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Incoming 00070013

OK

From: <James_Kohler@blm.gov>
To: "Jerriann Ernstsens" <JERRIANNERNSTSEN@utah.gov>
Date: 2/1/2007 1:58:37 PM
Subject: Re: pa moa

Jerriann,

Thanks for the opportunity to review. I have made some suggestions for changes to the "Whereases" and the stipulations to clarify BLM's position that subsidence does not necessarily automatically result in surface impacts.

Let me know if you have any questions.

Jim

(See attached file: JFK rev pa FINAL agency DRAFT w 01302006 edits.doc)
 James F. Kohler
 Utah State Office
 Chief, Branch of Solid Minerals
 (801) 539-4037

"Jerriann
 Ernstsens"
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 01/31/2007 05:18 <fkirby@osmre.gov>, "Matthew
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 cc
 <James_Kohler@blm.gov>,
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 "Wayne Hedberg"
 <WAYNEHEDBERG@utah.gov>
 Subject
 pa moa

Here is my first take of the PA.

Here is the second take of the MOA with DOGM and Steve R edits. (Blaine

and Foster did not have comments, no one else replied. Please, if you have comments - now is the time.)

Cheers,

Jerriann Ernstsén, Ph.D.
Division of Oil, Gas, & Mining
Department of Natural Resources
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[attachment "pa FINAL agency DRAFT w 01302006 edits.doc" deleted by James Kohler/UTSO/UT/BLM/DOI] [attachment "MOA FINAL agency DRAFT w 01302006 edits.doc" deleted by James Kohler/UTSO/UT/BLM/DOI]

CC: <Blaine_Miller@blm.gov>, <ddragoo@swlaw.com>, <fkirby@osmre.gov>, "Lori Hunsaker" <LHUNSAKER@utah.gov>, "Mary Ann Wright" <MARYANNWRIGHT@utah.gov>, "Matthew Seddon" <MSEDDON@utah.gov>, "Pam Grubaugh-Littig" <PAMGRUBAUGHLITTIG@utah.gov>, <Steve_Rigby@blm.gov>, "Wayne Hedberg" <WAYNEHEDBERG@utah.gov>

DRAFT AS OF JANUARY 31, 2007

January 31, 2007

**PROGRAMMATIC AGREEMENT
AMONG
OFFICE OF SURFACE MINING (OSM),
DIVISION OF OIL GAS AND MINING (OGM),
BUREAU OF LAND MANAGEMENT (BLM),
AND UTAH STATE HISTORIC PRESERVATION OFFICER (SHPO)
REGARDING THE
LILA CANYON EXTENSION OF THE HORSE CANYON MINE
(C/007/0013)**

UNDERTAKING: Proposed Lila Canyon Extension of the Horse Canyon Mine.

STATE: Utah

AGENCY: Division of Oil Gas and Mining (OGM)

WHEREAS, as codified at 30 CFR Part 944, the Utah Division of Oil, Gas, and Mining (OGM) has assumed primacy for the regulation of coal mining operations containing Federal lands in Utah and issues mining permits for such lands; and

WHEREAS, the United States Department of the Interior, Bureau of Land Management (BLM) has a program, which leases coal within public lands and a surface owner of a portion of the proposed project area (4660 acres; Exhibit A). UtahAmerican Energy, Inc. (UEI), Josiah Eardley, and School and Institutional Trust Lands Administration own other portions of the property (fee) within this 4660 acres; and

WHEREAS, this Agreement is intended to encompass coal mine permitting and Secretarial mining plan approvals for the Area of Potential Effect (APE; Exhibit B) of the Lila Canyon Extension of the Horse Canyon Mine; and

WHEREAS, UEI has applied for a permit by application for the Lila Canyon Extension of the Horse Canyon Mine to mine coal and OGM is required by R645-300.133.600, R645-300.113, and R645-301_{jk} rules and the requirements of the state and federal coal programs to comply with the National Historic Preservation Act in issuing the permit; and

WHEREAS, the OSM, OGM, and BLM, in consultation with SHPO, have defined the APE as areas subject to direct surface disturbance (42 acres; APE I) and areas subject to potential

subsidence (approximately 2835 acres; APE II) that may change the character or nature of cultural or historical resources; and

WHEREAS, reasonable and good faith identification efforts per 36 CFR 800.4(b) have been conducted within the APE I (Class III) and APE II (Class II) for cultural and historical resources and the results reviewed by the OSM, OGM, BLM, and SHPO to determine the eligibility of such resources and the potential effects of the undertaking per 36 CFR 800.5(b); and

WHEREAS, the OSM, OGM, and BLM, in consultation with SHPO, have determined that development of the proposed Lila Canyon Extension of the Horse Canyon Mine and corresponding mining operations will have an Adverse Effect on site 42EM2517; and

WHEREAS, the OSM, OGM, and BLM, in consultation with SHPO, have determined that development of the proposed Lila Canyon Extension of the Horse Canyon Mine and corresponding mining operations, such as subsidence, may have effects on resources not identified during identification efforts for the project, and

WHEREAS, the appropriate tribes (Attachment 1) have been consulted regarding their concerns about potential effects to cultural and/or religious sites (Traditional Cultural Properties and sacred/respected places); and

WHEREAS, Emery and Carbon Counties and Southern Utah Wilderness Association (SUWA), consulting parties, have been consulted regarding their concerns about potential effects to cultural or historic resources; and

WHEREAS, OGM in conjunction with OSM and BLM has notified the Advisory Council on Historic Preservation (Council) and has invited the Council's comments and participation in the review for this undertaking pursuant to 36 CFR § 800;

NOW, THEREFORE, Pursuant to 36 CFR 800.14, the OSM, OGM, BLM, and SHPO agree this Agreement shall be implemented in accordance with the following stipulations to take into account the effects that mining operations of the Lila Canyon Extension of the Horse Canyon Mine may have on cultural or historic resources.

Stipulations

1. **Lead Agency.** The lead Agency (LA) for the purposes of this Agreement is determined as follows: BLM will be the LA until permit approval. Upon approval, the LA will be OGM. OGM, as the agency official, will continue to consult and coordinate with OSM, BLM, and SHPO on archaeological matters covered under this Agreement. BLM's coal lease stipulation relating to archaeology, BLM's MOA, as well as this Agreement will become conditions to the permit.
2. **Treatment of Site 42EM2517.** The BLM shall draft a Memorandum of Agreement for mitigation of 42EM2517 (Attachment 2). UEI will assure that a mitigation plan for 42EM2517 is prepared, approved, and implemented in accordance with the BLM MOA. Consultation with tribes and consulting parties will occur during this process. BLM will take into account comments and concerns received from the tribes and consulting parties. The MOA will become an attachment to this Agreement subsequent to the official signing of the MOA.
3. **Monitoring of Subsidence.** UEI will conduct annual fly-over subsidence monitoring beginning when subsidence is likely to occur (during full extraction) and continue for a minimum of five years after mining ceases or until subsidence stabilizes, which ever comes later. The accuracy of this survey will be within plus or minus 6" horizontally and vertically. UEI will provide an accurate map showing the subsidence isopachs to OGM. UEI will initiate and coordinate with OGM to identify any evidence of surface disturbance within the areas of mapped subsidence. If any surface disturbance is identified, UEI will, in coordination with OGM, ensure that a qualified archaeologist will examine the location of disturbed areas relative to previous archaeological inventories and known archaeological sites within fourteen (14) days of the identification of the surface disturbance. Depending on the location of surface disturbance in relation to previous archaeological inventories and known sites, the accessibility of the area, and the current safety of ground conditions, the following stipulations will apply (to each area of surface disturbance event):
 - a. **Previously Inventoried and No Sites.** If surface disturbance occurs within an area that has undergone previous archaeological inventory, and no sites are present within the area of subsidence, or no sites eligible to the National Register of Historic Places are present in the area of subsidence, no further work will need to be done. UEI (or their consulting archaeologist) will notify OGM regarding this determination within fourteen (14) days of making the determination, and OGM will provide the information to OSM, BLM, and SHPO.

- b. **Previously Inventoried and Known Sites.** If surface disturbance due to subsidence occurs within an area that has undergone previous archaeological inventory, and known archaeological sites, previously determined eligible to the National Register of Historic Places are present in the disturbed area, UEI will have a qualified archaeologist examine the effects of subsidence upon the site(s) in question within fourteen (14) days of making this determination. UEI's archaeologist will provide a report, for review by OGM, OSM, and BLM in a timely manner that makes recommendations regarding whether or not the effects of subsidence are adverse. OGM will coordinate with OSM and BLM, as appropriate, to make a final determination of the effects of subsidence. OGM will then consult with the SHPO regarding the effects determination. If the effect is determined to be adverse, procedures following 36 CFR 800.6 and the stipulations below regarding evaluation and archaeological treatment will be followed.
- c. **Not Previously Inventoried.** If surface disturbance due to subsidence occurs within an area that has not undergone previous archaeological inventory, UEI will have a qualified archaeologist conduct a field examination of the disturbed area within fourteen (14) days of making this determination. Depending on the presence or absence of sites in the disturbed area, the following stipulations will apply (to each area of surface disturbance due to subsidence):
- i. **No Sites.** If no sites are present within the disturbed area , UEI's archaeologist will make a recommendation of No Historic Properties Affected to OGM in a timely manner. OGM will coordinate with OSM and BLM, as appropriate, to make a final determination of the effects of subsidence. OGM will then consult with the SHPO regarding the effects determination per 36 CFR 800.4(c).
- ii. **Inventoried Sites.** If a site or sites are present within the disturbed area , UEI's archaeologist will provide a report and make recommendations of eligibility and effect to OGM (per 36 CFR 800.4(c)(2) and 36 CFR 800.5) regarding the site(s) and subsidence effects on the site(s) in a timely manner. OGM will coordinate with OSM and BLM, as appropriate, to make a final determination of eligibility of the site(s) and the effects of subsidence on the site(s). OGM will then consult with the SHPO regarding the effects determination. If the effect to any site eligible to the National Register of Historic Places is determined to be adverse, procedures following 36 CFR 800.6 and the stipulations below regarding evaluation and archaeological treatment will be followed.
- d. **Time Lines.** In all cases, signatories of this Agreement will be afforded thirty (30) calendar days, following receipt of reports/consultation requests, to respond to the OGM.

- e. **Conducting Consultation.** Consultation with tribes and consulting parties will occur during this process at a level appropriate to the nature of the resources (if any) and effects to the resources (if any) taking into account comments and concerns received previously from the tribes and consulting parties.
4. **Discoveries in APE I and II.** Should unanticipated cultural or historic resources be observed within the APE during, but not limited to, UEI's quarterly ground-water monitoring, annual fly-over subsidence monitoring, OGM's field visits, construction of any mine-related structures or features, future archaeological surveys conducted within the permit area, or otherwise brought to OGM attention, UEI will notify OGM within 24 hours of the discovery. UEI will immediately implement protection measures to prevent harm of the discovery while OGM evaluates the discovery and consults with the signatories of this Agreement. OGM will notify the signatories of this Agreement of said resources within fourteen (14) days of resource discovery. OGM may consult with the signatories of this Agreement, if needed, to make evaluations. If determined appropriate, OGM will require UEI to record the discovery, conduct additional evaluations as necessary, and provide supporting reports. OGM, in consultation with OSM and BLM, as appropriate, will make determinations of eligibility and effect regarding the discovery.
 - a. **No Historic Properties Affected or No Adverse Effects.** If a determination of No Historic Properties Affected or No Adverse Effects is made, OGM will consult with the SHPO regarding the determination following 36 CFR 800.4-5.
 - b. **Adverse Or Potentially Adverse.** If effects to a site that is determined via this process to be eligible to the National Register of Historic Places are determined adverse or potentially adverse, the signatories of this Agreement will reconvene to recommend and draft appropriate measures to avoid, minimize, or mitigate adverse effects.
 - c. **Time Lines.** In all cases, signatories of this Agreement will be afforded thirty (30) calendar days following receipt of reports/consultation requests to respond.
 - d. **Conducting Consultation.** Consultation with tribes and consulting parties will occur during this process at a level appropriate to the nature of the resources (if any) and effects to the resources (if any) taking into account comments and concerns received previously from the tribes and consulting parties.
5. **Expedited Treatment.** In the case of unanticipated discoveries and where timing is critical, the signatories may mutually agree to the Expedited Treatment (described below) for such discoveries. Potential human burial discoveries will be subject to the provisions of the Native American Graves Protection and Repatriation Act.

6. **Funding of Work.** UEI will fund and implement any future and all cultural or historic resources fieldwork, analysis, and monitoring, required under this Agreement.
7. **Amendment to this Agreement.** Any signatory to this Agreement may request that it be amended, whereupon the signatories will consult to reach agreement on amendments, which will be executed in the same manner as the original agreement.
8. **Objections.** Should any signatory to this Agreement object within thirty (30) days to any activity pursuant to this Agreement, the OGM will consult with the objecting signatory to resolve the objection. If the OGM determines the objection cannot be resolved, the OGM will forward all documentation relevant to the dispute to Advisory Council on Historic Preservation (ACHP). Within thirty days after the receipt of all pertinent documentation, ACHP will either:
 - a. Provide the OGM with recommendations, which the OGM will take into account in reaching a final decision regarding the dispute; or
 - b. Notify the OGM that it will comment pursuant to 36 CFR Part 800.6(b) and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by the OGM in accordance with 36 CFR Part 800.6(c)(2) with reference only to the subject of the dispute; the OGM's responsibility to carry out all actions under this Agreement that are not subject of the dispute will remain unchanged.
9. **Termination.** Any signatory to this Agreement may terminate it by providing thirty (30) days notice to the other signatories. In the event of termination, the OGM will comply with 36 CFR Part 800.3 through 800.7 with regard to individual undertakings covered by this Agreement.
10. **Term of Agreement.** This Agreement will remain in effect for the life of the mine and through final reclamation and bond release from its date of execution by the signatories. This stipulation applies to UEI or any coal mine permit successor of the proposed (or amended) extension area. Any new Permittee will accept all provisions within this Agreement.
11. **Permit Changes.** Subsequent additions, deletions or other changes to the permit that may affect cultural resources will be handled in compliance with the normal Section 106 consultation process as described in 36 CFR 800, and amended into this Programmatic Agreement and/or its attachments.

12. **Expedited Treatment.** For any incidental discovery where the OSM, OGM, and BLM agree that timing is critical because of mining activities, the agencies may invoke the following expedited treatment option:
- a. OGM will notify OSM, BLM, and SHPO of the need for expedited treatment.
 - b. OGM will determine the potential eligibility of the site/property in question as well as appropriate treatment for the site, keeping OSM, BLM, and SHPO informed of the process.
 - c. OGM will submit a decision memo to OSM, BLM, and SHPO, including contractor's report where applicable.
 - d. In the event that the discovery involves human burial remains or materials, the provisions of the Utah Burial Protection Act and, where applicable, the Native American Graves Protection and Repatriation Act will still apply.

Signatories

Bureau of Land Management

By: _____ Date: _

Utah State Division of Oil, Gas, and Mining

By: _____ Date: _

Office of Surface Mining

By: _____ Date: _____

Utah State Historic Preservation Officer

By: _____ Date: _

ATTACHMENT 1: Tribal List

The following tribes were consulted with during the Section 106 process for the Lila Canyon extension application:

Uintah & Ouray Ute Indian Tribe, Ute Mountain Ute Tribe, Southern Ute Tribe, Eastern Shoshone Tribe, Shoshone Bannock Tribes, Northwest Shoshone Tribe, Confederated Tribes of the Goshute Reservation, Paiute Indian Tribe of Utah, Indian Peaks Band of Paiutes, Cedar Band of Paiutes, Hopi Tribe, Navajo Nation, Pueblo of Laguna, Pueblo of Santa Clara, Pueblo of Zia, and Pueblo of Zuni.

ATTACHMENT 2: BLM's Memorandum of Agreement for mitigation of 42EM2517.

EXHIBIT 1: Map of Permit Area

EXHIBIT 2: Map of Area of Potential Effect