<br/>                 23 through August, especially during this drought.</p> <p>24 Fourth, the descriptions of the<br/>                 25 vegetative communities around the seeps, springs,</p>   |
| <p style="text-align: right;">Page 38</p> <p>1 not the mining operation will adversely affect the<br/>                 2 water quantity and quality or other environmental<br/>                 3 resources of the stream. Thus, the Division<br/>                 4 cannot support a decision to authorize mining<br/>                 5 within the stream buffer zone.</p> <p>6 MR. McHARG: Well, Elliott has<br/>                 7 completed his presentation on the hydrological<br/>                 8 concerns that we have. I'll move on to other<br/>                 9 concerns. Point 13: The PAP lacks required<br/>                 10 survey data. The PAP fails to contain certain<br/>                 11 survey data required under the rules. According<br/>                 12 to the rules, "All technical data submitted in the<br/>                 13 permit application will be accompanied by the<br/>                 14 names of persons or organizations that collected<br/>                 15 and analyzed the data, dates of the collection,<br/>                 16 and analysis of the data and descriptions of the<br/>                 17 methodology used to collect and analyze the data,"<br/>                 18 and "technical analyses will be planned by or<br/>                 19 under the direction of professional"--of a<br/>                 20 professional qualified and are subject to be<br/>                 21 analyzed."</p> <p>22 UEI and DOGM cannot agree to discard<br/>                 23 the requirement under the rules to provide such<br/>                 24 information as they apparently attempt to for<br/>                 25 certain surveys. Further, it appears that no</p>   | <p style="text-align: right;">Page 40</p> <p>1 and reaches is cursory and does not represent<br/>                 2 adequate baseline information.</p> <p>3 Point 15, site-specific resource<br/>                 4 information is not adequate. The PAP does not<br/>                 5 contain the site-specific resource information<br/>                 6 required by the rules. And the information<br/>                 7 presented in the PAP is not sufficient to design<br/>                 8 a protection and enhancement plan. Site-specific<br/>                 9 resource information is required where, as here,<br/>                 10 the permit area or adjacent areas include listed<br/>                 11 or proposed threatened and endangered plant and<br/>                 12 animal species; high-value habitats, including<br/>                 13 riparian areas, cliffs, migration routes, and<br/>                 14 wintering areas; or other species or habitats of<br/>                 15 agency concern. Despite these rules, either UEI<br/>                 16 has failed to provide or the Division has<br/>                 17 apparently not required such site-specific<br/>                 18 information.</p> <p>19 For example: With regard to<br/>                 20 amphibians, the Division should require formal<br/>                 21 survey for amphibians. Noting the lack of<br/>                 22 amphibian observation is not sufficient under the<br/>                 23 regulations requiring site specific information.<br/>                 24 UEI merely inserts, "The permittee has never<br/>                 25 observed amphibians at or near this location."</p> |

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| <p style="text-align: right;">Page 41</p> <p>1 This does not confirm whether or not amphibians<br/>                 2 actually live in these locations but only implies<br/>                 3 that someone from UEI had not seen any at a<br/>                 4 particular time. Obviously, it is in UEI's best<br/>                 5 interest to claim that no amphibians are present.<br/>                 6 the rules require a formal survey in monitoring<br/>                 7 plan to ensure protection of amphibians and their<br/>                 8 habitat. Further, the permittee does not meet the<br/>                 9 requirement to provide the names of people making<br/>                 10 the observations, whether or not they were<br/>                 11 qualified, the dates and data collection<br/>                 12 methodology.<br/>                 13 In regards to Mexican spotted owl: As<br/>                 14 recognized by the Division, UEI must conduct<br/>                 15 Mexican spotted owl surveys and provide results of<br/>                 16 the ground-truthing surveys. UEI states it will<br/>                 17 not inventory areas "where the depth of mining is<br/>                 18 so deep as to not cause any surface effects." As<br/>                 19 discussed previously, 1,000 feet of overburden may<br/>                 20 not be sufficient. Thus, all areas of potential<br/>                 21 impact must be surveyed.<br/>                 22 In regards to raptors, there's no<br/>                 23 explanation of the details of, of the raptor<br/>                 24 survey, which fails to comply with our<br/>                 25 R645-301-131 and -132. Further, the flight path</p> | <p style="text-align: right;">Page 43</p> <p>1 and 7-8, the information on plant, fish, and<br/>                 2 wildlife species contained in Appendices 7-7 and<br/>                 3 7-8 are not sufficient to comply with the<br/>                 4 regulations. The level of detail must be<br/>                 5 sufficient to design the protection and<br/>                 6 enhancement plan required under 301-333.<br/>                 7 Point 16: Subsidence impacts the<br/>                 8 plants and animals are not adequately addressed.<br/>                 9 The PAP fails to include information on subsidence<br/>                 10 adequate to assess impacts to plant and wildlife<br/>                 11 species. As discussed above, subsidence may<br/>                 12 impact seeps and springs throughout the affected<br/>                 13 area including areas where there is more than<br/>                 14 1,000 feet of cover. If springs and seeps are<br/>                 15 dewatered, impacts to wildlife species would be<br/>                 16 extensive. UEI's discussion of subsidence is<br/>                 17 incorrectly limited to its effect on snake dens,<br/>                 18 and fails to describe how it will minimize<br/>                 19 disturbances using the best technology currently<br/>                 20 available.<br/>                 21 Point 17: Impacts to fish and wildlife<br/>                 22 are not adequately assessed. The PAP fails to<br/>                 23 include information necessary to adequately assess<br/>                 24 impacts to fish and wildlife and related<br/>                 25 environmental values including the sensitive fish</p>                                      |
| <p style="text-align: right;">Page 42</p> <p>1 illustrated in Appendix 3-5 shows that the survey<br/>                 2 did not cover the entire area of potential effect.<br/>                 3 In regards to the Southwest willow flycatcher: As<br/>                 4 discussed above, we are concerned with impacts to<br/>                 5 Range Creek and Price River because these waters<br/>                 6 may be impacted, the PAP must address the<br/>                 7 potential impacts to the Southwest willow<br/>                 8 flycatcher.<br/>                 9 In regards to endangered fish species:<br/>                 10 Due to the impacts of mine discharge and water<br/>                 11 consumption, the PAP must evaluate the impacts to<br/>                 12 the bonytailed chub, the Colorado pikeminnow,<br/>                 13 humpback chub, and razorback sucker. And this was<br/>                 14 also discussed during Elliot's presentation on<br/>                 15 hydrological impacts.<br/>                 16 With regards to sensitive plant<br/>                 17 species: None of the surveys conducted extend<br/>                 18 throughout the entire potentially affected area.<br/>                 19 Those that were conducted may not have been<br/>                 20 conducted at the appropriate time or by qualified<br/>                 21 individuals. And for reference, see the attached<br/>                 22 declaration of Dr. Ron Kass, dated 11/29/2001.<br/>                 23 And that will be provided in the package that I<br/>                 24 provide to you today.<br/>                 25 In regards to reliance on Appendix 7-7</p>                                  | <p style="text-align: right;">Page 44</p> <p>1 species identified by the U.S. Fish &amp; Wildlife<br/>                 2 Service.<br/>                 3 As discussed above, UEI's quantitative<br/>                 4 water consumption assessment is not accurate. In<br/>                 5 actuality, UEI will be taking 112 acre-feet of<br/>                 6 water directly from the Price River, which may<br/>                 7 adversely affect the endangered fish in the Upper<br/>                 8 Colorado River Basin. Further, mine waste will<br/>                 9 discharge into the Price River, increasing<br/>                 10 selenium. Thus, consultation with Fish &amp; Wildlife<br/>                 11 Service must occur, and UEI must fully describe<br/>                 12 how it intends to comply with the Endangered<br/>                 13 Species Act and to prevent dewatering, increased<br/>                 14 selenium, and other impacts to these species.<br/>                 15 Point 18: Disturbance, monitoring, and<br/>                 16 protection of habitat. The PAP fails to comply<br/>                 17 with the rules requiring the operator to avoid<br/>                 18 disturbance of wildlife habitat and fails to<br/>                 19 describe how wildlife will be monitored and<br/>                 20 protected from hazardous materials. Again, as<br/>                 21 discussed above, the proposed mining operation may<br/>                 22 impact seeps, springs, drainages, Range Creek, and<br/>                 23 the Price River and other high-value wildlife<br/>                 24 habitats. And it fails to include an adequate plan<br/>                 25 to avoid such disturbances or restore such</p> |



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| <p style="text-align: right;">Page 45</p> <p>1 habitats should they be harmed. This directly<br/>                 2 violates the rules. Locating surface facilities<br/>                 3 near a relatively high concentration of golden<br/>                 4 eagle nest sites risks the taking of such golden<br/>                 5 eagle nests or eggs also in violation of the<br/>                 6 rules.<br/>                 7 Further, in direct contradiction to the<br/>                 8 Division's concerns, UEI intends to develop the<br/>                 9 drainage located in the southwest portion of the<br/>                 10 mine site area that communicates with the Price<br/>                 11 River. This drainage is an important wildlife<br/>                 12 corridor, and the regulations require that<br/>                 13 disturbances and adverse impacts to wildlife be<br/>                 14 minimized. The PAP fails to explain using the<br/>                 15 best technology available why this location is the<br/>                 16 "most logical taking into consideration both the<br/>                 17 engineering and environmental aspects."<br/>                 18 Point 19: Land use capability is not<br/>                 19 accurately described, the reclamation plan is not<br/>                 20 adequate, and there is--and the area is unsuitable<br/>                 21 for mining. The PAP fails to include information<br/>                 22 that accurately describes the capability of the<br/>                 23 land affected by the coal mining and reclamation<br/>                 24 operations and fails to demonstrate that the land<br/>                 25 will be returned to its premining land use</p> | <p style="text-align: right;">Page 47</p> <p>1 describes measures to prevent adverse impacts to<br/>                 2 such resources and a determination of no historic<br/>                 3 properties by the State Historic Preservation<br/>                 4 Office. The PAP still fails to include a<br/>                 5 complete cultural survey of the entire affected<br/>                 6 area, including Range Creek, which is an area that<br/>                 7 is extremely culturally significant. The<br/>                 8 discussion on cultural resources contains<br/>                 9 uncertainties and assumptions, and fails to<br/>                 10 provide any confidence that all cultural resources<br/>                 11 in the affected area have been identified and will<br/>                 12 be protected from harm.<br/>                 13 Point No. 21: Subsidence control is<br/>                 14 not adequately addressed. The PAP fails to<br/>                 15 include information necessary to adequately assess<br/>                 16 the quantity and quality of all state-appropriated<br/>                 17 water supplies that could be impacted by<br/>                 18 subsidence, and fails to include an adequate plan<br/>                 19 for repair, replacement, or restoration of such<br/>                 20 supplies or surface lands.<br/>                 21 UEI's discussion regarding the need to<br/>                 22 replace, repair, or restore state-appropriated<br/>                 23 water--appropriated water sources damage by<br/>                 24 subsidence is both inaccurate and inadequate.<br/>                 25 First, the presumption is that subsidence caused</p>         |
| <p style="text-align: right;">Page 46</p> <p>1 capability or a higher or better use. Mining in<br/>                 2 the proposed permit area may, at a minimum, affect<br/>                 3 productivity of water supply, scientific and<br/>                 4 aesthetic values, and natural systems. The rules<br/>                 5 do not contemplate the current management--or I'm<br/>                 6 sorry--yeah. The rules do not contemplate the<br/>                 7 current management of the lands but rather the<br/>                 8 uses that the lands are capable of supporting or<br/>                 9 even higher uses. The Bureau of Land Management<br/>                 10 found the proposed mining area, including the<br/>                 11 lands on which UEI proposes to construct surface<br/>                 12 facilities to have wilderness character. And for<br/>                 13 reference, you can note the attached BLM 1999<br/>                 14 wilderness inventory. In other words, the lands<br/>                 15 are capable of supporting wilderness, regardless<br/>                 16 of how they are currently managed.<br/>                 17 Further, because of the unknown impacts<br/>                 18 to the springs and seeps that were discussed<br/>                 19 above, impacts on other land uses, including<br/>                 20 wildlife, recreation, grazing, etc., cannot be<br/>                 21 determined.<br/>                 22 Point No. 20: Cultural resources have<br/>                 23 not been adequately surveyed for and protected.<br/>                 24 The PAP fails to include information from a<br/>                 25 complete cultural resource survey. A plan that</p>       | <p style="text-align: right;">Page 48</p> <p>1 the damage, and UEI's statement attempts to shift<br/>                 2 the burden of proof. They--"after proof of damage<br/>                 3 by mining in Lila Canyon," and they go on with<br/>                 4 their sentence.<br/>                 5 Second, the PAP merely lists ways to<br/>                 6 replace the water, without describing a plan for<br/>                 7 doing so. There is no discussion regarding the<br/>                 8 potential impacts of these replacement measures.<br/>                 9 For example, trucking water could have additional<br/>                 10 impacts to wildlife and wilderness qualities and<br/>                 11 may be impossible during the winter. Constructing<br/>                 12 wells may dewater other natural sources, cause<br/>                 13 impacts to vegetation surrounding the wells, and<br/>                 14 impact wilderness resources.<br/>                 15 Point No. 22: Despite the, the<br/>                 16 comments by Emery County this morning, it can't<br/>                 17 just be worked out. The coal haul road issue<br/>                 18 cannot be just worked out with the BLM. It is<br/>                 19 part of the permitting process. The PAP must<br/>                 20 include the coal haul road within the affected<br/>                 21 area and include all information necessary for the<br/>                 22 permitting process. The rules require the<br/>                 23 Division to include within the affected area<br/>                 24 "every road used for purposes of access to or for<br/>                 25 hauling coal to or from coal mining operations,"</p> |

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1 unless the road is found exempt.  
2 The so-called Emery County Road 126  
3 does not exist beyond the 2.6-mile section listed  
4 in the Emery County road log, and there is no  
5 record of maintenance by the county of the  
6 remaining route to the proposed mine. The present  
7 alignment and condition of the route cannot  
8 sustain the intensity of traffic and type of  
9 vehicles for the proposed mining operation. The  
10 route would need new right-of-way permits from the  
11 BLM, realignment, and reengineering to construct a  
12 substantial paved road capable of safely handling  
13 the heavy traffic associated with an active coal  
14 mine that ships coal by truck.  
15 Obviously, none of these improvements  
16 would be contemplated but for the proposed mine.  
17 And the road fails to--fails the primary criteria  
18 for exemption from permitting. Therefore the  
19 Division must analyze the impacts on the various  
20 resources from road construction as part of the  
21 permitting process.  
22 Point No. 23: The proposed Lila Canyon  
23 Mine must be applied for, noticed, and processed  
24 as a new permit. The proposed mine must be  
25 processed and approved through application of a

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1 new permit. Although the text of the public  
2 notice states that the application "is being  
3 processed as a new permit," everything else in the  
4 notice operates against this statement.  
5 Specifically, the public notice is titled "Horse  
6 Canyon Mine Extension," and states that the permit  
7 is being processed under the Horse Canyon Mine  
8 permit number.  
9 Further, the map included in the notice  
10 depicts the Horse Canyon mine in solid black while  
11 the Lila Canyon mine is outlined. The result  
12 fails to display the fact that the proposed Lila  
13 Canyon Mine Extension is actually over three times  
14 the coal ownership acreage of the Horse Canyon  
15 Mine permit area and involves new surface  
16 facilities. Thus, the public has not been  
17 effectively notified of the impending processing  
18 of a new permit for a completely new mine three  
19 times the size of the Horse Canyon Mine.  
20 Further, although the rules contemplate  
21 application for, and issuance of, a new permit  
22 using the procedures, using the procedures for a  
23 new permit is not the same as issuing a new  
24 permit. Indeed, UEI has not applied for a new  
25 permit, and the Division is not reviewing the

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1 application in contemplation of issuing a new  
2 permit. Rather, UEI has requested and the  
3 Division contemplates issuing an extension that  
4 will be known as Part B to the existing Horse  
5 Canyon Mine permit. This does not comply with  
6 the rules.  
7 Thanks again. We appreciate your time  
8 in considering our comments today. And we'll look  
9 forward to be working with you throughout the  
10 permitting process.  
11 MR. BRAXTON: Thank you very much.  
12 Now, you're going to submit an outline of, of the  
13 comments that you've read right here?  
14 MR. MCHARG: We will. I'll hand them  
15 to you right now.  
16 MR. BRAXTON: Okay.  
17 MR. MCHARG: Thank you.  
18 MR. BRAXTON: Are there people in the  
19 audience that want to comment on what they've  
20 heard?  
21 MR. MCHARG: This is your copy. That's  
22 the original.  
23 MR. BRAXTON: Thank you.  
24 I'm hearing no comments. That, I  
25 guess, obviates the need for addressing concerns

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1 and dialogue from interested parties, the second-  
2 to-the-last bullet on the agenda.  
3 I think what I'm going to do is take  
4 these comments into consideration. I'll, I'll  
5 provide some written findings later in the  
6 process. I think it's imperative that we do  
7 continue dialogue between interested members of  
8 the public throughout the permitting process.  
9 Denise, didn't see you behind the post.  
10 MS. DRAGOO: We have a response that  
11 we'll just submit for the record. So you can  
12 consider those.  
13 MR. BRAXTON: Okay.  
14 These are substantially what Mr.  
15 Marshall said earlier this morning or--  
16 MS. DRAGOO: No, these, these respond  
17 to the specific issues that were raised by SUWA.  
18 MR. BRAXTON: Okay. And do you want to  
19 comment on those on the record right now?  
20 MS. DRAGOO: No. This, this speaks for  
21 itself. I think we're fine. Thank you.  
22 MS. WRIGHT: We're not going to hear  
23 these?  
24 MS. DRAGOO: We can summarize them for  
25 you if you like.



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| <p style="text-align: right;">Page 53</p> <p>1 MR. BRAXTON: I think it would be<br/>2 helpful if you did.<br/>3 (Conversation off the record.)<br/>4 MS. DRAGOO: All right. I'm Denise<br/>5 Dragoo, attorney for UtahAmerican Energy. And Jay<br/>6 Marshall is here as well. And we just wanted to<br/>7 just briefly respond to the, the comments that<br/>8 Southern Utah Wilderness Alliance presented.<br/>9 First of all, we, we just wanted to<br/>10 note that SUWA's comments primarily relate to<br/>11 administrative completeness. And that's what,<br/>12 what their letter indicated that they would be<br/>13 addressing. And we wanted to just point out that<br/>14 there was already an administrative completeness<br/>15 determination on this particular matter, that<br/>16 actually I think--if you actually issued--Mr.<br/>17 Braxton, the findings of fact, conclusions, and<br/>18 order dated June 18th. And that actually found<br/>19 that the permit was complete.<br/>20 Ultimately, that permit application<br/>21 package was denied in part and then that was<br/>22 appealed to the Board. And that was, that was<br/>23 one issue that was left out this morning in terms<br/>24 of procedure, that this matter has been appealed<br/>25 to the Board of Oil, Gas &amp; Mining. And there's a</p> | <p style="text-align: right;">Page 55</p> <p>1 There's been a lot of water that's gone<br/>2 under the bridge since the last administrative<br/>3 completeness determination. The Division has<br/>4 issued a couple of technical adequacy reviews.<br/>5 UtahAmerican Energy has responded to the initial<br/>6 TA of March 26, 2002, with a response April 24th<br/>7 of 2002. And to the Division's second technical<br/>8 analysis of April 9, 2003, with a response dated<br/>9 February 24, 2004. But, you know, basically those<br/>10 responses by UtahAmerican Energy and then the<br/>11 submittals that were provided to the previous<br/>12 administrative completeness determination more<br/>13 than adequately address the issues that were<br/>14 raised by SUWA. But just--we'll just briefly<br/>15 summarize those.<br/>16 First, with respect to the issues<br/>17 raised by Mr. Elliott Lips regarding acid- or<br/>18 toxic-forming materials. These, once again, are<br/>19 technical issues, not administrative completeness<br/>20 matters. They're all addressed in Chapter 5 of<br/>21 the permit application package. And, and also in<br/>22 Chapter 6. There's specifically an analysis of<br/>23 rock types provided at Appendix 6-1, which more<br/>24 than adequately address those issues.<br/>25 The second item concerning subsurface</p>             |
| <p style="text-align: right;">Page 54</p> <p>1 stipulation of the parties to stay those<br/>2 proceedings until the Division has finally issued<br/>3 its final decision to deny or grant the permit<br/>4 application package.<br/>5 So--<br/>6 MR. ALDER: Are you referring--when you<br/>7 said "June 18," I didn't hear--<br/>8 MS. DRAGOO: Oh. June 18, 2002. That<br/>9 was the date of the findings. And then the Board<br/>10 order, which states this matter, was dated October<br/>11 4, 2002. So these matters are all--have been<br/>12 remanded now back to the Division. But I think<br/>13 we still are essentially before the Board--<br/>14 probably ultimately will be.<br/>15 UtahAmerican Energy's second objection<br/>16 really relates to the issues that were raised by<br/>17 Southern Utah Wilderness Alliance, which go beyond<br/>18 completeness. They raised several issues, but<br/>19 they really were all technical adequacy issues and<br/>20 not completeness issues.<br/>21 And if this is an administrative<br/>22 completeness determination, which, you know,<br/>23 SUWA's letter indicates, these technical issues<br/>24 are, are premature until the Division can issue<br/>25 its final technical adequacy determination.</p>   | <p style="text-align: right;">Page 56</p> <p>1 water resources maps are all addressed in the<br/>2 hydrology chapter, Chapter 7, of the permit<br/>3 application package. And they're also addressed<br/>4 in the TA responses regarding Chapter 7.<br/>5 Item 3: Surface water resources. Once<br/>6 again, this is a hydrologic issue that's addressed<br/>7 at Chapter 7 of the permit application package.<br/>8 We'd like to point out that there has been a<br/>9 probable hydrologic consequences analysis that's<br/>10 been revised. And it specifically addresses the<br/>11 seeps. So we think that's adequately addressed.<br/>12 If you, if you look at UtahAmerican Energy's TA<br/>13 response in February 24, 2004, that's addressed.<br/>14 In terms of ground water quality, once<br/>15 again, that's a hydrologic issue addressed at<br/>16 Chapter 7 of the permit application package. UEI<br/>17 has addressed that in both its submittal regarding<br/>18 administrative completeness in May 21st of 2002<br/>19 and a technical analysis responses regarding<br/>20 Chapter 7 of the permit application package.<br/>21 Ground water quality, Issue 5. It's a<br/>22 hydrologic issue addressed at Chapter 7 of the<br/>23 permit application package and in UEI's TA<br/>24 response dated February 24, 2004.<br/>25 Coal mine waste, that's an issue which</p> |

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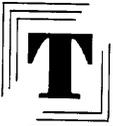


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| <p style="text-align: right;">Page 57</p> <p>1 has been addressed specifically in Chapter 5 of<br/>                 2 the permit application package, and then also in<br/>                 3 UEI's TA responses regarding Chapter 5 of the<br/>                 4 permit application package.<br/>                 5 Item 7--this is getting a little bit<br/>                 6 redundant--but ground water monitoring. Once<br/>                 7 again, that's addressed at Chapter 7. It's a<br/>                 8 hydrologic issue addressed at Chapter 7 of the<br/>                 9 permit application package and in UEI's technical<br/>                 10 adequacy responses.<br/>                 11 Baseline data for surface monitoring<br/>                 12 plan is addressed at Chapter 7 of the permit<br/>                 13 application plan.<br/>                 14 The probable hydrologic consequences<br/>                 15 data has been revised, and that's addressed in<br/>                 16 UEI's technical adequacy response of February 24,<br/>                 17 2004.<br/>                 18 Water consumption is another hydrologic<br/>                 19 issue, addressed at Chapter 7 of the permit<br/>                 20 application plan. Cumulative impact area--once<br/>                 21 again, a hydrologic issue addressed at Chapter 7<br/>                 22 of the permit application package.<br/>                 23 In terms of the operation plan, that's<br/>                 24 addressed in Chapter 7. This is another<br/>                 25 hydrologic issue, which is addressed at Chapter 7</p> | <p style="text-align: right;">Page 59</p> <p>1 something--an issue that SUWA did not challenge in<br/>                 2 court and cannot raise again.<br/>                 3 Cultural issues are addressed<br/>                 4 adequately in Chapter 4 of the permit application<br/>                 5 package.<br/>                 6 Subsidence control addressed in several<br/>                 7 chapters, Chapters 2, 3, 5, and 7, and also<br/>                 8 addressed in the environmental analysis prepared<br/>                 9 by Bureau of Land Management.<br/>                 10 The coal haul road has been determined<br/>                 11 by Division of Oil, Gas &amp; Mining to not be a--<br/>                 12 something that has to be permitted. And in terms<br/>                 13 of the, the new permit, once again, we feel the<br/>                 14 Division has adequately and properly processing<br/>                 15 the permit application package as a current<br/>                 16 extension in accordance with the rules.<br/>                 17 So I guess we're available if there are<br/>                 18 any further questions regarding those issues.<br/>                 19 Maybe Jay could address.<br/>                 20 MR. BRAXTON: That's helpful. Thank<br/>                 21 you for walking us through those.<br/>                 22 MR. MARSHALL: Well, I'd like to make<br/>                 23 one comment.<br/>                 24 MR. BRAXTON: Sure.<br/>                 25 MR. MARSHALL: After the Division</p>  |
| <p style="text-align: right;">Page 58</p> <p>1 of the permit application plan.<br/>                 2 The survey data, Item 13 raised in<br/>                 3 SUWA's letter--once again, this is a technical<br/>                 4 issue, not an administrative completeness issue<br/>                 5 and this data has been provided by UtahAmerican<br/>                 6 Energy.<br/>                 7 The vegetation survey is addressed in<br/>                 8 Chapter 3 of the permit application plan--permit<br/>                 9 application package.<br/>                 10 Item 15, site-specific research<br/>                 11 information, has also been provided in Chapter 3<br/>                 12 of the permit application package.<br/>                 13 Subsidence impacts to plants and<br/>                 14 animals is more than adequately addressed in<br/>                 15 several places in the permit application package:<br/>                 16 Volume 2, Chapter 3, Chapter 7, Chapter 4. It's<br/>                 17 also addressed in the Bureau of Land Management's<br/>                 18 environmental assessment.<br/>                 19 Impacts to Fish &amp; Wildlife are, once<br/>                 20 again, addressed in Chapter 3 of the permit<br/>                 21 application package.<br/>                 22 Land use and unsuitability for mining--<br/>                 23 those are issues which were actually addressed by<br/>                 24 ruling of the Board of Oil, Gas &amp; Mining, and<br/>                 25 would be res judicata at this point. That's</p>                | <p style="text-align: right;">Page 60</p> <p>1 reviewed the public's comments and if they<br/>                 2 determine that there are deficiencies in the<br/>                 3 permit not covered or required by law, they are<br/>                 4 still deficiencies UEI will be glad to address<br/>                 5 them through a TA.<br/>                 6 MR. BRAXTON: Thanks. I'm sure the<br/>                 7 process will, will be open.<br/>                 8 If there are no other people that would<br/>                 9 like to be heard, I think I'm going to conclude<br/>                 10 the hearing for right now. I'll make a ruling<br/>                 11 within the required time as to where we're going.<br/>                 12 Mr. McHarg?<br/>                 13 MR. McHARG: Not to establish a<br/>                 14 rebuttal process or anything here, but I think<br/>                 15 it's important to just put on the record that<br/>                 16 because the, the objections submitted by<br/>                 17 UtahAmerican Energy involve some issues that were<br/>                 18 discussed between the parties yesterday during a<br/>                 19 telephonic conference and as we discussed during<br/>                 20 that telephonic conference, the issues that would<br/>                 21 be presented here today would not only relate<br/>                 22 directly to administrative completeness, but would<br/>                 23 also pertain to technical adequacy issues. And<br/>                 24 for the record, we believe that what we presented<br/>                 25 actually pertains to both. If data is missing</p> |



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| <p style="text-align: right;">Page 61</p> <p>1 that is required under the rules, then we believe<br/>                 2 that that box on the administrative completeness<br/>                 3 checklist should not be checked by the Division.<br/>                 4 So they--these issues are relevant to both<br/>                 5 administrative completeness and to technical<br/>                 6 adequacy.<br/>                 7 MR. BRAXTON: Do you have specific<br/>                 8 instances of the inadequacy of the administrative<br/>                 9 completeness determination that you'd like to read<br/>                 10 into the record this morning? Again, I infer,<br/>                 11 infer much of what you said was technical rather<br/>                 12 than administrative completeness.<br/>                 13 MR. MCHARG: And I, I agree, Mr.<br/>                 14 Braxton. I think that's how you should look at<br/>                 15 our comments as comments on technical adequacy.<br/>                 16 However, I think all of them also relate to<br/>                 17 administrative completeness. We're not<br/>                 18 challenging necessarily the administrative<br/>                 19 completeness check list that the Division did.<br/>                 20 However, any, any issue where the information<br/>                 21 provided by UEI does not comply with the rules,<br/>                 22 we believe, then, that particular box should not<br/>                 23 be checked because the Division doesn't have<br/>                 24 before it all the information necessary to proceed<br/>                 25 with the technical analysis for that particular</p> | <p style="text-align: right;">Page 63</p> <p>1 In other words, we'd be at a point of issuing it.<br/>                 2 So I'm like--feel like I'm caught.<br/>                 3 MR. MCHARG: I understand.<br/>                 4 MS. WRIGHT: All the Division people<br/>                 5 do, you know, by your argument there, and it's<br/>                 6 causing us a lot of difficulty.<br/>                 7 MR. MCHARG: I understand. And that's<br/>                 8 why I did not raise that as an issue. I was<br/>                 9 simply responding to what Denise's objections were<br/>                 10 to what we raised today. So--<br/>                 11 MS. WRIGHT: Okay.<br/>                 12 MS. DRAGOO: Of course I was just<br/>                 13 responding to the way you had categorized your<br/>                 14 pleadings, which are entitled, SUWA's Comments<br/>                 15 Regarding Determination of Administrative<br/>                 16 Completeness.<br/>                 17 MR. MCHARG: If, if you look, if you<br/>                 18 look at the rules basically, the administrative<br/>                 19 completeness determination simply triggers the<br/>                 20 opportunity for the public to request an informal<br/>                 21 conference. But the informal conference, under<br/>                 22 the rules, as stated under--what is it--<br/>                 23 R645-300-123, under "Informal Conferences," it<br/>                 24 says that the Division will hold an informal<br/>                 25 conference on the application for the permit. So</p> |
| <p style="text-align: right;">Page 62</p> <p>1 issue.<br/>                 2 So just having said, you know--or just<br/>                 3 in response to Denise's concern that this hearing<br/>                 4 should have only related to administrative<br/>                 5 completeness only and not technical adequacy, I<br/>                 6 thought it was important to make that point.<br/>                 7 MR. BRAXTON: Thanks for that.<br/>                 8 MR. MCHARG: Thank you.<br/>                 9 MR. BRAXTON: Mary Ann?<br/>                 10 MS. WRIGHT: I'd just like to ask SUWA<br/>                 11 if--you know, we struggle with this. If we had a<br/>                 12 list of boxes that we check to say whether they<br/>                 13 have something to say that they have an item<br/>                 14 there so it's administratively complete for a<br/>                 15 given section of the rules, then if we had<br/>                 16 another list that then said it was technically<br/>                 17 adequate, that list of boxes that we would check<br/>                 18 would be permit issuance. And if we were able to<br/>                 19 do that, we would be at the point of completion<br/>                 20 of our review.<br/>                 21 So this idea of the publication for the<br/>                 22 public to come in and look at the application, if<br/>                 23 we were to wait to check off those boxes till<br/>                 24 everything was technically adequate, then there<br/>                 25 wouldn't be time for the public to look at it.</p>  | <p style="text-align: right;">Page 64</p> <p>1 that is all-encompassing. So I don't think<br/>                 2 there's any discrepancy there.<br/>                 3 MR. BRAXTON: Well, I think,<br/>                 4 regardless, there's value in, in hearing people's<br/>                 5 comments on the technical adequacy of a permit at<br/>                 6 any time in the process. And I think the, the<br/>                 7 rules contemplate some technical input from the<br/>                 8 public. And I think it makes for a better permit<br/>                 9 application as long as they're valid and honest<br/>                 10 comments that--<br/>                 11 MR. MCHARG: We agree.<br/>                 12 MR. LIPS: I agree to that.<br/>                 13 MR. BRAXTON: Is there additional<br/>                 14 dialogue that we need to have? I'm going to<br/>                 15 conclude this conference now. We'll go off the<br/>                 16 record. And I'll get findings out within the<br/>                 17 times provided in the rules.<br/>                 18 MS. DRAGOO: Thank you.<br/>                 19 MR. BRAXTON: Thanks, everybody, for<br/>                 20 coming. And I guess I'd like to recognize the<br/>                 21 efforts that Mary Ann and some of her staff did<br/>                 22 in just setting up this morning. This was a<br/>                 23 fairly major effort, and I appreciate what they've<br/>                 24 done. Thanks again.<br/>                 25 (Proceedings concluded at 11:18 a.m.)</p>                                      |

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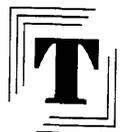
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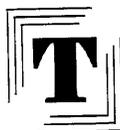
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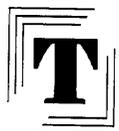
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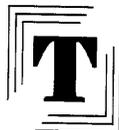
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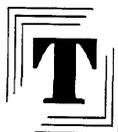
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