Handwritten signature and date: C/007/0013

April 19, 2007

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

UNDERTAKING: Proposed Mining and Reclamation Plan (MRP), 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 Reclamation and Enforcement (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; 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 leased federal coal leases to UEI within the MRP permit area (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, UEI has applied for a permit 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 R645-301-411.140 to 144 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 effect recorded cultural or historical resources; 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, 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. BLM has drafted a Memorandum of Agreement to treat the potential impacts to this site; 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 cultural or historic 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, 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), has invited the Council's comments and participation in the review for this undertaking pursuant to 36 CFR § 800 and the Council has chosen not to participate at this time;

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.** 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.
2. **Treatment of Site 42EM2517.** The BLM drafted a Memorandum of Agreement for mitigation of 42EM2517. UEI will assure that a mitigation plan for 42EM2517 is prepared, approved, and implemented in accordance with the BLM MOA. BLM will assure that signatories of this Agreement are kept informed on the processes of the MOA.
3. **Monitoring of Subsidence.** For this Agreement, surface impacts due to subsidence are defined as, 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 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 precision 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. **Previously Inventoried and No Sites.** If subsidence-related or upsidence-related surface impacts (as defined above) 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, UEI will have a qualified archaeologist examine the location of the subsidence-related or upsidence-related surface impacts relative to the geomorphological setting of the site. If the area of the subsidence-related or upsidence-related surface impacts is in an area with a high probability that such impacts could expose previously unseen sites potentially eligible to the National Register of Historic Places (such as areas of alluvial deposition), the qualified archaeologist will examine the effects of subsidence upon the area(s) in question 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. If a site is identified in this examination, procedures defined below under item (c.ii) will be followed. If no site is present, procedures defined below under item (c.i) will be followed. If the area is not a high probability area, no further work need be done. UEI will notify OGM regarding the determination(s) under this section within fourteen (14) days of making the determination(s), and OGM will provide the information to OSM, BLM, and SHPO.

- b. **Previously Inventoried and Known Sites.** If subsidence-related or upsidence-related surface impacts (as defined above) 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. If known archaeological sites previously determined not eligible to the National Register of Historic Places are present in the subsidence area, and such sites are in geomorphological settings or have other characteristics that indicate a high probability that subsidence-related or upsidence-related surface impacts could have exposed significant new information to view, the qualified archaeologist will examine the effects of subsidence upon the site(s) in question 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.

UEI will provide a report by an archeologist, 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 subsidence-related or upsidence-related surface impacts (as defined above) 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):

- i. **No Sites.** If no sites are present within the area of subsidence-related or upsidence-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(c).
 - ii. **Inventoried Sites.** If a site or sites are present within the area of subsidence-related or upsidence-related surface impacts, 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 other consulting parties will occur during this process at a level appropriate to the nature of the cultural or historic resources (if any) and effects to the cultural or historic 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 UEI's 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 Effect 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 determine 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 unless following an “expedited treatment” (see Stipulation 5).
 - d. **Conducting Consultation.** Consultation with tribes and other consulting parties will occur during this process at a level appropriate to the nature of the cultural or historic resources (if any) and effects to the cultural or historic 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 for such discoveries as follows:
- 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.
6. **Funding of Work.** UEI will fund and implement any and all future 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 a written 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 the Advisory Council on Historic Preservation. Within thirty days after the receipt of all pertinent documentation, the Council will either:

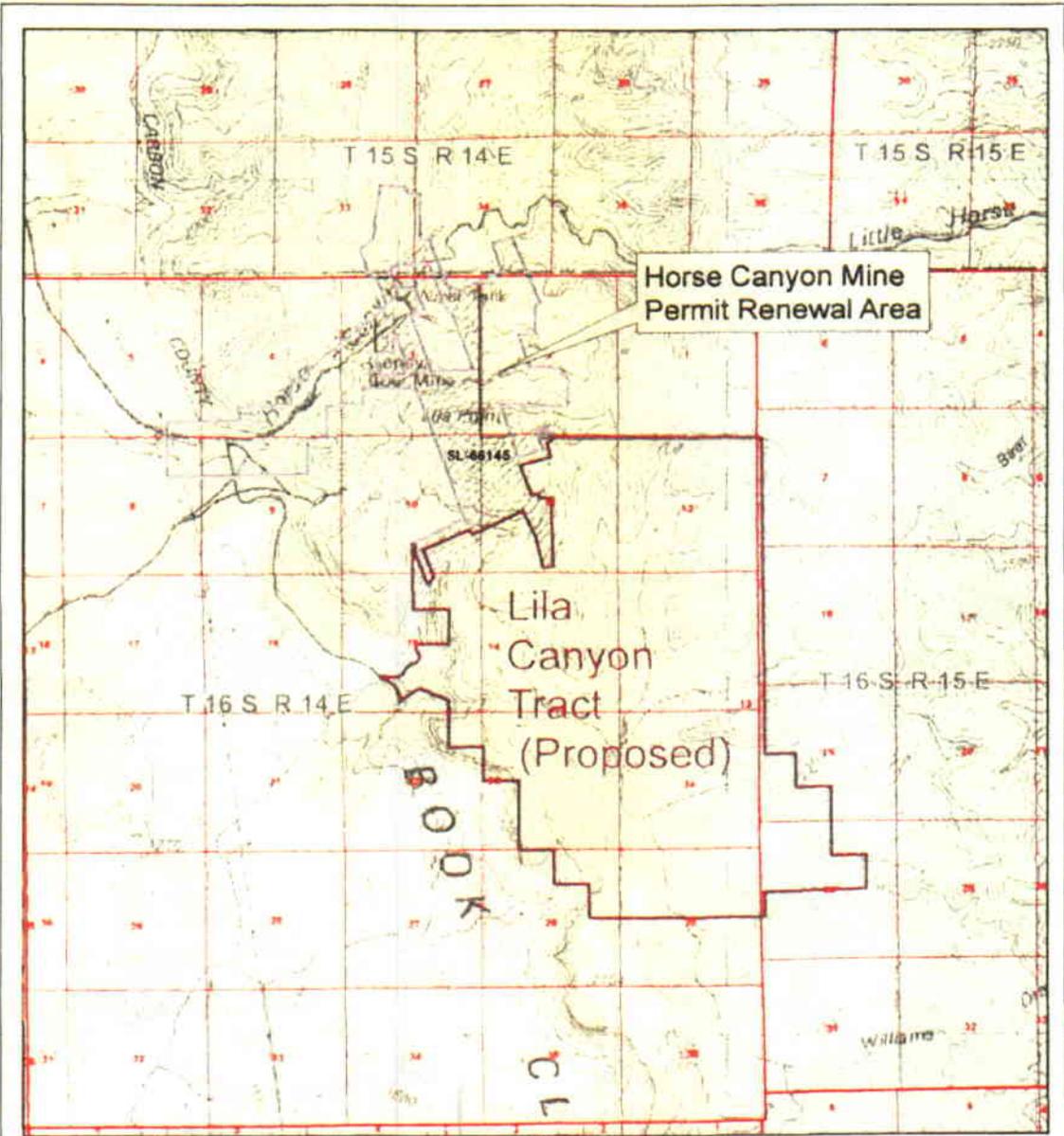
- a. Provide the OGM with recommendations, which the OGM will take into account in reaching a final decision regarding the dispute; or
 - b. Notify the OGM that it will comment pursuant to 36 CFR Part 800.6(b) and proceed to comment. Any Council comment provided in response to such a request will be 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. This Agreement 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 or historic 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.

ATTACHMENT 1: Tribal List

The following tribes were consulted 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.

EXHIBIT A: Map of Permit Area



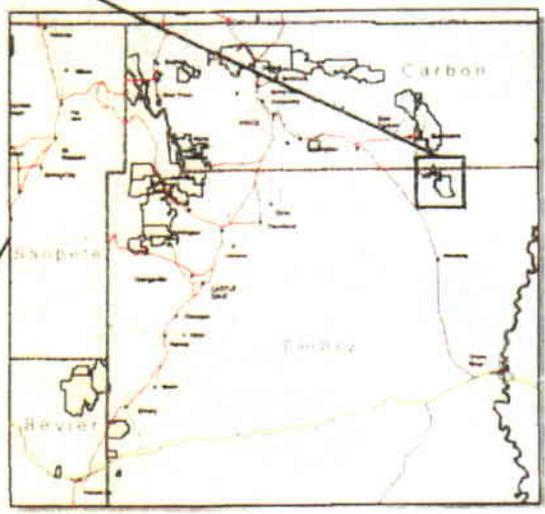
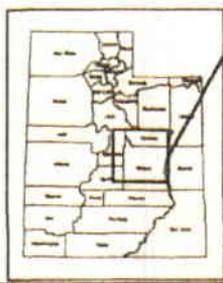
Horse Canyon Mine - Map 1

C0070013
 Carbon County, Utah
 March 2006

Township 16 South Range 14 East
 Township 16 South Range 14 East

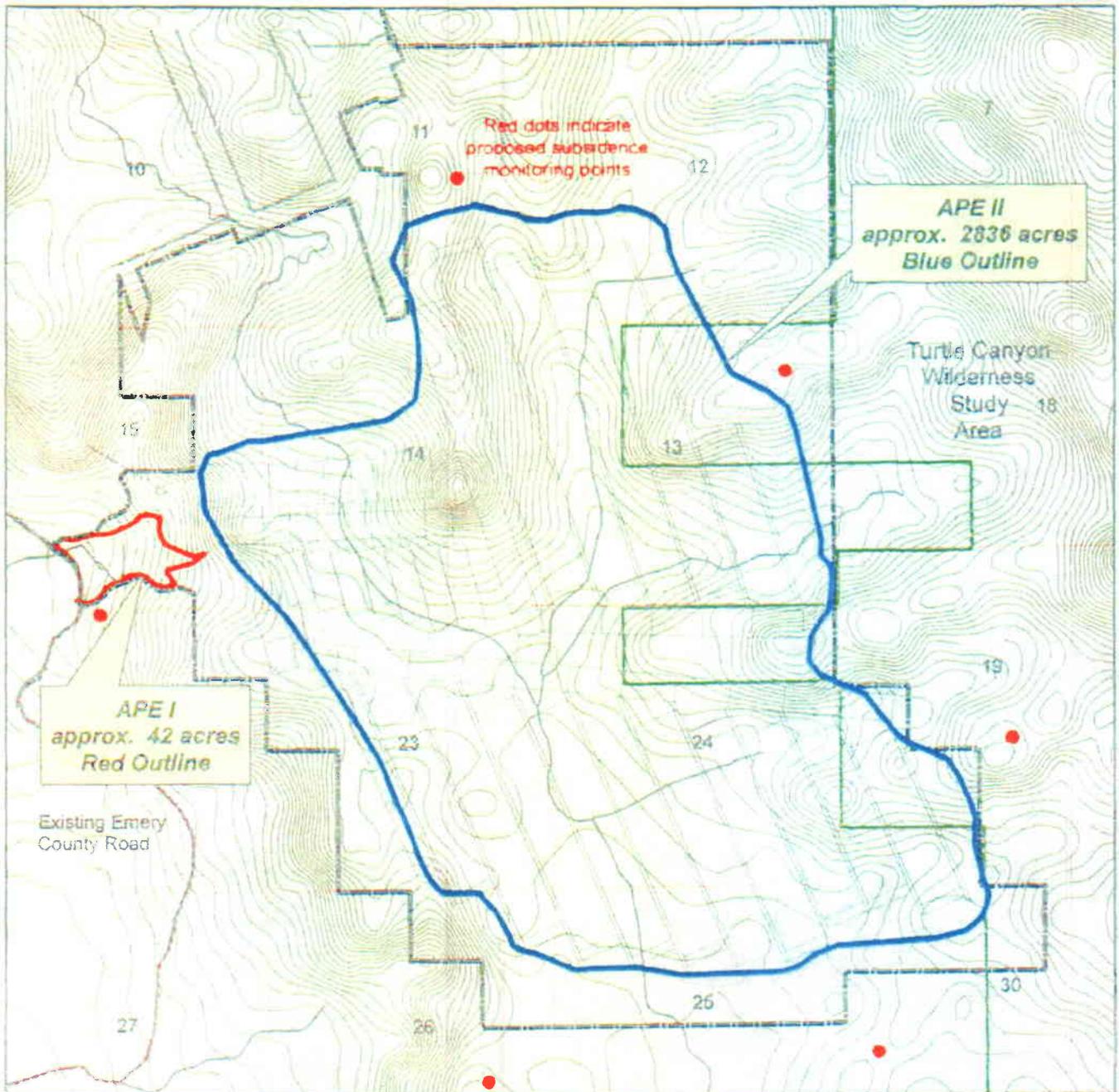
P:\GROUPS\SOCAL\WPN07013\HORC013Map1.pdf

- Permit Area
- Proposed Mine Plan Modification (if shown)
- Federal Lease Areas



Locator Map

EXHIBIT B: Map of Area of Potential Effect



Lila Canyon Project - Map 2

- Legend**
- Plates-3.dwg
Layer
- CONTOUR
 - INDEX CONTOUR
 - BATTERED
 - LAYOUT
 - OLD PERMIT
 - NEW PERMIT
 - ROAD
 - PROPOSED
 - SECTION
 - EWA
 - SUBSIDENCE



Map Produced
March 2005

Signatories

 By: Wilson G. Martin Date: 4/30/07
Wilson G. Martin, Utah State Historic Preservation Officer
Utah State Division of State History

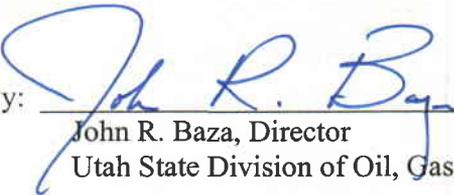
By: _____ Date: _____
John R. Baza, Director
Utah State Division of Oil, Gas, and Mining

By: _____ Date: _____
Peter A. Rutledge, Chief, Program Support Division
Office of Surface Mining Reclamation and Enforcement, Western Region

By: _____ Date: _____
Roger Bankert, Field Manager
Bureau of Land Management, Price Field Office

Signatories

By: _____ Date: _____
Wilson G. Martin, Utah State Historic Preservation Officer
Utah State Division of State History

By:  _____ Date: 4/24/07
John R. Baza, Director
Utah State Division of Oil, Gas, and Mining

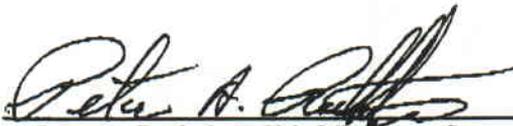
By: _____ Date: _____
Peter A. Rutledge, Chief, Program Support Division
Office of Surface Mining Reclamation and Enforcement, Western Region

By: _____ Date: _____
Roger Bankert, Field Manager
Bureau of Land Management, Price Field Office

Signatories

By: _____ Date: _____
Wilson G. Martin, Utah State Historic Preservation Officer
Utah State Division of State History

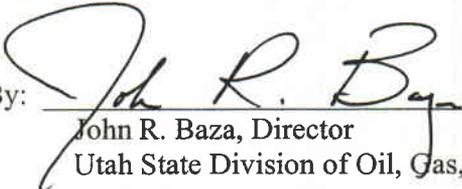
By: _____ Date: _____
John R. Baza, Director
Utah State Division of Oil, Gas, and Mining

By:  Date: 4/30/07
Peter A. Rutledge, Chief, Program Support Division
Office of Surface Mining Reclamation and Enforcement, Western Region

By: _____ Date: _____
Roger Bankert, Field Manager
Bureau of Land Management, Price Field Office

Signatories

By: _____ Date: _____
Wilson G. Martin, Utah State Historic Preservation Officer
Utah State Division of State History

By:  _____ Date: 4/24/07
John R. Baza, Director
Utah State Division of Oil, Gas, and Mining

By: _____ Date: _____
Peter A. Rutledge, Chief, Program Support Division
Office of Surface Mining Reclamation and Enforcement, Western Region

By: _____ Date: _____
Roger Bankert, Field Manager
Bureau of Land Management, Price Field Office

0248



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Price Field Office
125 South 600 West
Price, UT 84501

<http://www.blm.gov/utah/price/>



3400
SL 066490
(UT-070)

Jerry K
C/007/0013

April 27, 2007

Mary Ann Wright
Associate Director, Mining
State of Utah
Department of Natural Resources
1594 West North Temple, Suite 1210
PO Box 145801
Salt Lake City, UT 84114-5801

RECEIVED
5/2/07
MAY 02 2007
msw

Subject: Requesting Signatures for the Programmatic Agreement – Protection Measures for Lila Canyon Extension, UtahAmerican Energy, Inc. (UEI), Horse Canyon Mine, C/007/0013, Task #2714, Outgoing File

Dear Ms. Wright:

The Bureau of Land Management (BLM) is in receipt of your letter dated April 19, 2007, requesting signature for the Programmatic Agreement (PA) for the Lila Canyon Extension of the Horse Canyon Mine.

There are still issues that need to be resolved before the BLM can be a signatory on the agreement. We are concerned that a number of the changes we had suggested in our April 4 submittal have not been incorporated into the agreement. As we indicated, these changes need to be made in order for the BLM to continue as a signatory to the document. In addition to our concerns with the basis for the agreement, the document, as it now stands, contains provisions and requirements that cannot be reasonably performed on the ground. Further, before the BLM can sign the agreement, the "whereas" clauses we had identified need to be removed. These particular clauses conflict with the fact that the previous Federal Mine Plan Approval is not the Federal Undertaking that provides a basis for this PA. If the Division still wants the BLM to be a signatory to the document, we should meet to discuss and resolve our concerns.

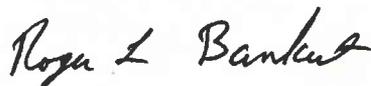
As the BLM discussed with you and members of your staff during a phone call on April 18, unless there was a resolution on some of these points and issues, the BLM would not be able to sign the document as written. The Assistant Secretary, Lands and Minerals (ASLM) has already approved the Federal Mining Plan for this operation. Unless the

ASLM determines that this approval should be withdrawn, the BLM has concluded that no further Mineral Leasing Act approvals are required before mining can start.

Thank you for the opportunity to provide comments for the PA. The diligent efforts of the Division staff and general intent to provide protection to valuable cultural and historic resources are commendable.

Please feel free to call any one of us if there are any questions or concerns: Roger Bankert (435) 636-3600, Jim Kohler (801) 539-4037, Steve Rigby (435) 636-3604, or Jeff McKenzie (801) 539-4038.

Sincerely,

Handwritten signature of Roger L. Bankert in cursive script.

Roger Bankert
Field Manager
Bureau of Land Management, Price Field Office

cc: James Kohler, BLM-SO