



southern
utah
wilderness
alliance

HAND DELIVERED

October 11, 2005

Pam Grubaugh-Littig
Utah Division of Oil, Gas and Mining
1594 West North Temple
P.O. Box 145801
Salt Lake City, Utah 84114

Juaning
C/007/0013

Re: *Horse Canyon Mine, Lila Canyon Extension C/007/013*
Southern Utah Wilderness Alliance Request for Informal Conference per
Utah Admin R.645-300-123

Greetings:

Pursuant to Utah Admin. R645-300-123 and Division of Oil, Gas and Mining's ("DOGM" or "the Division") July 30, 2004 Order (¶ 6) re: Cause No. C/007/013, Southern Utah Wilderness Alliance (SUWA) timely requests an informal conference on DOGM's September 21, 2005 Lila Canyon Extension Technical Analysis (TA) and September 16, 2005 Book Cliffs Area V Cumulative Hydrologic Impact Assessment (CHIA). SUWA requests that the informal conference be held at DOGM's Salt Lake City office. See Utah Admin. R645-300-123.120.

As SUWA explained at the July 7, 2004 Informal Conference, DOGM's decision that UtahAmerican Energy, Inc.'s (UEI) permit application package (PAP) is administratively complete is erroneous. As was the case in 2004, DOGM does not have the required information to make this determination, nor has the Division conducted its own analyses or studies to provide the missing information. In addition, for the reasons set forth below, DOGM's conclusion that the PAP is technically adequate is arbitrary and capricious. SUWA incorporates the issues raised in its April 22, 2002, May 26, 2004, and July 7, 2004 letters to DOGM by reference and may discuss issues identified in these letters at the upcoming informal conference. SUWA also incorporates by reference all exhibits and other documents and reference materials provided to DOGM by SUWA at the 2002 and 2004 informal conferences. SUWA may also discuss issues regarding administrative completeness that the Division itself raised between 1998 and 2004. In addition, SUWA may discuss issues regarding the technical adequacy of the September 21, 2005 TA that have been raised by the Division in prior TAs. These may include, but are not limited to, issues regarding hydrology, geology, and wildlife.

RECEIVED

OCT 11 2005

DIV. OF OIL, GAS & MINING

425 East 100 South
Salt Lake City, Utah 84111
Phone: 801-486-3161
Fax: 801-486-4233
Website: www.suwa.org

The comments below “briefly summarize the issues” that SUWA intends to raise at the informal conference. Utah Admin. R645-300-123.110.¹

1. **Acid- or toxic-forming materials.** The Lila Canyon Extension application (MRP-Part B) 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, or information having equal value or effect. See Utah Admin. R645-301-624.300 and -626. Thus, DOGM’s decision that the MRP-Part B is technically adequate is arbitrary and capricious.
2. **Subsurface water resource maps.** The MRP-Part B 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. See Utah Admin. R645-301-722.100. Thus, DOGM’s decision that the MRP-Part B is technically adequate is arbitrary and capricious.
3. **Surface water resources.** The MRP-Part B does not contain baseline information on seasonal flow rates or water quality descriptions for any of the ephemeral streams or the 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). See Utah Admin. R645-301-724.200. Thus, DOGM’s decision that the MRP-Part B is technically adequate is arbitrary and capricious.
4. **Ground water quantity.** The MRP-Part B 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. See Utah Admin. R645-301-724.100. Thus, DOGM’s decision that the MRP-Part B is technically adequate is arbitrary and capricious.
5. **Ground water quality.** The MRP-Part B does not contain descriptions of water quality for all ground-water resources within the permit and adjacent areas. See Utah Admin. R645-301-724.100. Thus, DOGM’s decision that the MRP-Part B is technically adequate is arbitrary and capricious.
6. **Coal mine waste.** UEI is proposing to end dump coal mine waste and use it as structural fill for a shop and warehouse and not place it in a disposal area. See Utah Admin. R645-301-528.320. Thus, DOGM’s decision that the MRP-Part B is technically adequate is arbitrary and capricious.

¹ Because of the sheer volume of the PAP, TA, and CHIA, and the short time for SUWA to review these records prior to requesting an informal conference, SUWA may raise additional issues not specifically identified below. SUWA may also supply DOGM with exhibits during the informal conference that will assist the Division and UEI in understanding our concerns.

7. **Insufficient baseline data for ground-water monitoring plan.** There are insufficient hydrologic baseline data upon which the ground-water monitoring plan can be based. See Utah Admin. R645-301-731.211. Thus, DOGM's decision that the MRP-Part B is technically adequate is arbitrary and capricious.
8. **No baseline data for surface water monitoring plan.** There are no baseline data for any surface flows in the permit area; thus, there will be no basis for comparison during monitoring. See Utah Admin. R645-301-731.221. Thus, DOGM's decision that the MRP-Part B is technically adequate is arbitrary and capricious.
9. **The PHC is flawed.** The PHC determination and findings presented in the MRP-Part B are not based on baseline hydrologic, geologic and other information collected for the permit application. See Utah Admin. R645-301-728.200-728.300. Thus, DOGM's decision that the MRP-Part B is technically adequate is arbitrary and capricious.
10. **Water consumption.** The MRP-Part B contains inconsistent and conflicting descriptions 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. Thus, DOGM's decision that the MRP-Part B is technically adequate is arbitrary and capricious.
11. **Operation Plan.** The plan presented in the MRP-Part B 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. See Utah Admin. R645-301-731. Thus, DOGM's decision that the MRP-Part B is technically adequate is arbitrary and capricious.
12. **Cumulative Hydrologic Impact Assessment (CHIA).** The information presented in the CHIA is not sufficient to allow the Division to establish a hydrologically reasonable CIA boundary, or to determine whether the proposed coal mining and reclamation operation has been designed to prevent material damage to the hydrologic balance outside the permit area. See Utah Admin. R645-301-729.
13. **Transportation Facilities.** UEI has met with the Division regarding an overland conveyor, loadout, and rail spur to be located near the proposed Lila Canyon Extension, and UEI has stated its intention, in writing, to begin "[c]onstruction on these facilities" in April 2006. UEI has also filed right-of-way applications with the Bureau of Land Management, Price field office, for these facilities. These proposed facilities fall within the definition of "surface coal mining operations" and thus must be included within the "affected area" to be permitted under the Surface Mining Control and Reclamation Act and Utah Coal Mining and Reclamation Act. See Utah Admin. R645-301-527. The MRP-Part B erroneously omits any discussion of these proposed facilities.
14. **Historic and Archeological Resource Information.** The MRP-B contains inadequate information regarding the cultural and historic resources listed or eligible for listing in the

National Register of Historic Places within the permit and adjacent areas. See Utah Admin. R645-301-411. The TA also contains conflicting information regarding the “effect” of the proposed Lila Canyon Extension to cultural resources. For example, the TA states both that “Lila Canyon extension project will have ‘no effect’ to historic resources” and that “the Lila project will not likely affect 42EM2255 and 42EM2256.” TA at 15. DOGM has also failed to comply with the requirements of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470 *et seq.*, as required by Utah Admin. R645-300-113. Thus, DOGM’s conclusion that the MPR-B is technically adequate is arbitrary and capricious.

15. **Fish and Wildlife Resource Information.** The TA states that “[t]he Division, in consultation with DWR, requires the Permittee to conduct raptor surveys at least two years immediately prior to and one year following facilities construction.” TA at 17. The MRP-B does not indicate whether such pre-construction monitoring has taken place (and if so for what years), though issuance of the permit would allow UEI to immediately commence surface disturbing operations, including facilities construction. The TA also acknowledges that “there is a high probability that [golden] eagles will abandon [their] nests because of proximity to operations. TA at 62. DOGM, however, is prohibited from approving an activity that results in the “taking” of a golden eagle. See Utah Admin. R645-301-358.200-.300. See also 16 U.S.C. § 1532(19) (explaining that “the term ‘take’ means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”) (emphasis added). In addition, currently available information from the Division of Wildlife Resources and BLM indicates that a portion of the project area may be located in “crucial value year long” habitat for pronghorn antelope; this is not reflected in the MRP-B or TA. See TA at 17. See also Draft Price field office resource management plan at Map 3-9 (2004). Finally, the “fish and wildlife resource information” described in the MRP-B and TA is outdated (in some cases by several years) and thus does not comply with the requirements of Utah Admin. R645-301-320. Thus, DOGM’s conclusion that the MRP-B is technically adequate is arbitrary and capricious.
16. **Coal Haul Road.** The revised coal haul road (EC-126) falls fits within the definition of “surface coal mining operations” and thus must be included within the “affected area” to be permitted under the Surface Mining Control and Reclamation Act and Utah Coal Mining and Reclamation Act. See Utah Admin. R645-301-527. The MRP-Part B erroneously concludes that the revised road does not constitute “surface coal mining operations,” and thus does not include EC-126 in the “affected area.”
17. **Air Quality.** The TA is inconsistent on the question of when EC-126 (referred to as the “truck loadout road”) will be paved. Compare TA at 55 (the truck loadout road “will be paved during construction”) with TA at 54 (“[d]uring the initial construction and operation phase, the road [EC-126] will be graveled. When the need arises, EC 126 will be paved.”). In addition, UEI’s permit with the Division of Air Quality for the proposed Lila Canyon Mine is for the 1.5 million tons of coal per year – not the 2 million tons requested by UEI (TA at 55), nor the 4.5 million tons that UEI has stated to DOGM that it intends to process. See Letter from Denise Drago to Pamela Grubaugh-Littig (June 2, 2005), at 2.

*Southern Utah Wilderness Alliance - Request for Informal Conference
Lila Canyon Extension -- Horse Canyon Mine
October 11, 2005*

Southern Utah Wilderness Alliance looks forward to participating in the requested informal conference and to discussing these and other issues at the conference. Please contact me directly to arrange the time and date for the informal conference: (801) 486-3161.

Sincerely,

A handwritten signature in black ink, appearing to be 'S. Bloch', enclosed within a circular scribble. A long horizontal line extends from the right side of the signature.

Stephen Bloch
Staff Attorney