

*Lila
Submining*

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From: <James_Kohler@blm.gov>
To: <maryannwright@utah.gov>, <jerriannernstsens@utah.gov>, <pamgrubaughlitti...>
Date: 04/04/2007 12:35 PM
Subject: BLM review of the Lila Canyon PA
Attachments: PA.revised 4 4 2007.doc; PA.revised.compare.doc; Att07.doc

CC: <Kent_Hoffman@ut.blm.gov>, <Roger_Bankert@blm.gov>, <Julie_Howard@blm.gov>

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c/007/05/13*

After reviewing the comments received by the consulting parties we identified a number of concerns with the Lila Canyon PA. Specifically, there were a number of items that provided support for the necessity of this PA that are not consistent with BLM's position and some unnecessary duplication in the document. BLM has agreed that the basic goal of the PA (to provide for an assessment of impacts on cultural or historic resources that have not yet been identified) is reasonable and we are willing to sign an agreement to establish a process to have an archaeologist examine areas where subsidence causes observable impacts to the land surface that could impact these resources. To that end, we have edited the document and have identified the changes we feel are necessary for us to sign the agreement. The documents attached below include both a "clean" version and a redline version. For comparison purposes, we have also attached the Feb. 2 version.

Please let me know if you have any questions or concerns. We will be happy to meet with the Division to discuss this further.

(See attached file: PA.revised 4 4 2007.doc)(See attached file: PA.revised.compare.doc)(See attached file: Att07.doc)

James F. Kohler
 Utah State Office
 Chief, Branch of Solid Minerals
 (801) 539-4037

DRAFT AS OF ~~February 2~~April 4, 2007

~~February 2~~April 4, 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. (C/007/0013)

STATE: Utah

AGENCY: Utah Division of Oil Gas and Mining (OGM)

~~WHEREAS, the Office of Surface Mining (OSM) is required by 30 CFR Part 746 to prepare and submit to the Secretary of the Interior (Secretary), which the Secretary has in turn delegated to the Assistant Secretary, Land and Minerals Management, a decision document recommending approval, disapproval, or conditional approval of mining plans for coal mining operations on lands containing leased Federal coal.~~ **WHEREAS, Utah Energy American Incorporated (UEI) has applied to OGM for approval of the Permit Component of the Permit Application Package (permit) for the Lila Canyon Extension of the Horse Canyon Mine to mine coal by underground mining methods. A map of the proposed PAP permit area is at Exhibit A; and**

~~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). Utah American 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, UEL 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 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 Area of Potential Effect (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 effect recorded cultural or historical resources is at Exhibit B; 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 OSM, OGM, and BLM, in consultation with SHPO, have determined that the effects on cultural or historical resources from development of the proposed Lila Canyon Extension of the Horse Canyon Mine and corresponding mining operations cannot be fully determined; 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, 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, 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 § 800.2~~;

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 PA 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.

Programmatic Agreement (PA) Stipulations

Lead Agency. 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.

2.1. 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.

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, whichever 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 ensure that a qualified archaeologist will examine the location of the mapped subsided areas relative to previous archaeological inventories and known archaeological sites within fourteen (14) days of the mapped identification of the subsidence. Depending on the location of subsidence in relation to previous archaeological inventories and known sites, the following stipulations will apply (to each subsidence event):

a.2. Previously Inventoried and No Sites. If subsidence related or upsidence related surface impacts (including For this agreement surface features due to subsidence are defined as, any subsidence related impacts that are readily visible with the unaided eye that disrupt the prior continuity of the ground surface. Features may include but are not limited to tension fractures, fractures, compression bulges, ridges, slope/escarpment failure, bumps, tilting, deformation of the ground surface, sag, slumping, strata displacement at or near the surface, ground movement, and/or even disturbances that are unlikely such as sinkholes, subsidence troughs, mine water breakout, or any other subsidence-related surface impacts) occur 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. features such as sinkholes. UEI will

implement the subsidence control plan in their approved permit. This includes conducting an annual fly-over subsidence monitoring beginning prior to the occurrence of subsidence (for a base line) and continuing for a minimum of two years after mining ceases or until subsidence stabilizes, which ever comes later. The accuracy of this survey will be a minimum of photogrametric grade. UEI will map surface features due to subsidence and label the features (i.e. Crack 12 inches wide). In addition the map will include subsidence isopleths. The maps will be sent to OGM on an annual basis or will be available upon request. UEI will initiate and coordinate with OGM to ensure that a qualified archaeologist will examine the location of the mapped-subsided features within thirty (30) days of the mapped identification of the surface features due to subsidence. The following will apply:

b.a. Previously Inventoried and Known Sites. ~~If subsidence-related or upsidence-related surface impacts (including but not limited to tension fractures, fractures, compression bulges, slope/escarpment failure, bumps, tilting, deformation of the ground surface, sag, slumping, strata displacement at or near the surface, ground movement, and/or even disturbances that are unlikely such as sinkholes, subsidence troughs, mine water breakout, or any other subsidence-related surface impacts) occur 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 subsidence 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. When subsidence-related surface features are identified during subsidence monitoring, UEI will have a qualified archaeologist conduct a field examination of the subsidence feature (s) for the presence of cultural or historic resources. The cultural resource fieldwork and reports will adhere to the requirements and recommendation specified in the Utah BLM Cultural Resources Management 8110 and 8120 Handbooks. If accessibility to the site, or current safety conditions of the site prohibits examination, UEI will ensure that examination will proceed within fourteen (14) days from the last day of the first fourteen (14) day timeline, when it is safe. UEI (or their consulting archaeologist) will submit the findings in a report to OGM within (30) days of the on-site examination, OGM will provide the information to OSM, BLM, and SHPO. Depending on the presence or absence of sites in the subsidence area, the following will apply:~~

- i. ~~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. **No Sites.** If no sites are present within the mapped area of subsidence-related surface features), UEI's archaeologist will make a written 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. 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.~~

Not Previously Inventoried Sites. ~~If subsidence-related or upsidence-related surface impacts (including but not limited to tension fractures, fractures, compression bulges, slope/escarpment failure, bumps, tilting, deformation of the ground surface, sag, slumping, strata displacement at or near the surface, ground movement, and/or even disturbances that are unlikely such as sinkholes, subsidence troughs, mine water breakout, or any other subsidence-related surface impacts) occur within an area that has not undergone previous archaeological~~

inventory, UEI will have a qualified archaeologist conduct a field examination of the subsidence area within fourteen (14) days of making this determination. If accessibility to the site, or current safety conditions of the site prohibits examination, UEI will ensure that examination will proceed within fourteen (14) days from the last day of the first fourteen (14) day timeline. Depending on the presence or absence of sites in the subsidence area, the following stipulations will apply (to each subsidence event):

No Sites. If no sites are present within the area of subsidence-related or upsidence-related surface impacts (including but not limited to tension fractures, fractures, compression bulges, slope/escarpment failure, bumps, tilting, deformation of the ground surface, sag, slumping, strata displacement at or near the surface, ground movement, and/or even disturbances that are unlikely such as sinkholes, subsidence troughs, mine water breakout, or any other subsidence-related surface impacts), 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(e).

- ii. **Inventoried Sites.** If a site or sites are present within the area of subsidence-related or upsidence-related surface impacts (including but not limited to tension fractures, fractures, compression bulges, slope/escarpment failure, bumps, tilting, deformation of the ground surface, sag, slumping, strata displacement at or near the surface, ground movement, and/or even disturbances that are unlikely such as sinkholes, subsidence troughs, mine water breakout, or any other subsidence-related surface impacts), UEI's archaeologist will provide a report and make recommendations of eligibility and effect to OGM (per 36 CFR 800.4(e)(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.b. 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.c. 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 consideration comments and concerns received previously from the tribes and consulting parties.

4.3. 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 twenty four (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 consideration comments and concerns received previously from the tribes and consulting parties.

5.4. 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.

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~~**Funding of Work.** UEI will fund and implement any future and all cultural or historic resources fieldwork, analysis, and monitoring, required under this Agreement.~~

~~**7.5. 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.~~

~~**8.6. 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:~~

~~Provide the OGM with recommendations, which the OGM will take into account in reaching a final decision regarding the dispute; or~~

~~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(e)(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.~~

~~**9.7. 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.~~

~~**10.8. 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 permit 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.~~

~~**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.~~

12.9. **Expedited Treatment.** For any incidental discovery where the OSM, OGM, and BLM agree that timing is critical because of surface mining activities operations, 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.~~

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EXHIBIT A: Map of Permit Area

EXHIBIT B: Map of Area of Potential Effect (Ape I and II)

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