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PGL

southern utah wilderness alliance

December 19, 2006

Incoming
C/007/0013

John Baza – Director
Division of Oil, Gas and Mining
P.O. Box 145801
Salt Lake City, Utah 84114-5801

Re: UtahAmerican Energy, Inc. December 8, 2006 Letter Concerning Decision on Horse Canyon Mine, Lila Canyon Extension C/007/013 Permit Application

Dear Director Baza:

We write to you concerning the recent correspondence between UtahAmerican Energy, Inc. (UEI) and the Division of Oil, Gas and Mining (DOGM or "the Division") regarding the proposed Lila Canyon Mine. This correspondence culminated in UEI's December 8, 2006 letter stating that the Division has until January 22, 2007 to "issue the Lila Canyon Extension mine permit." As you may know, Southern Utah Wilderness Alliance (SUWA) signed UEI's proposed stipulation – circulated earlier this month – to start the clock running again on the Division's review of and ultimately decision on UEI's permit application. SUWA agrees with UEI that the Division should finalize its decision regarding UEI's permit application for the Lila Canyon mine as soon as possible, and no later than January 22, 2007.

Further, SUWA disagrees with the Division's position – stated in its December 12, 2006 letter to UEI – that a formal hearing is needed to rescind the January 16, 2006 stipulation and compel DOGM to act on UEI's permit application by January 22, 2007. As explained below, however, because UEI has not provided the Division with an administratively complete and technically adequate permit application package, the Division has no choice but to deny the permit.

First, UEI has not fully responded to the Division's November 27, 2006 letter seeking supplemental technical information and clarifications. SUWA has reviewed UEI's most recent submission to the Division – provided on December 1, 2006 – and concluded that UEI's submission is incomplete. For example, UEI failed to reconcile conflicting information between the text and figures regarding the elevation of the potentiometric surface in the regional aquifer, and thus fails to accurately describe the potential down-gradient impacts. UEI has also failed to provide complete and accurate descriptions of the recharge and discharge areas of both the perched aquifer and the regional aquifer.

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In addition, UEI has not responded to the concerns raised by SUWA over the past several years and most recently at the November 8, 2005 informal conference. Most notably, UEI has failed to provide DOGM with adequate baseline information for surface and ground water quality and quantity. This failure infects several other aspects of the permit application package 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. Furthermore, UEI has failed to identify numerous seeps and springs in the permit area, they have not submitted the required maps and cross-sections, and they have failed to accurately assess the impacts of subsidence on water resources in the permit and adjacent areas.

Finally, the National Historic Preservation Act, Section 106 consultation process has not yet been finalized and thus any decision by the Division regarding the PAP prior to the completion of consultation must be to deny the permit.

Over the past five years UEI has repeatedly provided the Division with technically incomplete and inaccurate information and UEI's latest submission on December 1st is no different. As Assistant Attorney General Steven Alder stated in his November 23, 2005 letter to UEI: "It is the burden of the applicant to satisfy the criteria of the rules before the Division can issue a permit." UEI's continued failure to follow the rules leaves the Division with no choice but to deny the permit application in its entirety.

Sincerely,

Stephen Bloch
Staff Attorney

Cc: Steven Alder, Assistant Utah Attorney General
Denise Dragoo, Snell & Wilmer