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Attorneys for Respondent-Intervenor
Southern Utah Wilderness Alliance

FILED

APR 20 2007

SECRETARY, BOARD OF
OIL, GAS & MINING

Handwritten notes and initials

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

| | | |
|------------------------------------|--|---|
| _____ | |) |
| UTAHAMERICAN ENERGY, INC., | |) |
| | |) |
| Petitioner, | |) |
| | |) |
| vs. | |) |
| | |) |
| DIVISION OF OIL, GAS AND MINING, | |) |
| | |) |
| Respondent, | |) |
| | |) |
| and | |) |
| | |) |
| SOUTHERN UTAH WILDERNESS ALLIANCE, | |) |
| | |) |
| Respondent-Intervenor. | |) |
| _____ | |) |

Docket No. 2007-008
Cause No. C/007/013-SR98(1)(A)

**SOUTHERN UTAH WILDERNESS ALLIANCE
MOTION FOR RECUSAL**

Respondent-Intervenor Southern Utah Wilderness Alliance ("SUWA") respectfully moves this Board, pursuant to Utah Rule of Civil Procedure 63(b), to recuse or disqualify Mr. Kent Petersen from his role as Board member and Acting Board Chairperson and from participating in all proceedings in the above captioned matter, either by hearing, debating, or deciding procedural matters or the merits.

The parties agreed at a pre-hearing conference on April 18, 2007, that motions for recusal would be filed on or before today. A certificate stating that this Motion is being filed in good faith and an affidavit setting forth facts to show that Mr. Petersen has a conflict of interest, both signed by the undersigned counsel for SUWA, Mr. Stephen Bloch, are attached to this Motion and made a part hereof.

Mr. Petersen was a County Commissioner for Emery County prior to his appointment to this Board. Emery County has an economic interest in mining at Lila Canyon, and the Emery County Commissioners, including Mr. Petersen, made decisions and entered into agreements with UtahAmerican Energy, Inc. (UEI), a party here, with respect to Lila Canyon mining. Mr. Petersen accordingly recused himself on or before December 4, 2001, from all proceedings relating to this Board's review of the Division's approval of the Permit Application Package for the Lila Canyon Significant Revision of the Horse Canyon Mine permit. That recusal should continue in effect with respect to the current proceedings for the following reasons, as set out more fully in the accompanying Memorandum in Support of Motion for Recusal.

1. Because Mr. Petersen recused himself in 2001 from proceedings in this case, that recusal should still be operative, and he should continue to be disqualified from deciding this matter.

2. Mr. Petersen's conflict of interest has not diminished through the passage of time. He was in 2001 and still is a *former County Commissioner*. The interests of Emery County that

Mr. Petersen upheld as a County Commissioner continue to be in possible conflict with the interests of the State of Utah, which this Board must uphold, in enforcing its coal laws and rules. Further, Mr. Petersen is a current Board Member of Emery County Special Service District #1, whose responsibilities include transportation within Emery County. UEI has appeared before the Special Service District during Mr. Petersen's tenure to discuss the proposed Lila Canyon Mine and has indicated that the company will come back to the Special Service District to seek County monies to defray costs related construction and upgrades to the County road that would access the mine.

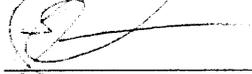
3. Mr. Petersen indicated that his "primary reason" for recusing himself from this case in 2001 was the roads issue. However, the Board's rulings on UEI's present petition may describe the scope of further proceedings with respect to UEI's permit application for Lila Canyon, and depending on the Board's rulings, issues concerning the Lila Canyon road could conceivably be reviewed by this Board. Any assumption that there cannot possibly be any issue about the mining road would impermissibly prejudge some of the issues before this Board.

4. Mr. Petersen's failure to continue to recuse himself would create at least the public appearance of inconsistency in his position and thus impropriety.

For the foregoing reasons, the Board should disqualify Mr. Petersen or request that he
continue to recuse himself.

Dated: April 20, 2007

Respectfully submitted,



Stephen Bloch
Southern Utah Wilderness Alliance

David Churchill
Kathy Weinberg
Jenner & Block, LLP

Attorneys for Respondent-Intervenor
Southern Utah Wilderness Alliance

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of April, 2007 I served a true and correct copy of **SOUTHERN UTAH WILDERNESS ALLIANCE MOTION FOR RECUSAL, MEMORANDUM IN SUPPORT OF MOTION FOR RECUSAL, AFFIDAVIT OF STEPHEN BLOCH, AND RULE 63(b) CERTIFICATION** to each of the following persons via electronic mail and first class U.S. Mail:

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James Allen (jimallen@utah.gov)
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Salt Lake City, UT 84116



Stephen Bloch

FILED

APR 20 2007

**SECRETARY, BOARD OF
OIL, GAS & MINING**

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Attorneys for Respondent-Intervenor
Southern Utah Wilderness Alliance

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

| | | |
|------------------------------------|---|--------------------------------|
| UTAHAMERICAN ENERGY, INC., |) | |
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| Petitioner, |) | |
| |) | |
| vs. |) | Docket No. 2007-008 |
| |) | Cause No. C/007/013-SR98(1)(A) |
| DIVISION OF OIL, GAS AND MINING, |) | |
| |) | |
| Respondent, |) | |
| |) | |
| and |) | |
| |) | |
| SOUTHERN UTAH WILDERNESS ALLIANCE, |) | |
| |) | |
| Respondent-Intervenor. |) | |

**SOUTHERN UTAH WILDERNESS ALLIANCE
MEMORANDUM IN SUPPORT OF MOTION FOR RECUSAL**

Respondent-Intervenor Southern Utah Wilderness Alliance (“SUWA”) respectfully submits this memorandum in support of its motion to recuse or disqualify Mr. Kent Petersen from his role as Board member and Acting Board Chairperson and from participating in all proceedings in the captioned matter, either by hearing, debating, or deciding procedural matters or the merits.

BACKGROUND

Mr. Petersen recused himself on or before December 4, 2001, from all proceedings relating to this Board’s review of the Division’s approval of the Permit Application Package for the Lila Canyon Significant Revision of the Horse Canyon Mine permit. Then Chairperson of the Board, Ms. Elise Erlich, announced at the beginning of the hearing on the merits of SUWA’s 2001 petition for such review that Mr. Petersen had recused himself. *See* Hearing Transcript at 6-7 (December 4, 2001) (attached hereto as Attachment 3 to this Memorandum). The Board’s Order dated December 14, 2001 (Attachment 5 hereto), similarly reflects that Mr. Petersen had recused himself “from this matter.”

The conflict of interest that existed in 2001 stemmed from Mr. Petersen’s previous service as a County Commissioner, and the Commission Chairman, for Emery County. Emery County had, and continues to have, economic interests in Utah American Energy’s (“UEI’s”) conduct of mining operations in Lila Canyon and its commissioners have negotiated agreements with UEI regarding the proposed mine. *See* Agreement dated Oct. 19, 1999 (Attachments 1 hereto); Emery County Road Department letter dated February 27, 2001 (Attachment 2 hereto). According to Mr. Petersen, he was “involved with - as a county commissioner for Emery County with some of the early requests for permits to the planning and zoning permits and also the road

permits.” Hr’g. Tr. at 8:1-8 (Sept. 26, 2001) (Attachment 4 hereto). As a County Commissioner, Mr. Petersen was a decision-maker for the county with respect to these matters and also was a signatory, on behalf of Emery County, on at least one of the agreements between the County and UEI. *See* Attachment 1.

Emery County has never been a formal party to these proceedings before the Board, but it has been advised, as an interested party, of the Division’s permit review process that led to permit approval in 2001; it has continued to be kept advised, as an interested party, in the Division’s review process and it has participated in that process. *See* Bloch Aff. ¶ 4. *See* Attachment 6 Hr’g Tr. At 58-60 (Nov. 8, 2005). Mr. Petersen no longer served as County Commissioner in December 2001 but obviously believed that his previous service on behalf of Emery County gave him an actual or apparent conflict of interest sufficient to warrant recusal.

ARGUMENT AND AUTHORITIES

The United States Constitution and Utah Constitution both grant substantially the same due process guarantees. *See In re Worthen*, 926 P.2d 853, 876 (Utah 1996). The Utah Coal Mining and Reclamation Chapter also confers due process guarantees. *See* Utah Code Ann. § 40-10-6.7(b) (hearings shall be conducted “in a manner which guarantees the parties’ due process rights”).

The right to a fair trial before an impartial tribunal is a fundamental requirement of due process, *In re Murchison*, 349 U.S. 133, 136 (1955), and that constitutional requirement of an impartial tribunal extends to administrative agencies serving in an adjudicatory capacity, *Gibson v. Berryhill*, 411 U.S. 564, 579 (1973). The Utah Supreme Court has held that “every person who brings a claim in a court or at a hearing held before an administrative agency has a due process right to receive a fair trial in front of a fair tribunal.” *Bunnell v. Industrial Comm’n of*

Utah, 740 P.2d 1331, 1333 (Utah 1987); see also *Dairy Product Serv., Inc. v. City of Wellsville*, 13 P.3d 581, 593 (Utah 2000) (due process requires being heard in a meaningful manner, which means being heard by an impartial decision-maker); *In re Worthen*, 926 P.2d 853, 876 (Utah 1996). The concept of fairness “requires not only an absence of actual bias, but endeavors to prevent even the possibility of unfairness.” *Bunnell*, 740 P.2d at 1331 (quoting *Anderson v. Industrial Commission*, 696 P.2d 1219, 1221 (Utah 1985)).

A decision-maker in an adjudicatory proceeding must be disqualified if there exists an “actual impermissible bias or an unacceptable risk of an impermissible bias on the part of [the] decision maker.” *Dairy Product*, 13 P.3d at 594 (quoting *V-1 Oil Co. v. Dep’t of Envtl. Quality*, 939 P.2d 1192, 1197 (Utah 1997)). Presumed bias is not limited to personal pecuniary interests, but may also occur when there is clear evidence of partiality on the face of the record. *Bunnell*, 740 P.2d at 1331. Both Mr. Petersen’s prior commitment with respect to adjudicative facts and his role as a decision-maker in shaping those facts create such evidence of partiality and should now disqualify him. *V-1 Oil Co.*, 939 P.2d at 1197 (a prior commitment with respect to any adjudicative facts can disqualify a decision-maker from finding those facts); *Lowcher v. New York City Teacher’s Retirement Sys.*, 445 N.Y.S.2d 696 (NY Ct. App. 1981) (“due process is compromised when a person makes fact finding determinations and later reviews those same determinations of fact”).

Mr. Petersen’s participation poses an unacceptable risk of impermissible bias for the following reasons:

1. Prior Recusal: While the exact procedural status of this matter is the subject of UEI’s current petition, the case presently before the Board is a later proceeding in the case heard by the Board in December 2001. Since Mr. Petersen recused himself from prior proceedings in

this case, that recusal should still be operative, and he should continue to be disqualified from deciding this matter.

2. Role as Emery County Commissioner: Mr. Petersen's actual or apparent conflict of interest has not diminished through the passage of time. Even if the current proceedings are viewed as completely separate from the December 2001 proceedings, the facts concerning Mr. Petersen's conflict of interest are still the same. His interest then - that of a *former county commissioner* - is identical to his interest now, which is still that of a *former county commissioner*. The interests of Emery County (which Mr. Petersen was committed as County Commissioner and Commission Chairman to uphold, and which he has vigorously championed) continue to be in possible conflict with the interests of the State of Utah, which this Board is committed to uphold, in enforcing its coal laws and rules. Nor have the standards for recusal changed in the interim such as to warrant a different result on the same facts.

3. Role as Board Member – Emery County Special Service District #1: Mr. Petersen is currently a Board Member of Emery County Special Service District #1 whose responsibilities include transportation within Emery County. *See* Attachment 7 (true and correct copy of Emery County website listing current Special Service District #1 Board Members and the Special Service District's purpose, responsibilities, and boundaries). UEI has appeared before Special Service District #1 during Mr. Petersen's tenure on the Board to provide updates on the proposed Lila Canyon mine. *See* Bloch Aff. ¶ 6. Though UEI has not yet asked the Special Service District for funds to construct and upgrade the County road leading to the proposed mine site, the company indicated that it intends to do so in the future. *See id.* At the November 9, 2005, Informal Conference, Mr. Ray Petersen spoke on behalf of Emery County and stated that Emery County is willing and able to participate in necessary road construction to make this project

happen. . . . We are satisfied that environmental concerns are addressed adequately in the permitting process. Those that would oppose this mine . . . have an unrealistic understanding of the energy needs of this nation. Strategies are adopted by such opposition which are intended only to delay the development of resources gladly [sic] necessary to the economic well being of this country. Emery County asks the Division to commit to a timely decision in regard to the application being considered.” Hr’g Tr. at 58-59 (Attachment 6 hereto) (emphasis added). Thus, Mr. Kent Petersen may indeed be directly involved on behalf of Emery County in an issue directly relating to the proposed Lila Canyon mine – this time in his capacity as Board Member of Special Service District #1 – and thus recusal is required.

4. Roads Issue: Emery County’s actions and agreements with respect to the Lila Canyon mining road have been reviewed by both the Division and the Board. Mr. Petersen’s involvement on behalf of Emery County, and thus his reason for recusal, appeared to relate primarily to the roads issues. Roads issues, however, may well still come before the Board in this matter. The Board’s rulings on UEI’s present petition may define the scope of further proceedings before both the Division and the Board with respect to UEI’s permit application for Lila Canyon. Depending on the Board’s rulings, issues concerning the Lila Canyon road could conceivably be reviewed by this Board. At the very least, any *assumption* by Mr. Petersen or by this Board that there cannot possibly be any issue about the mining road would impermissibly prejudice some of the issues presently before this Board.

5. Appearance of Inconsistency: Mr. Petersen’s failure to continue to recuse himself would create at least the appearance of impropriety. The public would see simply that Mr. Petersen recused himself in one proceeding involving a Lila Canyon permit application but refused to recuse himself in another such proceeding, raising the obvious appearance of

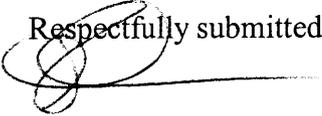
administrative inconsistency and, thus, impropriety. "The appearance of impartiality and fairness is just as important as being impartial and fair and is essential to maintaining the integrity of the administrative process." *In re American Waste and Pollution Control Co.*, 581 So.2d 738 (Ct. App. La. 1991).

CONCLUSION

For the foregoing reasons, the Board should disqualify Mr. Petersen or request that he continue to recuse himself.

Dated: April 20, 2007

Respectfully submitted,

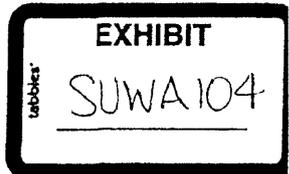


Stephen Bloch
Southern Utah Wilderness Alliance

David Churchill
Kathy Weinberg
Jenner & Block, LLP

Attorneys for Respondent-Intervenor
Southern Utah Wilderness Alliance

ATTACHMENT 1



AGREEMENT

This agreement made and entered into this 19 day of October 1999, by and between Emery County, a body corporate and politic (County), and UtahAmerican Energy, Inc. (UEI).

WHEREAS, there is an existing road in Emery County known as Lila Canyon Road (#126) and

WHEREAS, UEI requires extensive use of said road, and

WHEREAS, due to said extensive use, said road must be improved for the health, safety and welfare of the citizens of County as well as others who may have occasion to use said road,

NOW THEREFORE, be it agreed as follows:

1. The parties hereto agree and acknowledge that presently the southwest portion of the road known as Lila Canyon Road is a County road. Said County road runs from State Route 6 in a Northeasterly direction for approximately 2.63 miles to a presently existing corral. Thereafter the road is an unimproved RS 2477 roadway under assertion by Emery County with the Bureau of Land Management (BLM) and identified as assertion #144 lower Lila point, #155 Lila Canyon and #326 Lila Canyon Lila Pt. The Assertions were indexed and submitted to BLM Jan. 8, 1993.
2. That Emery County will improve the Lila Canyon Road according to the plans and specifications as approved by Johansen & Tuttle Engineering, Inc., as Emery County's engineers of record.
3. The parties shall enter into an Escrow Agreement. Johansen & Tuttle Engineering, Inc. estimates for such improvements are shown in attachment A. Estimates for each phase shall be carefully reviewed and brought up to date before funds are put in escrow prior to initiation of the individual phases. UEI and Emery County shall jointly agree in writing before beginning any specific phase. No phase shall commence before the required funds for that specific phase is in escrow. Each phase once initiated shall be completed.
4. Insofar as the road will be used by the public for access to private and public lands and by UEI for access and construction of the Lila Canyon mine, and insofar as improvement of the Roadway would not otherwise be a budgeted item for Emery County given other priorities for highway maintenance or reconstruction, it has been agreed between Emery County and UEI that the total cost of the reconstruction of the county road shall be the responsibility of UEI. Upon satisfactory completion by both parties of each phase, any remaining unspent funds in escrow shall remain sole property of UEI.

5. UEI will assist the County in obtaining additional road ROW's as required. The newly applied for BLM, ROW #UTU- 76617, now in the EA process will, be issued and assigned to Emery County.
6. Emery County shall make available at no cost, any native rock or dirt materials available on County or otherwise permitted local properties which might be suitable for road construction.
7. UEI shall acquire an Encroachment Permit from Emery County and comply with the conditions as set forth in the permit. It is agreed that when UEI is operating any coal mining or reclamation activity within 100' of a County road that UEI shall protect the public from normal hazards associated with said activity by installing a 6' chain link fence between the public and mine activity or facility situated within the 100' distance from the road unless as otherwise agreed to by Emery County through its Road Encroachment Ordinance 8-7-85A or as amended.
8. It is further agreed by Emery County that in consideration of UEI's contributions, Emery County agrees and acknowledges that said contribution does not in any manner constitute participation by UEI in the design, construction, maintenance or operation of the road except as otherwise agreed by both parties. The road will remain a County network road entirely under authority of Emery County. Furthermore, Emery County agrees to indemnify and hold UEI, its owners, directors, officers, employees, and agents (indemnitees) harmless of any liability, cost or expense, including defense costs, from any claim, demand or action which may be brought alleging negligence or responsibility on the part of indemnitees in the design or construction of the roadway, including any claim or demand which may be made by UEI employees. This obligation to indemnify and hold harmless commences immediately and includes the period of time during which construction is taking place.

Emery County agrees that it will fully cooperate with UEI should any explanation of this expenditure by UEI be required by any of the commissions which regulate UEI operations and/or any government agency which may inquire or investigate into the expenditure of UEI.

EMERY COUNTY


Commission Chairman

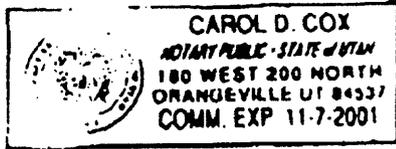
Attest:


Emery County Clerk

ATTACHMENT "A"

| Phase | Description | Estimated Cost |
|-----------|---|--------------------------------------|
| Phase I | Engineering and Design of the Lila Canyon road complete, ready for bid. | \$150,000 |
| Phase II | Construction of gravel roadways. Includes acceleration & deceleration lanes on State Hwy 6. | To be determined by Phase I studies. |
| Phase III | Paving of the western segment of the Lila Canyon road. | To be determined by Phase I studies. |

Subscribed and sworn to before me this 19th day of October, 1999.



Carol D. Cox
Notary Public

UtahAmerican Energy, Inc.

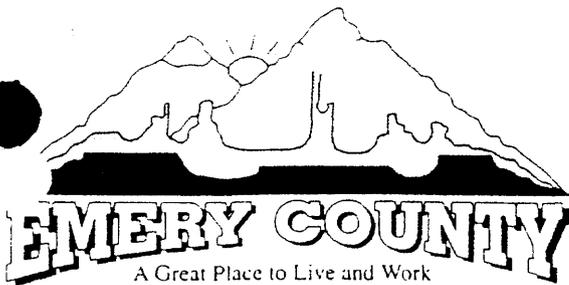
Hershel H. Hayden, President
Hershel H. Hayden, President

Subscribed and sworn to before me this 26th day of October, 1999.



Janet A. King
Notary Public

ATTACHMENT 2



LILA C, R
mine file

3/20/01
JRM
3/20/01

Road Department

February 27, 2001

RECEIVED

MAR 27 2001

DIVISION OF
OIL GAS AND MINING

Incoming
C/007/013
Copy Faron

Lowell P. Braxton
Division of Oil, Gas, and Mining
1594 West North Temple, STE 1210
P. O. 145801
Salt Lake City, Utah 84114-5801

Dear Mr. Braxton:

The following information should answer certain questions posed to Melvin Coonrod, Resident Agent UEI, by Daron Haddock on November 29, 2000 regarding the proposed Lila Canyon Road (#126) improvements.

Emery County recognizes that there are significant natural resources located on its State School Trust and Federal Public Lands. Emery County supports the responsible development of its natural resources which is consistent with Emery County's Comprehensive Master Plan and the multiple use ideals held by its people. Our natural resources include, but are not limited to, mineral deposits including coal, oil and natural gas, timber, water, grazing, recreation, wildlife, cultural and scenic which are all of significant social and economic benefit to Emery County, the State of Utah and the United States in terms of employment, tax revenue, mineral royalties and recreational opportunities.

I will respond to the questions in the order set forth in Mr. Haddock's letter (November 29, 2000).

A. A legal description of the road right of way.

The approximate description of the proposed county road is as follows:
The road will start from U.S. Highway 6 located in the west half of Section 6, T. 17 S., R. 14 E. and proceed northeasterly to the NE ¼ NE ¼ of Section 32, T. 16 S., R. 14 E. The road will then proceed to the NW ¼ of Section 28 and then to the NE ¼ NE ¼ of Section 21. The road finally enters the Lila Canyon Mine surface facilities in the SW ¼ of Section 15. The total length of this road would be approximately 4.8 miles.

B. Name or numerical designation for the road.

Lila Canyon Road No. 126

C. Land ownership for the road right of way.

Lila Canyon Road No. 126 is currently situated on Federal and State Properties. Emery County will control all necessary right of ways for this road.

D. Name of the entity responsible for the alignment, construction, maintenance and liability for the road.

Emery County will be responsible for the alignment, construction, maintenance and liability for the road.



Mr. Braxton, DOGM
February 27, 2001
page 2

- E. Name of the entity responsible for environmental permitting of the road.**
Emery County will be ultimately responsible for obtaining environmental permitting for the road.
- F. Construction standard for the road and the entity responsible for attaining this standard.**
Emery County will design the Lila Canyon Road No.126 according to existing county, state and federal specifications.
- G. Maintenance schedule for the road.**
The maintenance schedule for the road will be the same as other similar Class "B" roads in Emery County.
- H. Source of funds for construction and/or maintenance of the road.**
Emery County will be responsible for funds to improve and maintain the Lila Canyon Road No.126.
- I. Examples of similar roads in Carbon and Emery Counties.**
Cottonwood Canyon road No.506 (Trail Mountain), Deer Creek Road No.304, Bear Creek Road No.305 (Co-Op), C Canyon Road Carbon County.
- J. Will Utah American Energy, Inc. have the ability to deny use of the road?**
No! The Lila Canyon Road No.126 will continue as a multiple use public road under the authority of Emery County providing access to stockmen, recreationalists, minerals exploration and development, hunters and the general public.

I hope that this information is sufficient for your purposes.

Sincerely,


Rex Funk,
Road Supervisor

RF/ls

attachment

cc Commissioners
Val Payne, Public Lands Director
Craig Johansen, Johansen & Tuttle Engineering
Melvin Coonrod, EIS

000212

ATTACHMENT 3

COPY OF TRANSCRIPT

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
IN AND FOR THE STATE OF UTAH

IN THE MATTER OF THE
REQUEST FOR AGENCY ACTION
BY PETITIONER SOUTHERN UTAH
WILDERNESS ALLIANCE (SUWA)
FOR BOARD REVIEW OF THE
DIVISION'S APPROVAL OF LILA
CANYON SIGNIFICANT REVISION
TO THE HORSE CANYON MINE
LOCATED IN CARBON AND EMERY
COUNTIES, UTAH, PERMIT
APPLICATION PACKAGE
C/007/013-SR98(1) SUBMITTED BY
UTAHAMERICAN ENERGY, INC., (UEI).

Docket No. 2001-027

Cause No.
C/007/013-SR98(1)

VOLUME 1

TAKEN AT: Department of Natural Resources
1594 West North Temple, Room 1040A
Salt Lake City, Utah

DATE: December 4, 2001

REPORTED BY: Scott M. Knight, RPR



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1 MS. ERLER: Another one of the
2 procedural items that's outstanding before us, is
3 the question of a privilege log. That topic is
4 still, I believe, a matter of dispute between
5 the parties. But if I recall correctly from our
6 conference call on Friday of--I understood that
7 SUWA was willing to move forward on the merits,
8 regardless of the outcome of any decision the
9 board made on the privilege log. Is that--

10 MR. CHURCHILL: Yes, ma'am that's also
11 correct. We think there is some confusion about
12 the nature of the inquiry the division made when
13 it was putting together the administrative
14 record, and whether it has accomplished the
15 board's goal of producing all of the documents
16 that were before the division and were considered
17 directly or indirectly as part of this process.
18 We're not sure that's been accomplished, but we
19 are prepared to move forward, in any event.

20 MS. ERLER: Thank you. We have one
21 last procedural item, I believe. But before I
22 go to that, I would like to state on the record,
23 that Board member Kent Peterson has recused
24 himself from this hearing and his presence will
25 be--his absence will be noted on the panel here



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before you.

The--I believe the last procedural item that we have that's outstanding is a request that we limit the time allowed for argument. And I think I'll ask the parties, is there anything's procedural that I've--

MR. QUIGLEY: There are some subsequent filings, various motions to strike, documents that SUWA that, in the Division and UEI's opinion, are inappropriate regarding timeliness and other issues.

MS. ERLER: Okay. The motions to strike various documents, I think, for right now, we'll move forward and take those requests, if you will, under advisement and wait until a bit later on to make some decisions on that.

On the matter of the--in the in limine motion, if I stated that correctly, that one, I believe the Board has not reached consensus on. And what's the Board's privilege--preference on the request to limit time for argument? Or would the Board like to take a quick break and discuss.

MR. QUIGLEY: Madam Chairman, if it's the pleasure of the Board, since it's the

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ATTACHMENT 4

COPY OF TRANSCRIPT

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
IN AND FOR THE STATE OF UTAH

IN THE MATTER OF THE
REQUEST FOR AGENCY ACTION
BY PETITIONER SOUTHERN UTAH
WILDERNESS ALLIANCE (SUWA)
FOR THE BOARD REVIEW OF THE
DIVISION'S APPROVAL OF LILA
CANYON SIGNIFICANT REVISION
TO THE HORSE CANYON MINE
LOCATED IN CARBON AND EMERY
COUNTIES, UTAH, PERMIT
APPLICATION PACKAGE
C/007/013-SR98(1) SUBMITTED BY
UTAHAMERICAN ENERGY, INC., (UEI).

Docket No. 2001-027
Cause No.
C/007/013-SR98(1)

TAKEN AT: Department of Natural Resources
1594 West North Temple, Room 1040A
Salt Lake City, Utah

DATE: September 26, 2001

REPORTED BY: Scott M. Knight, RPR



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1 could look more fully into the matter. We have
2 yet to review the administrative record. We
3 have noticed that JBR Consultants was a
4 consulting firm that was, it appears, was relied
5 upon--or that studies were relied upon by the
6 Division, and that this is a significant
7 revision. At least, that is how the Division's
8 characterizing it.

9 It's a significant revision to the
10 Horse Canyon Mine permit, and I believe the
11 studies were involved with the Horse Canyon Mine.
12 So there may be a potential conflict. I still
13 have yet to review the administrative record.
14 That is now available. And--and at that time, I
15 would hope that we could reconsider if there is
16 any conflict or if you personally see any. But
17 I appreciate you making these statements.

18 MR. BAYER: No problem. We can--if
19 you run--my memory's not as good as it used to
20 be, not that it ever was all that good, so maybe
21 there's something I don't recall. But I believe
22 I have reviewed, you know, our involvement
23 sufficiently to know where we stand.

24 MR. MCHARG: Thank you.

25 MR. PETERSEN: Madam Chairman, I



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1 probably should also state for the record that I
2 was involved with--as a county commissioner for
3 Emery County with some of the early requests for
4 permits to the planning and zoning permits and
5 also the road permits. That was several years
6 ago, and I certainly had no financial interest
7 in it, but I was at least aware of some of the
8 things that were going on.

9 MR. McHARG: And if I may, again,
10 thank you, Mr. Petersen. As you know, one of
11 the issues is the road issue that's involved
12 here. And I appreciate you bringing that
13 forward, and if--if upon further review of the
14 administrative record or in any discovery we find
15 that there may be some potential conflict, then
16 maybe the Board can review it at that time, and
17 Mr. Petersen can review his involvement at that
18 time. So thank you.

19 MS. ERLER: Mr. Seel?

20 MR. SEEL: Yes. I have just a couple
21 of comments. My understanding is that SUWA has
22 challenged both the quantity and quality of data
23 that was generated, especially the hydrologic,
24 geologic data. And to the extent that their
25 challenge pertains to the quality of data that



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ATTACHMENT 5

FILED

BEFORE THE BOARD OF OIL, GAS & MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

DEC 14 2001

SECRETARY, BOARD OF
OIL, GAS & MININGSOUTHERN UTAH WILDERNESS
ALLIANCE,

Petitioner/Appellant,

vs.

DIVISION OF OIL, GAS & MINING,
DEPARTMENT OF NATURAL
RESOURCES, STATE OF UTAH,

Respondent/Appellee,

UTAHAMERICAN ENERGY, INC.,

Intervenor-Respondent.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

Docket No. 2001-027

Cause No. C/007/013-SR98(1)

This matter came for hearing before the Utah Board of Oil, Gas and Mining (the "Board") at their regularly scheduled hearing on Tuesday, December 4, 2001, at the hour of 8:30 a.m. in Salt Lake City, Utah. The following Board members were present and participated at the hearing:

Elise L. Erler, Chairman
Robert J. Bayer
Stephanie Cartwright
Douglas E. Johnson
W. Allan Mashburn
J. James Peacock

Board Member Kent Peterson recused himself from this matter.

ATTACHMENT 6

REV. 11/18/05 ANLU

COPY OF TRANSCRIPT

BEFORE THE DIVISION OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

IN THE MATTER OF THE
LILA CANYON, SUPPLEMENTAL CAUSE NO. C/007/013
HORSE CANYON MINE,
CARBON COUNTY, UTAH

INFORMAL CONFERENCE

TAKEN AT: Department of Natural Resources
1594 West North Temple
Salt Lake City, Utah 84114-5801

DATE: November 9, 2005

TIME: 9:03 a.m.

REPORTER: Nancy A. Fullmer, RMR



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1 we close out the informal conference?

2 MR. ALDER: Yes.

3 HEARING OFFICER BAZA: All right.

4 Anything more?

5 MR. ALDER: No.

6 HEARING OFFICER BAZA: Okay. Well, we

7 also have an audience here with us. And I know

8 that Mr. Petersen of Emery County has a statement

9 that you would like to make. So now is the time

10 for anyone who has public comments to make those,

11 and we'll give Mr. Petersen first crack.

12 MR. PETERSEN: Thank you, Director. I

13 would just like to read a prepared statement here.

14 It represents Emery County's position. Emery

15 County welcomes the opportunity to comment on the

16 permit application referred to about the Lila

17 Canyon extension. The area described in the

18 application permit is within the boundary of Emery

19 County as well as proposed access rights-of-way.

20 Emery County is well suited for the location of

21 this mining operation. Supported industries are

22 in place within the Carbon/Emery area. Trained

23 and available workforce is available. Emery

24 County is willing and able to participate in

25 necessary road construction to make this project



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1 happen. Emery County supports the issuance of the
2 permit to Utah America Energy, Incorporated, and
3 wants the Division to contact the county
4 commission for further information concerning our
5 support should that be necessary.

6 Local economic stimulus is anticipated
7 with the development of this mine. It is also
8 important nationally and regionally that energy-
9 producing resources are developed to help lessen
10 our dependance on other less reliable resources.
11 It is important to us that every effort be made
12 to expedite the issuance of this permit. We are
13 satisfied that environmental concerns are
14 addressed adequately in the permitting process.
15 Those that would oppose this mine and other
16 projects like it have an unrealistic understanding
17 of energy needs of this nation. Strategies are
18 adopted by such opposition which are intended only
19 to delay the development of resources gladly
20 necessary to the economic well being of this
21 country. Emery County asks the Division to commit
22 to a timely decision in regard to the application
23 being considered.

24 HEARING OFFICER BAZA: Mr. Petersen, do
25 you have any comments as to what would constitute



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59

1 the timely decision?

2 MR. PETERSEN: As soon as possible. I
3 would say--I would echo the déjà vu sentiment.
4 Over a year ago, we submitted virtually the same
5 statement. A lot of the things that are being
6 addressed and brought up today I believe have been
7 addressed. So whatever the Division can do to--
8 again whatever can be done to hasten this.

9 HEARING OFFICER BAZA: Okay. Thank
10 you. Are there any other comments from
11 individuals? Mr. Alder?

12 MR. ALDER: Yeah, I've been reminded of
13 one additional point that I think is probably
14 apparent to everybody, but we would like to make
15 it clear for the record that the obligation to
16 provide data and responses to the questions that
17 have been raised by Southern Utah Wilderness
18 Alliance, I think notwithstanding the current
19 status of this reviewing having gone on for a
20 long time, still remains that of the applicant.
21 And under the statute, the applicant or any person
22 who applies for a coal mine permit has to show
23 they've met all requirements of the act and rules.
24 And so we just want to remind that in this
25 procedural review it's not the Division's



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ATTACHMENT 7



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Board Members

**Board Members of
Emery County Special Service District #1**
 Merrill Swasey, Chairman
 Bevan Wilson
 Richard Jensen
 Kent Petersen
 Dean King

Current Issues

- Addressing - What You Should Know
- OHV Ordinance & B Class Road ATV Designation
- GPS Roads 8/11/04

News/Information

- 2006 General Election Results
- Archive Photos
- Community Calendar

Events & Notices

- Happenings In Emery County
- Senior Golf League
- Arapeen ATV Jamboree

Emery Water Conservancy District

Castle Dale, Utah
 Weather Station
5 AM, Apr 20

Temperature
43°F 24-hour Hi: **44**
 24-hour Lo: **29**

Relative Humidity
36% 24-hour Hi: **71**
 24-hour Lo: **33**

Wind
1 mph Today's Gust: **18**

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| Meeting |

Emery County Special Service District #1

Purpose

The Board of Emery County Special Service District #1 determines how a percentage of mineral lease funds will be disbursed.

Responsibilities

The Special Service District #1 is an entity that provides the following services to Emery County.

- . Transportation
- . Flood Control
- . Snow Removal
- . Water
- . Sewerage
- . Drainage
- . Garbage
- . Street Lighting

Boundaries

Emery County Special Service District #1 boundaries include all of Emery County except inside the limits of incorporated towns or cities.

Current Issues

- Addressing - What You Should Know
- OHV Ordinance & B Class Road ATV Designation
- GPS Roads 8/11/04

News/Information

- 2006 General Election Results
- Archive Photos
- Community Calendar

Events & Notices

- Happenings In Emery County
- Senior Golf League
- Arapeen ATV Jamboree

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| Emery Water Conservancy District |
| Castle Dale, Utah Weather Station |
| 5 AM, Apr 20 |
| Temperature |
| 43°F 24-hour Hi: 44 |
| 24-hour Lo: 29 |
| Relative Humidity |
| 36% 24-hour Hi: 71 |
| 24-hour Lo: 33 |
| Wind |
| 1 mph Today's Gust: 10 |
| www.emwcd.org |

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1717 Main St., Suite 3150
Dallas, Texas 75201-4647
Telephone: (214) 746-5700

Attorneys for Respondent-Intervenor
Southern Utah Wilderness Alliance

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

UTAHAMERICAN ENERGY, INC.)

Petitioner,)

vs.)

DIVISION OF OIL, GAS AND MINING,)

Respondent,)

and)

SOUTHERN UTAH WILDERNESS ALLIANCE,)

Respondent-Intervenor.)

Docket No. 2007-008
Cause No. C/007/013-SR98(1)(A)

AFFIDAVIT OF STEPHEN H. M. BLOCH
IN SUPPORT OF MOTION FOR RECUSAL

FILED

APR 20 2007

SECRETARY, BOARD OF
OIL, GAS & MINING

Stephen H.M. Bloch, being first duly sworn under oath, states as follows:

1. I am a staff attorney for the Southern Utah Wilderness Alliance (“SUWA”) and have served in this position for approximately eight-and-a-half years. I am over 21 years of age, of sound mind, have personal knowledge of each of the facts set forth below, and if called upon to do so, could and would testify regarding the following. This Affidavit is filed in support of SUWA’s Motion for Recusal in the above-captioned matter.

2. Attachments 1 and 2 to the accompanying Memorandum, which are documents marked with record page numbers, show that Emery County negotiated with and reached agreements with UEI with respect to UEI’s conduct of mining at Lila Canyon and furnished information to the Division in support of the permit application. Attachment 1 is signed by Mr. Kent Petersen as a County Commissioner of Emery County.

3. Attachments 3 and 4 to the accompanying memorandum contain, respectively, a statement by Mr. Petersen confirming his involvement in Emery County’s dealings with UEI concerning UEI’s permit application and a statement by the Board’s then-chairperson, Ms. Elise Erlich, that Mr. Petersen had recused himself. The Board’s Order dated December 14, 2001, Attachment 5 to the accompanying Memorandum, also states Mr. Petersen recused himself from participation in this matter.

4. Attachment 6 to the accompanying memorandum contains excerpts from the Informal Conference conducted on November 9, 2005, in which Mr. Ray Petersen – speaking on behalf of Emery County – discussed Emery County’s support for the proposed Lila Canyon mine.

5. Attachment 7 to the accompanying memorandum consists of two pages from the Emery County website - <http://www.emerycounty.com/ssd1/boardmembers.htm> and

<http://www.emerycounty.com/ssd1/index.htm> (last visited April 20, 2007) – which lists Mr. Kent Petersen as a current Board Member of the Emery County Special Service District #1 and explains that Special Service District #1 is an entity that provides transportation services to Emery County.

6. On April 19, 2007, I inquired about Mr. Petersen's status regarding recusal and was advised by Board counsel, Mr. Michael Johnson, that Mr. Petersen did not believe that his recusal in 2001 automatically required his recusal from current proceeding and that he did not intend to recuse himself *sua sponte*. Counsel for the Board further said that Mr. Petersen said his primary reason for recusing himself had been the roads issue and that this did not seem to be an issue now. Counsel for the Board further indicated that Mr. Petersen is currently a board member of an Emery County Special Service District – Special Service District #1 – Roads – and that UtahAmerican Energy, Inc. ("UEI") has appeared before this Special Service District regarding the Lila Canyon Mine and may come back before the Special Service District for financial assistance in constructing and upgrading the road to the Lila Canyon mine site.

7. These facts and the documents referenced herein show: that Mr. Petersen had knowledge of facts as Emery County Commissioner relevant to Lila Canyon coal mine permitting; that he engaged in decision-making for the county concerning matters pertaining to UEI's mining operations; that he executed one or more agreements with UEI, on behalf of Emery County, facilitating such mining operations; that he decided, presumably on such facts, to recuse himself from proceedings regarding Lila Canyon coal mining permitting in 2001; that he has not indicated he will recuse himself *sua sponte* from further proceedings with regard to such permitting, and that he is currently a board member of Emery County Special Service District #1

Pursuant to Utah R.Civ.P. 63(b)(1)(A), undersigned counsel hereby certifies on behalf of Respondent-Intervenor Southern Utah Wilderness Alliance that this Motion to Recuse Mr. Kent R. Petersen is brought in good faith and is supported by an affidavit "stating facts sufficient to show bias, prejudice, or conflict of interest."

Respectfully submitted this 20th day of April, 2007.



Stephen Bloch
Counsel for Respondent-Intervenor
Southern Utah Wilderness Alliance