

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

Tam
 Darin
 Susan
 Wyatt
 Lowell
 Steve Alder
 Alism Garner
 5/27/04
 5/27/04

Fax

To: Mary Ann Wright (801) 359-3940
 From: SUWA (435) 259-7049

6 pgs incl. Cover

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

~~Also - kemp~~
 Dave Durb
 Darin
 Wayman
 Priscilla
 Jermann
 5/27/04

RECEIVED
 MAY 26 2004
 DIV. OF OIL, GAS & MINING
 5/27/04



southern
utah
wilderness
alliance

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

May 26, 2004

Mary Ann Wright
Utah Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801
Fax (801) 359-3940

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

Dear Ms. Wright,

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

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

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MAY 26 2004

DIV. OF OIL, GAS & MINING

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

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

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

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

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

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

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

15. **Site-Specific Resource Information.** The PAP does not contain the site-specific resource information required by the rules, and the information presented in the PAP is not sufficient to design a protection and enhancement plan. R645-301-322.
16. **Subsidence Impacts to Plants and Animals.** The PAP fails to include information on subsidence adequate to assess impacts to plant and wildlife species. R645-301-332; -358.
17. **Impacts to Fish and Wildlife.** The PAP fails to include information necessary to adequately assess impacts to fish and wildlife and related environmental values, including the sensitive fish species identified by the U.S. Fish and Wildlife Service. R645-301-333; -358.
18. **Disturbance, Monitoring, and Protection of Habitat.** The PAP fails to comply with the rules requiring the operator to avoid disturbance of wildlife habitats, and fails to describe how wildlife will be monitored and protected from hazardous materials. R645-301-358.400; -358.530; -526.222.
19. **Land Use/ Unsuitable for Mining.** The PAP fails to include information that accurately describes the capability of the land affected by the coal mining and reclamation operations, and fails to demonstrate that the land will be returned to its premining land-use capability. Mining in the proposed permit area may, at a minimum, affect productivity of water supply, scientific and aesthetic values, and natural systems. R645-301-411.100; -411.120; -412; -414; and R645-301-115.
20. **Cultural.** The PAP fails to include information from a complete cultural resource survey, coordination with the State Historic Preservation Officer, and a plan that describes measures to prevent adverse impacts to such resources. R645-301-411.140--144.
21. **Subsidence Control.** The PAP fails to include information necessary to adequately assess the quantity and quality of all State-appropriated water supplies that could be impacted by subsidence, and fails to include an adequate plan for repair, replacement, or restoration of such supplies or surface lands. R645-301-525.130; -525.400; 525.480; -525.510; -731.530.
22. **Coal Haul Road.** The PAP must include the coal haul road within the "affected area" and include all information necessary for the permitting process. R645-100-200.
23. **New Permit.** The proposed mine must be processed and approved through application of a new permit. R645-303-222.

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

Sincerely,



W. Herbert McHarg
Southern Utah Wilderness Alliance

CERTIFICATE OF MAILING

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

Mary Ann Wright
Utah Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801
Fax (801) 359-3940

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



Fax :

To: Vickie Southwick (801) 359-3940

From: Herb 435-259-7049

2 pgs incl cover

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JUN 02 2004
DIV. OF OIL, GAS & MINING



southern
utah
wilderness
alliance

June 2, 2004

VIA FACSIMILE AND MAIL

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

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

Dear Ms. Southwick,

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

Thank you for your time in scheduling this conference.

Sincerely,

W. Herbert McHarg

cc: Denise Dragoo, Esq.

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JUN 02 2004

DIV. OF OIL, GAS & MINING

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



southern
utah
wilderness
alliance

June 2, 2004

VIA FACSIMILE AND MAIL

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

Re: Informal Conference Date -- Lila Canyon Extension, Utah American Energy,
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Sincerely,

W. Herbert McHarg

cc: Denise Dragoo, Esq.

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JUN 04 2004

DIV. OF OIL, GAS & MINING

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

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

Emery Co
SUWA

---ooOoo---

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

NOTICE OF INFORMAL
CONFERENCE

CAUSE NO. C/007/013

---ooOoo---

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

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

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

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

DATED this 11 day of June 2004.

STATE OF UTAH
DIVISION OF OIL, GAS AND MINING

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

CERTIFICATE OF MAILING

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

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

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

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

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

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



Vickie Southwick
Executive Secretary
Division of Oil, Gas and Mining



State of Utah

Department of
Natural Resources

ROBERT L. MORGAN
Executive Director

Division of
Oil, Gas & Mining

LOWELL P. BRAXTON
Division Director

OLENE S. WALKER
Governor

GAYLE F. McKEACHNIE
Lieutenant Governor

June 13, 2004

Facsimile Transmittal
(435) 637-2716

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

Re: Notice of Informal Conference

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

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

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

Sincerely,

Vickie Southwick
Executive Secretary

vs
Enclosure
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INCOMING
C0070013
CC: Informal con. Tolky

AFFIDAVIT OF PUBLICATION

COPY COPY

STATE OF UTAH)

SS.

County of Carbon,)

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

Ken G. Larson
Ken G Larson - Publisher

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

Linda Thayn

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

Publication fee, \$91.52

NOTICE OF INFORMAL CONFERENCE
CAUSE NO. C/007/013
 BEFORE THE DIVISION OF OIL, GAS AND MINING
 DEPARTMENT OF NATURAL RESOURCES
 STATE OF UTAH

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

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

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

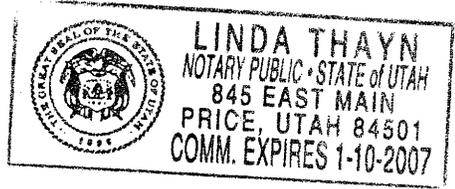
Pursuant to the Americans with Disabilities Act, persons requiring auxiliary communicative aids and services to enable them to participate in this conference should call Vickie Southwick at 538-5304, at least three working days prior to the hearing date.

DATED this 11 day of June 2004.

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

Published in the Sun Advocate June 22, 2004.

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





State of Utah

Department of
Natural Resources

Division of
Oil, Gas & Mining

ROBERT L. MORGAN
Executive Director

LOWELL P. BRAXTON
Division Director

OLENE S. WALKER
Governor

GAYLE F. McKEACHNIE
Lieutenant Governor

UTAH DIVISION OF OIL, GAS & MINING
FACSIMILE COVER SHEET

DATE: June 15, 2004
FAX: (435) 637-2716
ATTENTION: Publication
COMPANY: Emery County Progress, Sun Advocate
DEPARTMENT:
NUMBER OF PAGES: (Including this one)3

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

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

MESSAGE:

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

Thanks

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

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DIV. OF OIL, GAS & MINING

INCOMINGS
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CC: Informal con. folder

COPY

STATE OF UTAH)

SS.

County of Emery.)

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

Ken G. Larson

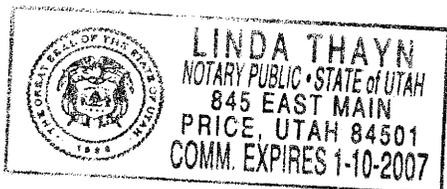
Ken G Larson - Publisher

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

Linda Thayne

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

Publication fee, \$ 65.56



NOTICE OF INFORMAL CONFERENCE

CAUSE NO. C/007/013

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

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

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

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

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

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

DATED this 11 day of June 2004.

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

Published in the Emery County Progress June 22, 2004.

2841/REE/6131/XSHC/GCF3/NCPMRO36



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801-983-2180

Fax: 801-983-2181

DEPOSITION CONFIRMATION

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

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

CASE NOTICE INFORMATION

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

QUESTIONS / CHANGES REGARDING THIS ASSIGNMENT

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

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

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

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JUN 25 2004
DIV. OF OIL, GAS & MINING

INCOMING
0070013

CC: Informal Conf Folder
Sm 8-19-04

MEMORANDUM

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

FROM: Alison Garner

DATE: July 1, 2004

RE: Informal Conference, July 7, 2004

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

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

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

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

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

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

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

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

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

COPY OF 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**

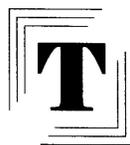
Cause No. C/007/013

~~~~~  
**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



Thacker + Co LLC

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Los Angeles

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APPEARANCES

HEARING EXAMINER:

LOWELL P. BRAXTON,

DIRECTOR, DIVISION OF OIL, GAS & MINING

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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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1 hear them?

2 THE REPORTER: Uh-huh (Affirmative).

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

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

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

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

25 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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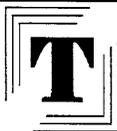
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1 review on April 9th of '03, 2003. On February
2 6th of 2004, the Division sent a letter, and what
3 it was, it was a response to a UEI letter of
4 January 16, 2004, that notified UEI where--in the
5 January 16th letter, notified us that UEI would 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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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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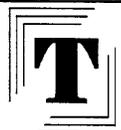
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1 the Horse Canyon Mine. And going back, starting
2 in spring 2004 back to autumn of 2001, looking at
3 quarterly sampling, dates where samples were taken
4 at these sites, IPA-1, -2, and -3, L-16-G and
5 L-16-G, are shown for the dates for that year.
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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the--required under this rule.

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

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



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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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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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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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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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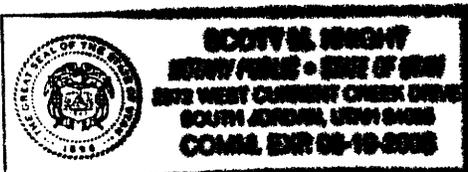
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CERTIFICATE

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



UtahAmerican Energy, Inc.

July 7, 2004

HAND DELIVERED

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

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

Dear Director Braxton:

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

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

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

1. Acid or Toxic-Forming Material.

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

2. Subsurface Water Resource Maps.

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

3. Surface Water Resources.

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

4. Groundwater Quantity.

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

5. Groundwater Quality.

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

6. Coal Mine Waste.

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

7. Groundwater Monitoring.

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

8. Baseline Data for Surface Monitoring Plan.

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

9. The PHC is Adequate.

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

10. Water Consumption.

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

11. Cumulative Impact Area.

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

12. Operation Plan.

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

13. Survey Data.

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

14. Vegetation Survey.

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

15. Site-Specific Resource Information.

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

16. Subsidence Impacts to Plants.

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

17. Impacts to Fish and Wildlife.

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

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

18. Land Use / Unsuitable for Mining.

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

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

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

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

19. Cultural.

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

20. Subsidence Control.

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

21. Coal Haul Road.

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

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

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

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

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

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

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

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

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

Director Lowell Braxton

July 7, 2004

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22. New Permit.

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

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

Sincerely,



R. Jay Marshall

JM:jmc:304985

cc: Clyde Borrell
Denise Dragoo, Esq.
Michael Gardner, Esq.
Michael McKown, Esq.

July 7, 2004

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

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

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

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

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

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

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

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



southern
utah
wilderness
alliance

INCOMING
C0070013
CC: Informal CON.

July 7, 2004

VIA HAND DELIVERY AT THE INFORMAL CONFERENCE

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

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

Dear Mr. Braxton,

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

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

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

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

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

Our concerns are that:

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

surface facilities.

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

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

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

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

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

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

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

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

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

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

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

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

For the regional aquifer:

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

For the perched aquifer:

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

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

For the regional aquifer:

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

For the perched aquifer:

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

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

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

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

With regard to the regional aquifer:

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

With regard to the perched aquifer:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "W. Herbert McHarg", is written over a horizontal line.

W. Herbert McHarg
Southern Utah Wilderness Alliance

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

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

Perched Aquifer											
L-6-G											
L-7-G	10/10			6/4; 8/13	10/15			6/16	9/10		
L-8-G	10/10			6/4; 8/13	10/15			6/16	9/12; 11/2		
L-9-G	10/10			6/4	10/15			6/16			
L-10-G	10/10		3/27	6/4; 8/13	10/14			6/16	9/12; 11/2		
L-11-G	10/10		3/27	6/4				6/16	9/10		
L-12-G	10/10		3/27	6/4; 8/13	10/14			6/16	9/10		

 = NO DATA
 = No Access 3/30/04

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

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

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

DECLARATION OF DR. RON KASS

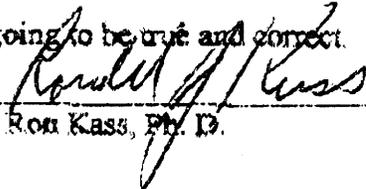
Dr. Ron Kass declares the following:

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

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

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

Date 11-29-2001


Dr. Ron Kass, Ph. D.

5. In particular the search for Despain footcactus (*Pediocactus despainii*) should have been conducted during the last week of April or 1st week of May. This species is very difficult to locate in its vegetative condition and only a real expert should conduct these searches during non-flowering times.
6. The Book Cliffs blazing star (*Mentzelia multicaulis* var. *librina*) should have been included in the inventory of this area, as it is known to exist at the mouth of Horse Canyon and is a Colorado Plateau endemic. This species is on the Bureau of Land Management (BLM) special status list, and it was also listed as G3T1 by the Utah Rare Plant Workshop in 2000.
7. I, and other botanists in the state, recommend that only highly qualified botanists should conduct rare plant surveys, especially during sub-optimal times. The May 1998 inventory prepared by EIS Consulting reveals that that the specimen of canyon sweetvetch (*Hedysarum occidentale* var. *canone*) was taken to the BLM to be positively identified. If qualified botanists were doing the field work for EIS Consulting, there should be no need to consult the BLM for positive identification. Regardless, there are no botanists on staff at the BLM in Price. Indeed it is imperative that a qualified botanist performs the field work in order to identify new taxa, range extensions, and other rare and disjunct taxa possible at a given site.
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I DECLARE, under penalty of perjury, the foregoing to be true and correct.

Date _____

Dr. Ron Kass, Ph. D.

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EDUCATION

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

PROFESSIONAL EXPERIENCE

Principal--Intermountain Ecosystems, LLC.

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

PRINCIPLE PROJECTS

ENDANGERED SPECIES

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

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

- Pic-Technologies, Denver, Co. Wetlands & T& E. Ultra Natural Gas EIS. Pinedale, Wy.
- SWCA, Salt Lake City, Ut. Williams Pipeline Co. Aspen T&E inventory, Price, Ut.
- SWCA, Salt Lake City, Ut. Questar Gas Co., Rare plant inventory, Price, Ut.
- 1997** Continental Lime Co., Delta, Ut. Rare plant inventory Cricket Mt. Mine Expansion.
- SWCA., Salt Lake City, Ut. Questar Pipeline. *Spiranthes diluvialis* inventory. Genola, Ut.
- River Gas Inc. Northport, Al. T&E inventory: Price Coalbed Methane.
- BLM. Ferron Gas EIS Rare plant inventory. Price, Utah.
- Northern Geophysical of America, Englewood, Co. Rare plant inventory Salina, Ut.
- BLM. Wright fishhook cactus (*Sclerocactus wrightiae*) demographic monitoring.
- HDR & Baseline Data. Legacy Highway EIS, Salt Lake City, Ut.
- 1996** McMurry Oil Company, Big Piney, Wy. Rare plant and logger head shrike inventory: Jonah EIS.
- Continental Lime Co., Delta, Ut. Rare plant inventory. Cricket Mt. Mine Expansion.
- Brush Wellman, Delta, Ut. Rare plant inventory. Topaz Mine Expansion.
- Kennecott Copper and The Nature Conservancy, Salt Lake City, Ut. Northern Oquirrh Mts. Bio-inventory.
- USFS Black Hills Natl. Forest, Sundance Wy. Rare plant inventory Bear Lodge N. F. Timber EA.
- Chandler Oil, Denver Colo. Rare plant inventory, Emery Co.
- Engineering Planning Group, Draper, Ut. Endangered species inventory, Spotted frog (*Rana pretiosa*) Ute ladies' tresses (*Spiranthes diluvialis*) American Fork, Ut.
- Baseline, Inc. Orem, Ut. Western Transportation Corridor MIS & T&E species.
- Northwest Pipeline, Salt Lake City, Ut. Rare plant inventory, Evanston, Wy.
- Mariah Assoc., Laramie, Wy. U.S. Gypsum Co., Kimball Draw EA.
- Golder Assoc., Denver, Co. Phelps Dodge Co. Chino Mine Expansion EA, Silver City, NM.
- 1995** USFS Dixie Natl. Forest, Cedar City, Ut. Status report for *Penstemon pinorum*.
- Northern Geophysical of America, Englewood, Co. Rare plant inventory Salina, Ut.
- Balcron Oil and Subsurface Exploration, Pasadena, Ca. Rare plant inventory Snake Valley Seismic Project. Millard Co, Ut.
- Northwest Pipeline Inc., Salt Lake City, Ut. Rare plant inventory for Piceance Creek Replacement Project. Rangely Co.
- Union Telephone Co., Lonetree, Wy. Rare plant and logger head shrike inventory.

1994

- U.S. Gypsum Co, Chicago, Ill. Rare plant inventory: proposed Gypsum Mine in San Rafael, Ut.
- Balcron Oil and Subsurface Exploration, Pasadena, Ca. Rare plant inventory: Snake Valley Seismic Project, Millard Co, Ut.
- Resource Management International, Sacramento, Ca. Rare plant inventory: Ute ladies's tresses (*Spiranthes diluvialis*). Central Utah Project, Nephi Basin, Ut.
- CH2M-Hill & Mt. Nebo Scientific, Springville Ut. Rare plant inventory: Ute ladies's tresses (*Spiranthes diluvialis*). Central Utah Project, Unitah Basin, Utah.
- Baseline, Inc., Orem, Ut. Rare plant inventory: Ute ladies's tresses (*Spiranthes diluvialis*) on the UDOT Myton and Currant Creeks Bridge replacement.
- Wyoming Fish and Game, Cheyenne, Wy. Rare plant inventory: Big Piney big game habitat enhancement project. Pinedale, Wy.
- BLM, Rock Spring District Office. Status survey and habitat management plan for bastard draba milkvetch (*Astragalus drabelliformis*) in the Upper Green River Basin, Wy.
- River Gas of Utah, Northport, Al. T&E inventory: Price Coalbed Methane EIS.
- Freston, Ostler, Vernon & Assoc., Vernal, Ut. Rare plant inventory for Ute ladies's tresses (*Spiranthes diluvialis*), Ashley Creek Bridge replacement.
- Enron Oil & Gas Corporation, Houston, Tx. T&E inventory: Upper Green River Basin.
- Chevron, USA. Houston, Tx. Rare plant inventory: southwestern Wyo.
- Mobil Oil Corporation, Bakerfield, Ca. Rare plant inventory: LaBarge oil fields.
- Enviroserve Assoc., Fruit Heights, Ut. Rare plant inventory: Ute ladies's tresses (*Spiranthes diluvialis*) AT&T underground powerline: Strawberry Reservoir, Ut.
- Freston, Ostler, Vernon & Assoc., Vernal, Ut. Rare plant inventory: Ute ladies's tresses (*Spiranthes diluvialis*), Fort Duchesne, Ut.
- Heitzman Drill Services, Casper, Wy Anadarko Petroleum EA., Helper Coalbed Methane EA-- rare plants. Helper, Ut.
- Endangered Plant Studies, Orem, Ut. UDOT. LaVerkin Creek Bridge Replacement BA.
- Williams Field Services, Salt Lake City, Ut. Rare plant inventory Big-Piney-LaBarge oil fields.

1993

- U.S. Justice Dept., Denver Co. Expert witness for Zion National Park Virgin River Ajudication. Expert for hanging gardens and rare plants.
- Mobil Oil Corporation & Heitzman Drilling, Casper, Wy. Rare plant inventory: LaBarge oil fields.
- Texaco Inc. Heitzman Drilling. Stagecoach Draw EIS--rare plants. Farson, Wy.
- Mobil EA: LaBarge Oil Field Expansion Program. Rare plants
- Endangered Plant Studies, Orem, Ut. Pacific-Corp., Salt Lake City, Ut. Ismay and

- Mexican Water Powerline EA, Navajo Tribal Lands, Window Rock, Az.
- Williams Field Services. Green River, Wy. Rare plant inventory: Cathodic Protection Systems.
- Geo-Marine Inc., Plano, Tx. Rare plants and burrowing owls inventory: Wendover Nev.
- Chevron, USA. LaBarge, Wy. Rare plant inventory: LaBarge oil fields.
- B LM, Salt Lake City, Ut. Monitoring and demographics for Wright Fishhook cactus (*Sclerocactus wrightiae*).
- Mariah Associates, Inc., Laramie, Wy. Rare plant inventory: Cutthroat Gas plant. Granger, Wy.
- Enron Oil & Gas, Big Piney, Wy. Rare plant inventory, LaBarge, Wy.
- Pic-Technology, Denver, Co. Rare plant inventory: Basin Exploration. Big Piney, Wy.
- Utah Power and Light, Salt Lake City, Ut. burrowing owl and black footed ferret inventory: Navajo Reservation, Aneth, Ut.
- Pic-Technology, Denver, Co. Rare plant inventory: Northwest Pipeline Inc. Big Piney, Wy.
- Endangered Plant Studies, Orem, Ut. Utah Prairie Dog (*Cynomys parvidens*) inventory: Beaver, Ut.
- 1992** Endangered Plant Studies, Orem, Ut. Desert Tortise (*Gopherus agassizii*) inventory: Walmart Inc. Wash. Co., Ut.
- Utah Power and Light Co., Salt Lake City, Ut. Rare plant inventory: Dixie N.F. Enterprize, Ut.
- BLM, Salt Lake City, Ut. House Range rare plant inventory.
- Ute Indian Reservation, Fort Duchesne, Ut. Rare plant inventory: *Spiranthes diluvialis*.
- USFWS, Denver, Co. Status reports: *Eriogonum soledium*, *Trifolium andersonii* var. *friscanum*, and *Lepidium ostleri*.
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- 1990** BLM, Richfield District, Ut. Rare plant inventory: Warm Springs and House Range Resource Areas.
- Utah Heritage Program, Salt Lake City, Ut. Rare plant inventory: Tushar Mountains, Ut.
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- 1988** Endangered Plant Studies, Orem, Ut. Utah Power and Light. Rare plant inventory: Blanding, Ut.
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- 1983** Endangered Plant Studies, Orem, Ut. Utah Power and Light. Rare plant inventory: Unita Co., Wy

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- Natural Successions Inc. Springville, Ut. Wetland delineation. Springville Industrial Park.
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- 1983** Mt. Nebo Scientific, Springville, Ut. Vegetation/ soil inventory: Diamond Shamrock Mine, Emery Co., Ut.
Mt. Nebo Scientific, Springville, Ut. Vegetation/soil inventory: Horse Cyn. Mine. Sunnyside, Ut. U.S Steel Corp.
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- 1977-78** BLM, Moab District Office. Range technician. Vegetation mapping and sampling (SVIM).
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- 1976** Brigham Young University and Dow Chemical Co. Gambel oak control.

PUBLICATIONS

5 scientific publications and 100 non-refereed reports.

PROFESSIONAL AFFILIATIONS

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

CERTIFICATIONS

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UTAH

Wilderness Inventory



1999

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

Desolation Canyon

Findings

INVENTORY UNIT ACRES

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

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

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

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

Unit Description

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

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

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

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

Wilderness Characteristics

Naturalness

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

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

Outstanding Opportunities

Solitude

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

Primitive and Unconfined Recreation

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

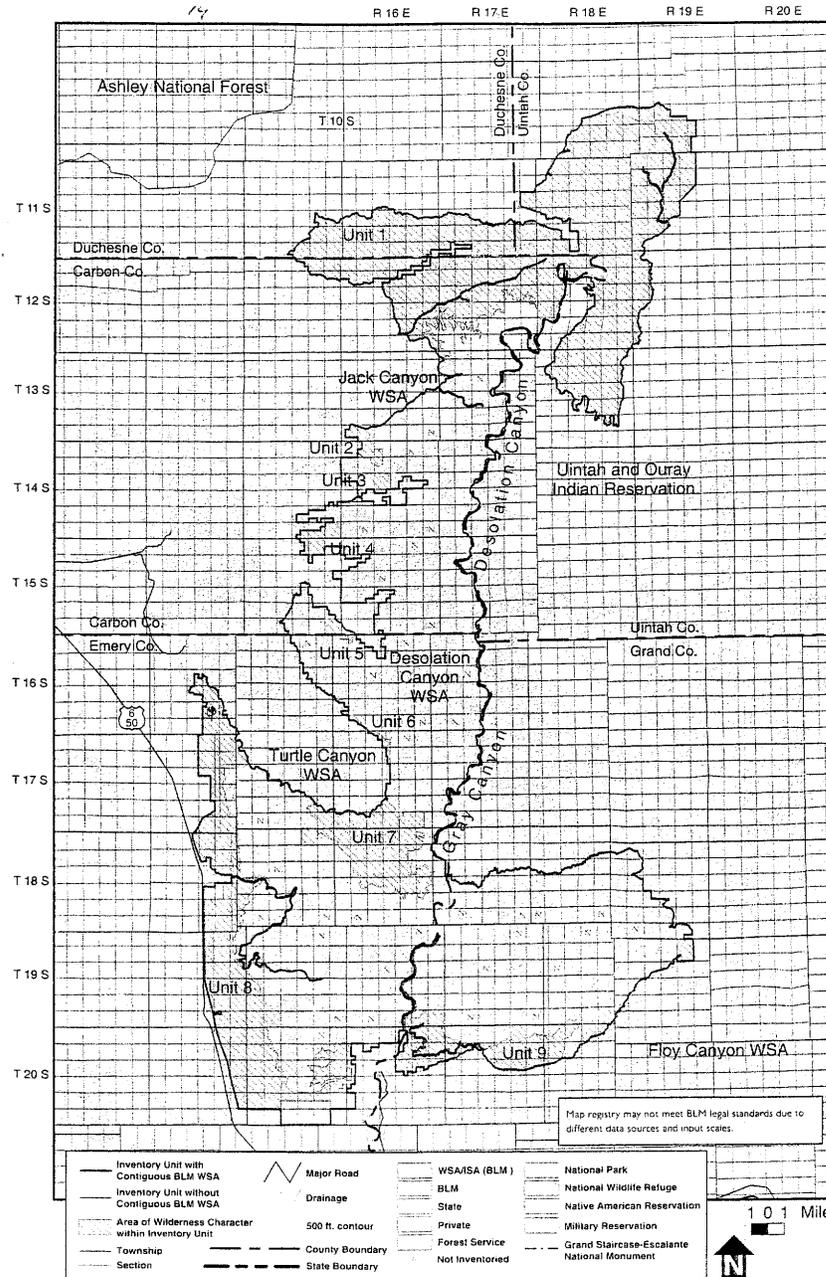
Supplemental Values

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

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



Desolation Canyon



NORTHEAST REGION—Desolation Canyon

Turtle Canyon

Findings

INVENTORY UNIT ACRES

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

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

Unit Description

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

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

Wilderness Characteristics

Naturalness

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

Outstanding Opportunities

Solitude

The inventory units possess outstanding opportunities for solitude because they

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

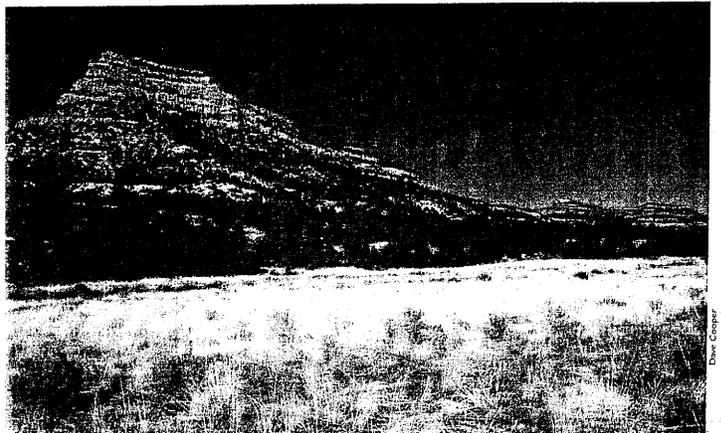
Primitive and Unconfined Recreation

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

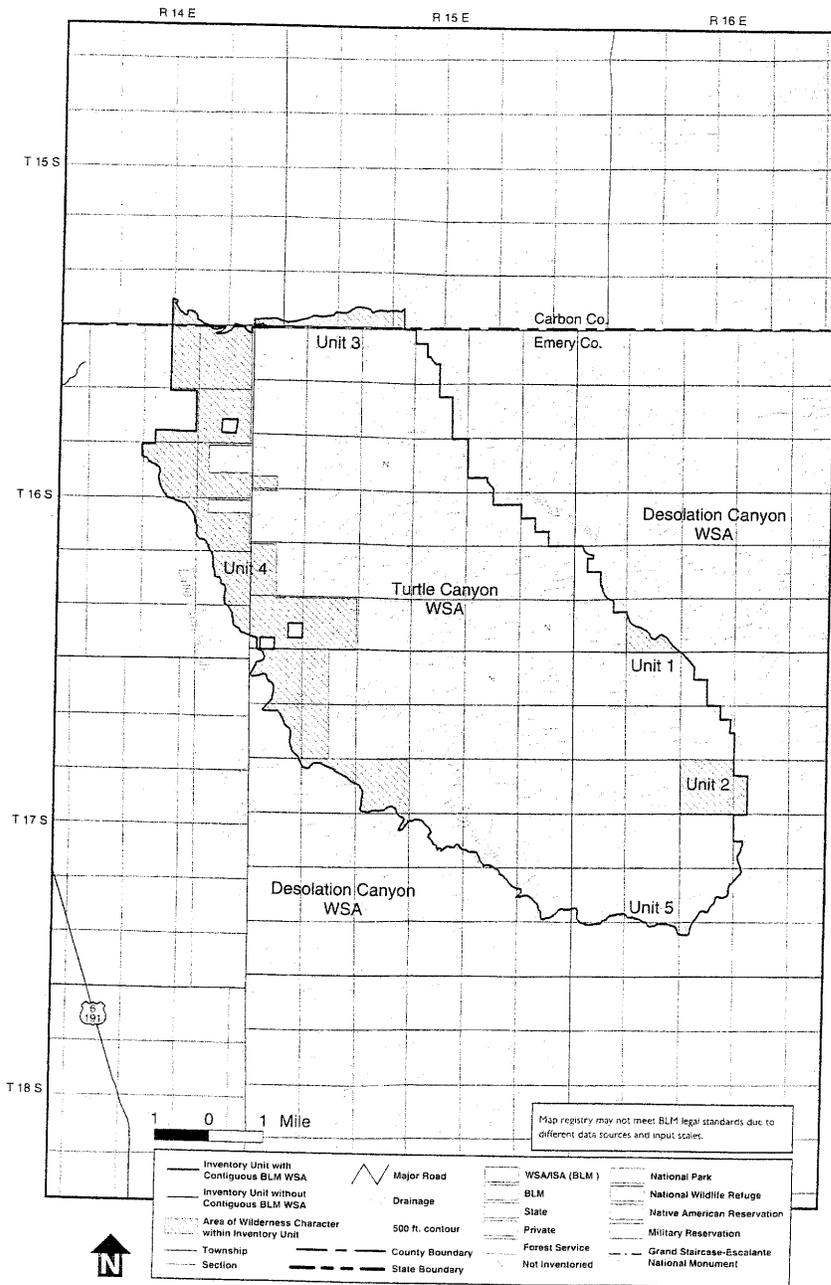
Supplemental Values

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

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



Turtle Canyon



NORTHEAST REGION—Turtle Canyon

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

--- ooOoo---

IN THE MATTER OF THE LILA CANYON EXTENSION TO THE HORSECANYON MINE, CARBON AND EMERY COUNTIES, UTAH		INFORMAL CONFERENCE FINDINGS, CONCLUSIONS AND ORDER CAUSE NO. C/007/013
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---ooOoo---

On July 7, 2004, the Division of Oil, Gas and Mining ("Division") held an informal conference concerning Utah American Energy Inc's (UEI's) application for a new Coal Mining and Reclamation Permit (MRP) for the Lila Canyon Extension to the Horse Canyon Mine, Carbon and Emery Counties, Utah. The request for an informal conference was made by Southern Utah Wilderness Alliance (SUWA) by Fax to the Division, May 26, 2004.

The following individuals attended:

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

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

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

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

FINDINGS OF FACT

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

CONCLUSIONS OF LAW

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

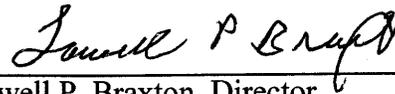
ORDER

NOW THEREFORE, it is ordered that:

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

5. The informal conference shall remain open, and be continued without date during the pendency of the Division's review of the technical adequacy of the Lila Canyon Extension of the Horse Canyon Mine to accommodate the need for additional public comment.
6. If within 15 days of the Division¹³ notification to a party in this conference of the completion of the final TA a party requests an opportunity to discuss the TA with the Division, the Division will schedule and conduct such a meeting within 30 working days of a party's notification.

SO DETERMINED AND ORDERED this 30 day of, July 2004



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

vs.

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

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CERTIFICATE OF MAILING

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

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

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

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

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

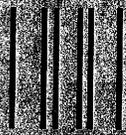
Ira Hatch
Emery County
P.O. Box 629
Castle Dale, Utah 84513

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



Vickie Southwick
Executive Secretary
Division of Oil, Gas and Mining

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box. •

Vickie Southwick
Division of Oil, Gas and Mining
1594 W. North Temple, Suite 1210
Salt Lake City, Utah 84145-5804

RECEIVED

Findings and conclusions and order AUG 10 2004
August 2, 2004 C/607/6013

10 DIVISION OF OIL, GAS & MINING

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

JAY MARSHALL
UTAHAMERICAN
P O BOX 986
PRICE UTAH 84501

2. Article Number

(Transfer from service label)

7003 2266 0002 02479918

COMPLETE THIS SECTION ON DELIVERY

A. Signature

R. Jay Marshall Agent Addressee

B. Received by (Printed Name)

C. Date of Delivery

R. Jay Marshall

D. Is delivery address different from item 1? Yes

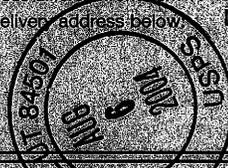
If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes



LINCOLN
 COOR0013
 CC: conference folder
 SM 8/19/04

UNITED STATES POSTAL SERVICE

First Class Mail
 Postage & Fees Paid
 USPS
 Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box.

Vickie Southwick
 Division of Oil, Gas and Mining
 Salt Lake City, Utah 84114-5801

Findings & Conclusions Folder C/007/0013
 8/2/04

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature x <i>Judie McKenzie</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee
1. Article Addressed to:	B. Received by (Printed Name) <i>Judie McKenzie</i> C. Date of Delivery <i>8-9-04</i>
<div style="border: 1px solid black; padding: 5px;"> <p>DENISE DRAGOO SNELL & WILLIMER GATEWAY TOWER WEST 15 WEST SOUTH TEMPLE SUITE 1200 SALT LAKE CITY UTAH 84101</p> </div>	D. Is delivery address RECEIVED <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below: AUG 18 2004 DIV. OF OIL, GAS & MINING
2. Article Number	3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
(Transfer from service label) <i>7003 2266 0002 0247 9925</i>	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
PS Form 3811 August 2001 Domestic Return Receipt 102595-02-M-1540	

INCORVLLN9
C0070013
Con. fold
SM
8-12-01

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
PSN
Permit No. 0-0

• Sender: Please print your name, address, and ZIP+4 in this box.

Vickie Southwick
Division of Oil, Gas and Mining
Salt Lake City Utah 84114-589

Finding a conclusion & order RECEIVED
8-2-04



AUG 12 2004

DEPT OF OIL, GAS & MINING

SENDER: COMPLETE THIS SECTION

1. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse of this card to the back of the mailpiece, in the front if space permits.

Addressed to:

**V. HERBERT MCHARG
SOUTHERN UTAH WILDERNESS
ALIANCE MOAB OFFICE
MOB UTAH 84532**

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
V. Southwick Addressee

B. Received by (Printed Name) *V. Southwick* C. Date of Delivery *8/10*

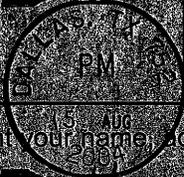
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No.

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) **7003 2260 0002 0247 9949**

UNITED STATES POSTAL SERVICE



Sender: Please print your name, address, and ZIP+4® in this area.

Vickie Southwick
Division Oil, Gas & Mining
1599 W. North Temple, Suite 1010
Salt Lake City, Utah 84119-5807

RECEIVED
AUG 10 2004

DIV. OF OIL, GAS & MINING
0/007/0813

Findings & Conclusion & Order
8-2-04

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

KATHY C WEINBERG
JENNER & BLOCK
1717 MAIN STEET SUITE 3150
DALLA TEXAS 75201

2. Article Number

(Transfer from service label)

7003 2260 00020247 9956

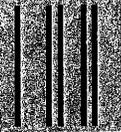
COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent
 Addressee
K. Fugitt
- B. Received by (Printed Name) Agent
 Addressee
K. Fugitt
- C. Date of Delivery: *8-5-04*
- D. Is delivery address different from item 1? Yes
 No
 If YES, enter delivery address below:

3. Service Type
- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. 629

RECEIVED

AUG 09 2004

• Sender: Please print your name, address, and ZIP+4 in this box.

Vickie Southwick
Division of Oil, Gas + ^{PH} MINING
1594 West North Temple, Southwicks
Salt Lake City Utah 84114-5801

Findin & conclusion & order. (1/007/012
8-2004

10



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**IRA HATCH
EMERY COUNTY
P. O. BOX 629
CASTLE DALE UTAH 84513**

2. Article Number
(transfer from service label) **7003 0260 0002 0247 9963**

COMPLETE THIS SECTION ON DELIVERY

A. Signature
Janalee Luke Agent
 Addressee

B. Received by (Printed Name) *Janalee Luke* C. Date of Delivery *8-5-04*

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

AUG 05 2004
84513

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes