CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Notice of Supplemental to Amend Informal Conference for Cause No. C/007/013 to be mailed by certified mail, postage prepaid, on the __20__ day of January 2005 to the following:

7099 3400 0016 8895 6733

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

7099 3400 0016 8895 6726

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

7099 3400 0016 8895 6719

Steve Bloch
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, Utah 84111

7099 3400 0016 8895 6702

Ira Hatch
P.O. Box 629
Castle Dale Utah 84513

_____
Vickie Southwick
Executive Secretary
Division of Oil, Gas and Mining

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

Incoming
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

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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

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,

Stephen Bloch
Staff Attorney

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

JOHN R. BAZA
Division Director

October 18, 2005

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

Subject: Continuation of Informal Conference for Lila Canyon Extension, UtahAmerican Energy, Inc., Horse Canyon Mine, C/007/0013

Dear Mr. Hatch:

A supplemental meeting in the Informal Conference regarding the application for the Lila Canyon Extension of the Horse Canyon Mine, will be held on November 8, 2005 at 9:00 a.m. in Room, 1060, at 1594 West North Temple, Salt lake City, Utah. John Baza, Director of the Division of Oil, Gas, and Mining will be the presiding officer.

This meeting is scheduled as a result of the October 11, 2005 request of Southern Utah Wilderness Alliance pursuant to the terms of the July 30, 2005 Order issued at the conclusion of the prior meeting of this conference. The Informal Conference was commenced on July 7, 2004 pursuant to Utah Administrative Code § R645-300-123 to provide an opportunity for public participation and comment on the application. As set forth in the prior Order, the purpose of the supplemental meeting is to provide an opportunity at the completion of the Division's final technical analysis for the parties to the initial conference to discuss the Technical Analysis with the Division. The meeting will be limited to this purpose.

At the conclusion of the meeting the presiding officer will make such orders as he finds necessary or appropriate regarding the further review of the application, and any additional information received. The presiding officer will also determine if the informal conference shall remain open or shall be closed.

Sincerely,

John R. Baza
Director

vs
cc: Mary Ann Wright
Steve Alder
Pam Grubaugh-Littig
Wayne Hedber
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JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

JOHN R. BAZA
Division Director

October 18, 2005

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

Subject: Continuation of Informal Conference for Lila Canyon Extension, UtahAmerican Energy, Inc., Horse Canyon Mine, C/007/0013

Dear Mr. Marshall:

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Sincerely,

John R. Baza
Director

vs
cc: Mary Ann Wright
Steve Alder
Pam Grubaugh-Littig
Wayne Hedber
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JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

JOHN R. BAZA
Division Director

October 18, 2005

Steve Bloch
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, Utah 84111

Subject: Continuation of Informal Conference for Lila Canyon Extension, UtahAmerican Energy, Inc., Horse Canyon Mine, C/007/0013

Dear Mr. Bloch:

A supplemental meeting in the Informal Conference regarding the application for the Lila Canyon Extension of the Horse Canyon Mine, will be held on November 8, 2005 at 9:00 a.m. in Room, 1060, at 1594 West North Temple, Salt lake City, Utah. John Baza, Director of the Division of Oil, Gas, and Mining will be the presiding officer.

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Sincerely,

John R. Baza
Director

vs
cc: Mary Ann Wright
Steve Alder
Pam Grubaugh-Littig
Wayne Hedber
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P.01

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Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

JOHN R. BAZA
Division Director

UTAH DIVISION OF OIL, GAS & MINING
FACSIMILE COVER SHEET

DATE October 19, 2005

FAX (435) 637-2716

ATTENTION:

COMPANY Sun Advocate, Emery County Progress

DEPARTMENT Legal Department

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FROM Vickie Southwick

DIVISION OIL, GAS & MINING (801) 538-5304

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SNELL WILMER
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SALT LAKE CITY UTAH 84101

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SALT LAKE CITY UTAH 84114

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SUPPLEMENTAL MEETING
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DATE OF CONFERENCE
11/8/2005

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STEVE BLOCH
SOUTHERN UTAH WILDERNESS ALLIANCE
425 EAST 100 SOUTH'
SLAT LAKE CITY UTAH 84111

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DATE OF CONFERENCE
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KATHY WEINBWEG
JENNER & BLOCK
1717 MAIN STREET SUITE 3150
DALLAS TEXAS 75201

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IRA HATCH
P O BOX 629
CASTLE DALE UTAH 84513

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1594 WEST NORTH TEMPLE SUIT 1210
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SUPPLEMENTAL MEETING
INFORMAL CONFERECE

DATE OF CONFERENCE
11/8/2005

PUBLIC NOTICES

"Because the People Must Know"

UPAXLP

PUBLIC NOTICE

oint Commission on Accreditation of Healthcare Organizations will
oratory Accreditation Survey of Carbon Medical Service Association,
ber 17, 2005 to evaluate the organization's compliance with nationally
oint Commission Laboratory Standards.
e believing that they have pertinent and valid information about quality
s and the safety of the environment in which care is provided may
lic information interview with the Joint Commission's field represen-
me of survey. Requests for a public information interview must be
g to the Joint Commission no later than five working days before the
and must indicate the nature of the information to be provided at the
h requests should be addressed to:
atory Care Service Team
ommission on Accrediation of Healthcare Organizations
naissance Boulevard
ok Terrace, IL 60181

erviewee will be notified of the date, time and place of the meeting.
ed in the Sun Advocate October 18, 20, 25 and 27, 2005.

NOTICE OF TRUSTEE'S SALE

owing described real property will be sold at public auction to the
purchase price payable in lawful money of the United States of
time of sale, at the main entrance of the Seventh Judicial District
9 East 100 South, Price, Utah, on Monday, November 21, 2005, at
0 p.m. of that day for the purpose of foreclosing a Deed of Trust
mett C. Adair and Sharon L. Adair, in favor of Washington Mutual
ing real property located at approximately 2401 Secoal Creek Road,
ounty, Utah, and more particularly described as:
NG at a point 250 feet North and 300 feet East of the West Quarter
on 34, Township 14 South, Range 11 East, Salt Lake Base and
nning thence North 225 feet; thence East 225 feet; thence South
West 225 feet to the point of beginning.
ER with the following described right of way (not fee simple title) for
remises:
land 35 feet in width, lying 11 feet North and 24 Feet South from

NOTICE OF SUPPLEMENTAL MEETING

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 MINE,
HORSE CANYON MINE,
CARBON COUNTY, UTAH

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

Notice is hereby given that on November 8, 2005 being at 9:00 a.m. at the Department of Natural Resources, Room 1060, 1594 West North Temple, Salt Lake City, Utah, the Division of Oil, Gas and Mining (Division) will hold a supplemental meeting in continuation of the informal conference in the above matter. This supplemental meeting of the informal conference will be conducted in accordance with the Utah Code Ann. Section 40-10-12 and Utah Admin. R645-300-100.

The purpose of the meeting is to provide an opportunity for comment on the final technical analysis by the Division of the application of UtahAmerican Energy Inc. for approval of the Lila Canyon Extension of the Horse Canyon coalmine. 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 19th day of October, 2005.

STATE OF UTAH
DIVISION OF OIL, GAS AND MINING
John R. Baza
Director

Published in the Sun Advocate October 27, 2005.

NOTICE OF TRUSTEE'S SALE

The SUN ADVOCAT
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The Spring C
Saturday November
Helper Utah.
Published in

NOT

Sealed bids v
Management (DFCM
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DIVISION OF
DFCM Project

Bids will be
available at 10:00 AM
from DFCM, 4110 St
http://dfcm.utah.gov.
Clark, DFCM, at (801
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A **mandatory**
November 9, 2005 at
#313 Mile Post 1.5, C
are required to attend
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The Division of
reject any or all bids or
of DFCM.
DIVISI

Publish

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C/007/0013
Internal

southern
utah
wilderness
alliance

HAND DELIVERED

November 8, 2005

John Baza
Director - Utah Division of Oil, Gas and Mining
1594 West North Temple
P.O. Box 145801
Salt Lake City, Utah 84114

Re: *Horse Canyon Mine, Lila Canyon Extension C/007/013*
Southern Utah Wilderness Alliance Comments and Objections

Greetings:

Southern Utah Wilderness Alliance appreciates the opportunity to share its concerns and objections regarding the Division of Oil, Gas, and Mining's ("DOGM" or "the Division") erroneous conclusions that UtahAmerican Energy, Inc.'s (UEI) permit application package (PAP) is administratively complete and technically adequate.[1] In addition to the items outlined below and discussed by SUWA at the Informal Conference, SUWA may have additional concerns and objections that – based on our review of the recently obtained 2004-2005 records – will require an additional informal conference. We appreciate the Division's commitment to provide SUWA with the time to review these additional records and, if necessary, to request an additional informal conference.

In short, the Division's decisions that the PAP is administratively complete and technically adequate do not withstand scrutiny. For example, and as SUWA has explained for several years, the Division has never required UEI to provide adequate baseline information, including baseline information for surface or ground water quality or quantity. This critical information still has not been provided in this latest iteration of the PAP and this failure infects numerous critical aspects of the PAP including, but not limited to, the following: the ground water monitoring plan, the surface water monitoring plan, the probably hydrologic consequences determination, the operation plan, and the cumulative hydrologic impact assessment.

[1] SUWA incorporates its April 22, 2002, May 26, 2004, and July 7, 2004 letters (and all exhibits attached thereto) to DOGM by reference and may pursue issues identified in these letters, but not discussed today, should the Division decide to issue UEI a permit for the Horse Canyon Mine – Lila Canyon Extension C/007/0013. 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, as well as all technical reviews prepared by Division staff between 2001-2005.

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

Printed on recycled paper

These failures, alone, demand that the Division acknowledge that the PAP is neither administratively complete, nor technically adequate and, when added to the additional items discussed below, there is no question that DOGM cannot authorize UEI to proceed until each of these issues is fully resolved.

1. **Acid- or toxic-forming materials.** Utah Admin. R645-301-624.300 requires UEI to collect samples from test borings or drill holes and analyze these samples for acid- or toxic-forming materials. Specifically, Utah Admin. R645-301-624.320 requires UEI 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 Utah Admin. R645-301-626, an applicant may request the Division to waive in whole or in part the requirements of Rule 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:

- 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.

- 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.

- 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.

- UEI has not provided data and analysis required under Rule 624, or information having equal value, as required under Rule 626.

- 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.

- UEI proposes to use this material, the underground development waste, as structural fill for surface facilities that will not be reclaimed until the end of the mine life.

2. **Subsurface water resource maps**. Utah Admin. R645-301-722.100 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. Though UEI has previously identified both what it calls a regional aquifer and several perched aquifers, it has not complied with this requirement. Rather, UEI has submitted Figures 7-2A and 7-2B – neither of which comply with this Rule.

- Figure 7-2A does not show water levels for the entire permit area. In addition, UEI's description of the piezometric surface is clearly flawed in that it is depicted as a uniformly dipping planar surface, and it is based only on water level data from the three IPA wells, an area that covers less than 200 acres, or approximately four percent of the 4,664-acre Part B permit area. Finally, Figure 7-2A does not portray the areal and vertical distribution and seasonal differences of head in the perched aquifers.

- Figure 7-2B is not a cross-section. It depicts water level changes through time, not through the permit area, and does not include the perched aquifer.

3. **Baseline information - surface water resources**. Utah Admin. R645-301-724.200 requires that UEI 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.

- 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 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.

- In spite of the Rule requiring baseline data, and in spite of the fact that UEI and the Division know that there are surface water flows in the permit area, UEI has never submitted <u>any</u> data on surface water quantity or quality for <u>any</u> of the streams in the permit area.

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

- UEI has never attempted to collect these data through remote methods for obtaining both water quality or flow depth even though these methods are inexpensive, well within the state of the art, are standard practice by the U.S. Geological Survey, are discussed in

OSM guidelines for collecting baseline surface water data in arid climates, and have been used in the permitting of other coal mines in Utah.

4. **Baseline information - ground water quantity**. Utah Admin. R645-301-724.100 requires that UEI submit data on the seasonal quantity of ground water. Ground-water quantity descriptions must 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. UEI has failed to submit data required under this rule.

Regional Aquifer

- UEI's sporadic submissions are insufficient, based on Rule 724.100 and DOGM's longstanding practices, to establish seasonal baseline data from IPA-1, -2, and -3, or from L-16-G and L-17-G. See Table - Lila Canyon ground water sampling dates – proposed monitoring sites. (November 2005) (attached hereto as Exhibit 1).

- UEI provides no data on the rates of discharge of ground water or on the hydraulic conductivity in the permit area, and has failed to even identify the recharge and discharge areas.

- UEI provides conflicting information, and in places contradicts itself, with regard to the effect of lithology, regional structure, or faults on the movement, discharge, and depth of the ground water in the regional aquifer.

Perched Aquifer

- UEI's sporadic submissions are insufficient, based on Utah Admin. R724.100 and DOGM's longstanding practices, to establish seasonal baseline data from the springs (L-6-G through L-12-G). See Table - Lila Canyon ground water sampling dates – proposed monitoring sites. (November 2005).

5. **Baseline information - ground water quality**. Utah Admin. R645-301-724.100 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. UEI has failed to submit data required under this rule.

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 insufficient 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, UEI's submission is insufficient, based on Rule 724.100 and DOGM's longstanding practices, to establish seasonal baseline data See Table - Lila Canyon ground water sampling dates – proposed monitoring sites. (November 2005).

Perched Aquifer

- UEI's submission is insufficient, based on Rule 724.100 and DOGM's longstanding practices, to establish seasonal baseline data for the springs (L-6-G through L-12-G). See Table - Lila Canyon ground water sampling dates – proposed monitoring sites. (November 2005).

6. **Coal mine waste**. Coal mine waste is defined as "coal processing waste and underground development waste." Utah Admin. R645-100-200. Utah Admin. R645-301-528.320 requires that all coal mine waste be placed in new or existing disposal areas within a permit area which are approved by the Division for this purpose. Coal mine waste must meet the design criteria of Utah Admin. 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) at the surface, 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, UEI proposes to leave this deposit of coal mine waste (a refuse pile) exposed at the surface for the life of the mine.

7. **Ground water monitoring plan**. According to Utah Admin. R645-301-731.211, UEI's permit application must include a ground-water monitoring plan based upon the analysis of all baseline hydrologic, geologic and other information contained in the permit application. Because UEI's PAP contains no baseline data (or, at a minimum, incomplete baseline data), neither UEI nor DOGM can determine mine impacts and there can be no effective monitoring.

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).

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 ground water monitoring sites in the Part B permit area, and only partial baseline data exist for these sites.

8. Surface water monitoring plan. According to Utah Admin. R645-301-731.221 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 any surface flows in Lila Canyon, Little Park Wash, Stinky Spring Wash, IPA #1 Wash, Pine Springs Wash, or No Name Wash (see point 3, supra). Thus, there will be no basis for comparison during monitoring.

9. Probable Hydrologic Consequences (PHC). Utah Admin. R645-301-728.200 requires that the PHC determination will be based on baseline hydrologic, geologic and other information collected for the permit application. As discussed, supra, (points 1-5), there are no baseline data, or incomplete baseline data upon which the PHC can make the required findings. Specifically, there can be no determinations or findings on:

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

10. Water consumption. The MRP-Part B contains contradictory, and unsupported data on the amount of water consumed by dust suppression, and contains an error in calculating the coal moisture loss.

- Appendix 7-3 states that the rate of water to be consumed from dust suppression and evaporation is estimated to be 15,000,000 gallons per year. Subtracting out the portion

attributed to evaporation from ventilation (1,183,600 gal/yr) the amount consumed due to dust suppression is 13,816,400 gal/yr, and not 3,650,000 gal/yr as reported in Table 2 of the Appendix. In addition, coal moisture loss is calculated in Table 2 based on a mining rate of 4 M ton/yr, but the PAP states that mining could peak at 4.5 M ton/yr. When the correct amounts are used for dust suppression and coal moisture loss, the amount of water consumed will be approximately 112 acre-feet per year, not the 74 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 from the removal of this water.

11. Cumulative Impact Area. The information provided by UEI is not sufficient to allow the Division to establish a hydrologically reasonable cumulative impact area (CIA) boundary. Utah Admin. R645-301-725. Specifically;

- The recharge and discharge areas of the aquifers have not been identified. Without this information, the Division cannot establish the CIA boundary.

- The effect of the faults on the occurrence, movement, and discharge of water in the regional aquifer is not addressed.

- There is no explanation for the occurrence of ground water in the Mancos Shale (L-16-G and L-17-G)

- 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 aquifers.

12. Operation Plan. According to Utah Admin. R645-301-731, 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:

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 are 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, ground disturbance related to subsidence (i.e., subsidence fractures) 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." (Allgaier, F.K., 1982, 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." (Slaughter, C.B., Freethey, G.F., and Spangler, L.E., 1995, 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." (Dunrod, C.R., 1976, 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 ephemeral and intermittent streams, and 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.

Stream Buffer Zones

Utah Admin. R645-301-731.610 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: Coal mining and reclamation operations will not adversely affect the water quantity and quality or other environmental resources of the stream (Rule 731.611).

The PAP documents that mining will take place under Little Park Wash, Stinky Spring Wash, IPA #1 Wash, Pine Springs Wash, and No Name Wash. The PAP further documents that subsidence will likely disturb the land within these stream channels. Each of these five streams drains a watershed of at least one square mile, and therefore are, by definition, intermittent streams. (Although these five streams are defined as intermittent according to R645-100-200, UEI and DOGM occasionally refer to them as "ephemeral acting", a term that is not defined in R645-100-200.) UEI's mining operations will disturb land within 100 feet of five intermittent streams, and because there are no baseline data on the water quality or water quantity in these streams, the Division cannot determine whether or not the mining operation will adversely affect the water quantity and quality or other environmental resources of the streams. Without these data, the Division cannot support a decision to authorize mining within the stream buffer zone.

13. Renewable Resource Lands: Renewable resource lands means aquifers and areas for the recharge of aquifers and other underground waters. Utah Admin. R645-301-525.110 requires a map of the permit and adjacent areas showing the location of renewable resource lands that subsidence may materially damage. Rule 525.120 requires a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of renewable resource lands.

- UEI has not submitted a map that delineates the renewable resource lands within the permit and adjacent areas.

- UEI claims to have conducted a survey of renewable resource lands; however there are no baseline data on any surface water flows in the permit and adjacent area. Without any data on surface water flows, UEI can not evaluate the relationship between surface water flows and recharge to renewable resource lands. Similarly, UEI has failed to obtain baseline data on underground waters within the permit and adjacent area. Therefore, they are unable to document the area of discharge, direction of movement, and/or recharge area for any underground waters, i.e., the renewable resource lands.

- UEI acknowledges that subsidence will likely cause material damage to both underground waters, and surface flows within the permit area. However, they fail to address how the renewable resource lands in the permit and adjacent areas will be impacted by these subsidence-related impacts

14. Historic and Archeological Resource Information. The Division has 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.

- The heart of the NHPA is Section 106, which prohibits agencies from approving any "undertaking," including the issuance of any license, permit, or approval unless the agency takes into account the effects of the undertaking on historic properties that are include in or eligible for inclusion in the National Register of Historic Places. 16 U.S.C. §§ 470(f) and 470(w)(7). The NHPA's implementing regulations, 36 C.F.R. Part 800, detail the process for full compliance with Section 106. The participants in the Section 106 process include, but are not limited to, the State Historic Preservation Officer, Indian tribes, local governments, additional consulting parties, and the public. 36 C.F.R. § 800.2.

- Because the Division has not complied with Section 106, 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.

15. Fish and Wildlife Resource Information. 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. R645-301-322.

- For example, 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).

- 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).

16. Affected area. The revised coal haul road (EC-126) 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.

- 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. Also, in September 2005 UEI 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. Because UEI has a firm right-of-way proposal for these additional facilities before the Bureau of Land Management, DOGM and UEI cannot avoid including these proposed facilities in the affected area by segmenting the analysis of these additional facilities to a later day.

17. Air Quality. 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 Dragoo to Pamela Grubaugh-Littig (June 2, 2005), at 2.

18. Lila Canyon Mine – New Permit Required. The proposed mine must be processed and approved through application of a new permit. Utah Admin. R645-303-220.

- The recent transfer by UEI of the Horse Canyon Mine to the College of Eastern Utah reinforces the point that the proposed Lila Canyon Mine is not an "extension" of any existing mine. See Les Bowen, College in Price secures title to Horse Canyon mining property, SUN ADVOCATE, Oct. 25, 2005, at A1 (attached hereto as Exhibit 2). Indeed, the PAP identifies the Horse Canyon Mine, Part A, as being for "reclamation only."

- SUWA recognizes that Utah Admin. R645-303-226 requires the Division to comply with R645-300-100 and -200, as well as R645-301 and R645-302 when processing a significant permit revision. Nevertheless, the proposed Lila Canyon Mine is not a "significant permit revision," and DOGM's insistence on mislabeling the Lila Canyon Mine as merely an extension of the Horse Canyon Mine has perpetuated a general misunderstanding among the public regarding the full scope of the proposed Lila Canyon Mine.

Thank you for your time and consideration in evaluating Southern Utah Wilderness Alliance's concerns and objections. SUWA is confident that after the Division reviews the information detailed above and discussed at the Informal Conference, it will conclude that the PAP is neither administratively complete nor technically adequate.

Finally, SUWA has attached to its comments and objections a copy of a speech given by Mr. Robert Murray, owner of UtahAmerican's parent company Murray Energy Corp., at the College of Eastern Utah on October 20, 2005. See Remarks of Robert E. Murray, Land Contribution to the College of Eastern Utah, Oct. 20, 2005 (attached hereto as Exhibit 3). Throughout the course of his speech, Mr. Murray railed against the Southern Utah Wilderness Alliance, its board members, the foundations that support it, and its staff for challenging the proposed Lila Canyon mine. After giving the names, addresses, and, in some instances, home telephone numbers, of SUWA board members, Mr. Murray stated that "[i]t is time for every government official, politician, and leader in Utah to challenge the extremist SUWA and their supporters in every manner possible." In addition to being grossly inappropriate and misleading, SUWA is gravely concerned that Mr. Murray's comments may have placed SUWA board members at risk of harassment or even injury. While SUWA board member information is public – SUWA is a register Utah non-profit corporation – Mr. Murray's inflammatory rhetoric crossed the line from advocacy to intimidation.

Feel free to contact me with any questions: (801) 486-3161.

Sincerely,

Stephen Bloch
Staff Attorney

EXHIBIT 1

Table 1: Lila Canyon ground water sampling dates – proposed monitoring sites. (November 2005)

Water Monitoring Station	Spring 2001	Summer 2001	Autumn 2001	Winter 2002	Spring 2002	Summer 2002	Autumn 2002	Winter 2003	Spring 2003	Summer 2003	Autumn 2003	Winter 2004	Spring 2004	Summer 2004	Autumn 2004	Winter 2005	Spring 2005	Summer 2005
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	5/15		9/21; 10/10		3/27	6/4; 8/13	10/15			6/16	9/10; 11/2						3/29	
IPA-2	5/15		9/21; 10/10		3/27	6/4; 8/13	10/15			6/16; 8/21	11/2						3/29	
IPA-3	5/15		9/21; 10/10		3/27	6/4; 8/13	10/15			6/16; 8/29	11/2						3/29	
Perched Aquifer																		
L-6-G																		
L-7-G		7/3	10/10			6/4; 8/13	10/15			6/16	9/10							
L-8-G		7/3	10/10			6/4; 8/13	10/15			6/16	9/12; 11/2						3/29	
L-9-G		7/3	10/10			6/4	10/15			6/16							3/29	
L-10-G		7/3	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						3/29	
L-12-G			10/10		3/27	6/4; 8/13	10/14			6/16	9/10						3/29	

= NO DATA

Winter - December, January, and February

Spring - March, April, and May

Summer - June, July, and August

Autumn - September, October, November

EXHIBIT 2

College in Price secures title to Horse Canyon mining property

By LES BOWEN
Sun Advocate reporter

College of Eastern Utah has acquired title to 896 acres at at the site of the former Horse Canyon coal mine.

The transfer comes after an exhaustive review by the Utah Division of Oil, Gas and Mining.

With county, local, state, college and mining representatives present, UtahAmerican Energy Inc., a subsidiary of Murray Energy Corporation, presented the facility to CEU at a luncheon last Thursday.

Of the 1707.38 acres at the site, the mining corporation will retain 811.25 acres.

The property donated to the college has been reclaimed other than approximately 17 acres.

The 17 acres house a variety of structures and facilities which include a sedimentation pond, a pump house, an office building, a bath house, a warehouse and a shop.

Other improvements at the former coal mining site include building pads, a parking lot, a powder magazine, a cap magazine, a water tank and a portal pad.

In addition, the property includes the transfer of diversionary water rights totaling .08 cubic feet per second from Horse Canyon Creek and 5.0 acre-feet of storage from Redden Spring.

The process of reviewing the land before the transfer and the change in post mining use was only possible after a strict review process, explained Mary Ann Wright, associate director of DOGM.

Wright explained that part of the review pertained to the change in post-mining use for 16 acres.

Under normal circumstances, the mining corporation would be that the company donated to the college in Price and reclaim the land.

That process required a complete narrative on each building or facility included in the transfer to the college.

Further, the mining company was required to explain why the changed post-mining use would be a higher and better use than

Mary Ann Wright
Assistant DOGM director

restoring the land to its original state.

That proposed change and the release of the land from the requirements of the Surface Mining Control and Reclamation Act of 1977 was approved after an exhaustive one-year review process, Wright indicated.

"This is one of the most significant gifts that has come to the College of Eastern Utah," said Brad King, a vice president at the college and member of the state legislature.

The college expects to use the Horse Canyon property for recreation, as a base camp for environmental studies, as a collection site for Range Creek archaeological artifacts and as an outdoor classroom for paleobiology, art and creative writing.

Robert Murray, the chairperson, president and chief executive officer of Murray Energy Corporation, also addressed the status of the proposed Lila Canyon Mine, on property which adjoins that area donated to the college.

"This proposed state-of-the-art project will be environmentally one of the best projects undertaken in the West. My family and I want to leave a balanced legacy of economic and environmentally acceptable development."

Murray explained that 55 percent of the generation of electricity is dedicated to the purchase of fuel for power plants.

He continued that the cost of natural gas is seven times that of coal. As a result, the cost of coal-generated electricity is one-seventh of the cost of poser generated by natural gas.

The proposed mine is estimated to create 300 high-paying jobs, said Murray.

The energy corporation official added that studies suggest that for each job created at a mining facility, up to 11 secondary jobs are created.

While plans to mine in Lila Canyon are at least five years old, the plans have been opposed by the Southern Utah Wilderness Alliance.

Murray indicated that SUWA's claims have been previously addressed and the lobbying organization continues to repeated opposition to the opening of the mine without new claims.

The energy corporation executive pointed out that Lila Canyon is in a historic coal production area where Kaiser Steel and the United States Steel Corporation have pre-existing mining rights.

College secures property:

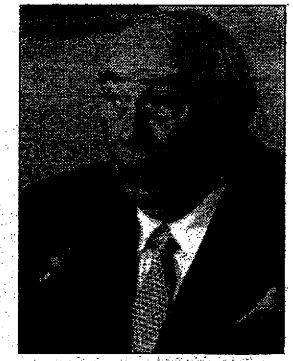
(Continued from page 1A)

Further, the corporation official pointed out that the area in question is not a roadless or wilderness area.

"They simply want to stop all economic development in Utah," said Murray.

He continued by stating that SUWA is headed by a European industrialist, the 26th richest man in Europe, and that the officers who direct SUWA are "absentee multimillionaires." Murray pointed out that in its efforts against the mining developments at Lila Canyon, SUWA is stopping 3,600 jobs from coming into Carbon and Emery counties.

Further, Murray listed the principal donors to SUWA and noted that many of the foundations from which SUWA receives support received their principal endowments from energy industrialists.



Robert Murray
Murray Energy Corporation

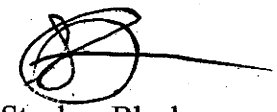
"If the founders of these foundations knew how their money was being used, they'd roll over in their graves," said Murray.

EXHIBIT 3

Finally, SUWA has attached to its comments and objections a copy of a speech given by Mr. Robert Murray, owner of UtahAmerican's parent company Murray Energy Corp., at the College of Eastern Utah on October 20, 2005. See Remarks of Robert E. Murray, Land Contribution to the College of Eastern Utah, Oct. 20, 2005 (attached hereto as Exhibit 3). Throughout the majority of his speech, Mr. Murray railed against the Southern Utah Wilderness Alliance, its board members, the foundations that support it, and its staff and supporters for opposing the proposed Lila Canyon mine in its current iteration. After giving the names and, in many instances, home addresses and telephone numbers of SUWA board members, Mr. Murray stated that "[i]t is time for every government official, politician, and leader in Utah to challenge the extremist SUWA and their supporters in every manner possible." In addition to being grossly inappropriate and misleading, SUWA is gravely concerned that Mr. Murray's comments may have placed SUWA board members at risk of harassment or even injury. While SUWA board member information is public – SUWA is a registered Utah non-profit corporation – Mr. Murray's inflammatory rhetoric crossed the line from advocacy to intimidation.

Feel free to contact me with any questions: (801) 486-3161.

Sincerely,



Stephen Bloch
Staff Attorney

Remarks of Robert E. Murray

Land Contribution to the

College of Eastern Utah

October 20, 2005

Price, Utah

On behalf of my wife, Brenda, and our sons, Robert Edward, who is with me today, Jonathan, and Ryan, and from Murray Energy Corporation ("Murray Energy") and UtahAmerican Energy, Inc. ("UtahAmerican"), we are pleased to make this contribution of buildings and 896.13 acres of land to the College of Eastern Utah.

Being thoroughly familiar with the real estate gifted, we believe that this large acreage and the buildings will serve the College of Eastern Utah well for many decades, as a natural laboratory or for whatever purpose your administrators deem appropriate.

As you know, for the past four (4) years, UtahAmerican has been attempting to get its proposed Lila Canyon Mine re-permitted, after an approved permit was remanded in 2001. This huge proposed state-of-the-art project will:

- Be environmentally one of the best projects ever undertaken in the West. My family and I want to leave a balanced legacy of economic and environmentally acceptable development.

- Create nearly 300 high-paying, well-benefited jobs in the Carbon and Emery County area.

- According to The Pennsylvania State University, up to eleven (11) secondary jobs are created for each mining job, to provide the goods and services to each of our employees. Thus, an additional up to 3,300 jobs could be created in our area.

- The Lila Canyon Mine project has the support of all local governmental officials and our citizens in general.

- The electric utilities sorely need the high quality, low sulfur coal that the Lila Canyon Mine will produce. Over ninety-five percent (95%) of the electricity in Utah comes from coal. A reliable, reasonably-priced coal supply is critical to holding down electric rates in Utah for our State's businesses that compete in the global marketplace, and for those who are on fixed incomes.

During the permitting stage, we have had significant local support for the project from individuals or agencies of this great State.

First, I would like to acknowledge the support of the Emery County Commission, and its Chairman, Mr. Ira Hatch.

Also, I wish to acknowledge the efforts of the Federal Bureau of Land Management for their good work with UtahAmerican over the years.

The efforts of the Utah Division of Oil, Gas & Mining are also very much acknowledged and appreciated.

On the other hand, much to the detriment of Utah and its citizens, UtahAmerican's proposed Mine has been the focus of opposition from the environmental group, the Southern Utah Wilderness Alliance ("SUWA"). This is notwithstanding that UtahAmerican's Lila Canyon Mine is in a historical mining area, where the Kaiser and United States Steel Corporations previously mined and where UtahAmerican has pre-existing mining rights. Further, the Lila Canyon Mine will not be in a roadless or wilderness area.

"They simply want to stop all econ. dev. in Utah."

Our contribution of buildings and nearly 900 acres of land to the College of Eastern Utah today clearly exemplifies that UtahAmerican's Lila Canyon Mine is in a historic mining area, not a roadless or wilderness area which SUWA champions. However, their actions show that SUWA just really wants to stop our project and any development in our area.

"Deny the Pappas family their grandchildren from being an account, an income."

It has been stated by a number of credible, progressive Utah organizations, that SUWA is a totally anti-development organization, opposed to the extraction of natural resources, and against private property rights. What began in 1983 as a local grassroots wilderness group has now grown into an extremist group which is well-financed primarily by out-of-state interests.

Jeal[illegible]

SUWA is dominated by absentee multi-millionaires, including their President, Hansjorg Wyss, who is listed as the twenty-sixth (26th) richest person in Europe, worth 3.4 billion pounds in 2004, according to an April 18, 2004, *Times Online* article. Mr. Wyss, who has an office at 1690 Russell Road, Paoli, Pennsylvania 19301 (phone: 610.687.5760), is Chief Executive Officer of the Swiss-based Synthes-Stratec.

wealthy suburb of Pennsylvania

Help from Alg + local.

What right does this European gentleman have to capriciously delay an economic development project in an area in which mining has already occurred, and which project the people of Utah and Carbon and Emery Counties want? To me, it is time that the lawyers, politicians, and anyone concerned about future jobs and quality of life in Utah start fighting back against SUWA and Hansjorg Wyss and the other elitist officers and financiers of this extremist and very detrimental organization.

Mortlegs [illegible] [illegible]
hasn't helped a bit

According to State records and the Internet, other officers of SUWA include:

Vice President Ted Wilson, 587 Perrys Hollow Road, Sale Lake City, Utah 84103 (phone: 801.519.9705). Mr. Wilson is a former Mayor of Salt Lake City, and was a candidate for the United States Senate. He is Director of the Hinckley Institute of Politics at the University of Utah.

Secretary Trent Alvey, 4301 Emigration Canyon, Salt Lake City, Utah 84108 (phone: 801.582.2420). Ms. Alvey is an artist in Salt Lake City.

Treasurer, Mark Ristow, 3755 East 82nd Street, Indianapolis, Indiana 46240 (phone: 317.845.4171). Mr. Ristow is an attorney.

Director, Darrell Knuffke, 7475 Dakin Street, Denver, Colorado 80221. Mr. Knuffke is also a Director of the Friends of the Boundary Waters Wilderness in Minneapolis, Minnesota.

Director, Dottie Fox, 354 Snowmass Creek Road, Snowmass, Colorado 81654 (phone: 970.927.4483). Ms. Fox is an artist.

Director, Thomas Scott Groene, 1471 South 1100 East, Salt Lake City, Utah 84105 (phone: 801.486.7639 Ext. 26). Mr. Groene is a very active attorney for SUWA, and has offices in Salt Lake City, Moab, and Cedar City.

Jim Baca, 2309 Via Madrid Drive, NW, Albuquerque, New Mexico 87104 (phone: 505.244.0031). Mr. Baca is on the Board of the Hansjorg Wyss Foundation and is a former Director of the Bureau of Land Management.

Bert Fingerhut, 1520 Silver King Drive, Aspen, Colorado 81611 (phone: 970.920.1934). Mr. Fingerhut is another high-dollar donor to SUWA and opponents of economic development in Utah. He is a retired multi-millionaire from Oppenheimer & Company, and other organizations.

Bill Hedden, 390 Castle Creek Lane, Castle Valley, Utah 84532 (phone: 435.259.5284). He was very active with the Clinton Administration, and was a key player on the Grand Staircase-Escalante National Monument formation.

Richard J. Ingebretsen, 1877 Clayborne Avenue, Salt Lake City, Utah 84106 (phone: 801.487.2570). He is a medical doctor and physics professor at the University of Utah.

Clive Kincaid, P. O. Box 2767, Park City, Utah 84060 (phone: 435.645.9298). Mr. Kincaid is one of the founders of SUWA and a former Bureau of Land Management ("BLM") Wilderness Manager in Arizona. He wants to stop all economic uses of BLM land.

Cindy Shogan, 10608 Woodsdale Drive, Silver Spring, Maryland 20901 (phone: 301.593.2131). She is involved in numerous anti-development, environmental organizations.

Johanna Wald, 845 Ashbury Street, San Francisco, California 94117 (phone: 415.777.0220). She is an attorney for the Natural Resources Council and is a member of many environmental groups.

Chip Ward, P. O. Box 1005, Grantsville, Utah 84029. He is Founder of the West Desert Healthy Environment Alliance, and currently works for the Utah State Library Division.

Terry Tempest Williams, HC 64 # 3710, Moab, Utah 84532 (phone: 435.259.9295). She is a Professor of English at the University of Utah.

SUWA receives about $2 million per year in contributions. Some of the primary contributors have been:

- The Beldon Fund, formed by John R. Hunting, founder of Steelcase, the office furniture manufacturer;

- The Compton Foundation, set up by William H. Danforth, who founded the Ralston Purina feed empire;

- The Educational Foundation of America, set up by Richard P. Ettinger of the Prentice-Hall Publishing fortune;

- Deep Ecology, set up by Douglas Tompkins from the Esprit Clothing fortune;

- General Service Foundation, originating from the Weyerhauser Company;

- The Gerhard Family Foundation, set up by Lang Gerhard of West Highland Capital;

- The Harder Foundation, set up by a former General Motors executive;

- The Homeland Foundation, set up by Anne Getty Earhart, the granddaughter of J. Paul Getty.

- The W. Alton Jones Foundation, set up by the founder of Citco Oil Company, Mr. W. Alton "Pete" Jones.

- The Kenney Watershed Protection Foundation, set up by a Massachusetts industrialist;

- The New-Land Foundation, founded by the heiress to two (2) Chicago meat packing fortunes, Morris and Swift;

- Pew Charitable Trusts, which were set up by Joseph Newton Pew, the founder of Sun Oil Company;

- The Rockefeller Family Fund, established by the heirs to the Rockefeller fortune;

- The Schumann Foundation, of which William D. "Bill" Moyers, the Public Broadcasting System television personality, is the President;

- The Benjamin Spencer Fund, founded by the richest person in New Mexico;

- The Tortuga Foundation, set up by a group of Yale University graduates;

- Town Creek Foundation, set up by the former President and Chief Executive Officer of Bowne & Company, Inc., a corporate and financial printer;

- The Underhill Foundation, set up by other Rockefeller heirs;

- The Walton Family Foundation. Yes, you have it, Wal-Mart has contributed to SUWA and against the development of UtahAmerican's Lila Canyon Mine;

- The Wild Wings Foundation, another fund of Rockefeller heirs;

- The Winslow Foundation, established by Wren Winslow Wirth, wife of Timothy Wirth, and now currently with Ted Turner's United Nations Foundation, with a family fortune in excess of $25 million; and, of course,

- The Wyss Foundation, founded by Hansjorg Wyss, with Bert Fingerhut as a Trustee.

As stated, SUWA has attempted to terminate the very beneficial and environmentally acceptable Lila Canyon Mine of UtahAmerican for four (4) years. In an October 11, 2005, filing on the last day that they had the legal right to do so, which has been the *modus operandi* of this extremist organization over the years, their staff attorney from Salt Lake City, once again, filed in opposition to the permit for the Lila Canyon Mine with the Utah Division of Oil, Gas & Mining ("DOGM"). Not only did SUWA, in an attempt to totally kill the UtahAmerican project, cite the same objections that it repeatedly has raised, which have been totally addressed by DOGM and UtahAmerican, Stephen Bloch, the SUWA representative, accused DOGM as being "arbitrary and capricious" in addressing the issues that SUWA has raised and re-raised for the last four (4) years. Now folks, you tell me who is being arbitrary and capricious here? It is SUWA, their lawyer, Mr. Bloch, their President, Mr. Wyss, their Directors, and their contributors.

Again, do you really believe that it is in the best interests of Carbon and Emery Counties and the State of Utah for the extremist, well-financed SUWA to continually take jobs, up to 3,600 of them in this case, away from Utah citizens, and at the same time attempt to deny UtahAmerican of its pre-existing mining rights? Remember the Lila Canyon Mine will be in the historical mining area of the Kaiser and United States Steel Corporations, and not effect any roadless or wilderness areas.

It is time for every government official, politician, and leader in Utah to challenge the extremist SUWA and their supporters in every manner possible. Otherwise, electric rates in Utah are going to sky rocket, as the low cost, minimal transportation, local coal cannot be consumed; good high-paying, well-benefited jobs will be lost; and there will be far fewer opportunities for the graduates of the College of Eastern Utah.

In conclusion, I want to emphasize that there are no environmental issues left regarding UtahAmerican's Lila Canyon Mine. It is at the site of the previous mining of the Kaiser and United States Steel Corporations, and all issues have been effectively addressed and re-addressed by the Utah Division of Oil, Gas & Mining, which has been entrusted by our elected officials to have the final say as to what is environmentally acceptable in Utah, not the extremist SUWA, its lawyers, officers, and contributors.

Again, it has been a privilege for our family and Company to present our contribution to the College of Eastern Utah.

Officers and Directors from State Records:

President:
Hansjorg Wyss
1690 Russell Road
Paoli, PA 19301
610-687-5760

CEO of Swiss based Synthes-Stratec, computer assisted orthopedic surgery. Listed as the 26th richest person in Europe according to TimesOnLine Article 4/18/2004.

The Wyss Foundation gave $524,171 to SUWA in 1995

Vice President:
Ted Wilson
587 Perrys Hollow Road
Salt Lake City, UT 84103
801-519-9705

Mr. Wilson is a former mayor of Salt Lake City (1976-1985). Ran unsuccessfully for U.S. Senate. Director of the Hinckley Institute of Politics at the University of Utah. Former fellow of the JFK Institute of Politics at Harvard.

Secretary:
Trent Alvery
4301 Emigration Canyon
Salt Lake City, UT 84108
801-582-2420

Ms. Alvery is an artist and the President of Trent Alvery Design in Salt Lake City. Ms. Alvery is a trustee of several other environmental groups.

Treasurer:
Mark Ristow
3755 E. 82nd St.
Indianapolis, IN 46240
317-845-4171

Mr. Ristow is an attorney and CPA

Director:
Darrell Knuffke
7475 Dakin St.

Denver, CO 80221
(phone not available)
(this is an office building, mostly doctors)

2070 County Road 138
International Falls, MN 56649
(phone not available)
(appears to be a home address)

Mr. Knuffke is also a Director for Friends of the Boundary Waters Wilderness in Minneapolis, MN.

Director:
Dottie Fox
P.O. Box 545
Snowmass, CO

354 Snowmass Creek Road
Snowmass, CO 81654
970-927-4483

Ms. Fox resides in Snowmass, Colorado, which is just outside Aspen, Colorado. Snowmass is a very expensive area. It appears that she is very active in the Aspen community. She is listed as being an artist. She is also shown as being 85 years old, which is unconfirmed. If she is 85 she is very active for her age.

Director:
Thomas Scott Groene
1471 S 1100 E
Salt Lake City, UT 84105
801-486-7639 x 26 (SUWA Office)

Mr. Groene (goes by both Thomas and Scott) is a very active attorney for SUWA. Has several offices in Utah (Salt Lake City, Moab, Cedar City), but no phone numbers are available for any of his offices other than the SUWA office number shown above.

Directors from SUWA Website:

Chair:
Hansjorg Wyss
1690 Russell Road
Paoli, PA 19301
610-687-5760

CEO of Swiss based Synthes-Stratec, computer assisted orthopedic surgery. Listed as the 26th richest person in Europe according to TimesOnLine Article 4/18/2004.

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Director:
Trent Alvery
4301 Emigration Canyon
Salt Lake City, UT 84108
801-582-2420

Ms. Alvery is an artist and the President of Trent Alvery Design in Salt Lake City. Ms. Alvery is a trustee of several other environmental groups.

Director:
Jim Baca
2309 Via Madrid Drive NW
Albuquerque, NW 87104
505-244-0031

Mr. Baca was the Director of the Bureau of Land Management and was fired by Bruce Babbitt in 1994. Mr. Baca was also the Mayor of Albuquerque, New Mexico from 1997-2001. Mr. Baca is also on the Board of the Wyss Foundation (see Hansjorg Wyss above).

Director:
Bert Fingerhut
1520 Silver King Drive
Aspen, CO 81611
970-920-1934

Mr. Fingerhut is a retired multi-millionaire. ExVP of Oppenheiner & Company, Sr. VP Odyssey Partners, Chairman and CEO of Cortech, Inc. Chairman of Toxics Targeting. High dollar donor to the Democratic Party. Mr. Fingerhut is involved with many different environmental groups. There is no mention that he is, or was, involved with the Fingerhut catalog sales.

Director:
Bill Hedden
390 Castle Creek Lane
Castle Valley, UT 84532
435-259-5284

Mr. Hedden was very active with the Clinton Administration. Was a key player on the Grand Staircase-Escalante National Monument formation. Is active in local politics. Is Executive Director of the Grand Canyon Trust. Is active with several other environmental organizations.

Director:
Richard J. Ingebretsen, MD, PhD
1877 Clayborne Ave.
Salt Lake City, UT 84106
801-487-2570

Dr. Ingebretsen is a Medical Doctor and physics professor at the University of Utah. Dr. Ingegretsen is the founder of the Glen Canyon Institute and is very outspoken on wanting to drain Lake Powell. He has been condemned as being a "crazy or a radical" environmental extremist.

Director:
Clive Kincaid
P.O. Box 2767
Park City, UT 84060
435-645-9298

One of the original founders of SUWA and a former BLM Wilderness Manager in Arizona. Is very active in the wilderness classification of BLM land. Wants to stop traditional uses of BLM land such as timbering, oil and gas, mining, cattle grazing, etc. Mr. Kincaid is a member of several of several other environmental groups. Mr. Kincaid's P.O. Box is in Park City, UT which is a very expensive area.

Director:
Darrell Knuffke
7475 Dakin St.
Denver, CO 80221
(phone not available)

(this is an office building, mostly doctors)

2070 County Road 138
International Falls, MN 56649
(phone not available)
(appears to be a home address)

Mr. Knuffke is also a Director for Friends of the Boundary Waters Wilderness in Minneapolis, MN.

Director:
Cindy Shogan
10608 Woodsdale Drive
Silver Spring, MD 20901
301-593-2131

Ms. Shogan is the Executive Director of the Alaska Wilderness League. It appears that Ms. Shogan focuses mostly on Alaska issues. Has worked for the Defenders of Wildlife, Izaak Walton League, and the Sierra Club.

Director:
Johanna Wald
845 Ashbury St.
San Francisco, CA 94117
415-777-0220 or 415-564-0153

Ms. Wald is the Sr. Attorney, Land Program Director for the Natural Resources Council (Yale graduate). She has been with Natural Resources Council for 30+ years. Is a member of several other environmental groups.

Director:
Chip Ward
P.O. Box 1005
Grantsville, UT 84029
(no phone available)

Mr. Ward is the founder of the West Desert Healthy Environment Alliance. He is a former bookmobile driver and is currently development services manager for the Utah State Library Division. Mr. Ward has written several books related to environment issues.

Terry Tempest Williams
HC 64 # 3710
Moab, UT 84532
435-259-9295

Professor of English, University of Utah, nature writer and feminist. Has written several books. Is a member of the Ecology Hall of Fame.

EXHIBIT E
to
Asset Assignment Agreement

LIST OF FACILITIES

The following is a list of facilities at the Horse Canyon Mine to be donated to the College of Eastern Utah Foundation by UtahAmerican Energy, Inc.

1. Sedimentation Pond #2 (including associated drainage features)
2. Pump House
3. Office Building
4. Bath House
5. Warehouse
6. Shop
7. Chain Link Fence
8. Building Pads
9. Parking Lot
10. Powder Magazine
11. Cap Magazine
12. Water Tank
13. Portal Pad

EXHIBIT B
to
Asset Assignment Agreement

DESCRIPTION OF DONATED WATER RIGHTS

(1) Water User's Claim 91-183: Certificate of Appropriation of Water No. 4592, Application No. 20888, Water Users Claim 91-183, dated August 30, 1952, recorded in Book C of Water Rights at Page 259 in the office of the Emery County Recorder, United States Steel Company, appropriator, appropriating eighty thousandths second feet (.08 cfs) from Horse Canyon Creek, Emery County, Utah, for the period from January 1 to December 31, inclusive, for mining purposes, for diversion and use as set forth in the Deed.

(2) Water Right No. 91-5084, to appropriate 5.0 acre-feet of water from Redden Spring, located at a point South 2145 feet and West 330 feet from the NE Corner of Section 3, T16S, R14E, SLBM.

Provided, that Assignor reserves the right to use water from the above-described Water Rights for reclamation and mining purposes or water replacement uses at the Horse Canyon Mine and the Lila Canyon Mine, Emery County and Carbon County, Utah.

EXHIBIT A
to
Asset Assignment Agreement

College of Eastern Utah Foundation
Horse Canyon Project

Legal Description		UEI to Retain Ownership		Donate to College of Eastern Utah Foundation	
	Section	Description	Acres	Description	Acres
T.16S R.14E Emery County Fee Surface	3			Lots 1,3,7,8,11	176.13
	4	S2SW4	80	NW4SE4, SE4SE4	80
	5	SE4SE4	40		
	9	S2NW4, W2SE4	160	NW4NE4, SE4NE4, NE4SE4	120
	10	SE4	160		
	15	SE4NW4, N2NE4, SE4NE4	160		
T.15S R.14E Carbon County Fee Surface	33			S2SE4	80
	34			SW4SW4	40
T.16S R.14E Emery County Fee Simple	3			Lots 5, 6, 12, NW4SW4, S2SW4	240
	4			Lots 8, 9, NE4SE4, SW4SE4	160
	8	NE4NE4	40		
	9	N2NW4	80		
T.16S R.14E Emery County Fee Simple	15	S2NE4, ALSO, Beginning at the NE corner of the NW4SE4, and running thence W 1000 feet; thence SE'ly to a point 500 feet S of beginning; thence N 500 feet to beginning	91.25		
TOTAL			811.25		896.13

SUPPLEMENTAL MEETING
INFORMAL CONFERNCE
UtahAmerican Energy Inc.
Horse Canyon Mine / Lila Canyon
C/007/013
November 8, 2005

Name	Company	Telephone Number
Steve Rigby	BLM / FS	435 636 3604
Stephen Falk	BLM / Price	435 - 636 - 3605
Denise Dragoo	Snell & Gilmore representing Utah American Energy	801 - 257 - 1998
Jay Marshall	UEI	435 - 637 5032 ext 704
Ray Petersen	Emery County	435 381 5552
Jim Smith	DOGM	801 - ~~362-36~~ 538-5267
Jeff McKenzie	BLM	801 - 539 - 4038
Steve Bloch	SUWA	801 486 · 3161
Elliott Lips	U of U	(801) 581 - 8281
Steve Alder	AG / DOGM	801 538 - 5348
Mary Ann Wright	OGM	801 - 538 - 5306
Pameta Grubaugh-Littig	OGM	801 - 538 - 5268
D. Wayne Hedberg	OGM	801 - 538 - 5286
Jonathan Jemming	AG / DOGM	801 - 366 - 0554
Keli Beard	AG	801 - 538 - 7486
Susan White	OGM	538 - 5258
mark mesch	OGM	538-5349
Wayne Western	DOGM	801 - 538 - 5263
DANA DEAN	OGM	538 - 5320
Jerriann Ernstsen	OGM	~~538~~
Priscilla Burton	OGM	435 613 1146 x 207
Vickie Southwick	OGM	

Page 1

1 BEFORE THE DIVISION OF OIL, GAS AND MINING
2 DEPARTMENT OF NATURAL RESOURCES
3 STATE OF UTAH
4 IN THE MATTER OF THE
LILA CANYON, SUPPLEMENTAL CAUSE NO. C/007/013
5 HORSE CANYON MINE,
CARBON COUNTY, UTAH
6 ~~~~~~
7 INFORMAL CONFERENCE
8 ~~~~~~
TAKEN AT: Department of Natural Resources
9 1594 West North Temple
Salt Lake City, Utah 84114-5801
10
DATE: November 9, 2005
11
TIME: 9:03 a.m.
12
REPORTER: Nancy A. Fullmer, RMR
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Page 2

1 APPEARANCES
2 .
3 John R. Baza, P.E.
4 Department of Natural Resources
5 Division of Oil, Gas and Mining
6 1594 West North Temple, Suite 1210
7 Salt Lake City, Utah 84114-5801
8 .
9 Heather Shilton
10 Attorney General's Office
11 1594 West North Temple, Suite 300
12 Salt Lake City, Utah 84114
13 .
14 For Southern Utah Wilderness Alliance:
15 Stephen H. Bloch
16 Attorney at Law
17 1471 South 1100 East
18 Salt Lake City, Utah 84105
19 .
20 For Utah American Energy:
21 Denise A. Dragoo
22 SNELL & WILMER
23 15 West South Temple, Suite 1200
24 Salt Lake City, Utah 84101
25 .

Page 3

1 For the Division:
2 Steven F. Alder
3 Attorney General's Office
4 1594 West North Temple, Suite 300
5 Salt Lake City, Utah 84114
6 .
7 Also Present:
8 Elliot Lips, SUWA
9 Jay Marshall, Utah American Energy
10 Mary Ann Wright, Division of Oil, Gas and Mining
11 Pam Grubaugh-Littig, Division of Oil, Gas and
12 Mining
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Page 4

1 Informal Hearing
2 November 9, 2005
3 PROCEEDINGS
4 HEARING OFFICER BAZA: First of all, my
5 name is John Baza. I'm the director for the
6 Division of Oil, Gas and Mining. I'm also the
7 hearing officer for this matter at this time.
8 And we'll call the matter to order and then we'll
9 have some brief introductions here. This is the
10 supplemental hearing in the matter of the Lila
11 Canyon, Horse Canyon mine, Carbon County, Utah,
12 Cause No. C/007/013. It is November 8th at 9:00
13 a.m., and it is the time and place for the
14 supplemental hearing in this matter. I'm going to
15 ask everyone to just introduce themselves at this
16 time, and then I'll give a brief opening statement
17 before we start into the hearing matters. This
18 is Heather Shilton. She's legal counsel with the
19 Attorney General's office, and she's going to be
20 assisting me in this matter. We'll go ahead and
21 start from left to right here.
22 MS. DRAGOO: All right. Thank you
23 Director Baza. I'm with the law firm of Snell &
24 Wilmer, and I represent Utah American Energy.
25 MR. MARSHALL: I'm Jay Marshall. I'm

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Page 5

1 the project manager for Utah American Energy.
2 MR. BLOCH: Thank you. Steven Bloch.
3 I'm attorney with the Southern Utah Wilderness
4 Alliance.
5 MR. LIPS: I'm Elliot Lips. I'm an
6 adjunct associate professor at the University of
7 Utah.
8 MR. ALDER: Steve Alder, Attorney
9 General's office representing the Division.
10 MS. WRIGHT: Mary Ann Wright, associate
11 director of mining, Division of Oil, Gas and
12 Mining.
13 HEARING OFFICER BAZA: Okay. Let's
14 continue--since we're such a small crowd here--
15 just introduce all the attendees.
16 MR. RIGBY: My name is Steve Rigby. I
17 work for the BLM in Price as well as the forest
18 service in Price.
19 MR. FALK: Stephen Falk, Bureau of Land
20 Management, Price also.
21 MR. MIKENSIN: Jim Mikensin, state
22 office for BLM.
23 MR. PETERSEN: Ray Petersen, Emery
24 County Public Lands Commissioner.
25 MR. SMITH: Jim Smith. I work with the

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1 Division of Oil, Gas and Mining.
2 MS. DEAN: Dana Dean, Division of Oil,
3 Gas and Mining. I'm the co-team leader on this
4 project.
5 MS. ERNSTSEN: Jerriann Ernstsen,
6 Division of Oil, Gas and Mining.
7 MR. WESTERN: Wayne Western, Division
8 of Oil, Gas and Mining. I'm the co-lead on this
9 project.
10 MR. MESCH: Mark Mesch, Oil, Gas and
11 Mining.
12 MS. WHITE: Susan White, Oil, Gas and
13 Mining.
14 MS. BEARD: Keli Beard, Utah Attorney
15 General's Office.
16 MR. JEMMING: Jonathan Jemming with
17 AG's Office, representing the Division.
18 MR. HEDBERG: Wayne Hedberg, Division
19 of Oil, Gas and Mining. Coal permit supervisor.
20 MS. GRUBAUGH-LITTIG: Pam Grubaugh-
21 Littig, Oil, Gas and Mining.
22 HEARING OFFICER BAZA: Thank you very
23 much. We welcome all of you today, and I'll go
24 ahead and read a short opening statement and then
25 indicate how we'll proceed in this hearing.

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1 This hearing is a continuation of an
2 informal conference previously held on July 7th of
3 2004 regarding the Lila Canyon Extension, Utah
4 American Energy Inc., Horse Canyon Mine. Its
5 purpose is to raise issues for consideration by
6 the Division in making its decision whether to
7 permit the application under R645-300-123.100.
8 This is an opportunity for all parties
9 to gather information. It's not a chance for
10 objections or responses and replies. Arguments
11 are not permitted. I also want to indicate that
12 we have an order that was signed by the former
13 director and former hearing officer, Lowell
14 Braxton, that was dated July 30th of 2004, which
15 is the primary driver for this informal
16 conference. The hearing matter was left open for
17 the purpose of receiving additional information
18 and comment on that. And the driver for this
19 hearing today is a letter that was received from
20 the Southern Utah Wilderness Alliance dated
21 October 11th, which requested that the informal
22 conference be conducted. So for that reason what
23 I think we'll do today is we'll start out by
24 presentation from Southern Utah Wilderness
25 Alliance. Then we'll allow Utah American to

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1 respond. And then we'll allow the Division to
2 respond as well. And then Emery County will have
3 time at the end for a statement that they have.
4 I'm going to suggest in order to move this thing
5 along that each party should take no longer than
6 30 minutes to do their statements and comments and
7 any information they want to preside.
8 Now, the hearing today is not
9 necessarily going to close as of today. As we
10 hear information and as we hear comments and
11 representations by the various party, I'll have to
12 make the decision as to whether keep this matter
13 open and continue it to another date or whether
14 information has been adequately supplied, then we
15 may move ahead for the next phase of Division's
16 responsibilities.
17 So with that being said, Mr. Bloch,
18 I'll turn the time over to you for your
19 statement.
20 MR. BLOCH: Okay. Thank you, Mr. Baza.
21 Just as some housekeeping: as we talked about last
22 Friday, I have not had a chance to review the
23 letter from UEI this morning, but as we talked
24 about on a conference call last Friday, last
25 Thursday afternoon SUWA learned that there was

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1 some additional records we, until that time, were
2 not aware of, had not had a chance to review.
3 Those included or were not limited to technical
4 reviews that were prepared by the staff in August
5 of '05, so we appreciate your commitment to allow
6 us some additional time to review those documents
7 and records and to provide additional comment and
8 if necessary to request an additional informal
9 conference to discuss some of the matters
10 contained in those documents.
11 This morning you'll be hearing from
12 myself and also from Mr. Lips, first from Mr.
13 Lips. As you know--as a preliminary statement, as
14 you know, many of the concerns that SUWA has
15 raised in its October 2005 letter come from the
16 Board's ruling in 2001 where the Board identified
17 a number of problems that have still not been
18 addressed. And that's why I think when we hear
19 from UEI or from the Division that these are the
20 same arguments that are being trotted out by SUWA.
21 In short, the reason for that is those are issues
22 that still have not been resolved. I think
23 there's been some additional information, and
24 we've tried in response then to amplify what our
25 concerns are. I think you'll hear about that this

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1 morning. You'll note that I've provided you and
2 staff and Division and UEI with a more lengthy
3 letter that has a few exhibits to it. We'll be
4 walking through the letter today. I invite you to
5 follow along with that. I, I suppose the core of
6 some of our concerns is the continued lack of
7 baseline information. This is information that is
8 plainly required by the rules and is still
9 missing. It's not been provided by UEI. It's
10 not been supplemented by the Division. That
11 failing to provide sufficient baseline information
12 affects various aspects of the permit. And in
13 short it ensures that the permit is facially
14 deficient. In addition I just want to point out
15 a few other issues that we've raised. I'll be
16 talking about them at length a little bit later.
17 First, as we've identified there's an obligation
18 by the Division to comply with the requirements of
19 the National Historic Preservation Act. That is a
20 fairly thorough and detailed process. It's under
21 section 106 of the implementing regulations of
22 that act. So far the Division has done nothing to
23 comply with the requirements of that act. There
24 are several steps, several other parties that have
25 to be involved in that. Based on my review of

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1 the record, there has been essentially no attempt
2 by the Division to meet those requirements.
3 And, lastly--and I know that we have
4 gone over this in the past--but the decision by
5 the Division to process the permit as a
6 significant revision instead of a new permit runs
7 contrary to the express instructions of the board.
8 It's more than superficial. It's more than a
9 technicality. The board was quite clear in its
10 ruling in instructing that the Division should
11 proceed as if this were a new permit. And,
12 again, that's something that simply has not
13 happened. I'm going to turn over some of our
14 time now to Mr. Lips who's going to walk through
15 some of the issues starting with point No. 1, and
16 then I'll follow up at the end. Thank you.
17 MR. LIPS: Thank you, Mr. Baza, for the
18 time. And I'll try not to read this because
19 everybody has a copy of this letter. We'll just
20 try to highlight some of the major points. With
21 regard to acid- and toxic-forming materials, No.
22 1, the rules require UEI to collect samples from
23 borings or drill holes and analyze them for acid-
24 or toxic-forming materials. Specifically, they're
25 to conduct analysis in the strata immediately

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1 above and below the coal seam to be mined. The
2 rules allow the applicant to request a waiver and
3 Division, if they find that there is information
4 having equal value or effect, can waive parts of
5 that rule. UEI hasn't provided the data analysis
6 required under the rule, and it had instead
7 requested an exemption. They requested the waiver
8 and their reasons are that they claim there's been
9 no problem with acid- or toxic-forming materials
10 at the Sunnyside mine. In fact there has been
11 acid generation at the Sunnyside refuse pile. And
12 there was water, acidic water, that seeped from
13 the base of the refuse pile. UEI's provided some
14 analysis from bore holes located outside of the
15 permit area. If you look at those bore holes in
16 the strata above the coal seam all the way down
17 to Mancos shale. There is evidence of having
18 total sulfur in 40 percent of the samples and
19 S-24 as high as 4.61 percent. Similarly, in
20 S-25, 46 percent of the samples have sulfur
21 greater than one percent. So there is an acid-
22 generating potential.
23 UEI also claims that the material
24 brought from the mine will be tested and treated
25 as though it was acid or toxic forming, but that

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1 doesn't satisfy the rule which requires
2 information of equal value or effect as testing
3 and collecting samples and testing bore holes. So
4 essentially UEI hasn't provided the analysis or
5 the information having equal value or effect. And
6 all indications are that the material removed from
7 the mine will be acid generating. It was at
8 Sunnyside. If you look at the chemical analysis
9 and drill hole logs from off the permit area,
10 they indicate high sulfur content. There's even
11 some logs from holes drilled within the permit
12 area that show a presence of pyrite. UEI
13 proposes to use this material which is underground
14 development waste as structural fill that will
15 remain at the surface and not be reclaimed until
16 the end of the mine life.
17 Second point is regarding subsurface
18 water resource maps. And the rules require that
19 UEI submit cross sections and maps showing the
20 location extent of subsurface water including the
21 aerial vertical distribution of aquifers and
22 portrayal of seasonal difference in head. UEI has
23 previously identified both what it calls a
24 regional aquifer and several first aquifers. And
25 they submit figures 7.2A and, 7-2A and 7-2B, but

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1 neither of these comply with the rule. 7-2A
2 doesn't show water levels for the entire permit
3 area. It was based on only three--information
4 from three wells that covers 200 acres which is
5 less than four percent of the part B permit area.
6 It shows the piezometric surface as a uniformly
7 dipping planar surface, which is unrealistic. And
8 it doesn't portray the aerial vertical
9 distribution or seasonal differences of head in
10 the first aquifers. With regard to 7-2B, it's
11 not a cross section. It depicts water level
12 changes through time not through the permit area.
13 And also it doesn't include the first aquifer.
14 The third point is baseline information
15 and surface water resources. The rules require
16 that UEI submit information on surface water
17 quality and quantity sufficient to demonstrate
18 seasonal variation. There's some specific things
19 that they're required to submit for water quality
20 and also information on seasonal flow rates for
21 water quantity descriptions. There's several
22 ephemeral washes. There are six intermittent
23 washes within the permit area. UEI and Division
24 know that these drainages flow intermittently in
25 response to snow melt and/or run off. In fact

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1 the Division personnel documented evidence of flow
2 in these drainages. In spite of the rule
3 required baseline data--and everybody knows that
4 there's surface water flow--UEI has never
5 submitted any data on any surface water quantity
6 or quality for any of the drains in the permit
7 area. There's some sporadic observations of no
8 flow, but those don't provide the data required
9 under the rule. You guys never even attempted to
10 collect these data even though through remote
11 methods are available for obtaining both water
12 quality and quantity. They're inexpensive.
13 They're well within the state of the art.
14 They're standard practice by the U.S. Geological
15 Survey. They're even recommended--OSM guidelines
16 for collecting baseline surface water data in arid
17 climates. Divisions have used these in permitting
18 of other coal mines.
19 With regard to baseline information and
20 groundwater quantity, the rules require that UEI
21 submit data on seasonal quantity of groundwater.
22 And that includes each water-bearing strata above
23 potentially impact strata and below the coal seam.
24 Again, UEI has failed to submit the data required
25 under this rule. With regard to the regional

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1 aquifer, there has only been sporadic and
2 insufficient submission of baseline data. It's
3 not sufficient to establish seasonal baseline from
4 IPA 1, 2, and 3 or from L16G and L17G, and
5 reference to the table that's attached is Exhibit
6 1 and you can see the dates that--where samples
7 were collected and submitted. UEI provides no
8 data on the rates of discharge, groundwater, or on
9 hydraulic conductivity. They never even
10 identified the recharge or discharge areas. The
11 PAP provides in--conflicting information, in some
12 places even contradicts itself with regard to the
13 effect of lithology, regional structure, or faults
14 on the movement discharge, depth of water in the
15 regional aquifer.
16 With regard to the first aquifer,
17 again, UEI's sporadic submissions are insufficient
18 to establish baseline data. I again refer you to
19 the table.
20 Point No. 5, baseline information on
21 groundwater quality, the rules require UEI to
22 submit data on seasonal quality of groundwater.
23 There's some specific numbers that need to be
24 tested. And, again, UEI has failed to submit the
25 data required under this rule. With regard to

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1 regional aquifer, UEI has never collected or even
2 attempt to collect any water samples from the IPA
3 wells.
4 It has some data for Red Springs.
5 That's in an area of Horse Canyon Mine, and it
6 doesn't represent premining baseline conditions.
7 It's not even proposed for monitoring, and there
8 are no seasonal baseline data.
9 With regard to L16G and L17G, UEI has
10 provided some information, but it's not clear on
11 the information they've provided whether or not
12 these springs are connected to the regional
13 aquifer and the effect if any of the central
14 crowded faults. Again, I refer you to the table
15 that documents the dates that--where samples were
16 collected.
17 With regard to the first aquifer, UEI's
18 submission is insufficient to establish seasonal
19 baseline data for the springs labeled L6G through
20 L12G. Again, I refer you to the table.
21 Point No. 6 is--has to do with coal
22 mine waste, which is defined under the rules as
23 coal processing waste and underground development
24 waste. And there's some specific things that
25 apply to coal mine waste. And one of which is

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1 that it cannot be--placement of coal mine waste by
2 end or side dumping as prohibited. UEI is
3 proposing to dump whole line waste. This is
4 underground development waste. At the surface
5 they're going to use it as structural fill upon
6 which facilities will be built and the handling of
7 that material in that manner is a violation of
8 the rules. In addition it's going it be left at
9 the surface which is a refuse pile exposed
10 throughout the life of the mine.
11 With regard to groundwater monitoring
12 plant, point No. 7, the rules require that the
13 permit application include groundwater monitoring
14 plant has to be based on analysis of baseline
15 hydrologic, geologic, and other information. As
16 discussed above, because of the lack of baseline
17 data, neither UEI, nor the Division can determine
18 what might impact and therefore there can be no
19 effective monitoring.
20 Specifically with regard to the
21 regional aquifer, UEI proposes only to monitor
22 water depth--excuse me, monitor water depth not
23 quality from the IPA wells. In addition, those
24 wells are going to be destroyed during mining.
25 UEI proposes to monitor groundwater quantity and

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1 quality from only two sides, L16G, L17G. And,
2 again, these springs may not even be connected to
3 the regional aquifer. They're not within the
4 permit area. They're only 400 feet apart. And
5 they're incomplete baseline data.
6 With regard to the first aquifer, UEI
7 proposes to monitor the groundwater from only five
8 seeps and springs. And those are listed here.
9 And while that's inadequate at its face, it's even
10 worse considering that they're incomplete baseline
11 data for these monitoring sites. L8G and L9G are
12 located outside the permit area. And L11G is the
13 spring above the Horse Canyon Mine, an area that's
14 already been impacted by mining, and there are no
15 premining baseline data. So if you look at it in
16 total, there's only two proposed ground water
17 monitoring sites in the part B permit area, and
18 only partial baseline data exists for these sites.
19 With regard to surface water monitoring
20 plant, according to the rules, the applicant again
21 needs to submit a monitoring plant based on the
22 analysis of the baseline data. And, again, where
23 there are no baseline data, there could be no
24 determination of impacts and no effective
25 monitoring. As pointed out there are no baseline

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1 data either water quality or water quantity for
2 any of the surface below us in the part B area.
3 Thus there will be no basis for comparison during
4 monitoring.
5 Point No. 9 is regarding the probable
6 hydrologic consequences or PHC. The rules require
7 that PHC determination will be based on baseline
8 hydrologic, geologic, or other information.
9 Again, as discussed above there are no baseline
10 data or at least complete baseline data upon which
11 the PHC can make the required findings.
12 Specifically there can be no determination on
13 whether there will be adverse effects to the
14 hydrologic balance whether acid- or toxic-forming
15 materials are present as a result of contamination
16 of surface and groundwater. There can be no
17 determination or findings on what the impacts of
18 the post-coal mining and reclamation operation
19 will have on sediment yield from the disturbed
20 area on the acidity, total suspender, or dissolved
21 solids or other water quality parameters, what the
22 impacts have on flooding or stream flow alteration
23 or on groundwater and surface water availability.
24 Point No. 10 has to do with water
25 consumption. The PAP contains contradictory and

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1 unsupported data on the amounts of water consumed
2 by suppression. It also contains an error in
3 calculating the moisture loss. Appendix 7-3
4 states that the rate of water to be consumed from
5 depth suppression and evaporation is estimated to
6 be 15 million gallons per year. Subtract out the
7 portion of that that's due to evaporation, which
8 is listed as 1,183,600 gallons per year, the
9 resulting amount that will be consumed due to
10 depth suppression is 13,816,400. And it's not
11 3,650,000 gallons per year as reported in table
12 two.
13 In addition the coal moisture loss in
14 table two is calculated based on mining rate of
15 four million tons per year, but the PAP states
16 mining can peak at 4-1/2 million tons per year,
17 so when you use the correct amounts for depth
18 suppression and coal moisture loss, the amount of
19 water consumed will be approximately 112-acre peak
20 per year, not the 74-acre peak per year calculated
21 by UEI, which is in excess of the amount of water
22 consumed that's been identified by the U.S. Fish
23 and Wildlife Service that requires mitigation. UEI
24 hasn't demonstrated that this water consumption
25 will not jeopardize the continued existence and/or

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1 adversely affect--adversely modify the critical
2 habit of the endangered fish species listed here.
3 In addition UEI proposes that this processed water
4 will be hauled from the Price River. However,
5 nowhere in the PAP is the effects of removing
6 112-acre feet per year from the Price River
7 analyzed. There's no baseline data on the water
8 quality and quantity above and below the point of
9 diversion; therefore, it will be impossible to
10 determine impacts from this withdrawal. In
11 addition there's no baseline data on the analysis
12 of potential impacts to vegetation and/or wildlife
13 from this withdrawal of this water.
14 Point No. 11 is regarding cumulative
15 impact area. The information provided by UEI
16 isn't sufficient to allow the Division to
17 establish a hydrologically reasonable cumulative
18 impact area boundary. A couple of specifics: the
19 recharge and discharge areas of the aquifers have
20 not been identified. Without this information the
21 Division can't establish CIA boundary. The
22 effects of the faults on the currents, movement,
23 and discharge of water in the regional aquifer is
24 not addressed. There's no explanation for the
25 occurrence of groundwater in the Mancos shale. And

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1 lastly the CIA must include the Price River
2 because UEI intends to divert up to 112-acre feet
3 per year and also because it's a potential
4 discharge area for aquifers.
5 Point No. 12 has to do with the
6 operation of the plant. The rules require the
7 permit to include a plan specific to the local
8 hydrologic conditions. And it states that steps
9 will be taken during coal mining all the way
10 through bond relates to minimize disturbance to
11 the hydrologic balance within the permit and
12 adjacent areas. UEI's--the plan submitted by UEI
13 failed to minimize disturbance to the hydrologic
14 balance essentially for two reasons. One is the
15 subsidence impacts. UEI claims that there will be
16 no impacts to surface or groundwater resources
17 based on the fact that although there was
18 subsidence at the Horse Canyon Mine, there were no
19 impacts. I--it is impossible to demonstrate this
20 because there are no premining hydrologic baseline
21 data to compare to existing water resources. UEI
22 does acknowledge that subsidence occurred at Horse
23 Canyon and therefore it's only logical to assume
24 it's going to occur at Lila Canyon Mine. UEI
25 bases their claim that no impacts on the surface

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1 streams from subsidence because of the overburn in
2 thickness. However, parts of Little Shark Wash
3 over in thickness of 500 feet in several regions
4 of other streams in the permit area have
5 overburned thickness of approximately a thousand
6 feet. Just looking at the literature provides
7 documentation that under similar geologic
8 conditions and mining methods, ground disturbance
9 related to subsidence, i.e., subsidence fractures,
10 has occurred at coal mines of overburn in
11 thickness with as much as 1500 feet. I won't
12 read all of this but the Deer Creek Mine, the
13 U.S. Bureau of Mines reported a maximum of 2-1/2
14 feet of subsidence in a depth of 1500 feet. The
15 reference is provided there to the information
16 circular.
17 At the Cyprus Plateau Mine, the U.S.
18 Geological Survey reports land surface subsided
19 and moved several feet horizontally. The
20 perennial stream and the tributary stream from the
21 mine area were diverted into the ground by surface
22 fractures where the over burden thickness is about
23 300 to 500 feet. The reference to the U.S.
24 Geological Survey is in there, and I just point
25 out that that was done in cooperation with the

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1 Utah Division of Oil, Gas, and Mining.
2 At the Geneva Mine, the U.S. Geological
3 Survey, the Sunnyside Mining District, reports
4 large tension cracks. There's some information
5 given in here on the dimensions, as much as three
6 feet wide where the over burdened thickness was
7 900 feet and they note that these cracks divert
8 all surface to ground water flow in this area to
9 lower strata or to the mine workings. Again,
10 referencing a USGS professional paper.
11 So based on the evidence of subsidence
12 at the Horse Canyon Mine, well documented evidence
13 at nearby mines with similar geologic strata, it's
14 obvious that subsidence will occur at the Lila
15 Canyon Mine. And these subsidence fractures will
16 impact several ephemeral intermittent streams,
17 seeps, and springs. And as stated above, there
18 is no baseline data for any of the surface
19 streams within the permit area, and there's only
20 incomplete baseline data on the groundwater
21 resources. So it would be impossible to determine
22 the impacts subsidence will have to the hydrologic
23 balance or whether or not there will be material
24 damage outside the permit area.
25 Second point has to do with stream

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1 buffer zones. The, the rules state that no land
2 within a hundred feet of an intermittent stream
3 will be disturbed by coal mining or reclamation
4 operations unless the Division specifically
5 authorizes it, which they can only do if coal
6 mining and reclamation operations will not
7 adversely affect the water quantity or quality or
8 other environmental resources of the stream, if
9 they find that won't happen. Again, the PAP
10 documents that mining will take place under five
11 intermittent streams listed here. The PAP further
12 documents that subsidence will likely disturb the
13 land within these stream channels. Each of these
14 streams, each of these five streams, drains the
15 watershed of at least one square mile and
16 therefore they are by definition intermittent
17 streams. And although they are defined as
18 intermittent according to the rules, UEI
19 occasionally refers to them as ephemeral atony,
20 which is a term that's not defined in the rules.
21 So UEI's mining operation will disturb land within
22 a hundred feet of five intermittent streams.
23 Because there's no baseline data on the water
24 quality or water quantity in these streams the
25 Division cannot determine whether or not the

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1 mining operation will adversely affect the water
2 quantity or quality or other environmental
3 resources, and without these data, the Division
4 cannot support a decision to authorize mining
5 within these stream buffer zones.
6 Point No. 13 has to do with renewable
7 resource lands which means lands--renewable
8 resource lands means aquifers and areas for the
9 recharge of aquifers and other groundwaters. And
10 that's defined in the rules. The rules require
11 that a map of the permit and adjacent areas
12 showing the location of renewable resource lands
13 that subsidence may materially damage. The rules
14 also require a narrative indicating whether
15 subsidence if it occurred could cause damage or
16 diminish the value or reasonably perceivable use
17 of the renewable resource lands. UEI has not
18 submitted a map that delineates the renewable
19 resource lands within the permitted adjacent
20 areas. They claim to have conducted a survey of
21 the renewable resource lands; however, again,
22 there are no baseline data on any surface water
23 flows in the permit and adjacent area. Without
24 any data on surface water flows, UEI can't
25 evaluate a relationship in surface water flow and

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1 recharge to the renewable resource lands. UEI has
2 also failed to obtaine baseline data of
3 underground waters within the permitted adjacent
4 area. Again, therefore, they are unable to
5 document the area recharged, direction of
6 movement, and/or recharge area for any underground
7 waters, which are the renewable resource lands.
8 UEI acknowledges that subsidence will likely cause
9 material damage to both the underground waters and
10 to surfaces below the permit area, but they failed
11 to address how the renewable resource lands in the
12 permit and adjacent areas will be impacted by the
13 use of subsidence-related implants.
14 HEARING OFFICER BAZA: I have a
15 question.
16 MR. BLOCH: Yes.
17 HEARING OFFICER BAZA: And excuse me if
18 I--what's your name, Mr. Lips?
19 MR. LIPS: Lips, L-I-P-S.
20 HEARING OFFICER BAZA: Okay. You were
21 reading quite a bit from the letter that Mr.
22 Bloch signed and submitted today.
23 MR. LIPS: That's correct.
24 HEARING OFFICER BAZA: Do I assume that
25 you're a subject matter expert or you prepared

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1 this letter or provided these words?
2 MR. LIPS: I'm not familiar with the
3 term subject matter expert. I think I would let
4 the attorneys maybe explain that to me, but I
5 prepared points 1 through 13.
6 HEARING OFFICER BAZA: Okay. And I'm
7 just trying to ascertain how much of this was
8 your originated version.
9 MR. LIPS: The original text from 1 to
10 13 is mine.
11 HEARING OFFICER BAZA: Okay.
12 MR. BLOCH: If you'll note in footnote
13 1 how we've incorporated some of our letters and
14 other exhibits from previous informal conferences,
15 I believe the 2002 informal conference we included
16 an expert report and a CV of Mr. Lips.
17 HEARING OFFICER BAZA: Okay. All
18 right. Thank you.
19 MR. BLOCH: Yes. I'm just going to
20 pick up and finish up here starting with point 14
21 about historic and archeological resource
22 information. There are two separate requirements
23 in the rules pertaining to these types of
24 resources. And I should start off by noting that
25 the Division does not have an archeologist on

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1 staff. The first is Rule 645-300-113 which states
2 that issuance of permits--essentially the Division
3 has to comply with the terms of the National
4 Historic Preservation Act. That's a fairly
5 complicated and entailed process. Section 106 is
6 essentially the touchstone of that statute. It
7 sets out the process for identifying, for example,
8 the area of potential effect and moves on to
9 things like identifying the consulting parties, et
10 cetera. It's all set forth in section 106.
11 Consultation as a part of that process includes--
12 it was not limited to--concurrence with the
13 state's historic preservation office. As I
14 mentioned, based on my review of the records and
15 my conversations with some staff from the
16 Division, Section 106 has not been complied with.
17 There is a related provision in rule--
18 MS. DRAGOO: Mr. Bloch, can I ask you a
19 question? Who did you talk to at the Division
20 about that?
21 MR. BLOCH: Are we having a back and
22 forth?
23 MS. DRAGOO: It's a question. You
24 mentioned you talked to the Division.
25 HEARING OFFICER BAZA: Go ahead and

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1 answer the question.
2 MR. BLOCH: I was speaking to Steve
3 Alder, and I was also speaking to Dana Dean and
4 to Jerriann Ernstsen.
5 MS. DRAGOO: Thank you.
6 HEARING OFFICER BAZA: Thank you.
7 MR. BLOCH: These are fairly nuance
8 terms as we identify in the TA. There's a point
9 where there's a reference made to no effect and
10 then no--not likely to affect. As I said, these
11 are very nuanced terms. In the TA, it's fairly
12 clear there's not a very solid understanding of
13 what the terminology means. There has never been
14 any site specific--or it's called a class three
15 survey of the project area. In fact, there's
16 never been a class one or a literature review of
17 the project area. These are significant
18 shortcomings.
19 Second, 15, fish and wildlife resource
20 information, in several years this information--in
21 several instances, this information is outdated by
22 several years, though there has been an attempt to
23 keep up insofar as rafter surveys go, there's
24 other information that has lingered in the permit
25 since the late '90s to early 2000. There's an

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1 example on our first point here in the latest
2 iteration of the Price field office resource
3 management plan how the project area may be
4 located in crucial value, yearlong habitat for
5 prong horn. That's not shown in the permit. The
6 Price field office, as you may know, is undergoing
7 a land use plan provision contained significant
8 information that has not been appropriated here to
9 the department.
10 Sixteen about the affected area, the
11 Coal Hall Road, EC126, fits within the definition
12 of surface coal mining operations and therefore
13 must be included within the affected area to be
14 permitted, and then secondly UEI has proposed the
15 construction of an overland conveyor or rail spur
16 to be located near and adjacent to the extension
17 to the Lila Canyon Mine, and UEI stated its
18 intention in writing to begin construction of
19 these facilities in April of '06. In September
20 of '05, in fact, they filed several applications
21 for rights-of-way with the BLM in Price. It's
22 simply inappropriate for UEI for Division to
23 segment out the process and to allow these
24 additional facilities that plainly fall within the
25 definition of surface coal mining operations to be

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1 permitted at a later time.
2 Seventeen, air quality, the permit that
3 UEI has from the Division of Air Quality for the
4 Lila Canyon Mine is for 1.5 million tons of coal
5 per year. It's not the two million tons been
6 sought by UEI nor 4.5 million tons that UEI
7 stated on several occasions it intends to process.
8 SUWA is following up with the Division of Air
9 Quality to look into the validity of the permit
10 seeing how it's seven years old at this point.
11 Point 18 is about the Lila Canyon Mine,
12 the need for a new permit. As I mentioned, it was
13 quite clear from the Board's ruling in 2001 in
14 their instructions that the Division was to
15 process the Lila Canyon Coal Mine as a new permit
16 not as a significant revision. The Division has
17 ignored those instructions. It's more than
18 semantics, and in fact as we learned a few weeks
19 ago there, there truly is no more Horse Canyon
20 Mine as I'm sure you know UEI has handed over the
21 keys of the mine to the College of Eastern Utah.
22 It's not a significant revision of or extension of
23 any existing mine.
24 The final point I have on page .12 of
25 our comments--and I've included a copy of this as

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1 Exhibit 3--in a speech on October 20th at the
2 College of Eastern Utah, Robert Murray, who's the
3 owner of Utah American and its parent company,
4 spoke about the handing over the keys of Horse
5 Canyon Mine for a moment and then spent several
6 minutes focusing on Southern Utah Wilderness
7 Alliance and railing against SUWA, its members,
8 its staff, its board, and in fact as you'll see
9 here he handed out to participants at the luncheon
10 or attendees at the luncheon a copy of the home
11 address and home phone number of all the SUWA
12 Board members he could find, and then he spoke in
13 a highly inflammatory, highly misleading language
14 and at one point called for every government
15 official, politician, and leader in Utah to
16 challenge the extreme of SUWA and their supporters
17 in every manner possible. And I wanted to call
18 to your attention--I know several of the Division
19 staff were at this--these highly inappropriate,
20 highly inflammatory comments--that we have serious
21 concerns--may have placed SUWA board members at
22 risk as a result of handing out home phone
23 numbers, risk of harassment, or even of injury.
24 In sum, it's our position that the Division should
25 not feel compelled at this time to issue a final

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1 permit to UEI when the permit is neither
2 administratively complete nor technically
3 adequate. UEI has dragged its feet for years in
4 this process. In some instances, they've waited
5 between 8 to 13 months to respond in writing to
6 the Division. They've asked the Division to carry
7 much of the water that should have been, should
8 have been carried by UEI. And the result is a
9 permit that simply fails on its face. So we
10 would urge you and the Division not to issue the
11 permit. SUWA is happy to continue a dialogue. I
12 notice that I have some questions from Mr. Alder
13 in writing. We will be happy to look over and we
14 look forward to continuing our dialogue with the
15 Division staff. Thank you.
16 HEARING OFFICER BAZA: Let me ask you a
17 question, Mr. Bloch. As of our conference call
18 on Friday, you had indicated there was some
19 information that had not been made available to
20 you or you did not have access to.
21 MR. BLOCH: Yes.
22 HEARING OFFICER BAZA: Do you now have
23 access to that information?
24 MR. BLOCH: Yes, yes, I do.
25 HEARING OFFICER BAZA: And I assume

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1 you're evaluating it at this point.
2 MR. BLOCH: Yes. As I indicated, that
3 included but was not limited to the technical
4 reviews of August '05. There were additional
5 documents in '05 and in fact '04 that were not
6 available in the public information center.
7 HEARING OFFICER BAZA: Could the
8 Division expect some additional comments from
9 you--
10 MR. BLOCH: Yes.
11 HEARING OFFICER BAZA: --as you review
12 that?
13 MR. BLOCH: I think so. I think that's
14 our plan, but we don't have an idea about--
15 HEARING OFFICER BAZA: Time frames?
16 MR. BLOCH: --about time frames since
17 we were preparing for this meeting.
18 HEARING OFFICER BAZA: All right.
19 Well, thank you for your comments.
20 MR. BLOCH: Thank you.
21 HEARING OFFICER BAZA: Denise, we'll
22 turn the time over to you from a statement from
23 UEI.
24 MS. DRAGOO: Thank you, Director Baza.
25 First, to the procedural points, you have a letter

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1 in front of you from our law firm. As you
2 recall, we had a conference call on Friday,
3 November 4th, and at that time Southern Utah
4 Wilderness Alliance had requested a 30-day
5 extension. We feel that's an unnecessary period
6 of time to keep the informal conference record
7 open. And we would also oppose any additional
8 meetings. There's a couple of reasons for this.
9 First of all, the Division Director's Braxton's
10 July 30 order--we're calling it the Braxton
11 order--only refers to having a meeting on the
12 actual technical adequacy document itself. It
13 doesn't refer to any other documents and so we
14 would like to just keep focused on that TA.
15 Second, we feel that 30 days is
16 excessively lengthy. But at the procedures that
17 Director Braxton ordered were a bit unusual,
18 generally, an informal conference, as you know,
19 arises at the time that you have a permit
20 submitted and there's a determination of
21 administrative completeness. But Director Braxton
22 went beyond a simple administrative completeness
23 determination to expand the record to a technical
24 adequacy determination. That technical adequacy
25 review is usually something that happens before

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1 the board. So as a result of the order, we've
2 added already of the 30-day period of time that
3 it took to set this hearing plus the 15 days that
4 each party had to review the technical adequacies
5 it's already added 45 days to an already tight
6 permitting schedule. And so we feel that
7 additional time is not necessary. However, as we
8 indicated in our conference on Friday, in the
9 event that the Division determines that there is
10 the need for an additional period of time to
11 allow SUWA to review the record, which was
12 publicly available as of Friday, we would like to
13 limit that time period to five days. We think
14 that's more than adequate to review the August
15 2005 technical review file. And the procedure
16 that we propose is allow them five days to review
17 the--that file, submit a letter to you as the
18 hearing officer, and at the same time in that
19 five-day period allow us an opportunity to respond
20 to that, that letter. And then at the time that
21 you receive Utah Americans' letter, then the
22 informal conference record will close. So it
23 would shorten that period of time from 30 days to
24 ten days in the event you determine that that's
25 necessary.

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1 In terms of the substantive response, I
2 think I'll have Jay Marshall, who's the permitting
3 director for Utah American Energy Company, to
4 respond to SUWA. We've also got a letter of
5 responses in front of you and in front of SUWA,
6 so if you want to follow along, I think Jay will
7 follow that.
8 We also just wanted to mention that
9 there was reference to Elliot Lips' expert report
10 and credentials. Initially during the board
11 hearings that expert report was stricken from the
12 record. And at the time I think that was because
13 before the board the administrative record had
14 simply focused on--or the hearings had focused on
15 the administrative record which it closed at the
16 time. So we just wanted to point out that that
17 expert report was not admitted before the board.
18 Maybe a different procedural issue at this time.
19 So why don't you go ahead.
20 MR. MARSHALL: Okay. Thank you.
21 Seeing right here it's d,j... vu. I've been here
22 before saying the same comments, the same concerns
23 that's been addressed a number of times. I don't
24 think I'm going to bore people going through each
25 and every counterpoint. I don't think we really

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1 have time to do it right now. The information is
2 in the permit. Acid and toxic, there is equal
3 data in there. There is data of the seam above
4 and below the mine. There is equivalent data.
5 Historically coal coming out of the Sunnyside seam
6 has not been acid/toxic forming. If you treat it
7 in a certain way, you can probably make it that
8 way is what Kaiser did. They washed the coal.
9 They increased the percent of pyrite. They
10 submersed it in water, and, yes, you got a acid
11 discharge from the bottom of it. But that acid
12 discharge did not leave the permit area. There was
13 no violations written. It was immediately
14 neutralized from the ground around it and from the
15 Mancos. If there is such a big acid and toxic
16 concern, there are no violations written for it.
17 There are no reports that I could find on it.
18 Even if that material was acid and toxic, we have
19 committed testing and to treat it as if it is
20 acid and toxic. So it doesn't matter if it is or
21 not. We're going to treat it as if it is. We're
22 going to cover a four-foot cover. We requested a
23 waiver and was granted a waiver by the Division.
24 The Division agreed that there is comparable
25 material or comparable information of equal value.

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1 And that's enough on acid toxic.
2 Water, water monitoring, SUWA has been
3 very creative in doing their charge. It doesn't
4 follow the guidelines. It doesn't follow
5 regulations in their time frames. Piezometers
6 have been measured for depth starting the third
7 quarter of '94. And up until the first quarter
8 of '05 we were able to get a sample. There were
9 a couple of those quarters that were missed
10 because of no access, but total numbers by sample
11 we had two in the first quarter, five in the
12 second, six in the third, and four in the fourth.
13 SUWA contends that UEI has not
14 monitored any of the surface water, any of the
15 ephemeral acting streams. We have monitored them
16 on a monthly basis since March of '01 and up
17 until April of '04, which is more than three plus
18 years of monthly monitoring of those ephemeral
19 acting drainages.
20 Ground water, the guidelines--and,
21 again, they are guidelines--recommend that you
22 have one year prior to submittal of permit and
23 two years prior to the approval. We've been
24 monitoring on a quarterly basis since first
25 quarter of '03. And we got a sample on the first

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1 quarter of '05. Number of samples by quarter have
2 been two quarter one, two quarter two, three
3 quarter three, and three quarter four for all the
4 groundwater.
5 MPS wasn't mentioned so I won't discuss
6 it.
7 As far as being--showing a seasonal
8 variation, 7-2A shows a seasonal variation. It's
9 one line right on top of another line because
10 there is negligible variation by season. Aerial--
11 the regulations say you have aerial and vertical
12 demonstration, you know, a lot of the maps show
13 the aerial. If you look at any contour map with
14 groundwater on it, it has an elevation, it's
15 vertical. Let's move on from water quality and
16 monitoring. I don't want to bore people and take
17 up all their time, but the data is in the permit.
18 You just need to look for it. It's there.
19 Air quality, yes, we are permitted on
20 air quality for a million tons a year. It's not
21 uncommon for a company to start at starting
22 tronages and then modify their permit as the mine
23 develops and that is our plan. If we were to go
24 in today and get a 4-1/2 million ton air quality
25 permit, we would pay for 4-1/2 million tons of

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1 emissions even if we don't admit it. And so it's
2 not good business sense to pay for emissions that
3 you don't need to pay for. It's, you know--we're
4 allowed by regulation to modify air quality permit
5 as needed and that's what we plan on doing. The
6 air quality permit as is is adequate for opening
7 the mine and probably for the first two to three
8 years.
9 The proposed rail load out is just
10 that. It's proposed. We don't know who. We
11 don't know what or we don't know when, even if
12 it's going to happen. It was just thoughts
13 internally that maybe it might be more beneficial
14 to reduce the truck traffic to put a rail spur in
15 closer to Lila Canyon Mine. And, again, we sent
16 a letter to the Division saying it was proposed
17 and we were asking the Division what if anything
18 needed to be permitted. The Division responded,
19 You need to submit a formal proposal. We're not
20 ready to submit a formal proposal because we don't
21 know what's going to happen if anything. Yes, we
22 started baseline data. We, we are required by
23 the Division to gather T&E species the year prior
24 to disturbance. While we were doing that, we
25 identified a quarter and collected teeny species

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1 on the proposed conveyor and railroad alignment.
2 Now we have submitted the Division--or to the
3 Bureau of Land Management right-of-way
4 application, but those right-of-way application
5 would not be issued in Utah American's name if
6 they are ever issued. We don't know who's going
7 to do it, but whoever is going to do it will need
8 to do the same right-of-way application, the same
9 baseline data. We were just getting a leg up on
10 it and doing it for whoever is going to construct
11 if it's constructed, the rail route and overlying
12 conveyor.
13 As far as the donation, Horse Canyon
14 hasn't gone away. If I recall when I left my
15 office I still have a Horse Canyon permit on my
16 shelf. We're still bonded for the Horse Canyon
17 Mine. And as an operator at any time we have a
18 right in modifying that permit in any way we deem
19 necessary. And we have some excess buildings we
20 had no longer use for. We donated them. We'll
21 modify our permit to reflect that. But at the
22 present time, we're still bonded for it.
23 Yes, Mr. Murray handed out phone
24 numbers and names of board members. They are
25 public, available on the Internet for anybody who

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1 would like to look. He also sent a copy of his
2 talk to the senators and representatives in
3 various states.
4 Yes, there was a period when UEI took
5 eight months to respond to some technical
6 deficiencies. But in that response there was a
7 requirement to redo the vegetation inventory. You
8 can only do vegetation inventories one time a
9 year, which is in the springtime. And at the
10 time, you know, we were in no real hurry for the
11 permit. Now we're ready for the permit. I think
12 that's all I got, Denise, if you've got anything
13 else.
14 MS. DRAGOO: Do you want to respond to
15 the archeological resource information?
16 MR. MARSHALL: Yeah, I'll respond a
17 little bit to archeologic resource information.
18 SUWA contended that there had been no inventories
19 done. In fact there had be several inventories
20 done throughout the years of the entire area that
21 is going to be disturbed. That information's in
22 a confidential binder just for reading, whoever's
23 interested in looking at it.
24 MS. DRAGOO: I just wanted to respond
25 to the land use issue that was raised by Mr.

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1 Bloch, and I had referenced in my--Utah American
2 has referenced these earlier--this earlier letter.
3 Basically in terms of community planning, the--
4 there's--attached to that letter is an opinion
5 from the Interior Board of Land Appeals which
6 finds that Bureau of Land Management appropriately
7 determined that the money facilities were
8 consistent with Price River resource management
9 plan. Also in terms of the ongoing resource or
10 the efforts to revise resource management plan,
11 the way that the Bureau of Land Management works
12 is its current Price River RMP is in effect
13 until, until the new revision is adopted, so we're
14 focusing on the old RMP, not the new revision,
15 which won't be done for probably another couple of
16 years. So I just wanted to supplement the record
17 with our responses there.
18 HEARING OFFICER BAZA: I do have a
19 question for you. Can you, Denise? Or for Mr.
20 Marshall?
21 MS. DRAGOO: Sure.
22 HEARING OFFICER BAZA: The Southern
23 Utah Wilderness Alliance has raised a number of
24 issues. And as we look at this informal
25 conference, part of it was to obtain information,

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1 derive new information. If I can paraphrase what
2 you said, Mr. Marshall, you feel like you have
3 responded to many of these issues before and that
4 your, your application you feel contains the
5 information that SUWA indicates is not. Is that
6 what I understood you to say?
7 MR. MARSHALL: Yes, that's correct, Mr.
8 Baza.
9 HEARING OFFICER BAZA: Okay. So at
10 this point, other than the addressing of land use
11 issues as you said or Mr. Murray's comments, you,
12 you don't have any additional information that you
13 would like to supply for this informal conference?
14 MR. MARSHALL: No. Unless you do.
15 MS. DRAGOO: That's correct.
16 HEARING OFFICER BAZA: Anything else,
17 Denise?
18 MS. DRAGOO: That's it.
19 HEARING OFFICER BAZA: Okay. Let's
20 turn the time over to the Division now.
21 MR. ALDER: Thank you, Chairman, or
22 presiding officer--Director, Baza. I would like
23 to ask if I might to take just a few minutes to
24 consult with the Division. There's been
25 substantially more information provided by

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1 Southern Utah Wilderness Alliance in their written
2 comments than had been provided earlier. And
3 there's a couple of new items. I would like to
4 make sure we address those--or questions that may
5 pertain to those in a way--
6 HEARING OFFICER BAZA: How much time do
7 you want?
8 MR. ALDER: Just five minutes.
9 HEARING OFFICER BAZA: Okay, that's
10 probably appropriate to give the court reporter a
11 break. Why don't we take--let's take ten minutes.
12 MR. ALDER: Okay. Thank you very much.
13 (Recess taken.)
14 HEARING OFFICER BAZA: Okay. We're
15 going to go back on the record now. Also I
16 noticed that we might have one or two faces that
17 walked in either prior to this or at the break
18 that we didn't identify on the record. I think,
19 Priscilla, you were one. Will you just identify
20 yourself for the court reporter?
21 MS. BURTON: I'm Priscilla Burton, and
22 I'm the Division spokesman.
23 HEARING OFFICER BAZA: Okay. Anyone
24 else? Vickie, are you a new face? Want to just
25 say who you are?

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1 MS. SOUTHWICK: Vickie Southwick,
2 executive secretary.
3 HEARING OFFICER BAZA: Okay. Very
4 good. All right, Mr. Alder, I'll turn the time
5 over to you for your comments and statements.
6 MR. ALDER: Thank you very much. I
7 would like to address some of the procedural
8 questions that have been raised first. With
9 regard to the extension of this informal
10 conference, there are two aspects I think that
11 need to be considered by the parties. One is
12 that this is an opportunity to provide notice as
13 to issues that perhaps other people don't believe
14 have been properly dealt with or understood by the
15 application. It's also an opportunity for public
16 comment again. We understand SUWA's concern to be
17 that some of the information from the public
18 information room was not complete. That's
19 additional information outside of the TA, which is
20 really what was sent out to the public for
21 comment. And we appreciate SUWA's thoroughness in
22 reviewing the information and the opportunities
23 that--for the thoroughness they're taking and
24 examining this application, but we think that
25 probably maybe ten days, fifteen days will be

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1 enough time for them to look at that additional
2 information, provide additional comments to the
3 Division as far as any information that may have
4 been omitted from the TA that would be revealed
5 by that additional information that wasn't in the
6 public information room. Having said that, the
7 other issue we have to deal with is the
8 requirement in the statute that provides that
9 40-10-14 that if a conference has been held after
10 written findings, the Division--this is
11 40-10-14-1, it says, The Division shall issue and
12 furnish the application for a permit and persons
13 with parties to proceedings with the written
14 finding of the Division granting or denying permit
15 in whole or in part and stating the reasons
16 within the 60 days after the conference. So this
17 wasn't really a Lowell Braxton innovation, this,
18 this continuation of informal conference. This is
19 a way to provide the parties to examine all the
20 issues that have been raised in a complex permit
21 and make sure that if they're thoroughly analyzed
22 in the application process, and I think that that
23 has served all the parties well to have this
24 second informal conference, this second input to
25 the TA. And so I think notwithstanding the

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1 potential to close this conference, I think the
2 parties will need to continue their dialogue and
3 correspondence, and we have submitted to Southern
4 Utah Wilderness Alliance the Division's questions
5 or inquiries about their comments--were submitted
6 on October 11th, and we apologize for not getting
7 those to them sooner, but there's a lot of people
8 involved, and we went through their comments with
9 some, some detail. And I would like to just go
10 over those briefly in a minute. But--so I guess
11 we would just say that we're--we wouldn't be a
12 opposed to a longer extension, but we think that--
13 keep in mind that's a limited purpose. It's an
14 opportunity to provide public input. And if the
15 Southern Utah Wilderness Alliance people can look
16 at that information, provide their additional
17 comments on information that wasn't in the TA
18 within ten days, that would serve that purpose.
19 One other sort of procedural matter: we
20 don't think that the letter that was--or the
21 speech that was given has anything to do with the
22 permitting process. And but I would just like to
23 note really shouldn't be part of this record. It
24 doesn't go to the merits of the application. And
25 the Division is used to the politics of this

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1 mining process, and I'm sure Southern Utah
2 Wilderness Alliance is, and we don't think that
3 that adds anything to the discussion of the
4 technical merits that should be decided by the
5 Division.
6 Looking at the comments of Southern
7 Utah Wilderness has provided, they have answered
8 some of the questions but some of them haven't.
9 And I'm not going to go through each one of these
10 in detail, but I have gone through them kind of
11 in the same order you did, Mr. Lips. And let me
12 see if I can summarize some of them to you. With
13 regard to the acid- and toxic-forming materials,
14 the Division believes there is information in
15 Appendix 6-2 which deals with the chemical
16 composition that's required by the rules for coal
17 that is on--within the permit area. And if you
18 could respond to the Division with regard to that
19 either now--and I guess I keep calling you Mr.
20 Chairman, but Presiding Officer Baza, one of the
21 things is I think SUWA needs an opportunity to
22 respond to this information that we've requested
23 of them and that will also help us in evaluating
24 the application. So one consideration in whether
25 or not they should be granted further time is how

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1 much time they need to respond to this.
2 MR. BLOCH: If I can interject for just
3 a moment. It was my understanding in talking to
4 Mr. Alder we were not going to be having a back
5 and forth. I think you eluded to as much. Since
6 we have these points in writing from the
7 Division--and I just want to clarify this that as
8 I've indicated we'll be happy to review them and
9 respond as appropriate but not to have a dialogue
10 here about the points.
11 HEARING OFFICER BAZA: I think that's
12 appropriate to say that you haven't had adequate
13 time to consider the questions and respond to
14 them.
15 MR. ALDER: And I didn't mean to--when
16 I directed the question to Mr. Lips, I didn't
17 mean to ask him to respond this morning. I just
18 wanted to make him aware of that.
19 HEARING OFFICER BAZA: Okay.
20 MR. ALDER: With regard to the surface
21 water resources, you have consistently set forth
22 that you believe there are other methodologies for
23 measuring the seasonal flow and water fall
24 information for those streams. I think this has
25 been an issue in all of the hearings and all the

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1 proceedings. And I'm wondering if you would in
2 your response provide the Division with your--more
3 detailed--as to your opinion as to what you I
4 think referred to as professionally recognized
5 procedures for making those kind of measurements.
6 With regard to the coal mine waste
7 issue that was identified in your October 11th
8 letter, we're a little confused or think perhaps
9 you might be to the term, end dumping. And if
10 that is an issue, we need to address it, but we
11 think that end dumping as it's used in the rules
12 is not the same type of end dumping as is
13 proposed by the applicants. So that's something
14 we would like to have addressed.
15 I think you did a good job explaining
16 the groundwater and surface water baseline
17 concerns and PHC concerns. And we may have
18 further questions for you after we review your
19 application today, but when we get to water
20 consumption, there seems to be some question as to
21 whether or not that your calculations that you
22 submitted today included water that is put back
23 into the stream, water line discharge water that
24 whether or not you included that when you did
25 your water consumption calculation.

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1 I would like to make one correction of
2 the record of this hearing and that is that I
3 think it was interpreted by some, and Mr. Bloch
4 said that he had had a conversation with the
5 Division and the Division informed him that we
6 had--that it had not satisfied the requirements of
7 the National Historic Preservation Act.
8 Obviously, that's not the opinion of the Division.
9 I think what Mr. Bloch was saying that that was
10 his conclusion based on his conversation and
11 information he gained from a conversation I was
12 party to. And I think there is a difference of
13 opinion. And specifically we have asked in our
14 letter to date if you would identify what
15 authority still believes that would require the
16 Division to--and what kinds of requirements are
17 necessary for cultural resources of the area above
18 where there's subsidence questions as opposed to
19 to the minor. I think SUWA probably knows that
20 the surface areas have been completely surveyed
21 and the question probably that is still maybe a
22 legal question is to what degree there is National
23 Historic Preservation Act compliance in the
24 potential subsidence area. So that would be
25 something we need to have responded to. But the

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1 record today shouldn't indicate that we don't
2 think we complied--or the Division doesn't think
3 it's complied. And also I think the record
4 should be clear that there is information in the,
5 in the application with regard to the compliance
6 in other areas.
7 You've provided us with one new item,
8 which is the--what you referred to as the
9 renewable area comments and so we may get to you
10 with a written response on that comment. That's
11 fairly new to this dialogue that we've been
12 having.
13 And there was a question about whether
14 or not the data that was being renewed on the
15 prong horned antelope whether or not that's DWR or
16 BLM that's doing that updated plan. So if we
17 could get that clarified.
18 And then I guess I have just one
19 question for UEI. Are you satisfied that you can
20 get an air quality permit for 4-1/2 million tons?
21 Is that just not an issue? Has that been
22 presumed?
23 MR. MARSHALL: I don't have--
24 MR. ALDER: We don't need--
25 MR. MARSHALL: Yeah. And I don't mind.

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1 We did that three different times as production
2 increased, you know.
3 MR. ALDER: I guess the question is
4 whether the mine's prepared to operate at a
5 million tons if it doesn't. And, again, that's
6 just something I think maybe can be addressed in
7 a conference. So that's all I have.
8 HEARING OFFICER BAZA: Let me ask you
9 some questions about your letter by Mr. Alder.
10 Is it your opinion that you would need a response
11 from this Division to make decision on the permit
12 application?
13 MR. ALDER: Yes. And I don't think
14 that--and I appreciate the opportunity to clarify
15 that the decision on the application is not
16 constrained by 10 days or 30 days extension of
17 this informal conference. The extension on the
18 decision will take place when they think they have
19 all the adequate information has been answered and
20 we do have the 60-day constraint, but that can be
21 dealt with and has been dealt with before by
22 denying the permit in part and approving it in
23 part. It's just very awkward.
24 HEARING OFFICER BAZA: Would you
25 recommend that these questions be answered before

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1 we close out the informal conference?
2 MR. ALDER: Yes.
3 HEARING OFFICER BAZA: All right.
4 Anything more?
5 MR. ALDER: No.
6 HEARING OFFICER BAZA: Okay. Well, we
7 also have an audience here with us. And I know
8 that Mr. Petersen of Emery County has a statement
9 that you would like to make. So now is the time
10 for anyone who has public comments to make those,
11 and we'll give Mr. Petersen first crack.
12 MR. PETERSEN: Thank you, Director. I
13 would just like to read a prepared statement here.
14 It represents Emery County's position. Emery
15 County welcomes the opportunity to comment on the
16 permit application referred to about the Lila
17 Canyon extension. The area described in the
18 application permit is within the boundary of Emery
19 County as well as proposed access rights-of-way.
20 Emery County is well suited for the location of
21 this mining operation. Supported industries are
22 in place within the Carbon/Emery area. Trained
23 and available workforce is available. Emery
24 County is willing and able to participate in
25 necessary road construction to make this project

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1 happen. Emery County supports the issuance of the
2 permit to Utah America Energy, Incorporated, and
3 wants the Division to contact the county
4 commission for further information concerning our
5 support should that be necessary.
6 Local economic stimulus is anticipated
7 with the development of this mine. It is also
8 important nationally and regionally that energy-
9 producing resources are developed to help lessen
10 our dependance on other less reliable resources.
11 It is important to us that every effort be made
12 to expedite the issuance of this permit. We are
13 satisfied that environmental concerns are
14 addressed adequately in the permitting process.
15 Those that would oppose this mine and other
16 projects like it have an unrealistic understanding
17 of energy needs of this nation. Strategies are
18 adopted by such opposition which are intended only
19 to delay the development of resources gladly
20 necessary to the economic well being of this
21 country. Emery County asks the Division to commit
22 to a timely decision in regard to the application
23 being considered.
24 HEARING OFFICER BAZA: Mr. Petersen, do
25 you have any comments as to what would constitute

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1 the timely decision?
2 MR. PETERSEN: As soon as possible. I
3 would say--I would echo the d,j... vu sentiment.
4 Over a year ago, we submitted virtually the same
5 statement. A lot of the things that are being
6 addressed and brought up today I believe have been
7 addressed. So whatever the Division can do to--
8 again whatever can be done to hasten this.
9 HEARING OFFICER BAZA: Okay. Thank
10 you. Are there any other comments from
11 individuals? Mr. Alder?
12 MR. ALDER: Yeah, I've been reminded of
13 one additional point that I think is probably
14 apparent to everybody, but we would like to make
15 it clear for the record that the obligation to
16 provide data and responses to the questions that
17 have been raised by Southern Utah Wilderness
18 Alliance, I think notwithstanding the current
19 status of this reviewing having gone on for a
20 long time, still remains that of the applicant.
21 And under the statute, the applicant or any person
22 who applies for a coal mine permit has to show
23 they've met all requirements of the act and rules.
24 And so we just want to remind that in this
25 procedural review it's not the Division's

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1 obligation to deal with this time constraint to
2 come up with additional information but to analyze
3 the questions and then they would be punted back
4 to the applicant and so in your concern for time,
5 UEI, we probably should advise you that you will
6 be the ones who will be asked to provide the
7 information if we find that it's necessary.
8 HEARING OFFICER BAZA: All right. I
9 need to ask a clarifying question then. Maybe this
10 can be to all the parties but primarily to Mr.
11 Alder. You made the statement that you expected a
12 continuing dialogue to occur amongst the parties
13 in order for the Division to go ahead and issue
14 this permit. What's the correct process for the
15 continuing dialogue? Is it this informal
16 conference or is it simply having correspondence
17 and communication with the parties involved?
18 MR. ALDER: I think that there's two
19 avenues for communication. And this conference
20 has been extended somewhat to fill both rolls.
21 It provides an opportunity for some exchange that
22 would otherwise take place in the review process,
23 which would be--so one of the avenues is the
24 informal conference, which is an opportunity for
25 public comment, identifying issues and we've maybe

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1 extended that.
2 The other avenue is the technical
3 review process, which allows for the Division to
4 respond to the applicant and to press them for
5 additional information as necessary and then to
6 issue their final decision. I think that under
7 the circumstances of this mine where it's been
8 appealed to the board before there's been an
9 anticipation of some conflict. And so I guess we
10 feel like this informal conference process has
11 helped facilitate the second avenue of discussion,
12 the permit review avenue. But, strictly speaking,
13 the Division, if you were to close this informal
14 conference, the Division will review the comments,
15 they'll respond to the applicant. They'll process
16 and eventually reach a final decision. And SUWA
17 will then have an opportunity to go through the
18 paper room again to go through everything else
19 again to raise the issues before the board. We
20 just want to make sure that that doesn't happen
21 until we are at a stage where we have a decision
22 that everybody's comfortable with.
23 HEARING OFFICER BAZA: I believe you've
24 already pointed out what the rules in the statute
25 indicate that the decision must be made within 60

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1 days after the close of the informal conference.
2 MR. ALDER: Yeah. I don't know who the
3 drafters of that statute were talking to.
4 HEARING OFFICER BAZA: Okay.
5 MR. ALDER: They weren't dealing in our
6 world.
7 HEARING OFFICER BAZA: Mr. Bloch or
8 Denise, do either of you have any comments on
9 that question?
10 MR. BLOCH: As I've indicated, we're
11 happy to continue talking to people from the
12 Division, to talk to UEI. In response to the
13 letter we received today from Mr. Alder that's
14 three or four pages long, you know, it's going to
15 take us some time I think to respond. For us it
16 would make sense to have a single response, to
17 have a response to the additional documents that
18 were placed into the pick into the public
19 information room last Friday, and to respond to
20 the questions raised in this letter. We're not
21 going to be able to do that in five or ten or
22 probably even Fifteen days. This is a 17-point
23 letter, which has several questions along with
24 each point. I think 30 days is enough time for
25 us to respond if the Division wants to receive a

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1 meaningful response from us.
2 HEARING OFFICER BAZA: Ms. Dragoo?
3 MS. DRAGOO: Yes. Once again, we
4 encourage a quicker response than that. We
5 believe that these issues--questions really all
6 relate to the same questions that have been raised
7 for the last, what, two and a half, almost three
8 years, more than three years because this of
9 course is the second informal conference, same
10 issues came up at the first informal conference
11 held in May of 2002 I think it was. So this has
12 been three and a half years that these same
13 questions have come up again and again. So we
14 would encourage the hearing examiner to shorten
15 the period of time if you are going to keep the
16 record open to a period of five days for SUWA to
17 respond, get a letter out, and then to the extent
18 that it requires a response from Utah American,
19 another five days for Utah American to respond.
20 HEARING OFFICER BAZA: Okay.
21 MR. BLOCH: If I can ask just one other
22 clarifying question: I'm not sure I understand
23 40-10-14-1, the 60-day time line, if that's--I
24 guess for yourself or for Mr. Alder, if the
25 60-day time line starts following the close of the

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1 conference by the hearing officer or if it's the
2 end of a conference today. I'm just trying to
3 clarify that.
4 MR. ALDER: I think our position is
5 that the presiding officer could keep the
6 conference open for 30 more days without having
7 another hearing and say we'll close this
8 conference 30 days from now, provide opportunity
9 for written responses or written inputs to the
10 questions. That's our position.
11 HEARING OFFICER BAZA: What I'm going
12 to do is I'm going to consult with my legal
13 counsel here before I answer that question. But
14 before I do, are there any other comments from
15 the audience on this informal conference?
16 MR. BLOCH: I suppose my last point is
17 in response to Mr. Alder's question about the
18 letter from Mr. Murray. I think it's entirely
19 appropriate. It's entirely appropriate in the
20 record. I'm not sure if I interpret his comment
21 to some type of motion to strike. I'm not sure
22 that there is such a vehicle when you have this
23 type of an informal setting. I think it's
24 appropriate it should stay in. And I think it
25 does color how the Division proceeds.

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1 HEARING OFFICER BAZA: Was it a motion
2 to strike?
3 MR. ALDER: I don't think there is a
4 thing for an informal conference. I think the
5 record should be clear that it really doesn't have
6 anything to do with the decision process and it's
7 nothing new.
8 HEARING OFFICER BAZA: Very well. I
9 would like to take ten minutes with Heather and
10 discuss this. So if you'll all just hang loose
11 for a few minutes, we'll go off the record and
12 come back in a few minutes.
13 (Recess taken.)
14 HEARING OFFICER BAZA: Okay. We'll go
15 back on the record now. Let me start my comments
16 by saying that I appreciate all the parties who
17 have been involved in this for their efforts. I
18 think that the--any decisions that the Division
19 will make will have added value because of this
20 the efforts of the various parties and the
21 communication that has occurred and the comments
22 that have been made. So I really appreciate
23 everyone taking the time and making the effort to
24 do this.
25 As I indicated in the beginning, and

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1 I'll paraphrase what I said initially, the purpose
2 of this proceeding in my mind is to determine
3 whether the application fulfills the intent of the
4 administrative process and whether there was any
5 new information to be gained or added information
6 that could be provided during the informal
7 conference. There's been a lot of water under
8 the bridge on this. And there's been a lot of
9 effort and time put in by all the parties in
10 trying to present information. However, what I've
11 heard today doesn't necessarily indicate that the
12 informal conference needs to be continued or
13 extended. There is a process yet remaining with
14 the Division where they have to issue a permanent
15 decision within 60 days of the close of the
16 informal conference. And I would expect that the
17 parties would continue to dialogue and communicate
18 during that period of time. But in fairness to
19 Mr. Bloch and the fact that he explored our
20 record last week and was not able to find certain
21 documents that he felt would have added to his
22 presentation, I'm going to allow that this
23 informal conference will remain open, the record
24 remain open until November 18th, which is about
25 ten days from now. So, Mr. Bloch, what I'll

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1 instruct you to do is to make whatever further
2 analysis or comment or anything that you think
3 would add to--value to the Division's decision
4 making by the close of business on November 18th.
5 And then at that point this informal conference
6 will close and that is my decision. With that we
7 know that the Division will then have no more
8 than 60 days in which to render a decision on the
9 permit. And, of course, the Division should
10 continue to communicate with the parties involved,
11 to get answers to their questions, and to ensure
12 that they've got all the information they need to
13 render that decision. And I think that that
14 tries to split the baby a little bit. It's
15 longer than five days maybe not as much as thirty
16 days, but it will allow this record to remain
17 open until close of business on November 18th.
18 So, again, I thank everyone involved. I
19 appreciate you being here. Again, it has added to
20 the process to have these meetings and these
21 conferences, and we'll try to progress very
22 quickly and expeditiously from this point.
23 One more thing on the record: I think I
24 have to do a written decision, and that decision
25 will be issued within a reasonable time after the

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1 18th.
2 (Hearing concluded at 11:04 a.m.)
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DIV. OF OIL, GAS & MINING

SALT LAKE CITY, UTAH
PHOENIX, ARIZONA
TUCSON, ARIZONA
IRVINE, CALIFORNIA
DENVER, COLORADO
LAS VEGAS, NEVADA

November 23, 2005

HAND DELIVERED

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

RE: Horse Canyon Mine, Lila Canyon Extension, C/007/013, Informal Conference-Utah Admin. R. 645-300-123

Dear Director Baza:

On behalf of UtahAmerican Energy, Inc. ("UEI"), applicant/permittee for the Lila Canyon Extension Coal Mining Permit ("Permit"), we request an opportunity to meet with the Utah Division of Oil, Gas & Mining ("Division") and the Southern Utah Wilderness Alliance ("SUWA") at a meeting scheduled at 1:30 p.m. on December 8, 2005. SUWA and the Division have scheduled this meeting to follow up on issues addressed at the informal conference held on November 8, 2005 regarding the Division's determination that the Lila Canyon Mine permit is administratively complete and technically adequate. Specifically, the Division has requested SUWA to respond to the issues raised in the Division's letter dated November 8, 2005, discussed at the informal conference. Although SUWA is open to considering UEI's participation, the Division has initially declined UEI's request to attend this meeting. UEI is being excluded from this discussion, despite the fact that the meeting involves issues raised at the informal conference and directly relates to UEI's pending application.

The Division's decision in this regard is contrary to the spirit and intent of Lowell Braxton's Order dated July 30, 2004 ("Order"), which provided <u>all</u> parties to the informal conference the opportunity to meet and address the Division's final technical adequacy determination. Order, ¶¶ 5 and 6. The follow up meeting held on November 8, 2005, at which you presided as hearing officer, was requested by SUWA and involved all parties to the original conference, including UEI. Despite your request that SUWA respond to the Division's letter by the close of the informal conference record on November 18, 2005, SUWA and the Division apparently agreed to address this letter in a separate meeting scheduled for December 8, 2005. In

all fairness, and consistent with the earlier Order, the applicant should be included in this meeting to complete the discussion which was initiated at the informal conference. Certainly, the applicant should have the opportunity to hear SUWA's concerns firsthand and have the opportunity to respond to the Division and SUWA at the meeting on December 8, 2005.

UEI appreciates your consideration in this matter.

Very truly yours,

Denise A. Dragoo

DAD:jmc:374493
cc: Clyde Borrell
Michael McKown, Esq.
Jay Marshall
Steve Alder, Esq.
Steven Bloch, Esq.
Heather Shilton, Esq.

southern
utah
wilderness
alliance

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

November 23, 2005

John Baza
Director - Utah Division of Oil, Gas and Mining
1594 West North Temple
P.O. Box 145801
Salt Lake City, Utah 84114

Re: *Response to UtahAmerican Energy Inc. November 23 Letter*
Horse Canyon Mine, Lila Canyon Extension C/007/013

Dear Director Baza:

This letter responds to UtahAmerican Energy's (UEI) November 23rd letter to you requesting that UEI be permitted to attend a meeting scheduled for December 8th between Southern Utah Wilderness Alliance (SUWA) and Division staff. To put this meeting in context, at the end of the Informal Conference hearing held on November 8th, SUWA agreed to a request by the Division to sit down informally and discuss some lingering issues of concern to SUWA regarding UEI's application. On November 22nd, I received a call from Ms. Dragoo asking whether SUWA would object to UEI participating in the December 8th meeting. I told Ms. Dragoo that I would consider her request and get back to her shortly. After reflecting on UEI's request and reviewing Ms. Dragoo's letter, SUWA believes that UEI's presence and participation would hinder, rather than facilitate, an open discussion and dialogue between SUWA and the Division and thus do not agree that UEI should be permitted to attend this informal meeting.

As for Ms. Dragoo's suggestion that you had directed SUWA to respond to the letter provided by the Division through its counsel to SUWA at the informal conference on November 8th (a four-page letter raising 17 separate points), there is simply no basis for this argument. SUWA did not commit to respond to Mr. Alder's letter and you did not direct SUWA to do so. At end of the informal conference, you stated that SUWA would have until November 18th to review the records previously unavailable in the public information center and provide the Division with any additional comments. SUWA hand delivered a letter to you on November 18th with those comments. I have attached the relevant pages from the Informal Conference transcript that confirms this point.

Feel free to contact me with any questions: (801) 486-3161.

Sincerely,

Stephen Bloch
Staff Attorney

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

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Rcvd. 11/18/05 ANU

COPY OF TRANSCRIPT

BEFORE THE DIVISION OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

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

CAUSE NO. C/007/013

~~~~~~

INFORMAL CONFERENCE

~~~~~~

TAKEN AT: Department of Natural Resources
1594 West North Temple
Salt Lake City, Utah 84114-5801

DATE: November 9, 2005

TIME: 9:03 a.m.

REPORTER: Nancy A. Fullmer, RMR

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1 HEARING OFFICER BAZA: Was it a motion
2 to strike?
3 MR. ALDER: I don't think there is a
4 thing for an informal conference. I think the
5 record should be clear that it really doesn't have
6 anything to do with the decision process and it's
7 nothing new.
8 HEARING OFFICER BAZA: Very well. I
9 would like to take ten minutes with Heather and
10 discuss this. So if you'll all just hang loose
11 for a few minutes, we'll go off the record and
12 come back in a few minutes.
13 (Recess taken.)
14 HEARING OFFICER BAZA: Okay. We'll go
15 back on the record now. Let me start my comments
16 by saying that I appreciate all the parties who
17 have been involved in this for their efforts. I
18 think that the--any decisions that the Division
19 will make will have added value because of this
20 the efforts of the various parties and the
21 communication that has occurred and the comments
22 that have been made. So I really appreciate
23 everyone taking the time and making the effort to
24 do this.
25 As I indicated in the beginning, and

WORD INDEX
CD-ROM

1 I'll paraphrase what I said initially, the purpose
2 of this proceeding in my mind is to determine
3 whether the application fulfills the intent of the
4 administrative process and whether there was any
5 new information to be gained or added information
6 that could be provided during the informal
7 conference. There's been a lot of water under
8 the bridge on this. And there's been a lot of
9 effort and time put in by all the parties in
10 trying to present information. However, what I've
11 heard today doesn't necessarily indicate that the
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13 extended. There is a process yet remaining with
14 the Division where they have to issue a permanent
15 decision within 60 days of the close of the
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18 during that period of time. But in fairness to
19 Mr. Bloch and the fact that he explored our
20 record last week and was not able to find certain
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22 presentation, I'm going to allow that this
23 informal conference will remain open, the record
24 remain open until November 18th, which is about
25 ten days from now. So, Mr. Bloch, what I'll

1 instruct you to do is to make whatever further
2 analysis or comment or anything that you think
3 would add to--value to the Division's decision
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5 And then at that point this informal conference
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7 know that the Division will then have no more
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14 tries to split the baby a little bit. It's
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16 days, but it will allow this record to remain
17 open until close of business on November 18th.
18 So, again, I thank everyone involved. I
19 appreciate you being here. Again, it has added to
20 the process to have these meetings and these
21 conferences, and we'll try to progress very
22 quickly and expeditiously from this point.
23 One more thing on the record: I think I
24 have to do a written decision, and that decision
25 will be issued within a reasonable time after the

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DIV. OF OIL, GAS & MINING

SALT LAKE CITY, UTAH
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LAS VEGAS, NEVADA

November 28, 2005

Via E-Mail and Hand Delivery

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

RE: Horse Canyon Mine, Lila Canyon Extension, C/007/013, Informal Conference--Utah Admin. R. 645-300-123—Response to Southern Utah Wilderness Alliance ("SUWA")

Dear Director Baza:

On behalf of UtahAmerican Energy, Inc. ("UEI"), applicant/permittee for the Lila Canyon Extension Coal Mining Permit ("Permit"), this letter responds to SUWA's letter dated November 23, 2005. As stated in our letter dated November 23, 2005, UEI would like to participate in a meeting scheduled by the Division at 1:30 p.m. on December 8, 2005 to review SUWA's response to issues raised at the informal conference in the Division's letter to SUWA dated November 8, 2005. Contrary to the suggestion of SUWA, the issue of whether these questions should be answered in the context of the informal conference was raised directly at the hearing as follows:

> HEARING OFFICER BAZA: Would you recommend that these questions be answered before we close out the informal conference?
>
> MR. ALDER: Yes.
>
> HEARING OFFICER BAZA: All right. Anything more?
>
> MR. ALDER: No.

Transcript at 57-58, enclosed. This discussion between Mr. Alder and you as Hearing Officer suggests that SUWA was to respond to the Division's questions by the close of the informal conference when you later stated:

> HEARING OFFICER BAZA: . . . So, Mr. Bloch, what I instruct you to do is to make whatever further analysis or comment or anything you think would add to -- value to the Division's decision making by the close of business on November 18th. And then at that point this informal conference will close and that is my decision. And, of course, the

> Division should continue to communicate with the parties involved, to get answers to their questions and to insure that they've got all the information that they need to render that decision. And I think that that tries to split the baby a little bit. It is longer than five days, maybe not as much as thirty days, but it will allow this record to remain open until close of business on November 18th.

Transcript at 67-68, enclosed.

In the context of the earlier exchange between you and Mr. Alder in which Mr. Alder stated that answers should be provided by SUWA prior to the close of the informal conference, it seems clear that SUWA was to provide this response prior to November 18th. Apparently, the Division and SUWA agreed to an extension of time for SUWA to respond to Mr. Alder's letter. This extension is acceptable to UEI, assuming that UEI has an opportunity to participate in the meeting between SUWA and the Division at which SUWA's response will be addressed. Contrary to SUWA's suggestion, UEI's presence and participation should not hinder this meeting. UEI was not confrontational during the informal conference. Further, UEI plans to bring an expert hydrologist to respond to SUWA's questions which should make the meeting productive for all parties.

You indicated at the close of the informal conference your intent to prepare a written order regarding the proceedings. Therefore, we request that your written order clarify the record and allow UEI to participate in the meeting with SUWA and the Division currently scheduled at 1:30 p.m. on December 8, 2005.

Thank you for your consideration in this matter. I am available any time this week to discuss these issues should you decide to have a conference call to review this matter.

Very truly yours,

Denise A. Dragoo

DAD:jmc:374701
Enclosures
cc: Clyde Borrell (via e-mail, with enclosures)
Michael McKown, Esq. (via e-mail, with enclosures)
Jay Marshall (via e-mail, with enclosures)
Steve Alder, Esq. (via e-mail, with enclosures)
Steven Bloch, Esq. (via e-mail, with enclosures)
Heather Shilton, Esq. (via e-mail, with enclosures)

1 We did that three different times as production
2 increased, you know.
3 MR. ALDER: I guess the question is
4 whether the mine's prepared to operate at a
5 million tons if it doesn't. And, again, that's
6 just something I think maybe can be addressed in
7 a conference. So that's all I have.
8 HEARING OFFICER BAZA: Let me ask you
9 some questions about your letter by Mr. Alder.
10 Is it your opinion that you would need a response
11 from this Division to make decision on the permit
12 application?
13 MR. ALDER: Yes. And I don't think
14 that--and I appreciate the opportunity to clarify
15 that the decision on the application is not
16 constrained by 10 days or 30 days extension of
17 this informal conference. The extension on the
18 decision will take place when they think they have
19 all the adequate information has been answered and
20 we do have the 60-day constraint, but that can be
21 dealt with and has been dealt with before by
22 denying the permit in part and approving it in
23 part. It's just very awkward.
24 HEARING OFFICER BAZA: Would you
25 recommend that these questions be answered before

1 we close out the informal conference?
2 MR. ALDER: Yes.
3 HEARING OFFICER BAZA: All right.
4 Anything more?
5 MR. ALDER: No.
6 HEARING OFFICER BAZA: Okay. Well, we
7 also have an audience here with us. And I know
8 that Mr. Petersen of Emery County has a statement
9 that you would like to make. So now is the time
10 for anyone who has public comments to make those,
11 and we'll give Mr. Petersen first crack.
12 MR. PETERSEN: Thank you, Director. I
13 would just like to read a prepared statement here.
14 It represents Emery County's position. Emery
15 County welcomes the opportunity to comment on the
16 permit application referred to about the Lila
17 Canyon extension. The area described in the
18 application permit is within the boundary of Emery
19 County as well as proposed access rights-of-way.
20 Emery County is well suited for the location of
21 this mining operation. Supported industries are
22 in place within the Carbon/Emery area. Trained
23 and available workforce is available. Emery
24 County is willing and able to participate in
25 necessary road construction to make this project

WORD INDEX

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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 HORSE CANYON MINE, CARBON AND EMERY COUNTIES, UTAH	:	INFORMAL CONFERENCE
	:	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
	:	CAUSE NO. C/007/013

---ooOoo---

BACKGROUND

On November 8, 2005, the Division of Oil Gas and Mining (the "Division") held an informal conference in the above-captioned matter at the Division of Natural Resources, 1594 West North Temple, Salt Lake City, Utah. Director John R. Baza conducted the informal hearing under provisions of the Utah Administrative Procedures Act, Division Administrative Rules, and other applicable law.

Assistant Attorney General Steven F. Alder represented the Division at the hearing. Denise Dragoo, Esq. represented Applicant/Respondent UtahAmerican Energy, Inc. ("UEI"). Stephen Bloch, Esq. represented Interested Party/Intervener Respondent Southern Utah Wilderness Alliance ("SUWA"). Ray Peterson, Public Lands Administrator, represented Interested Party Emery County, Public Lands Department.

Mr. Elliot W. Lipps, commented for SUWA. Mr. Jay Marshall commented for UEI. Deputy Director Mary Ann Wright commented for the Division. After hearing from all parties, receiving full disclosure of relevant facts, reviewing submitted exhibits, and considering the evidence and relevant law, the Director Baza hereby makes the following findings of fact and conclusions of law, and issues the order below.

FINDINGS OF FACT

1. By Order dated July 30, 2004, Lowell P. Braxton, then Director for the Division held the previous informal conference in this matter open and 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. This was done to accommodate the need for additional public comment.
2. Mr. Braxton also ordered that if within 15 days of the Division's notification to a party in this conference of the completion of the final Technical Analysis ("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.
3. The Division finalized the review for the TA and notified parties to the previous informal conference on September 21, 2005.
4. On October 11, 2005, SUWA hand delivered a letter to the Division commenting on the TA and requested an informal conference to be held at the Division's Salt Lake City office.
5. The October 11th request from SUWA for informal conference was timely.
6. The supplemental hearing was scheduled for November 8, 2005, and notice was properly given.
7. The supplemental hearing was held as scheduled on November 8, 2005.
8. A record of the informal conference was made by Nancy A. Fullmer, RPR, Thacker & Co., Salt Lake City, Utah.
9. The record referenced in 8, above, will be maintained in the conference file.

CONCLUSIONS OF LAW

1. Utah Code Annotated § 40-10-6.7(1)(b) requires that informal conferences shall be "governed by rules adopted by the board which are in accordance with Title 63, Chapter 46b, Administrative Procedures Act."

2. Utah Code Annotated § 40-10-13(2)(a) provides that if an initial or revised application for a permit for surface and coal mining and reclamation operations is filed with the Division, then "(a)ny person having an interest which is or may be adversely affected . . . shall have the right to file written objections . . . with the division within 30 days after the last publication of the notice."

3. Utah Code Annotated § 40-10-13(2)(b) provides that "(i)f written objections are filed and a conference requested, the division shall then hold a conference within a reasonable time of the receipt of the objections or request. The conference shall be informal and shall be conducted in accordance with the procedures described in this Subsection (b), irrespective of the requirements of Section 63-46b-6."

4. Utah Administrative Rule R645-300-123.240 provides that "(t)he requirements of the Procedural Rules of the Board of Oil, Gas and Mining (R641 Rules) will apply to the conduct of the informal conference. The conference will be conducted by a representative of the Division, who may accept oral or written statements and any other relevant information from and party to the conference. . . ."

5. Utah Code Annotated § 40-10-14(1) provides that "(i)f a conference has been held under Subsection § 40-10-13(2), the division shall issue and furnish the applicant for a permit and persons who are parties to the proceedings with the written finding of the division granting

or denying the permit in whole or in part and stating the reasons, within the 60 days after the conference."

ORDER

1. The informal conference will be closed as of the end of the business day on Friday, November 18, 2005.

2. Parties to the informal conference will have until the close of the informal conference to submit any additional information or further comment on the TA for consideration by the Division in reaching a final permit decision.

3. The Division will review the application for permit by UEI; written comments and objections submitted; and the records of the informal conferences held on the application and issue a written decision within 60 days after the close of the informal conference.

DATED this 2ND day of December 2005.

John R. Baza, Director
Division of Oil, Gas and Mining

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of December, 2005, I caused a true and correct copy of the foregoing Findings of Fact, Conclusions of Law and Order to be mailed, postage prepaid, to the following:

Stephen Bloch
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, Utah 84111

Elliot W. Lipps
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, Utah 84111

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

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

Ray Peterson, Administrator
Public Lands Department
Emery County
75 East Main
Castle Dale, Utah 84513

Steven F. Alder
Assistant Attorney General
Attorney for Division of Oil, Gas and Mining
1594 West North Temple, Suite 300
Salt lake City, Utah 84116

Julie Carter

Julie Carter, Administrative Secretary
Division of Oil, Gas and Mining

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

---oo0oo---

IN THE MATTER OF LILA CANYON EXTENSION TO THE HORSE CANYON MINE, CARBON AND EMERY COUNTIES, UTAH	:	STIPULATION TO AMEND ORDER
	:	CAUSE NO. C/007/013

---oo0oo---

The Division of Oil, gas, and Mining, (Division), UtahAmerican Energy Inc., (UEI), Emery County, and the Southern Utah Wilderness Alliance (SUWA), parties to the above entitled Informal Conference, HEREBY agree and stipulate as follows:

RECITALS

1. The Division has determined that: tribal consultation as required by Section 106 of the National Historic Preservation Act (NHPA) pursuant to 36 CFR Part 800 has not been completed and must be done as part of the permit review process; this consultation has been delegated to the Division by OSM pursuant to 36 CFR 800.2(a); the time required to complete this consultation and make a finding as required by the NHPA will extend the process for at least 60 days; and the actual amount of additional time will depend on the nature of the responses.
2. A decision based on incomplete analysis and made prior to completion of the Section 106 consultation, would be a partial approval and a partial denial, or require a modification of the permit application, and proceeding with such a partial decision would put all parties to the burden of filing appeals and then either proceeding to

appeal the partial actions, or stipulate to holding the appeal of the decision in abeyance pending complete evaluation of the application.

3. The Division and UtahAmerican Energy Inc., (UEI), the permit applicant, have entered into a letter agreement attached to this Stipulation providing that the time limits provided in Utah Code §40-10-14(1) shall be extended for time required to complete the tribal consultations and determinations required by NHPA prior to issuing a permit.

STIPULATION

NOW THEREFORE, the parties to the Informal conference stipulate that:

1. The Order requiring the Division to issue written findings granting or denying the permit in whole or in part within 60 days of the informal conference be amended consistent with the letter agreement between the Division and UEI; and
2. The Amended Order provide that the Division be allowed additional time prior to making its final decision on the permit application, as necessary to complete the tribal consultations and determinations required by NHPA .

AGREED TO on behalf of the parties on the date last executed by the signatures of the following persons

UTAHAMERICAN ENERGY INC., (UEI)

Denise Dragoo, Snell & Wilmer
Attorney for UEI

Dated 01/17/06

UTAH DIVISION OF OIL, GAS, & MINING

Mary Ann Wright
Associate Director

Dated 1/18/06

SOUTHERN UTAH WILDERNESS ALLIANCE

Stephen Bloch, Attorney for SUWA

Dated 1/17/06

EMERY COUNTY

Ira Hatch, Commissioner

Dated 01/17/06

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

---oo0oo---

IN THE MATTER OF LILA CANYON EXTENSION TO THE HORSE CANYON MINE, CARBON AND EMERY COUNTIES, UTAH	:	AMENDMENT TO ORDER
	:	CAUSE NO. C/007/013

---oo0oo---

The Division of Oil, Gas, and Mining, (Division), UtahAmerican Energy Inc., (UEI), Emery County, and the Southern Utah Wilderness Alliance (SUWA), parties to the above entitled Informal Conference, have filed a Stipulation (with an attached Letter Agreement between the Division and UEI) requesting that the presiding Officer Amend his Order issued on December 2, 2005 to the extent that an amendment of the Order may be necessary, to provide that the Division be allowed additional time prior to making its final decision on the permit application, as necessary to complete the tribal consultations and determinations required by National Historic Preservation Act.

Based on this Stipulation, in order to accommodate the Division's careful and lawful completion of its review of the application, to provide for the efficient complete review of the permit application, to facilitate a review of the application in a manner that is in the best interest of all of the parties to the Informal Conference, and for good cause appearing;

IT IS HEREBY ORDERED that:

1. The Order issued December 2, 2005 is Amended to provide that the Division shall make its decision on the permit application upon completion of the tribal

consultations and determinations required by National Historic Preservation Act or as soon thereafter as reasonable to prepare the decision; and

2. Except as modified by this Amended Order, the Order and the accompanying Findings of Fact, Conclusions of Law and Order remain in effect without alteration.

DATED this 19th day of January, 2006

John R. Baza, Director
Division of Oil, Gas and Mining

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Notice of Supplemental to Amend Informal Conference for Cause No. C/007/013 to be mailed by certified mail, postage prepaid, on the __20__ day of January 2005 to the following:

7099 3400 0016 8895 6733

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

7099 3400 0016 8895 6726

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

7099 3400 0016 8895 6719

Steve Bloch
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, Utah 84111

7099 3400 0016 8895 6702

Ira Hatch
P.O. Box 629
Castle Dale Utah 84513

_____
Vickie Southwick
Executive Secretary
Division of Oil, Gas and Mining

C/007/0f

STATE OF UTAH

OFFICE OF THE ATTORNEY GENERAL

MARK L. SHURTLEFF
ATTORNEY GENERAL

RAYMOND HINTZE
CHIEF DEPUTY

Protecting Utah • Protecting You

KIRK TORGENSEN
CHIEF DEPUTY

January 12, 2006

Denise Dragoo
Snell & Wilmer
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101-1547

Re: Continuation of Technical Analysis for Lila Canyon Extension, UtahAmerican Energy, Inc., Horse Canyon Mine, C/007/0013

Dear Denise:

I am writing on behalf of the Division of Oil, Gas, and Mining in order to agree on an extension of the time limit provided by Utah Code §40-10-14(1) which requires the Division to issue written findings granting or denying the permit in whole or in part within 60 days of the informal conference concluded November 18, 2005. We believe that an extension of this time limit will provide the most efficient means of completing review of the application, and is in the best interests of all of the parties.

As you are aware, as a result of comments received at the informal conference and further inquiries, the Division has determined that Tribal Consultation as required by Section 106 of the National Historic Preservation Act (NHPA) pursuant to 36 CFR Part 800 has not been completed and must be done as part of the permit review process. This consultation has been delegated to the Division by OSM pursuant to 36 CFR 800.2(a). The time required to complete this consultation and make a finding as required by the NHPA will extend the process for at least 60 days. The actual amount of time will depend on the nature of the responses.

Also, in response to the comments received at the informal conference, the Division has requested supplemental information from UtahAmerican Energy Inc., to further address specific requirements for the permit. The requested information that has been submitted by UEI was only recently received in a format that permits its accurate evaluation. Until the Division has time to review this information it can not make an accurate estimate of

the additional time needed to make a final decision, but it is reasonable to expect that the time needed to evaluate this information and respond with a written decision will also exceed the current deadline, set to expire on January 17, 2006.

As a consequence, it will not be possible to issue a decision approving the permit within the time constraints of the statute. A decision based on incomplete analysis and prior to completion of the Section 106 consultation, would at best be a partial approval and a partial denial, or require a modification of the permit application. Proceeding with such a partial decision would put all parties to the burden of filing appeals and then either proceeding to appeal the partial actions, or stipulate to holding the appeal of the decision in abeyance pending complete evaluation of the application. Rather than go down that road again, it is proposed that we agree to extend the deadline for making a decision for such additional time as is necessary to complete the tribal consultations and determinations required by NHPA prior to issuing a permit.

Instead of preparing a separate stipulation, will you please indicate your agreement with an extension for the time and conditions described by signing and returning a copy of this letter to me. The order from the informal conference will be amended to provide that this extension is not inconsistent with that order.

Sincerely yours,

Steven F. Alder
Assistant Attorney General
Attorney for Utah Division of Oil, Gas and Mining

Denise Dragoo
Snell & Wilmer
Attorney for UtahAmerican Energy, Inc.

cc: Stephen Bloch
Attorney for SUWA

ORIGINAL TRANSCRIPT

BEFORE THE DIVISION OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

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

CAUSE NO. C/007/013

~~~~~~

INFORMAL CONFERENCE

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TAKEN AT: Department of Natural Resources
1594 West North Temple
Salt Lake City, Utah 84114-5801

DATE: November 9, 2005

TIME: 9:03 a.m.

REPORTER: Nancy A. Fullmer, RMR

1 APPEARANCES
2
3 John R. Baza, P.E.
4 Department of Natural Resources
5 Division of Oil, Gas and Mining
6 1594 West North Temple, Suite 1210
7 Salt Lake City, Utah 84114-5801
8
9 Heather Shilton
10 Attorney General's Office
11 1594 West North Temple, Suite 300
12 Salt Lake City, Utah 84114
13
14 For Southern Utah Wilderness Alliance:
15 Stephen H. Bloch
16 Attorney at Law
17 1471 South 1100 East
18 Salt Lake City, Utah 84105
19
20 For Utah American Energy:
21 Denise A. Dragoo
22 SNELL & WILMER
23 15 West South Temple, Suite 1200
24 Salt Lake City, Utah 84101
25

1 For the Division:
2 Steven F. Alder
3 Attorney General's Office
4 1594 West North Temple, Suite 300
5 Salt Lake City, Utah 84114
6
7 Also Present:
8 Elliot Lips, SUWA
9 Jay Marshall, Utah American Energy
10 Mary Ann Wright, Division of Oil, Gas and Mining
11 Pam Grubaugh-Littig, Division of Oil, Gas and
12 Mining
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1 Informal Hearing
2 November 9, 2005
3 PROCEEDINGS
4 HEARING OFFICER BAZA: First of all, my
5 name is John Baza. I'm the director for the
6 Division of Oil, Gas and Mining. I'm also the
7 hearing officer for this matter at this time.
8 And we'll call the matter to order and then we'll
9 have some brief introductions here. This is the
10 supplemental hearing in the matter of the Lila
11 Canyon, Horse Canyon mine, Carbon County, Utah,
12 Cause No. C/007/013. It is November 8th at 9:00
13 a.m., and it is the time and place for the
14 supplemental hearing in this matter. I'm going to
15 ask everyone to just introduce themselves at this
16 time, and then I'll give a brief opening statement
17 before we start into the hearing matters. This
18 is Heather Shilton. She's legal counsel with the
19 Attorney General's office, and she's going to be
20 assisting me in this matter. We'll go ahead and
21 start from left to right here.
22 MS. DRAGOO: All right. Thank you
23 Director Baza. I'm with the law firm of Snell &
24 Wilmer, and I represent Utah American Energy.
25 MR. MARSHALL: I'm Jay Marshall. I'm

1 the project manager for Utah American Energy.
2 MR. BLOCH: Thank you. Steven Bloch.
3 I'm attorney with the Southern Utah Wilderness
4 Alliance.
5 MR. LIPS: I'm Elliot Lips. I'm an
6 adjunct associate professor at the University of
7 Utah.
8 MR. ALDER: Steve Alder, Attorney
9 General's office representing the Division.
10 MS. WRIGHT: Mary Ann Wright, associate
11 director of mining, Division of Oil, Gas and
12 Mining.
13 HEARING OFFICER BAZA: Okay. Let's
14 continue--since we're such a small crowd here--
15 just introduce all the attendees.
16 MR. RIGBY: My name is Steve Rigby. I
17 work for the BLM in Price as well as the forest
18 service in Price.
19 MR. FALK: Stephen Falk, Bureau of Land
20 Management, Price also.
21 MR. MIKENSIN: Jim Mikensin, state
22 office for BLM.
23 MR. PETERSEN: Ray Petersen, Emery
24 County Public Lands Commissioner.
25 MR. SMITH: Jim Smith. I work with the

Division of Oil, Gas and Mining.

MS. DEAN: Dana Dean, Division of Oil, Gas and Mining. I'm the co-team leader on this project.

MS. ERNSTSEN: Jerriann Ernstsen, Division of Oil, Gas and Mining.

MR. WESTERN: Wayne Western, Division of Oil, Gas and Mining. I'm the co-lead on this project.

MR. MESCH: Mark Mesch, Oil, Gas and Mining.

MS. WHITE: Susan White, Oil, Gas and Mining.

MS. BEARD: Keli Beard, Utah Attorney General's Office.

MR. JEMMING: Jonathan Jemming with AG's Office, representing the Division.

MR. HEDBERG: Wayne Hedberg, Division of Oil, Gas and Mining. Coal permit supervisor.

MS. GRUBAUGH-LITTIG: Pam Grubaugh-Littig, Oil, Gas and Mining.

HEARING OFFICER BAZA: Thank you very much. We welcome all of you today, and I'll go ahead and read a short opening statement and then indicate how we'll proceed in this hearing.

1 This hearing is a continuation of an
2 informal conference previously held on July 7th of
3 2004 regarding the Lila Canyon Extension, Utah
4 American Energy Inc., Horse Canyon Mine. Its
5 purpose is to raise issues for consideration by
6 the Division in making its decision whether to
7 permit the application under R645-300-123.100.
8 This is an opportunity for all parties
9 to gather information. It's not a chance for
10 objections or responses and replies. Arguments
11 are not permitted. I also want to indicate that
12 we have an order that was signed by the former
13 director and former hearing officer, Lowell
14 Braxton, that was dated July 30th of 2004, which
15 is the primary driver for this informal
16 conference. The hearing matter was left open for
17 the purpose of receiving additional information
18 and comment on that. And the driver for this
19 hearing today is a letter that was received from
20 the Southern Utah Wilderness Alliance dated
21 October 11th, which requested that the informal
22 conference be conducted. So for that reason what
23 I think we'll do today is we'll start out by
24 presentation from Southern Utah Wilderness
25 Alliance. Then we'll allow Utah American to

1 respond. And then we'll allow the Division to
2 respond as well. And then Emery County will have
3 time at the end for a statement that they have.
4 I'm going to suggest in order to move this thing
5 along that each party should take no longer than
6 30 minutes to do their statements and comments and
7 any information they want to preside.
8 Now, the hearing today is not
9 necessarily going to close as of today. As we
10 hear information and as we hear comments and
11 representations by the various party, I'll have to
12 make the decision as to whether keep this matter
13 open and continue it to another date or whether
14 information has been adequately supplied, then we
15 may move ahead for the next phase of Division's
16 responsibilities.
17 So with that being said, Mr. Bloch,
18 I'll turn the time over to you for your
19 statement.
20 MR. BLOCH: Okay. Thank you, Mr. Baza.
21 Just as some housekeeping: as we talked about last
22 Friday, I have not had a chance to review the
23 letter from UEI this morning, but as we talked
24 about on a conference call last Friday, last
25 Thursday afternoon SUWA learned that there was

1 some additional records we, until that time, were
2 not aware of, had not had a chance to review.
3 Those included or were not limited to technical
4 reviews that were prepared by the staff in August
5 of '05, so we appreciate your commitment to allow
6 us some additional time to review those documents
7 and records and to provide additional comment and
8 if necessary to request an additional informal
9 conference to discuss some of the matters
10 contained in those documents.
11 This morning you'll be hearing from
12 myself and also from Mr. Lips, first from Mr.
13 Lips. As you know--as a preliminary statement, as
14 you know, many of the concerns that SUWA has
15 raised in its October 2005 letter come from the
16 Board's ruling in 2001 where the Board identified
17 a number of problems that have still not been
18 addressed. And that's why I think when we hear
19 from UEI or from the Division that these are the
20 same arguments that are being trotted out by SUWA.
21 In short, the reason for that is those are issues
22 that still have not been resolved. I think
23 there's been some additional information, and
24 we've tried in response then to amplify what our
25 concerns are. I think you'll hear about that this

1 morning. You'll note that I've provided you and
2 staff and Division and UEI with a more lengthy
3 letter that has a few exhibits to it. We'll be
4 walking through the letter today. I invite you to
5 follow along with that. I, I suppose the core of
6 some of our concerns is the continued lack of
7 baseline information. This is information that is
8 plainly required by the rules and is still
9 missing. It's not been provided by UEI. It's
10 not been supplemented by the Division. That
11 failing to provide sufficient baseline information
12 affects various aspects of the permit. And in
13 short it ensures that the permit is facially
14 deficient. In addition I just want to point out
15 a few other issues that we've raised. I'll be
16 talking about them at length a little bit later.
17 First, as we've identified there's an obligation
18 by the Division to comply with the requirements of
19 the National Historic Preservation Act. That is a
20 fairly thorough and detailed process. It's under
21 section 106 of the implementing regulations of
22 that act. So far the Division has done nothing to
23 comply with the requirements of that act. There
24 are several steps, several other parties that have
25 to be involved in that. Based on my review of

1 the record, there has been essentially no attempt
2 by the Division to meet those requirements.
3 And, lastly--and I know that we have
4 gone over this in the past--but the decision by
5 the Division to process the permit as a
6 significant revision instead of a new permit runs
7 contrary to the express instructions of the board.
8 It's more than superficial. It's more than a
9 technicality. The board was quite clear in its
10 ruling in instructing that the Division should
11 proceed as if this were a new permit. And,
12 again, that's something that simply has not
13 happened. I'm going to turn over some of our
14 time now to Mr. Lips who's going to walk through
15 some of the issues starting with point No. 1, and
16 then I'll follow up at the end. Thank you.
17 MR. LIPS: Thank you, Mr. Baza, for the
18 time. And I'll try not to read this because
19 everybody has a copy of this letter. We'll just
20 try to highlight some of the major points. With
21 regard to acid- and toxic-forming materials, No.
22 1, the rules require UEI to collect samples from
23 borings or drill holes and analyze them for acid-
24 or toxic-forming materials. Specifically, they're
25 to conduct analysis in the strata immediately

1 above and below the coal seam to be mined. The
2 rules allow the applicant to request a waiver and
3 Division, if they find that there is information
4 having equal value or effect, can waive parts of
5 that rule. UEI hasn't provided the data analysis
6 required under the rule, and it had instead
7 requested an exemption. They requested the waiver
8 and their reasons are that they claim there's been
9 no problem with acid- or toxic-forming materials
10 at the Sunnyside mine. In fact there has been
11 acid generation at the Sunnyside refuse pile. And
12 there was water, acidic water, that seeped from
13 the base of the refuse pile. UEI's provided some
14 analysis from bore holes located outside of the
15 permit area. If you look at those bore holes in
16 the strata above the coal seam all the way down
17 to Mancos shale. There is evidence of having
18 total sulfur in 40 percent of the samples and
19 S-24 as high as 4.61 percent. Similarly, in
20 S-25, 46 percent of the samples have sulfur
21 greater than one percent. So there is an acid-
22 generating potential.
23 UEI also claims that the material
24 brought from the mine will be tested and treated
25 as though it was acid or toxic forming, but that

1 doesn't satisfy the rule which requires
2 information of equal value or effect as testing
3 and collecting samples and testing bore holes. So
4 essentially UEI hasn't provided the analysis or
5 the information having equal value or effect. And
6 all indications are that the material removed from
7 the mine will be acid generating. It was at
8 Sunnyside. If you look at the chemical analysis
9 and drill hole logs from off the permit area,
10 they indicate high sulfur content. There's even
11 some logs from holes drilled within the permit
12 area that show a presence of pyrite. UEI
13 proposes to use this material which is underground
14 development waste as structural fill that will
15 remain at the surface and not be reclaimed until
16 the end of the mine life.
17 Second point is regarding subsurface
18 water resource maps. And the rules require that
19 UEI submit cross sections and maps showing the
20 location extent of subsurface water including the
21 aerial vertical distribution of aquifers and
22 portrayal of seasonal difference in head. UEI has
23 previously identified both what it calls a
24 regional aquifer and several first aquifers. And
25 they submit figures 7.2A and, 7-2A and 7-2B, but

1 neither of these comply with the rule. 7-2A
2 doesn't show water levels for the entire permit
3 area. It was based on only three--information
4 from three wells that covers 200 acres which is
5 less than four percent of the part B permit area.
6 It shows the piezometric surface as a uniformly
7 dipping planar surface, which is unrealistic. And
8 it doesn't portray the aerial vertical
9 distribution or seasonal differences of head in
10 the first aquifers. With regard to 7-2B, it's
11 not a cross section. It depicts water level
12 changes through time not through the permit area.
13 And also it doesn't include the first aquifer.
14 The third point is baseline information
15 and surface water resources. The rules require
16 that UEI submit information on surface water
17 quality and quantity sufficient to demonstrate
18 seasonal variation. There's some specific things
19 that they're required to submit for water quality
20 and also information on seasonal flow rates for
21 water quantity descriptions. There's several
22 ephemeral washes. There are six intermittent
23 washes within the permit area. UEI and Division
24 know that these drainages flow intermittently in
25 response to snow melt and/or run off. In fact

1 the Division personnel documented evidence of flow
2 in these drainages. In spite of the rule
3 required baseline data--and everybody knows that
4 there's surface water flow--UEI has never
5 submitted any data on any surface water quantity
6 or quality for any of the drains in the permit
7 area. There's some sporadic observations of no
8 flow, but those don't provide the data required
9 under the rule. You guys never even attempted to
10 collect these data even though through remote
11 methods are available for obtaining both water
12 quality and quantity. They're inexpensive.
13 They're well within the state of the art.
14 They're standard practice by the U.S. Geological
15 Survey. They're even recommended--OSM guidelines
16 for collecting baseline surface water data in arid
17 climates. Divisions have used these in permitting
18 of other coal mines.
19 With regard to baseline information and
20 groundwater quantity, the rules require that UEI
21 submit data on seasonal quantity of groundwater.
22 And that includes each water-bearing strata above
23 potentially impact strata and below the coal seam.
24 Again, UEI has failed to submit the data required
25 under this rule. With regard to the regional

1 aquifer, there has only been sporadic and
2 insufficient submission of baseline data. It's
3 not sufficient to establish seasonal baseline from
4 IPA 1, 2, and 3 or from L16G and L17G, and
5 reference to the table that's attached is Exhibit
6 1 and you can see the dates that--where samples
7 were collected and submitted. UEI provides no
8 data on the rates of discharge, groundwater, or on
9 hydraulic conductivity. They never even
10 identified the recharge or discharge areas. The
11 PAP provides in--conflicting information, in some
12 places even contradicts itself with regard to the
13 effect of lithology, regional structure, or faults
14 on the movement discharge, depth of water in the
15 regional aquifer.
16 With regard to the first aquifer,
17 again, UEI's sporadic submissions are insufficient
18 to establish baseline data. I again refer you to
19 the table.
20 Point No. 5, baseline information on
21 groundwater quality, the rules require UEI to
22 submit data on seasonal quality of groundwater.
23 There's some specific numbers that need to be
24 tested. And, again, UEI has failed to submit the
25 data required under this rule. With regard to

1 regional aquifer, UEI has never collected or even
2 attempt to collect any water samples from the IPA
3 wells.
4 It has some data for Red Springs.
5 That's in an area of Horse Canyon Mine, and it
6 doesn't represent premining baseline conditions.
7 It's not even proposed for monitoring, and there
8 are no seasonal baseline data.
9 With regard to L16G and L17G, UEI has
10 provided some information, but it's not clear on
11 the information they've provided whether or not
12 these springs are connected to the regional
13 aquifer and the effect if any of the central
14 crowded faults. Again, I refer you to the table
15 that documents the dates that--where samples were
16 collected.
17 With regard to the first aquifer, UEI's
18 submission is insufficient to establish seasonal
19 baseline data for the springs labeled L6G through
20 L12G. Again, I refer you to the table.
21 Point No. 6 is--has to do with coal
22 mine waste, which is defined under the rules as
23 coal processing waste and underground development
24 waste. And there's some specific things that
25 apply to coal mine waste. And one of which is

1 that it cannot be--placement of coal mine waste by
2 end or side dumping as prohibited. UEI is
3 proposing to dump whole line waste. This is
4 underground development waste. At the surface
5 they're going to use it as structural fill upon
6 which facilities will be built and the handling of
7 that material in that manner is a violation of
8 the rules. In addition it's going it be left at
9 the surface which is a refuse pile exposed
10 throughout the life of the mine.
11 With regard to groundwater monitoring
12 plant, point No. 7, the rules require that the
13 permit application include groundwater monitoring
14 plant has to be based on analysis of baseline
15 hydrologic, geologic, and other information. As
16 discussed above, because of the lack of baseline
17 data, neither UEI, nor the Division can determine
18 what might impact and therefore there can be no
19 effective monitoring.
20 Specifically with regard to the
21 regional aquifer, UEI proposes only to monitor
22 water depth--excuse me, monitor water depth not
23 quality from the IPA wells. In addition, those
24 wells are going to be destroyed during mining.
25 UEI proposes to monitor groundwater quantity and

1 quality from only two sides, L16G, L17G. And,
2 again, these springs may not even be connected to
3 the regional aquifer. They're not within the
4 permit area. They're only 400 feet apart. And
5 they're incomplete baseline data.
6 With regard to the first aquifer, UEI
7 proposes to monitor the groundwater from only five
8 seeps and springs. And those are listed here.
9 And while that's inadequate at its face, it's even
10 worse considering that they're incomplete baseline
11 data for these monitoring sites. L8G and L9G are
12 located outside the permit area. And L11G is the
13 spring above the Horse Canyon Mine, an area that's
14 already been impacted by mining, and there are no
15 premining baseline data. So if you look at it in
16 total, there's only two proposed ground water
17 monitoring sites in the part B permit area, and
18 only partial baseline data exists for these sites.
19 With regard to surface water monitoring
20 plant, according to the rules, the applicant again
21 needs to submit a monitoring plant based on the
22 analysis of the baseline data. And, again, where
23 there are no baseline data, there could be no
24 determination of impacts and no effective
25 monitoring. As pointed out there are no baseline

1 data either water quality or water quantity for
2 any of the surface below us in the part B area.
3 Thus there will be no basis for comparison during
4 monitoring.
5 Point No. 9 is regarding the probable
6 hydrologic consequences or PHC. The rules require
7 that PHC determination will be based on baseline
8 hydrologic, geologic, or other information.
9 Again, as discussed above there are no baseline
10 data or at least complete baseline data upon which
11 the PHC can make the required findings.
12 Specifically there can be no determination on
13 whether there will be adverse effects to the
14 hydrologic balance whether acid- or toxic-forming
15 materials are present as a result of contamination
16 of surface and groundwater. There can be no
17 determination or findings on what the impacts of
18 the post-coal mining and reclamation operation
19 will have on sediment yield from the disturbed
20 area on the acidity, total suspender, or dissolved
21 solids or other water quality parameters, what the
22 impacts have on flooding or stream flow alteration
23 or on groundwater and surface water availability.
24 Point No. 10 has to do with water
25 consumption. The PAP contains contradictory and

1 unsupported data on the amounts of water consumed
2 by suppression. It also contains an error in
3 calculating the moisture loss. Appendix 7-3
4 states that the rate of water to be consumed from
5 depth suppression and evaporation is estimated to
6 be 15 million gallons per year. Subtract out the
7 portion of that that's due to evaporation, which
8 is listed as 1,183,600 gallons per year, the
9 resulting amount that will be consumed due to
10 depth suppression is 13,816,400. And it's not
11 3,650,000 gallons per year as reported in table
12 two.
13 In addition the coal moisture loss in
14 table two is calculated based on mining rate of
15 four million tons per year, but the PAP states
16 mining can peak at 4-1/2 million tons per year,
17 so when you use the correct amounts for depth
18 suppression and coal moisture loss, the amount of
19 water consumed will be approximately 112-acre peak
20 per year, not the 74-acre peak per year calculated
21 by UEI, which is in excess of the amount of water
22 consumed that's been identified by the U.S. Fish
23 and Wildlife Service that requires mitigation. UEI
24 hasn't demonstrated that this water consumption
25 will not jeopardize the continued existence and/or

1 adversely affect--adversely modify the critical
2 habit of the endangered fish species listed here.
3 In addition UEI proposes that this processed water
4 will be hauled from the Price River. However,
5 nowhere in the PAP is the effects of removing
6 112-acre feet per year from the Price River
7 analyzed. There's no baseline data on the water
8 quality and quantity above and below the point of
9 diversion; therefore, it will be impossible to
10 determine impacts from this withdrawal. In
11 addition there's no baseline data on the analysis
12 of potential impacts to vegetation and/or wildlife
13 from this withdrawal of this water.
14 Point No. 11 is regarding cumulative
15 impact area. The information provided by UEI
16 isn't sufficient to allow the Division to
17 establish a hydrologically reasonable cumulative
18 impact area boundary. A couple of specifics: the
19 recharge and discharge areas of the aquifers have
20 not been identified. Without this information the
21 Division can't establish CIA boundary. The
22 effects of the faults on the currents, movement,
23 and discharge of water in the regional aquifer is
24 not addressed. There's no explanation for the
25 occurrence of groundwater in the Mancos shale. And

1 lastly the CIA must include the Price River
2 because UEI intends to divert up to 112-acre feet
3 per year and also because it's a potential
4 discharge area for aquifers.
5 Point No. 12 has to do with the
6 operation of the plant. The rules require the
7 permit to include a plan specific to the local
8 hydrologic conditions. And it states that steps
9 will be taken during coal mining all the way
10 through bond relates to minimize disturbance to
11 the hydrologic balance within the permit and
12 adjacent areas. UEI's--the plan submitted by UEI
13 failed to minimize disturbance to the hydrologic
14 balance essentially for two reasons. One is the
15 subsidence impacts. UEI claims that there will be
16 no impacts to surface or groundwater resources
17 based on the fact that although there was
18 subsidence at the Horse Canyon Mine, there were no
19 impacts. I--it is impossible to demonstrate this
20 because there are no premining hydrologic baseline
21 data to compare to existing water resources. UEI
22 does acknowledge that subsidence occurred at Horse
23 Canyon and therefore it's only logical to assume
24 it's going to occur at Lila Canyon Mine. UEI
25 bases their claim that no impacts on the surface

1 streams from subsidence because of the overburn in
2 thickness. However, parts of Little Shark Wash
3 over in thickness of 500 feet in several regions
4 of other streams in the permit area have
5 overburned thickness of approximately a thousand
6 feet. Just looking at the literature provides
7 documentation that under similar geologic
8 conditions and mining methods, ground disturbance
9 related to subsidence, i.e., subsidence fractures,
10 has occurred at coal mines of overburn in
11 thickness with as much as 1500 feet. I won't
12 read all of this but the Deer Creek Mine, the
13 U.S. Bureau of Mines reported a maximum of 2-1/2
14 feet of subsidence in a depth of 1500 feet. The
15 reference is provided there to the information
16 circular.
17 At the Cyprus Plateau Mine, the U.S.
18 Geological Survey reports land surface subsided
19 and moved several feet horizontally. The
20 perennial stream and the tributary stream from the
21 mine area were diverted into the ground by surface
22 fractures where the over burden thickness is about
23 300 to 500 feet. The reference to the U.S.
24 Geological Survey is in there, and I just point
25 out that that was done in cooperation with the

1 Utah Division of Oil, Gas, and Mining.
2 At the Geneva Mine, the U.S. Geological
3 Survey, the Sunnyside Mining District, reports
4 large tension cracks. There's some information
5 given in here on the dimensions, as much as three
6 feet wide where the over burdened thickness was
7 900 feet and they note that these cracks divert
8 all surface to ground water flow in this area to
9 lower strata or to the mine workings. Again,
10 referencing a USGS professional paper.
11 So based on the evidence of subsidence
12 at the Horse Canyon Mine, well documented evidence
13 at nearby mines with similar geologic strata, it's
14 obvious that subsidence will occur at the Lila
15 Canyon Mine. And these subsidence fractures will
16 impact several ephemeral intermittent streams,
17 seeps, and springs. And as stated above, there
18 is no baseline data for any of the surface
19 streams within the permit area, and there's only
20 incomplete baseline data on the groundwater
21 resources. So it would be impossible to determine
22 the impacts subsidence will have to the hydrologic
23 balance or whether or not there will be material
24 damage outside the permit area.
25 Second point has to do with stream

1 buffer zones. The, the rules state that no land
2 within a hundred feet of an intermittent stream
3 will be disturbed by coal mining or reclamation
4 operations unless the Division specifically
5 authorizes it, which they can only do if coal
6 mining and reclamation operations will not
7 adversely affect the water quantity or quality or
8 other environmental resources of the stream, if
9 they find that won't happen. Again, the PAP
10 documents that mining will take place under five
11 intermittent streams listed here. The PAP further
12 documents that subsidence will likely disturb the
13 land within these stream channels. Each of these
14 streams, each of these five streams, drains the
15 watershed of at least one square mile and
16 therefore they are by definition intermittent
17 streams. And although they are defined as
18 intermittent according to the rules, UEI
19 occasionally refers to them as ephemeral atony,
20 which is a term that's not defined in the rules.
21 So UEI's mining operation will disturb land within
22 a hundred feet of five intermittent streams.
23 Because there's no baseline data on the water
24 quality or water quantity in these streams the
25 Division cannot determine whether or not the

1 mining operation will adversely affect the water
2 quantity or quality or other environmental
3 resources, and without these data, the Division
4 cannot support a decision to authorize mining
5 within these stream buffer zones.
6 Point No. 13 has to do with renewable
7 resource lands which means lands--renewable
8 resource lands means aquifers and areas for the
9 recharge of aquifers and other groundwaters. And
10 that's defined in the rules. The rules require
11 that a map of the permit and adjacent areas
12 showing the location of renewable resource lands
13 that subsidence may materially damage. The rules
14 also require a narrative indicating whether
15 subsidence if it occurred could cause damage or
16 diminish the value or reasonably perceivable use
17 of the renewable resource lands. UEI has not
18 submitted a map that delineates the renewable
19 resource lands within the permitted adjacent
20 areas. They claim to have conducted a survey of
21 the renewable resource lands; however, again,
22 there are no baseline data on any surface water
23 flows in the permit and adjacent area. Without
24 any data on surface water flows, UEI can't
25 evaluate a relationship in surface water flow and

1 recharge to the renewable resource lands. UEI has
2 also failed to obtaine baseline data of
3 underground waters within the permitted adjacent
4 area. Again, therefore, they are unable to
5 document the area recharged, direction of
6 movement, and/or recharge area for any underground
7 waters, which are the renewable resource lands.
8 UEI acknowledges that subsidence will likely cause
9 material damage to both the underground waters and
10 to surfaces below the permit area, but they failed
11 to address how the renewable resource lands in the
12 permit and adjacent areas will be impacted by the
13 use of subsidence-related implants.
14 HEARING OFFICER BAZA: I have a
15 question.
16 MR. BLOCH: Yes.
17 HEARING OFFICER BAZA: And excuse me if
18 I--what's your name, Mr. Lips?
19 MR. LIPS: Lips, L-I-P-S.
20 HEARING OFFICER BAZA: Okay. You were
21 reading quite a bit from the letter that Mr.
22 Bloch signed and submitted today.
23 MR. LIPS: That's correct.
24 HEARING OFFICER BAZA: Do I assume that
25 you're a subject matter expert or you prepared

1 this letter or provided these words?
2 MR. LIPS: I'm not familiar with the
3 term subject matter expert. I think I would let
4 the attorneys maybe explain that to me, but I
5 prepared points 1 through 13.
6 HEARING OFFICER BAZA: Okay. And I'm
7 just trying to ascertain how much of this was
8 your originated version.
9 MR. LIPS: The original text from 1 to
10 13 is mine.
11 HEARING OFFICER BAZA: Okay.
12 MR. BLOCH: If you'll note in footnote
13 1 how we've incorporated some of our letters and
14 other exhibits from previous informal conferences,
15 I believe the 2002 informal conference we included
16 an expert report and a CV of Mr. Lips.
17 HEARING OFFICER BAZA: Okay. All
18 right. Thank you.
19 MR. BLOCH: Yes. I'm just going to
20 pick up and finish up here starting with point 14
21 about historic and archeological resource
22 information. There are two separate requirements
23 in the rules pertaining to these types of
24 resources. And I should start off by noting that
25 the Division does not have an archeologist on

1 staff. The first is Rule 645-300-113 which states
2 that issuance of permits--essentially the Division
3 has to comply with the terms of the National
4 Historic Preservation Act. That's a fairly
5 complicated and entailed process. Section 106 is
6 essentially the touchstone of that statute. It
7 sets out the process for identifying, for example,
8 the area of potential effect and moves on to
9 things like identifying the consulting parties, et
10 cetera. It's all set forth in section 106.
11 Consultation as a part of that process includes--
12 it was not limited to--concurrence with the
13 state's historic preservation office. As I
14 mentioned, based on my review of the records and
15 my conversations with some staff from the
16 Division, Section 106 has not been complied with.
17 There is a related provision in rule--
18 MS. DRAGOO: Mr. Bloch, can I ask you a
19 question? Who did you talk to at the Division
20 about that?
21 MR. BLOCH: Are we having a back and
22 forth?
23 MS. DRAGOO: It's a question. You
24 mentioned you talked to the Division.
25 HEARING OFFICER BAZA: Go ahead and

1 answer the question.
2 MR. BLOCH: I was speaking to Steve
3 Alder, and I was also speaking to Dana Dean and
4 to Jerriann Ernstsen.
5 MS. DRAGOO: Thank you.
6 HEARING OFFICER BAZA: Thank you.
7 MR. BLOCH: These are fairly nuance
8 terms as we identify in the TA. There's a point
9 where there's a reference made to no effect and
10 then no--not likely to affect. As I said, these
11 are very nuanced terms. In the TA, it's fairly
12 clear there's not a very solid understanding of
13 what the terminology means. There has never been
14 any site specific--or it's called a class three
15 survey of the project area. In fact, there's
16 never been a class one or a literature review of
17 the project area. These are significant
18 shortcomings.
19 Second, 15, fish and wildlife resource
20 information, in several years this information--in
21 several instances, this information is outdated by
22 several years, though there has been an attempt to
23 keep up insofar as rafter surveys go, there's
24 other information that has lingered in the permit
25 since the late '90s to early 2000. There's an

1 example on our first point here in the latest
2 iteration of the Price field office resource
3 management plan how the project area may be
4 located in crucial value, yearlong habitat for
5 prong horn. That's not shown in the permit. The
6 Price field office, as you may know, is undergoing
7 a land use plan provision contained significant
8 information that has not been appropriated here to
9 the department.
10 Sixteen about the affected area, the
11 Coal Hall Road, EC126, fits within the definition
12 of surface coal mining operations and therefore
13 must be included within the affected area to be
14 permitted, and then secondly UEI has proposed the
15 construction of an overland conveyor or rail spur
16 to be located near and adjacent to the extension
17 to the Lila Canyon Mine, and UEI stated its
18 intention in writing to begin construction of
19 these facilities in April of '06. In September
20 of '05, in fact, they filed several applications
21 for rights-of-way with the BLM in Price. It's
22 simply inappropriate for UEI for Division to
23 segment out the process and to allow these
24 additional facilities that plainly fall within the
25 definition of surface coal mining operations to be

1 permitted at a later time.
2 Seventeen, air quality, the permit that
3 UEI has from the Division of Air Quality for the
4 Lila Canyon Mine is for 1.5 million tons of coal
5 per year. It's not the two million tons been
6 sought by UEI nor 4.5 million tons that UEI
7 stated on several occasions it intends to process.
8 SUWA is following up with the Division of Air
9 Quality to look into the validity of the permit
10 seeing how it's seven years old at this point.
11 Point 18 is about the Lila Canyon Mine,
12 the need for a new permit. As I mentioned, it was
13 quite clear from the Board's ruling in 2001 in
14 their instructions that the Division was to
15 process the Lila Canyon Coal Mine as a new permit
16 not as a significant revision. The Division has
17 ignored those instructions. It's more than
18 semantics, and in fact as we learned a few weeks
19 ago there, there truly is no more Horse Canyon
20 Mine as I'm sure you know UEI has handed over the
21 keys of the mine to the College of Eastern Utah.
22 It's not a significant revision of or extension of
23 any existing mine.
24 The final point I have on page 12 of
25 our comments--and I've included a copy of this as

1 Exhibit 3--in a speech on October 20th at the
2 College of Eastern Utah, Robert Murray, who's the
3 owner of Utah American and its parent company,
4 spoke about the handing over the keys of Horse
5 Canyon Mine for a moment and then spent several
6 minutes focusing on Southern Utah Wilderness
7 Alliance and railing against SUWA, its members,
8 its staff, its board, and in fact as you'll see
9 here he handed out to participants at the luncheon
10 or attendees at the luncheon a copy of the home
11 address and home phone number of all the SUWA
12 Board members he could find, and then he spoke in
13 a highly inflammatory, highly misleading language
14 and at one point called for every government
15 official, politician, and leader in Utah to
16 challenge the extreme of SUWA and their supporters
17 in every manner possible. And I wanted to call
18 to your attention--I know several of the Division
19 staff were at this--these highly inappropriate,
20 highly inflammatory comments--that we have serious
21 concerns--may have placed SUWA board members at
22 risk as a result of handing out home phone
23 numbers, risk of harassment, or even of injury.
24 In sum, it's our position that the Division should
25 not feel compelled at this time to issue a final

1 permit to UEI when the permit is neither
2 administratively complete nor technically
3 adequate. UEI has dragged its feet for years in
4 this process. In some instances, they've waited
5 between 8 to 13 months to respond in writing to
6 the Division. They've asked the Division to carry
7 much of the water that should have been, should
8 have been carried by UEI. And the result is a
9 permit that simply fails on its face. So we
10 would urge you and the Division not to issue the
11 permit. SUWA is happy to continue a dialogue. I
12 notice that I have some questions from Mr. Alder
13 in writing. We will be happy to look over and we
14 look forward to continuing our dialogue with the
15 Division staff. Thank you.
16 HEARING OFFICER BAZA: Let me ask you a
17 question, Mr. Bloch. As of our conference call
18 on Friday, you had indicated there was some
19 information that had not been made available to
20 you or you did not have access to.
21 MR. BLOCH: Yes.
22 HEARING OFFICER BAZA: Do you now have
23 access to that information?
24 MR. BLOCH: Yes, yes, I do.
25 HEARING OFFICER BAZA: And I assume

1 you're evaluating it at this point.
2 MR. BLOCH: Yes. As I indicated, that
3 included but was not limited to the technical
4 reviews of August '05. There were additional
5 documents in '05 and in fact '04 that were not
6 available in the public information center.
7 HEARING OFFICER BAZA: Could the
8 Division expect some additional comments from
9 you--
10 MR. BLOCH: Yes.
11 HEARING OFFICER BAZA: --as you review
12 that?
13 MR. BLOCH: I think so. I think that's
14 our plan, but we don't have an idea about--
15 HEARING OFFICER BAZA: Time frames?
16 MR. BLOCH: --about time frames since
17 we were preparing for this meeting.
18 HEARING OFFICER BAZA: All right.
19 Well, thank you for your comments.
20 MR. BLOCH: Thank you.
21 HEARING OFFICER BAZA: Denise, we'll
22 turn the time over to you from a statement from
23 UEI.
24 MS. DRAGOO: Thank you, Director Baza.
25 First, to the procedural points, you have a letter

1 in front of you from our law firm. As you
2 recall, we had a conference call on Friday,
3 November 4th, and at that time Southern Utah
4 Wilderness Alliance had requested a 30-day
5 extension. We feel that's an unnecessary period
6 of time to keep the informal conference record
7 open. And we would also oppose any additional
8 meetings. There's a couple of reasons for this.
9 First of all, the Division Director's Braxton's
10 July 30 order--we're calling it the Braxton
11 order--only refers to having a meeting on the
12 actual technical adequacy document itself. It
13 doesn't refer to any other documents and so we
14 would like to just keep focused on that TA.
15 Second, we feel that 30 days is
16 excessively lengthy. But at the procedures that
17 Director Braxton ordered were a bit unusual,
18 generally, an informal conference, as you know,
19 arises at the time that you have a permit
20 submitted and there's a determination of
21 administrative completeness. But Director Braxton
22 went beyond a simple administrative completeness
23 determination to expand the record to a technical
24 adequacy determination. That technical adequacy
25 review is usually something that happens before

1 the board. So as a result of the order, we've
2 added already of the 30-day period of time that
3 it took to set this hearing plus the 15 days that
4 each party had to review the technical adequacies
5 it's already added 45 days to an already tight
6 permitting schedule. And so we feel that
7 additional time is not necessary. However, as we
8 indicated in our conference on Friday, in the
9 event that the Division determines that there is
10 the need for an additional period of time to
11 allow SUWA to review the record, which was
12 publicly available as of Friday, we would like to
13 limit that time period to five days. We think
14 that's more than adequate to review the August
15 2005 technical review file. And the procedure
16 that we propose is allow them five days to review
17 the--that file, submit a letter to you as the
18 hearing officer, and at the same time in that
19 five-day period allow us an opportunity to respond
20 to that, that letter. And then at the time that
21 you receive Utah Americans' letter, then the
22 informal conference record will close. So it
23 would shorten that period of time from 30 days to
24 ten days in the event you determine that that's
25 necessary.

1 In terms of the substantive response, I
2 think I'll have Jay Marshall, who's the permitting
3 director for Utah American Energy Company, to
4 respond to SUWA. We've also got a letter of
5 responses in front of you and in front of SUWA,
6 so if you want to follow along, I think Jay will
7 follow that.
8 We also just wanted to mention that
9 there was reference to Elliot Lips' expert report
10 and credentials. Initially during the board
11 hearings that expert report was stricken from the
12 record. And at the time I think that was because
13 before the board the administrative record had
14 simply focused on--or the hearings had focused on
15 the administrative record which it closed at the
16 time. So we just wanted to point out that that
17 expert report was not admitted before the board.
18 Maybe a different procedural issue at this time.
19 So why don't you go ahead.
20 MR. MARSHALL: Okay. Thank you.
21 Seeing right here it's déjà vu. I've been here
22 before saying the same comments, the same concerns
23 that's been addressed a number of times. I don't
24 think I'm going to bore people going through each
25 and every counterpoint. I don't think we really

1 have time to do it right now. The information is
2 in the permit. Acid and toxic, there is equal
3 data in there. There is data of the seam above
4 and below the mine. There is equivalent data.
5 Historically coal coming out of the Sunnyside seam
6 has not been acid/toxic forming. If you treat it
7 in a certain way, you can probably make it that
8 way is what Kaiser did. They washed the coal.
9 They increased the percent of pyrite. They
10 submersed it in water, and, yes, you got a acid
11 discharge from the bottom of it. But that acid
12 discharge did not leave the permit area. There was
13 no violations written. It was immediately
14 neutralized from the ground around it and from the
15 Mancos. If there is such a big acid and toxic
16 concern, there are no violations written for it.
17 There are no reports that I could find on it.
18 Even if that material was acid and toxic, we have
19 committed testing and to treat it as if it is
20 acid and toxic. So it doesn't matter if it is or
21 not. We're going to treat it as if it is. We're
22 going to cover a four-foot cover. We requested a
23 waiver and was granted a waiver by the Division.
24 The Division agreed that there is comparable
25 material or comparable information of equal value.

1 And that's enough on acid toxic.
2 Water, water monitoring, SUWA has been
3 very creative in doing their charge. It doesn't
4 follow the guidelines. It doesn't follow
5 regulations in their time frames. Piezometers
6 have been measured for depth starting the third
7 quarter of '94. And up until the first quarter
8 of '05 we were able to get a sample. There were
9 a couple of those quarters that were missed
10 because of no access, but total numbers by sample
11 we had two in the first quarter, five in the
12 second, six in the third, and four in the fourth.
13 SUWA contends that UEI has not
14 monitored any of the surface water, any of the
15 ephemeral acting streams. We have monitored them
16 on a monthly basis since March of '01 and up
17 until April of '04, which is more than three plus
18 years of monthly monitoring of those ephemeral
19 acting drainages.
20 Ground water, the guidelines--and,
21 again, they are guidelines--recommend that you
22 have one year prior to submittal of permit and
23 two years prior to the approval. We've been
24 monitoring on a quarterly basis since first
25 quarter of '03. And we got a sample on the first

1 quarter of '05. Number of samples by quarter have
2 been two quarter one, two quarter two, three
3 quarter three, and three quarter four for all the
4 groundwater.
5 MPS wasn't mentioned so I won't discuss
6 it.
7 As far as being--showing a seasonal
8 variation, 7-2A shows a seasonal variation. It's
9 one line right on top of another line because
10 there is negligible variation by season. Aerial--
11 the regulations say you have aerial and vertical
12 demonstration, you know, a lot of the maps show
13 the aerial. If you look at any contour map with
14 groundwater on it, it has an elevation, it's
15 vertical. Let's move on from water quality and
16 monitoring. I don't want to bore people and take
17 up all their time, but the data is in the permit.
18 You just need to look for it. It's there.
19 Air quality, yes, we are permitted on
20 air quality for a million tons a year. It's not
21 uncommon for a company to start at starting
22 tronages and then modify their permit as the mine
23 develops and that is our plan. If we were to go
24 in today and get a 4-1/2 million ton air quality
25 permit, we would pay for 4-1/2 million tons of

1 emissions even if we don't admit it. And so it's
2 not good business sense to pay for emissions that
3 you don't need to pay for. It's, you know--we're
4 allowed by regulation to modify air quality permit
5 as needed and that's what we plan on doing. The
6 air quality permit as is is adequate for opening
7 the mine and probably for the first two to three
8 years.
9 The proposed rail load out is just
10 that. It's proposed. We don't know who. We
11 don't know what or we don't know when, even if
12 it's going to happen. It was just thoughts
13 internally that maybe it might be more beneficial
14 to reduce the truck traffic to put a rail spur in
15 closer to Lila Canyon Mine. And, again, we sent
16 a letter to the Division saying it was proposed
17 and we were asking the Division what if anything
18 needed to be permitted. The Division responded,
19 You need to submit a formal proposal. We're not
20 ready to submit a formal proposal because we don't
21 know what's going to happen if anything. Yes, we
22 started baseline data. We, we are required by
23 the Division to gather T&E species the year prior
24 to disturbance. While we were doing that, we
25 identified a quarter and collected teeny species

1 on the proposed conveyor and railroad alignment.
2 Now we have submitted the Division--or to the
3 Bureau of Land Management right-of-way
4 application, but those right-of-way application
5 would not be issued in Utah American's name if
6 they are ever issued. We don't know who's going
7 to do it, but whoever is going to do it will need
8 to do the same right-of-way application, the same
9 baseline data. We were just getting a leg up on
10 it and doing it for whoever is going to construct
11 if it's constructed, the rail route and overlying
12 conveyor.
13 As far as the donation, Horse Canyon
14 hasn't gone away. If I recall when I left my
15 office I still have a Horse Canyon permit on my
16 shelf. We're still bonded for the Horse Canyon
17 Mine. And as an operator at any time we have a
18 right in modifying that permit in any way we deem
19 necessary. And we have some excess buildings we
20 had no longer use for. We donated them. We'll
21 modify our permit to reflect that. But at the
22 present time, we're still bonded for it.
23 Yes, Mr. Murray handed out phone
24 numbers and names of board members. They are
25 public, available on the Internet for anybody who

1 would like to look. He also sent a copy of his
2 talk to the senators and representatives in
3 various states.
4 Yes, there was a period when UEI took
5 eight months to respond to some technical
6 deficiencies. But in that response there was a
7 requirement to redo the vegetation inventory. You
8 can only do vegetation inventories one time a
9 year, which is in the springtime. And at the
10 time, you know, we were in no real hurry for the
11 permit. Now we're ready for the permit. I think
12 that's all I got, Denise, if you've got anything
13 else.
14 MS. DRAGOO: Do you want to respond to
15 the archeological resource information?
16 MR. MARSHALL: Yeah, I'll respond a
17 little bit to archeologic resource information.
18 SUWA contended that there had been no inventories
19 done. In fact there had be several inventories
20 done throughout the years of the entire area that
21 is going to be disturbed. That information's in
22 a confidential binder just for reading, whoever's
23 interested in looking at it.
24 MS. DRAGOO: I just wanted to respond
25 to the land use issue that was raised by Mr.

1 Bloch, and I had referenced in my--Utah American
2 has referenced these earlier--this earlier letter.
3 Basically in terms of community planning, the--
4 there's--attached to that letter is an opinion
5 from the Interior Board of Land Appeals which
6 finds that Bureau of Land Management appropriately
7 determined that the money facilities were
8 consistent with Price River resource management
9 plan. Also in terms of the ongoing resource or
10 the efforts to revise resource management plan,
11 the way that the Bureau of Land Management works
12 is its current Price River RMP is in effect
13 until, until the new revision is adopted, so we're
14 focusing on the old RMP, not the new revision,
15 which won't be done for probably another couple of
16 years. So I just wanted to supplement the record
17 with our responses there.
18 HEARING OFFICER BAZA: I do have a
19 question for you. Can you, Denise? Or for Mr.
20 Marshall?
21 MS. DRAGOO: Sure.
22 HEARING OFFICER BAZA: The Southern
23 Utah Wilderness Alliance has raised a number of
24 issues. And as we look at this informal
25 conference, part of it was to obtain information,

1 derive new information. If I can paraphrase what
2 you said, Mr. Marshall, you feel like you have
3 responded to many of these issues before and that
4 your, your application you feel contains the
5 information that SUWA indicates is not. Is that
6 what I understood you to say?
7 MR. MARSHALL: Yes, that's correct, Mr.
8 Baza.
9 HEARING OFFICER BAZA: Okay. So at
10 this point, other than the addressing of land use
11 issues as you said or Mr. Murray's comments, you,
12 you don't have any additional information that you
13 would like to supply for this informal conference?
14 MR. MARSHALL: No. Unless you do.
15 MS. DRAGOO: That's correct.
16 HEARING OFFICER BAZA: Anything else,
17 Denise?
18 MS. DRAGOO: That's it.
19 HEARING OFFICER BAZA: Okay. Let's
20 turn the time over to the Division now.
21 MR. ALDER: Thank you, Chairman, or
22 presiding officer--Director, Baza. I would like
23 to ask if I might to take just a few minutes to
24 consult with the Division. There's been
25 substantially more information provided by

1 Southern Utah Wilderness Alliance in their written
2 comments than had been provided earlier. And
3 there's a couple of new items. I would like to
4 make sure we address those--or questions that may
5 pertain to those in a way--
6 HEARING OFFICER BAZA: How much time do
7 you want?
8 MR. ALDER: Just five minutes.
9 HEARING OFFICER BAZA: Okay, that's
10 probably appropriate to give the court reporter a
11 break. Why don't we take--let's take ten minutes.
12 MR. ALDER: Okay. Thank you very much.
13 (Recess taken.)
14 HEARING OFFICER BAZA: Okay. We're
15 going to go back on the record now. Also I
16 noticed that we might have one or two faces that
17 walked in either prior to this or at the break
18 that we didn't identify on the record. I think,
19 Priscilla, you were one. Will you just identify
20 yourself for the court reporter?
21 MS. BURTON: I'm Priscilla Burton, and
22 I'm the Division spokesman.
23 HEARING OFFICER BAZA: Okay. Anyone
24 else? Vickie, are you a new face? Want to just
25 say who you are?

1 MS. SOUTHWICK: Vickie Southwick,
2 executive secretary.
3 HEARING OFFICER BAZA: Okay. Very
4 good. All right, Mr. Alder, I'll turn the time
5 over to you for your comments and statements.
6 MR. ALDER: Thank you very much. I
7 would like to address some of the procedural
8 questions that have been raised first. With
9 regard to the extension of this informal
10 conference, there are two aspects I think that
11 need to be considered by the parties. One is
12 that this is an opportunity to provide notice as
13 to issues that perhaps other people don't believe
14 have been properly dealt with or understood by the
15 application. It's also an opportunity for public
16 comment again. We understand SUWA's concern to be
17 that some of the information from the public
18 information room was not complete. That's
19 additional information outside of the TA, which is
20 really what was sent out to the public for
21 comment. And we appreciate SUWA's thoroughness in
22 reviewing the information and the opportunities
23 that--for the thoroughness they're taking and
24 examining this application, but we think that
25 probably maybe ten days, fifteen days will be

1 enough time for them to look at that additional
2 information, provide additional comments to the
3 Division as far as any information that may have
4 been omitted from the TA that would be revealed
5 by that additional information that wasn't in the
6 public information room. Having said that, the
7 other issue we have to deal with is the
8 requirement in the statute that provides that
9 40-10-14 that if a conference has been held after
10 written findings, the Division--this is
11 40-10-14-1, it says, The Division shall issue and
12 furnish the application for a permit and persons
13 with parties to proceedings with the written
14 finding of the Division granting or denying permit
15 in whole or in part and stating the reasons
16 within the 60 days after the conference. So this
17 wasn't really a Lowell Braxton innovation, this,
18 this continuation of informal conference. This is
19 a way to provide the parties to examine all the
20 issues that have been raised in a complex permit
21 and make sure that if they're thoroughly analyzed
22 in the application process, and I think that that
23 has served all the parties well to have this
24 second informal conference, this second input to
25 the TA. And so I think notwithstanding the

1 potential to close this conference, I think the
2 parties will need to continue their dialogue and
3 correspondence, and we have submitted to Southern
4 Utah Wilderness Alliance the Division's questions
5 or inquiries about their comments--were submitted
6 on October 11th, and we apologize for not getting
7 those to them sooner, but there's a lot of people
8 involved, and we went through their comments with
9 some, some detail. And I would like to just go
10 over those briefly in a minute. But--so I guess
11 we would just say that we're--we wouldn't be a
12 opposed to a longer extension, but we think that--
13 keep in mind that's a limited purpose. It's an
14 opportunity to provide public input. And if the
15 Southern Utah Wilderness Alliance people can look
16 at that information, provide their additional
17 comments on information that wasn't in the TA
18 within ten days, that would serve that purpose.
19 One other sort of procedural matter: we
20 don't think that the letter that was--or the
21 speech that was given has anything to do with the
22 permitting process. And-but I would just like to
23 note really shouldn't be part of this record. It
24 doesn't go to the merits of the application. And
25 the Division is used to the politics of this

1 mining process, and I'm sure Southern Utah
2 Wilderness Alliance is, and we don't think that
3 that adds anything to the discussion of the
4 technical merits that should be decided by the
5 Division.
6 Looking at the comments of Southern
7 Utah Wilderness has provided, they have answered
8 some of the questions but some of them haven't.
9 And I'm not going to go through each one of these
10 in detail, but I have gone through them kind of
11 in the same order you did, Mr. Lips. And let me
12 see if I can summarize some of them to you. With
13 regard to the acid- and toxic-forming materials,
14 the Division believes there is information in
15 Appendix 6-2 which deals with the chemical
16 composition that's required by the rules for coal
17 that is on--within the permit area. And if you
18 could respond to the Division with regard to that
19 either now--and I guess I keep calling you Mr.
20 Chairman, but Presiding Officer Baza, one of the
21 things is I think SUWA needs an opportunity to
22 respond to this information that we've requested
23 of them and that will also help us in evaluating
24 the application. So one consideration in whether
25 or not they should be granted further time is how

1 much time they need to respond to this.
2 MR. BLOCH: If I can interject for just
3 a moment. It was my understanding in talking to
4 Mr. Alder we were not going to be having a back
5 and forth. I think you eluded to as much. Since
6 we have these points in writing from the
7 Division--and I just want to clarify this that as
8 I've indicated we'll be happy to review them and
9 respond as appropriate but not to have a dialogue
10 here about the points.
11 HEARING OFFICER BAZA: I think that's
12 appropriate to say that you haven't had adequate
13 time to consider the questions and respond to
14 them.
15 MR. ALDER: And I didn't mean to--when
16 I directed the question to Mr. Lips, I didn't
17 mean to ask him to respond this morning. I just
18 wanted to make him aware of that.
19 HEARING OFFICER BAZA: Okay.
20 MR. ALDER: With regard to the surface
21 water resources, you have consistently set forth
22 that you believe there are other methodologies for
23 measuring the seasonal flow and water fall
24 information for those streams. I think this has
25 been an issue in all of the hearings and all the

1 proceedings. And I'm wondering if you would in
2 your response provide the Division with your--more
3 detailed--as to your opinion as to what you I
4 think referred to as professionally recognized
5 procedures for making those kind of measurements.
6 With regard to the coal mine waste
7 issue that was identified in your October 11th
8 letter, we're a little confused or think perhaps
9 you might be to the term, end dumping. And if
10 that is an issue, we need to address it, but we
11 think that end dumping as it's used in the rules
12 is not the same type of end dumping as is
13 proposed by the applicants. So that's something
14 we would like to have addressed.
15 I think you did a good job explaining
16 the groundwater and surface water baseline
17 concerns and PHC concerns. And we may have
18 further questions for you after we review your
19 application today, but when we get to water
20 consumption, there seems to be some question as to
21 whether or not that your calculations that you
22 submitted today included water that is put back
23 into the stream, water line discharge water that
24 whether or not you included that when you did
25 your water consumption calculation.

1 I would like to make one correction of
2 the record of this hearing and that is that I
3 think it was interpreted by some, and Mr. Bloch
4 said that he had had a conversation with the
5 Division and the Division informed him that we
6 had--that it had not satisfied the requirements of
7 the National Historic Preservation Act.
8 Obviously, that's not the opinion of the Division.
9 I think what Mr. Bloch was saying that that was
10 his conclusion based on his conversation and
11 information he gained from a conversation I was
12 party to. And I think there is a difference of
13 opinion. And specifically we have asked in our
14 letter to date if you would identify what
15 authority still believes-that would require the
16 Division to--and what kinds of requirements are
17 necessary for cultural resources of the area above
18 where there's subsidence questions as opposed to
19 to the minor. I think SUWA probably knows that
20 the surface areas have been completely surveyed
21 and the question probably that is still maybe a
22 legal question is to what degree there is National
23 Historic Preservation Act compliance in the
24 potential subsidence area. So that would be
25 something we need to have responded to. But the

1 record today shouldn't indicate that we don't
2 think we complied--or the Division doesn't think
3 it's complied. And also I think the record
4 should be clear that there is information in the,
5 in the application with regard to the compliance
6 in other areas.
7 You've provided us with one new item,
8 which is the--what you referred to as the
9 renewable area comments and so we may get to you
10 with a written response on that comment. That's
11 fairly new to this dialogue that we've been
12 having.
13 And there was a question about whether
14 or not the data that was being renewed on the
15 prong horned antelope whether or not that's DWR or
16 BLM that's doing that updated plan. So if we
17 could get that clarified.
18 And then I guess I have just one
19 question for UEI. Are you satisfied that you can
20 get an air quality permit for 4-1/2 million tons?
21 Is that just not an issue? Has that been
22 presumed?
23 MR. MARSHALL: I don't have--
24 MR. ALDER: We don't need--
25 MR. MARSHALL: Yeah. And I don't mind.

1 We did that three different times as production
2 increased, you know.
3 MR. ALDER: I guess the question is
4 whether the mine's prepared to operate at a
5 million tons if it doesn't. And, again, that's
6 just something I think maybe can be addressed in
7 a conference. So that's all I have.
8 HEARING OFFICER BAZA: Let me ask you
9 some questions about your letter by Mr. Alder.
10 Is it your opinion that you would need a response
11 from this Division to make decision on the permit
12 application?
13 MR. ALDER: Yes. And I don't think
14 that--and I appreciate the opportunity to clarify
15 that the decision on the application is not
16 constrained by 10 days or 30 days extension of
17 this informal conference. The extension on the
18 decision will take place when they think they have
19 all the adequate information has been answered and
20 we do have the 60-day constraint, but that can be
21 dealt with and has been dealt with before by
22 denying the permit in part and approving it in
23 part. It's just very awkward.
24 HEARING OFFICER BAZA: Would you
25 recommend that these questions be answered before

1 we close out the informal conference?
2 MR. ALDER: Yes.
3 HEARING OFFICER BAZA: All right.
4 Anything more?
5 MR. ALDER: No.
6 HEARING OFFICER BAZA: Okay. Well, we
7 also have an audience here with us. And I know
8 that Mr. Petersen of Emery County has a statement
9 that you would like to make. So now is the time
10 for anyone who has public comments to make those,
11 and we'll give Mr. Petersen first crack.
12 MR. PETERSEN: Thank you, Director. I
13 would just like to read a prepared statement here.
14 It represents Emery County's position. Emery
15 County welcomes the opportunity to comment on the
16 permit application referred to about the Lila
17 Canyon extension. The area described in the
18 application permit is within the boundary of Emery
19 County as well as proposed access rights-of-way.
20 Emery County is well suited for the location of
21 this mining operation. Supported industries are
22 in place within the Carbon/Emery area. Trained
23 and available workforce is available. Emery
24 County is willing and able to participate in
25 necessary road construction to make this project

1 happen. Emery County supports the issuance of the
2 permit to Utah America Energy, Incorporated, and
3 wants the Division to contact the county
4 commission for further information concerning our
5 support should that be necessary.
6 Local economic stimulus is anticipated
7 with the development of this mine. It is also
8 important nationally and regionally that energy-
9 producing resources are developed to help lessen
10 our dependance on other less reliable resources.
11 It is important to us that every effort be made
12 to expedite the issuance of this permit. We are
13 satisfied that environmental concerns are
14 addressed adequately in the permitting process.
15 Those that would oppose this mine and other
16 projects like it have an unrealistic understanding
17 of energy needs of this nation. Strategies are
18 adopted by such opposition which are intended only
19 to delay the development of resources gladly
20 necessary to the economic well being of this
21 country. Emery County asks the Division to commit
22 to a timely decision in regard to the application
23 being considered.
24 HEARING OFFICER BAZA: Mr. Petersen, do
25 you have any comments as to what would constitute

1 the timely decision?
2 MR. PETERSEN: As soon as possible. I
3 would say--I would echo the déjà vu sentiment.
4 Over a year ago, we submitted virtually the same
5 statement. A lot of the things that are being
6 addressed and brought up today I believe have been
7 addressed. So whatever the Division can do to--
8 again whatever can be done to hasten this.
9 HEARING OFFICER BAZA: Okay. Thank
10 you. Are there any other comments from
11 individuals? Mr. Alder?
12 MR. ALDER: Yeah, I've been reminded of
13 one additional point that I think is probably
14 apparent to everybody, but we would like to make
15 it clear for the record that the obligation to
16 provide data and responses to the questions that
17 have been raised by Southern Utah Wilderness
18 Alliance, I think notwithstanding the current
19 status of this reviewing having gone on for a
20 long time, still remains that of the applicant.
21 And under the statute, the applicant or any person
22 who applies for a coal mine permit has to show
23 they've met all requirements of the act and rules.
24 And so we just want to remind that in this
25 procedural review it's not the Division's

1 obligation to deal with this time constraint to
2 come up with additional information but to analyze
3 the questions and then they would be punted back
4 to the applicant and so in your concern for time,
5 UEI, we probably should advise you that you will
6 be the ones who will be asked to provide the
7 information if we find that it's necessary.
8 HEARING OFFICER BAZA: All right. I
9 need to ask a clarifying question then. Maybe this
10 can be to all the parties but primarily to Mr.
11 Alder. You made the statement that you expected a
12 continuing dialogue to occur amongst the parties
13 in order for the Division to go ahead and issue
14 this permit. What's the correct process for the
15 continuing dialogue? Is it this informal
16 conference or is it simply having correspondence
17 and communication with the parties involved?
18 MR. ALDER: I think that there's two
19 avenues for communication. And this conference
20 has been extended somewhat to fill both rolls.
21 It provides an opportunity for some exchange that
22 would otherwise take place in the review process,
23 which would be--so one of the avenues is the
24 informal conference, which is an opportunity for
25 public comment, identifying issues and we've maybe

1 extended that.
2 The other avenue is the technical
3 review process, which allows for the Division to
4 respond to the applicant and to press them for
5 additional information as necessary and then to
6 issue their final decision. I think that under
7 the circumstances of this mine where it's been
8 appealed to the board before there's been an
9 anticipation of some conflict. And so I guess we
10 feel like this informal conference process has
11 helped facilitate the second avenue of discussion,
12 the permit review avenue. But, strictly speaking,
13 the Division, if you were to close this informal
14 conference, the Division will review the comments,
15 they'll respond to the applicant. They'll process
16 and eventually reach a final decision. And SUWA
17 will then have an opportunity to go through the
18 paper room again to go through everything else
19 again to raise the issues before the board. We
20 just want to make sure that that doesn't happen
21 until we are at a stage where we have a decision
22 that everybody's comfortable with.
23 HEARING OFFICER BAZA: I believe you've
24 already pointed out what the rules in the statute
25 indicate that the decision must be made within 60

1 days after the close of the informal conference.
2 MR. ALDER: Yeah. I don't know who the
3 drafters of that statute were talking to.
4 HEARING OFFICER BAZA: Okay.
5 MR. ALDER: They weren't dealing in our
6 world.
7 HEARING OFFICER BAZA: Mr. Bloch or
8 Denise, do either of you have any comments on
9 that question?
10 MR. BLOCH: As I've indicated, we're
11 happy to continue talking to people from the
12 Division, to talk to UEI. In response to the
13 letter we received today from Mr. Alder that's
14 three or four pages long, you know, it's going to
15 take us some time I think to respond. For us it
16 would make sense to have a single response, to
17 have a response to the additional documents that
18 were placed into the pick into the public
19 information room last Friday, and to respond to
20 the questions raised in this letter. We're not
21 going to be able to do that in five or ten or
22 probably even Fifteen days. This is a 17-point
23 letter, which has several questions along with
24 each point. I think 30 days is enough time for
25 us to respond if the Division wants to receive a

1 meaningful response from us.
2 HEARING OFFICER BAZA: Ms. Dragoo?
3 MS. DRAGOO: Yes. Once again, we
4 encourage a quicker response than that. We
5 believe that these issues--questions really all
6 relate to the same questions that have been raised
7 for the last, what, two and a half, almost three
8 years, more than three years because this of
9 course is the second informal conference, same
10 issues came up at the first informal conference
11 held in May of 2002 I think it was. So this has
12 been three and a half years that these same
13 questions have come up again and again. So we
14 would encourage the hearing examiner to shorten
15 the period of time if you are going to keep the
16 record open to a period of five days for SUWA to
17 respond, get a letter out, and then to the extent
18 that it requires a response from Utah American,
19 another five days for Utah American to respond.
20 HEARING OFFICER BAZA: Okay.
21 MR. BLOCH: If I can ask just one other
22 clarifying question: I'm not sure I understand
23 40-10-14-1, the 60-day time line, if that's--I
24 guess for yourself or for Mr. Alder, if the
25 60-day time line starts following the close of the

1 conference by the hearing officer or if it's the
2 end of a conference today. I'm just trying to
3 clarify that.
4 MR. ALDER: I think our position is
5 that the presiding officer could keep the
6 conference open for 30 more days without having
7 another hearing and say we'll close this
8 conference 30 days from now, provide opportunity
9 for written responses or written inputs to the
10 questions. That's our position.
11 HEARING OFFICER BAZA: What I'm going
12 to do is I'm going to consult with my legal
13 counsel here before I answer that question. But
14 before I do, are there any other comments from
15 the audience on this informal conference?
16 MR. BLOCH: I suppose my last point is
17 in response to Mr. Alder's question about the
18 letter from Mr. Murray. I think it's entirely
19 appropriate. It's entirely appropriate in the
20 record. I'm not sure if I interpret his comment
21 to some type of motion to strike. I'm not sure
22 that there is such a vehicle when you have this
23 type of an informal setting. I think it's
24 appropriate it should stay in. And I think it
25 does color how the Division proceeds.

1 HEARING OFFICER BAZA: Was it a motion
2 to strike?
3 MR. ALDER: I don't think there is a
4 thing for an informal conference. I think the
5 record should be clear that it really doesn't have
6 anything to do with the decision process and it's
7 nothing new.
8 HEARING OFFICER BAZA: Very well. I
9 would like to take ten minutes with Heather and
10 discuss this. So if you'll all just hang loose
11 for a few minutes, we'll go off the record and
12 come back in a few minutes.
13 (Recess taken.)
14 HEARING OFFICER BAZA: Okay. We'll go
15 back on the record now. Let me start my comments
16 by saying that I appreciate all the parties who
17 have been involved in this for their efforts. I
18 think that the--any decisions that the Division
19 will make will have added value because of this
20 the efforts of the various parties and the
21 communication that has occurred and the comments
22 that have been made. So I really appreciate
23 everyone taking the time and making the effort to
24 do this.
25 As I indicated in the beginning, and

1 I'll paraphrase what I said initially, the purpose
2 of this proceeding in my mind is to determine
3 whether the application fulfills the intent of the
4 administrative process and whether there was any
5 new information to be gained or added information
6 that could be provided during the informal
7 conference. There's been a lot of water under
8 the bridge on this. And there's been a lot of
9 effort and time put in by all the parties in
10 trying to present information. However, what I've
11 heard today doesn't necessarily indicate that the
12 informal conference needs to be continued or
13 extended. There is a process yet remaining with
14 the Division where they have to issue a permanent
15 decision within 60 days of the close of the
16 informal conference. And I would expect that the
17 parties would continue to dialogue and communicate
18 during that period of time. But in fairness to
19 Mr. Bloch and the fact that he explored our
20 record last week and was not able to find certain
21 documents that he felt would have added to his
22 presentation, I'm going to allow that this
23 informal conference will remain open, the record
24 remain open until November 18th, which is about
25 ten days from now. So, Mr. Bloch, what I'll

1 instruct you to do is to make whatever further
2 analysis or comment or anything that you think
3 would add to--value to the Division's decision
4 making by the close of business on November 18th.
5 And then at that point this informal conference
6 will close and that is my decision. With that we
7 know that the Division will then have no more
8 than 60 days in which to render a decision on the
9 permit. And, of course, the Division should
10 continue to communicate with the parties involved,
11 to get answers to their questions, and to ensure
12 that they've got all the information they need to
13 render that decision. And I think that that
14 tries to split the baby a little bit. It's
15 longer than five days maybe not as much as thirty
16 days, but it will allow this record to remain
17 open until close of business on November 18th.
18 So, again, I thank everyone involved. I
19 appreciate you being here. Again, it has added to
20 the process to have these meetings and these
21 conferences, and we'll try to progress very
22 quickly and expeditiously from this point.
23 One more thing on the record: I think I
24 have to do a written decision, and that decision
25 will be issued within a reasonable time after the

1 18th.
2 (Hearing concluded at 11:04 a.m.)
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CERTIFICATE

This is to certify that the foregoing proceedings were taken before me, NANCY FULLMER, a Registered Professional Reporter and Notary Public in and for the State of Utah;

That the proceeding was 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 testimony so taken and transcribed is set forth in the foregoing pages;

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.

Nancy A Fullmer

Nancy Fullmer, RMR
My Commission Expires:
June 28, 2008

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