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Snell & Wilmer

L.L.P.

LAW OFFICES

15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101
(801) 257-1900
Fax: (801) 257-1800
www.swlaw.com

Denise A. Dragoo (801) 257-1998
ddragoo@swlaw.com

SALT LAKE CITY, UTAH

PHOENIX, ARIZONA

TUCSON, ARIZONA

IRVINE, CALIFORNIA

DENVER, COLORADO

LAS VEGAS, NEVADA

November 8, 2005

HAND DELIVERED

Smearing
11/08/05

Mr. John Baza
Director
Utah Division of Oil, Gas & Mining
1594 West North Temple
Salt Lake City, Utah 84114

RE: Supplemental Meeting—Informal Conference, In the Matter of the Lila Canyon Extension, Cause No. C/007/013

Dear Director Baza:

On behalf of UtahAmerican Energy, Inc. ("UEI"), Applicant/Permittee for the Lila Canyon Extension Coal Mining Permit ("Permit"), we oppose the request of the Southern Utah Wilderness Alliance ("SUWA"), to postpone today's meeting and to keep the informal conference record open an additional thirty days. SUWA is seeking this lengthy extension of time to peruse the August, 2005 Technical Review file which was made publicly available on Friday, November 4, 2005. As UEI explained in our conference call on that day, SUWA's request is: (i) beyond the scope of the Findings, Conclusions and Order issued in this matter by the former Division Director Lowell Braxton on July 30, 2004 (the "Braxton Order") and (ii) excessively lengthy in that SUWA has already had nearly three and one-half years to review the Permit application and supporting data.

Director Braxton's Order sets forth the procedural history of this matter confirming that this is the second informal conference held by the Division at SUWA's request. The first informal conference was held on May 21, 2002, more than three years ago, following the Division's determination that the Lila Canyon Permit was administratively complete. Order, Findings of Fact, ¶ 4. An additional administrative completeness determination by the Division resulted in SUWA's request for a second informal conference held on July 7, 2004. Braxton Order, Findings of Fact, ¶¶ 5, 6. SUWA was a party to both informal conferences. Following the July 7, 2004 informal conference, Director Braxton took the unusual procedural steps of: (i) expanding the informal conference from Permit completeness issues to technical adequacy ("TA")

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issues; (ii) keeping the informal conference record open during the period of the Division's review of the Permit's technical adequacy ("TA"); and (iii) allowing the parties an opportunity to request a meeting with the Division to discuss the final TA, to be held within 30 days of the parties' request. Order, ¶¶ 4, 5, 6. Pursuant to the Braxton Order, the Division provided all parties with the final TA on the Lila Canyon Extension Permit. By letter dated October 11, 2005, SUWA requested a meeting with the Division, which was scheduled today, within the 30-day limit and following public notice.

1. Scope of the Braxton Order

SUWA's request for an additional 30-day delay is beyond the scope of the Braxton Order and the Division's decision to proceed with today's meeting is consistent with that Order. The focus of the Braxton Order is on the TA, not the Division's Technical Review files. By the terms of the Braxton Order, the parties had an opportunity to review the TA and request a meeting to discuss that document, not the Division's permit files. The Braxton Order extends the informal conference beyond an administrative completeness review and in this respect creates an unusual procedure not addressed in the Division's rules. *See* R645-300-121.300 (Providing for public notice and opportunity for informal conference following receipt of an administratively complete application.) Generally, under the Division's rules, a permit decision follows a determination of technical adequacy and challenges to technical adequacy may be appealed to the Board rather than to the Division. *See* R645-300-200; UCA 40-10-14. The Braxton Order has already expanded the scope of the informal conference and has added an additional meeting regarding the technical adequacy which is not provided for in the rules. Therefore, the Order should be narrowly construed to focus today's meeting only on the final TA and not the Division's files.

2. Needless Delay

Furthermore, a 30-day extension to allow SUWA to study the Technical Review file is overly lengthy given the circumstances of this case. Extending back to the May 21, 2002 informal conference, SUWA has had more than three years to review UEI's Permit. An additional thirty days is not necessary and will result in delay contrary to the tight application review periods set by R645-300-131. With the exception of two minor issues, SUWA's October 11, 2005 letter focuses on the same issues which it raised at the July 7, 2004 informal conference. UEI responded to these issues at the conference on July 7, 2004 and in a letter dated March 30, 2005 and those responses were incorporated into the final TA. Therefore, the TA is the proper focus for today's meeting. The two new issues raised by SUWA on October 11th concern proposed transportation facilities and the Lila Canyon air quality permit. Both of these issues are addressed by UEI in its letter delivered today to the Hearing Officer.

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In sum, SUWA's suggestion that it should have 30 days to review the August 2005 Technical Review file is: (1) beyond the scope of the Braxton Order, which focuses on the TA, not the Division files; and (2) is excessive in that the Technical Review files were made publicly available as of Friday, November 4, 2005 and SUWA has had more than three and one-half years to review the Permit and the supporting record.

However, should the Division determine that SUWA needs a short period of time to review the Division's file, UEI requests that SUWA be allowed no more than five days to complete its review and file a letter with the Hearing Officer and all parties. The scope of SUWA's letter should be limited to only those issues raised in the Division's August 2005 Technical Review file. UEI requests a period of five days from receipt of SUWA's letter to respond in a letter to the Hearing Officer. Following the Division's receipt of UEI's response letter, the record for the informal conference should close.

We appreciate your consideration in this matter.

Very truly yours,



Denise A. Dragoo

DAD:jmc:372366

cc: Jay Marshall
Clyde Borrell
Michael McKown, Esq.