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Coal

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11/21/06  
DIV. OF OIL, GAS & MINING  
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November 21, 2006

*Hand Delivered*

Director John R. Baza  
Utah Division of Oil, Gas & Mining  
1594 West North Temple  
Salt Lake City, Utah 84116

*Incoring ok  
2/007/0013*

**RE: Issuance of the Mine Permit for the Lila Canyon Mine to Utah American Energy, Inc. ("UEI")**

Dear Director Baza:

UEI hereby requests that you and the Utah Division of Oil, Gas & Mining ("**Division**"), issue the mine permit for UEI's Lila Canyon Mine, C/007/013 ("**Mine Permit**"), within sixty (60) days.

As you are aware, UEI's application for the Mine Permit has been pending for eight (8) years. UEI's application has met the requirements of the Utah Coal Program on repeated occasions over the years as most recently confirmed by the Division's September 21, 2005 final technical analysis ("**TA**").

The Division has full authority and, indeed, is mandated pursuant to Utah Code Ann. § 40-10-14 to issue a decision regarding the Mine Permit within the next sixty (60) days.

Pursuant to the Utah Cooperative Agreement, the Mine Permit approval is conditioned upon further federal mining plan approval, if any such approval is required by the U.S. Department of the Interior ("**DOI**"). Specifically, the Utah Cooperative Agreement, 30 C.F.R. § 944.30, Art. VI.C(f), provides:

DOGGM may make a decision on approval or disapproval of the permit on federal lands . . . prior to the necessary Secretarial Decision on the mining plan . . .

The federal mining plan approval for the six (6) federal coal leases which comprise the Lila Canyon Extension was issued by the DOI on November 5, 2001 and continues to remain in effect. UEI recently confirmed that the federal Bureau of Land Management ("**BLM**") insists

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that a new federal mining plan is not required. The determination regarding the need for a new federal mining plan approval is reserved to the Secretary of the Interior under the federal Mineral Leasing Act of 1920 ("MLA"), 30 U.S.C. § 201. Section 523(c) of the Surface Mining Control and Reclamation Act ("SMCRA") specifically provides, "Nothing in this subsection shall be construed as authorizing the Secretary to delegate to the State his duty to approve mining plans on Federal lands." The Secretary will make a determination regarding the viability of the existing federal mining plan approval once the Division has issued the Mine Permit. If the current federal mining plan remains in effect, there is no "federal undertaking" and the need for further tribal consultation is eliminated. If tribal consultation is required under a new federal mining plan, it should be completed by DOI, not the State of Utah. The federal mining plan relates to the leasing of federal coal reserves which, pursuant to the MLA, is solely within the purview of the DOI. Therefore, UEI requests the State to go forward and issue the Mine Permit. DOI should complete further tribal consultation, if any, as the Secretary may determine.

Again, we request that the Division issue the Mine Permit within the next sixty (60) days, which you have the authority to do. We appreciate your consideration of this matter. Please call me if you have any questions.

Very truly yours,



Denise A. Dragoo

DAD:jmc:419821.5

cc: Steve Alder, Esq.  
Michael McKown, Esq.  
John Jevicky, Esq.