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Explanation:
UEI letter about
mining plan approval.

cc:

Snell & Wilmer
L.L.P.
LAW OFFICES

15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101
(801) 257-1900
Fax: (801) 257-1800
www.swlaw.com

Denise A. Drago (801) 257-1998
ddrago@swlaw.com

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To	PAM GRUBAUGH-LITTLE	From	RON SINGH, OSM
Dept./Agency	UT DOGM	Phone #	303-844-1400x1489
Fax #	801-359-3940	Fax #	303-844-1522

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May 23, 2007

Mr. Jim Fulton
Chief, Western Field Division
Office of Surface Mining
Western Regional Coordinating Center
P.O. Box 46667
Denver, Colorado 80201-4667

Mr. Jim Kohler
Branch Chief, Solid Minerals
Bureau of Land Management
Utah State Office
P.O. Box 45155
Salt Lake City, Utah 84145-0155

**RE: Lila Canyon Mine Project Rights of Way and Federal Mining Plan Approval –
Response to May 16, 2007 letter from Southern Utah Wilderness Alliance
("SUWA")**

Dear Messrs. Fulton and Kohler:

On behalf of UtahAmerican Energy, Inc. ("UEI"), we appreciate this opportunity to respond to SUWA's letter of May 16, 2007 and to reconfirm that there is no need to revisit past federal decisions concerning the Lila Canyon Mine Project (the "Project") as the result of the State's May 2, 2007 approval and May 18, 2007 issuance of the Lila Canyon Mine Permit ("State Mine Permit"). The Bureau of Land Management ("BLM") and the Office of Surface Mining ("OSM"), as cooperating agencies, issued a final environmental assessment in September, 2000, regarding the Project rights of way on public lands and federal mining plan approval for six federal coal leases. See Lila Canyon Project, Emery County, Utah, Environmental Assessment, UT-070-99-22, September 2000 ("EA"). The EA supported BLM's Finding of No Significant Impact ("FONSI") and Decision Record dated October 27, 2000 for Project right of way grant nos. UTU-76614, UTU-77122 and UTU-76617. The EA also supported OSM's FONSI and recommendation of federal mining plan approval issued on September 26, 2001. On this basis, the Assistant Secretary, U.S. Department of the Interior ("DOI") issued the Project a federal mining plan approval on November 5, 2001 ("Federal Mining Plan Approval"). Unfortunately, the original Project mine permit issued on July 27, 2001 was remanded by the Utah Board of Oil, Gas & Mining to address certain baseline data deficiencies. DOI's Federal Mining Plan Approval and BLM's right of way grants have remained in place and do not require modification as a result of reissuance of the State Mine Permit.

SUWA has incorrectly asserted that changes have occurred to federal rights of way associated with the Project which require additional analysis under the National Environmental Policy Act ("NEPA"). The scope of Project rights of way have not changed from those issued

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on October 27, 2000 for surface facilities associated with the underground mine, a mine access road, a telephone line and a 46 kV power line. On September 22, 2004, the Interior Board of Land Appeals ("IBLA"), upheld these rights of way and the EA over SUWA's challenge. See *Southern Utah Wilderness Alliance*, 163 IBLA 142 (September 22, 2004), enclosed. SUWA failed to appeal this decision which is now final. SUWA's May 16, 2007 letter is an obvious attempt to reopen BLM's right of way decisions to obtain a "second bite of the apple."

Contrary to SUWA's allegations, BLM's right of way grants for the Project do not require modification or trigger additional NEPA analysis. No new surface facilities, power lines or telephone lines are proposed on federal lands in association with the State Mine Permit. Notably, the "Lila Canyon Road" right of way addressed in SUWA's letter is no longer needed. In addition, Plate 4-4 of the permit application package ("PAP") does not change the legal description or location of BLM's approved road right of way for the "Coal Haul Road" referenced at pages 8-10 of the EA. SUWA has apparently confused the "Coal Haul Road" with the "Lila Canyon Road" which has been eliminated from the Project. The Project right of way grants issued by BLM on October 27, 2000 have not been expanded or relocated and should remain in place. No new federal action is associated with these grants and no further NEPA analysis is required.

In addition, DOI's November 5, 2001 Federal Mining Plan Approval for the Project remains in effect and should not be rescinded due to reissuance of the State Mine Permit. The Federal Mining Plan Approval primarily relates to federal coal leasing activities which were not affected by the State Mine Permit. The term "mining plan" is defined by OSM's rules as "the plan for mining leased federal coal required by the Mineral Leasing Act." 30 C.F.R. § 740.5. Impacts identified in the EA relating to the Federal Mining Plan Approval have not changed since DOI issued the approval in November 2000. BLM's resource recovery and protection plan ("R2P2") issued for the Projects' federal coal leases on March 2, 2000, has not changed, nor have BLM's findings and recommendations based on the R2P2. See 30 C.F.R. § 746.13. The March 2, 2000 R2P2 accompanies the State's PAP supporting its May, 2007 Mine Permit approval and is the same R2P2 which accompanied the State's previous mine permit approval in July, 2001. UEI has provided additional baseline data to support the State Mine Permit, but this information has not resulted in new impacts to federal lands which would trigger additional NEPA analysis. Indeed, a review of the prior mine permit and findings originally issued on July 27, 2001, closely tract the current State Mine Permit and Findings issued on May 18, 2007. Copies of both documents are enclosed for your convenience.

For these reasons, UEI urges BLM and OSM to leave in place the current Federal Mining Plan Approval and right of way grants for the Project. The scope of Project activities on federal lands has not changed since the State Mine Permit was originally approved in 2001. Contrary to SUWA's allegations, the NEPA analysis under the EA fully supports all federal decisions associated with the Project.

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Please let me know if you would like to discuss this matter further.

Very truly yours,



Denise A. Drago

DAD:jmc:443826

Enclosures

cc: Jay Marshall
Bruce Hill
Michael McKown, Esq.
John Jevicky, Esq.
Grant Vaughn, Esq., BLM Regional Solicitor
John Kunz, Esq., OSM Regional Solicitor