

DEC 01 2006

DIV. OF OIL, GAS &amp; MINING

UtahAmerican Energy, Inc.

Lila Canyon ProjectP. O. Box 986, Price, Utah 84501

Phone: (435) 888-4000

Fax: (435) 888-4002

December 1, 2006

VIA HAND DELIVERY

John R. Baza, Director  
 Division of Oil, Gas and Mining  
 Department of Natural Resources  
 State of Utah  
 1594 West North Temple, Suite 1210  
 Salt Lake City, Utah 84114

*Inaug*  
 1/007/0013  
 JK

**RE: Request for Supplemental Technical Information and Clarifications, Lila Canyon Extension, UtahAmerican Energy, Inc., Horse Canyon Mine, C/007/0013**

Dear Mr. Baza:

We received your letter of November 27, 2006, with which you enclosed a letter from Ms. Pamela Grubaugh-Littig, Permit Supervisor of the Division of Oil, Gas and Mining ("DOGM") that cites various alleged "technical deficiencies" in the mine permit application ("Mine Permit") of UtahAmerican Energy, Inc. ("UEI").

We have very serious concerns that DOGM has raised several alleged deficiencies for the first time and that these issues were not discussed with UEI in recent meetings with DOGM. Moreover, Ms. Grubaugh-Littig's letter inappropriately describes these matters as "technical deficiencies." Mr. Baza, this latest letter appears to be yet another effort by DOGM's permitting staff to illegally delay issuance of the Lila Canyon Mine permit. This illegal action is violating UEI's property rights.

As you are aware, DOGM previously found the Mine Permit technically adequate ("TA") in the TA determination issued on September 21, 2005. As of that date, DOGM had reached an all important milestone in the granting of UEI's mine permit for the Lila Canyon Mine project. After seven years of a permitting process, in which the Southern Utah Wilderness Alliance ("SUWA") participated by raising repetitive and irrelevant objections, the Division found UEI's application to be technically adequate and issued a written TA determination. As the Division knows, the TA determination is the basis on which it makes findings and a decision to issue a mine permit. In the written TA determination, the Division analyzed and made written findings that UEI's Mine permit application was in compliance with the Utah Coal Mining and Reclamation Act and the Utah Coal Mining Rules. In this comprehensive 97 page document, the Division set forth all of the regulatory requirements for obtaining a Utah coal mining permit and determined that UEI's permit application met those requirements. Included with the TA

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determination was a 71 page Cumulative Hydrologic Impact Assessment ("CHIA") which was independently prepared by the Division. The Division's CHIA found that ". . . there will be no impacts to hydrologic resources and no probability of material damage for the proposed Lila Canyon Extension."

At this point in the permitting process, the Division should have gone into its deliberative stage and issued a permit based on its findings set forth in the September 21, 2005, TA and CHIA determinations. It did not do so. Instead, contrary to the manner in which any previous permit had been processed under the Utah Coal Program, it took the unprecedented step of forwarding the TA determination to SUWA for review and provided SUWA a further opportunity for informal conference. SUWA was allowed 15 days in which to review the September 21, 2005, TA determination and request a continuation of the informal conference. SUWA made this request by letter dated October 11, 2005, and, although the request was filed more than 15 days after the TA determination, the Division granted SUWA's request. The informal conference was held on November 8, 2005. During the informal conference on November 8, 2005, the Utah Attorney General's Office presented SUWA with a letter setting forth a list of issues repeatedly raised by SUWA and specifically asked SUWA to explain why the TA did not, in the opinion of SUWA, address these issues. SUWA once again raised many of the same issues it had presented at the previous two informal conferences and UEI responded by letter dated November 8, 2005, that these issues were previously addressed and continued to object to the scope of the informal conference. You informed the parties that the Division would close the record on the informal conference as of November 18, 2005.

By letter dated November 23, 2005, following closure of the record on November 18, 2005, the Division requested UEI to provide further explanation of certain issues raised by SUWA during the informal conference and concerning the TA determination. UEI responded to the Division's request. However, at SUWA's request, a meeting with the Division to address these questions was scheduled after the administrative record was closed. At the further request of SUWA, and over the objection of UEI's counsel, the Division took the unprecedented step of excluding UEI from the meeting scheduled on December 8, 2005, that involved UEI's permit. The Attorney General's Office responded to UEI's objection by asserting that the Division had the authority to exclude UEI, the permit applicant, from the conference between SUWA and the Division because the matter involved "the technical adequacy of UEI's application, not its completeness." You then issued an order dated December 2, 2005, which: (i) closed the informal conference record as of November 18, 2005; and (ii) set a timeframe of 60 days for the Division to complete its permit review even though the permit application had been reviewed and found technically adequate on September 21, 2005.

One year later, we are now addressing permit application items alleged to be "technically deficient" but which appear largely to be requests for cosmetic clarifications that do not affect the technical adequacy of the permit application. Approximately three-fourths of the alleged "technical deficiencies" raise hydrological issues that were previously addressed in the Division's TA and CHIA determinations and found to be in compliance with Utah's coal mining statute and

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regulations. Mr. Baza, you need to stop your permitting staff from abusing its authority and put an end to this process by issuing a mine permit to which UEI demonstrated over a year ago it was entitled.

Nevertheless, UEI expended considerable resources to be able to respond to Ms. Grubaugh-Littig's letter within four (4) days of receipt of the letter containing "Technical Deficiencies." This response will be hand delivered to the Division today. UEI is making every effort needed to assure the issuance of the Mine Permit within the sixty (60) day period that UEI requested. The Mine Permit should be issued by DOGM no later than January 22, 2007.

Because UEI was able to respond to Ms. Grubaugh-Littig within four (4) days, the Division should clearly be able to review the response within four (4) days and meet the 60 day time period. Again, we ask that DOGM finally bring this process to a conclusion, and that DOGM fulfill its statutory duties and issue the Mine Permit no later than January 22, 2007.

Sincerely,

UTAHAMERICAN ENERGY, INC.



Michael O. McKown  
General Counsel

MM/bjb

cc: Steven Alder, Esq.  
John Harja, Esq.  
Lynn Stevens  
James Kohler, BLM  
Ira Hatch, Emery County