



IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
P.O. Box 46667
Denver, Colorado 80201-6667

January 3, 2007

Mr. Jim Kohler, Solid Minerals Group Manager
Bureau of Land Management
P.O. Box 45155
Salt Lake City, UT 84145-0155

Jim Kohler
Cout 10013 OK

Dear Jim,

I am writing this letter regarding the Lila Canyon Mining Plan decision.

As you know, a mining plan for the Lila Canyon Mine was approved by the Assistant Secretary, Land and Minerals Management (ASLMM) on November 05, 2001, for Federal Leases SL-066145, SL-066490, SL-069291, U-014217, U-014218, and U-0126947 at UtahAmerican Energy, Inc.'s Horse Canyon Mine located in Carbon and Emery Counties, Utah.

On several occasions you have contended that since a mining plan was already approved for the Lila Canyon Mine, there is no need for approval of another Mining Plan as a result of impending re-issuance of a corrected permit by the Utah Division of Oil Gas and Mining (DOGM).

Approval of a new mining plan is necessary for the following reasons -

- (1) The mining plan that was approved on November 05, 2001, was based, among others documents, on the DOGM permit findings and recommendations and existence of a valid lease issued by BLM.
- (2) Subsequent to invalidation of the DOGM permit by the Utah Board of Oil, Gas and Mining, BLM put the leases in suspension. These two regulatory actions rendered the ASLMM approval of the original mining plan for an area for which there was no valid DOGM permit or right to mine.
- (3) The legal description and area of Federal leases that were covered in the State permit and the existing mining plan decision document are incomplete and incorrect.
- (4) Documentation in the existing mining plan decision document to assure compliance with applicable requirements of other Federal laws, specifically those of the Endangered Species Act and the National Historic Preservation Act, are incomplete and inadequate.

After receipt of documentation of compliance with the above deficiencies, OSM plans to prepare a single decision document recommending to ASLMM to cancel the existing mining plan, and approve the new mining plan.

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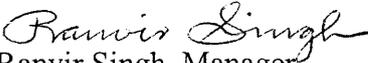
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DIV. OF OIL, GAS & MINING

I hope the above and the enclosed analysis titled Need for a New Mining Plan Approval for the Lila Canyon Mine, will help you understand OSM's position.

Sincerely,


Ranvir Singh, Manager
Program Support Operations
Program Support Division

Enclosure

Cc. Mary Ann Wright, DOGM

Need for a New Mining Plan Approval for the Lila Canyon Mine

REGULATORY REQUIREMENT#1: Mining plan decision document must be based upon the permit application package (PAP) including the resource recovery and protection plan [30 CFR 746.13 (a)]. The Federal regulations under 30 CFR 746.17(a) state, "Each mining plan approval shall cover the operations for which a complete permit application package was submitted, unless otherwise indicated in the approval."

In its appeal of Utah Division of Oil, Gas & Mining's (DOGM) approval of the Lila Canyon permit on July 27, 2001, the Southern Utah Wilderness Alliance (SUWA) asserted that the permit application package (PAP) was incomplete or insufficient in several areas. Consequently, on December 14, 2001 the Utah Board of Oil, Gas & Mining (Board) denied the permit, and remanded it to DOGM for further action.

Specifically, the Board found that the PAP lacked sufficient baseline data on acid and toxic forming materials, baseline ground water data, baseline surface water data for intermittent streams, seasonal quality and quantity data of existing groundwater wells, groundwater monitoring for quality, maps and cross sections showing the location and extent of subsurface waters, inadequate Probable Hydrologic Consequences determination, inadequate Cumulative Hydrologic Impact Analysis, and an inadequate determination of no adverse impact of mining within 100 feet of a stream.

(b) The November 5, 2001, Secretarial approval of the Lila Canyon Mine Plan for Federal leases SL-066145, SL-066490, SL-069291, U-014217, U-014218, and U-0126947 contained a legal description that was in error. The correct legal description covered approximately 5,544 acres or approximately 918 acres more than 4,626 acre authorized in the DOGM State permit. Some of those additional acres lay within the permit area for the mined out Horse Canyon mine. Consequently, the legal description in the Mining Plan needs to be corrected to describe only that acreage which is included in the State permit.

(c) Subsequent to invalidation of the DOGM permit by the Board, BLM put the leases in suspension. These two regulatory actions rendered the ASLMM approval of the original mining plan for an area for which there was no valid DOGM permit or right to mine.

REGULATORY REQUIREMENT#2: Mining plan decision document must assure compliance with the applicable requirements of other Federal laws, regulations and executive orders other than the Act [30 CFR 746.13(c)].

(a) The November 5, 2001, Mining Plan made a finding that section 7 of the Threatened and Endangered Species Act had been complied with based upon two letters from the U.S. Fish & Wildlife Service. While the two letters did concur with UT-DOGMs "no effect" determination for the Mexican spotted owl and the "not likely to adversely affect" determination for the southwestern willow flycatcher, bald eagle and listed plant species. No concurrence was given for 21.3 ac/ft water depletion for the four upper Colorado

River Basin fishes. The U.S. Fish & Wildlife Service points out in one letter that only another Federal agency can enter into formal section 7 consultation. In a revised submittal the Lila Canyon mine estimates that the water depletion for the mine will now be 80.81 ac/ft. A formal consultation with the FWS has been initiated by the Western Region office.

(b) The November 5, 2001, Mining Plan made a finding that the National Historic Preservation Act (NHPA) had been complied with based upon four separate letters from the State Historic Preservation Officer. It is unclear, however, whether or not all potential sites within and adjacent to the affected area have been addressed. Tribal consultation required by NHPA had not been conducted. DOGM has mailed consultation letters to the Indian Tribes, SUWA and the Utah American Energy, Inc.