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# Bureau of Land Management

Utah State Office, Lands & Minerals Division  
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*gk*  
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*4/20/07/ECB*

## Fax Cover Sheet

To: Pam Grubbaugh-Littig

FAX No: 359-3940

From: J. McKenzie

Phone: 539-4038

Date: 20 April 2007

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Subject: \_\_\_\_\_

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DIV. OF OIL, GAS & MINERAL

BLM





# United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
Utah State Office  
P.O. Box 45155  
Salt Lake City, UT 84145-0155  
<http://www.blm.gov>



*w. Brey*  
2/26/07  
*S. Parker*  
2/24/07  
*G. Brey*  
2/27/2007

IN REPLY REFER TO:  
3483  
UTU-73516  
SL-066145  
SL-066490  
SL-069291  
U-0126947  
U-014217  
U-014218  
(UT-923)

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CERTIFIED MAIL – Return Receipt Requested

### DECISION

UtahAmerican Energy, Inc.	:	LMU: UTU-73516
P. O. Box 986	:	Coal Leases: SL-066145,
Price, Utah 84501	:	SL-066490, SL-069291,
	:	U-0126947, U-014217
	:	U-014218

### Decision Amended

On November 14, 2002 a decision was issued by this office concerning the suspension of operations and production for Logical Mining Unit (LMU) UTU-73516 comprised of six federal coal leases, SL-066145, SL-066490, SL-069291, U-0126947, U-014217 and U-014218.

The decision granted the suspension of operations and production effective September 4, 2001 continuing until fifteen days after the final court decision concerning an Southern Utah Wilderness Alliance (SUWA) appeal dated September 4, 2001. It has come to the attention of this office that there is no court case pending in this matter. Therefore, the duration of the suspension is amended to terminate effective fifteen days after notification by the authorized officer following completion of all State permit and Federal actions, including resolution of potential administrative and judicial appeals.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4, and the enclosed Form 1842.1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21)(58 FR 4939, January 19, 1993) (request) for a stay (suspension) of the effectiveness of this decision during the time that your

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appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed in this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards.

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

If you have further questions call Stan Perkes at (801) 539-4036.

**Kent Hoffman**

Kent Hoffman  
Deputy State Director  
Lands and Minerals

cc: Price Field Office

923



## United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
 Utah State Office  
 P.O. Box 45155  
 Salt Lake City, UT 84145-0155  
 www.ut.blm.gov

IN REPLY REFER TO:  
 3483.3  
 U-087805 et al  
 (UT-942)

NOV 14 2002

### DECISION of SUSPENSION

UtahAmerican Energy, Inc.	:	LMU: UTU-73516
P.O. Box 986	:	Leases: SL-066490,
Price, Utah 84501	:	U-014218, U-0126947,
		U-014217, SL-069291,
		and SL-066145

### Granted -- Suspension of Leases

On 15 January 2002, Utah American Energy, Inc. (UEI) submitted an application for suspension of operations and production for Logical Mining Unit (LMU): UTU-73516 (comprised of leases: SL-066490, U-014218, U-0126947, U-014217, SL-069291, and SL-066145).

The following summarizes the history and recent activity concerning these leased coal lands:

- Year leases issued:
  - 1947: U-066490 and U-066145
  - 1950: U-069291
  - 1955: U-014218
  - 1963: U-0126947
- 1998  
Leases acquired by UEI as part of a larger transaction.
- March 1999  
BLM approval of the R2P2 (Resource Recovery and Protection Plan).

- 27 October 2000  
BLM approval of right-of-way applications (UTU-76614, UTU-76616, UTU-76617, and UTU-77122).
- 27 July 2001  
DOGM (Utah Division of Oil Gas and Mining) approved the revised "Horse Canyon Reclamation Plan," ACT/007/013. (Now known as the "Lila Canyon Mining and Reclamation Plan.")
- 4 September 2001  
SUWA (Southern Utah Wilderness Alliance) appeal of the Lila Canyon Mine Permit before Utah Board of Oil, Gas & Mining filed 4 September 2001 (Docket No. 2002-027).
- 11 December 2001  
BLM issued notice to proceed with surface facilities right-of-way, with stipulations.
- 14 December 2001  
Utah Board of Oil, Gas & Mining remanded the permit decision to DOGM.
- 14 December 2001  
DOGM remand of permit to mine.

UEI cannot proceed with mine development or production due to appeals and actions beyond the scope of UEI's control. Further, UEI has continued to pursue options to gain necessary permits to begin mine development followed by production.

If a suspension is not granted, the lessee could lose the leases if the appeal delay is long enough to result in not meeting the due diligent development requirements. This would occur through no fault of the lessee and would result in a loss to the lessee of the exploration, business development expenses, and the original bonus bid without the possibility of recovery.

Such a loss, due to not granting a suspension, would result in lower valuations of future coal leases based on the increased risk. This in turn would lead to one or more of the following:

- Potential operators will avoid these and other coal reserves which are deemed to be in an area of possible future litigation or near-litigation due any number of actions delaying beneficial use.

- Due to the sweeping nature of such appeals, buffer zones will be used by interested operators sterilizing the energy potential of larger areas than eventually contested for this reserve and others.
- Future bonus bids will be hampered by the higher risk of apparent random appeals and resulting delays that adversely impact the time-value of up front investments of time and money.

The increased risk and opportunity cost will be reflected in higher future energy costs – a “hidden tax.” This is in addition to the potential loss to the American people of valued energy resources. Granting a suspension reduces the risk incurred. However, even with a granting of suspension, the lessee has a real time-value-of-money cost for the development costs incurred to date.

Therefore, in accordance with the authority granted to the Secretary by the Mineral Leasing Act (MLA), and pursuant to the regulations in 43 CFR 3483.3 (b) and Interior Board of Land Appeals (IBLA) decision *5m, Inc.*, 148 IBLA 36,41 (Mar. 17, 1999)<sup>1</sup>, and in accordance with the authority granted to the Bureau of Land Management (BLM), a MLA Section 39 suspension of operations and production is hereby granted “...in the interest of conservation...” to UtahAmerican Energy, Inc., as lessee of record for Federal coal leases: SL-066490, U-01428, U-0126947, U-014217, SL-069291, SL-066145; which are included in a logical mining unit (LMU: UTU-73516).

The granting of this suspension of operations and production is effective 4 September 2001, and will continue until 15 days after the final court decision of the SUWA appeal dated 4 September 2001. The granting of this suspension of operations and production is subject to the attached stipulations, which are made part of this approval.

/S/ Linda S. Colville

State Director

ACTING

Attachment: Stipulations of Approval

<sup>1</sup>  
As referenced in “UtahAmerican Energy, Inc. – Application for Lease Suspension – LMU Serial NO. UTU-73516:

(1) where, through some act, omission, or delay by a federal agency, beneficial use of the lease has been precluded, such as where delays imposed on the lessee due to administrative actions addressing environmental concerns have the effect of denying the lessee “timely access” to the property; or (2) in the interest of conservation, e.g., to prevent damages to the environment.

*5M, Inc.*, IBLA 36, 41 (Mar. 17, 1999) citing *Alfred G. Hoyl*, 123 IBLA 160, 190-91, aff’d, 129 F.3d 1377 (10<sup>th</sup> Cir. 1997)

**APPROVAL STIPULATIONS**  
of the  
**SUSPENSION of OPERATIONS and PRODUCTION**  
Under Section 39 of the Mineral Leasing Act  
for  
**Federal Coal Leases**  
**SL-066490, U-014218, U-0126947,**  
**U-014217, SL-069291, and SL-066145**  
**Forming LMU: UTU-73516**

**SUSPENSION APPROVAL DECISION**

In accordance with the authority granted to the Secretary by the Mineral Leasing Act (MLA), and pursuant to the regulations in 43 CFR 3483.3 (b) and Interior Board of Land Appeals (IBLA) decision *5m, Inc.*, 148 IBLA 36,41 (Mar. 17, 1999)<sup>1</sup>, and in accordance with the authority granted to the Bureau of Land Management (BLM), an MLA Section 39 suspension of operations and production is hereby granted "in the interest of conservation" to UtahAmerican Energy, Inc., as lessee of record for Federal coal leases: SL-066490, U-01428, U-0126947, U-014217, SL-069291, SL-066145; which are included in a logical mining unit (LMU: UTU-73516).

The granting of this suspension of operations and production is effective 4 September 2001, and will continue until 15 days after the final court decision of the SUWA appeal dated 4 September 2001. The granting of this suspension of operations and production is subject to the following stipulations, which are made part of the approval.

**Stipulations of this SUSPENSION APPROVAL DECISION**

This approved Section 39 of MLA suspension of operations and production is subject to the following conditions:

1. No existing buildings, facilities, structures, or other improvements, if any exist, shall be removed from the above referenced Federal leases without the prior written permission of the BLM

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As referenced in "UtahAmerican Energy, Inc. - Application for Lease Suspension - LMU Serial NO. UTU-73516:

(1) where, through some act, omission, or delay by a federal agency, beneficial use of the lease has been precluded, such as where delays imposed on the lessee due to administrative actions addressing environmental concerns have the effect of denying the lessee "timely access" to the property; or (2) in the interest of conservation, e.g., to prevent damages to the environment.

*5M, Inc.*, IBLA 36, 41 (Mar. 17, 1999) citing *Alfred G. Hoyl*, 123 IBLA 160, 190-91, aff'd, 129 F.3d 1377 (10<sup>th</sup> Cir. 1997)

2. The lessee shall not have beneficial use of the Federal coal leases for the duration of this approved MLA Section 39 suspension of operations and production.
- a. Beneficial use includes, but is not limited to: any activity related to or preparatory for mining of Federal coal from a lease, including:
- i. development, including surface, or processing, facility construction;
  - ii. mining, including mineral haulage, road and/or power-line, fuel transfer and electrical generation or transmissions;
  - iii. beneficiation, concentration, and processing of material mined; and/or
  - iv. Federal coal production and/or disposal by sale or otherwise.

Please note:

Generally, actions approved by BLM as required or necessary to maintain a mine in a suspended condition to avoid damage to other resources, to conserve the leased resource, or to ensure safety do not constitute beneficial use of the lease.

For example, the following are not categorized as beneficial use:

- i. The lessee obligation to conduct reclamation and to maintain mine integrity;
  - ii. The ventilation of non-producing areas;
  - iii. The extraction of Federal coal and other actions to prevent ignition to prevent fires by ignition of combustible materials or by spontaneous combustion;
  - iv. Activities necessary to extinguish mine fires;
  - v. To correct hazardous mine conditions;
  - vi. To de-water mine works; and/or
  - vii. Activities necessary to ensure the health and safety of the miners or the public.
- b. This approved Section 39 of MLA suspension of operations and production shall not preclude either casual use of the Federal coal leases or casual or beneficial use of any adjoining, non-Federal coal leases of the lessee, including the use of those adjoining premises, if any, for facilities, testing, and development. Casual use includes activities that do not ordinarily lead to any appreciable disturbance of or impacts to lands, resources, or improvements (for example: surveying).

3. This Section 39 of MLA suspension of operations and production may be terminated by the BLM, for justifiable cause, at any time following written notice to the lessee, and shall be terminated by the BLM on the first day of the calendar month during which one of the following occurs:
- a. Beneficial use of one or more of the Federal coal leases(s) or LMU(s) recommences;
  - b. The lessee does not provide annual certification from the effective date of this approval (which is 4 September 2001) that the conditions that warranted the suspension continue to exist; or
  - c. Thirty days have elapsed and the lessee fails to:
    - i. Comply with a notice of non-compliance with any terms of the lease(s) or the LMU(s) and/or with this Section 39 of MLA suspension of operations and production decision; or
    - ii. Correct the conditions that resulted in a notice of noncompliance with the lease terms and/or with this Section 39 of MLA suspension of operations and production decision; or
    - iii. Submit a request for extension of time within which to correct the situation of noncompliance with the leases terms and/or with this Section 39 of MLA suspension of operations and production decision; or
    - iv. Respond to directives from the State of Utah Division of Oil Gas and Mining to correct deficiencies in the Federal Mine Permit Application.
  - d. UEI transfers controlling record title interest in the lease(s); or
  - e. The lessee files a request for termination of this suspension; or
  - f. The lessee files for relinquishment of the lease(s) and/or the LMU(s).
4. Upon the effective date of expiration or termination of the approved Section 39 of MLA suspension of operations and production, all suspended terms and conditions shall be immediately in full force and effect.

5. This approved Section 39 of MLA suspension of operations and production relieves the lessee from paying annual rentals for these lease(s).
6. The individual lease terms will be extended for a time equivalent to the duration of this approved Section 39 of MLA suspension of operations and production, commencing on the effective date of the approval of this Section 39 of MLA suspension of operations and production.
7. The lessee shall provide the BLM authorized officer open access to the Federal lands for monitoring casual use.