



southern
utah
wilderness
alliance

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Incoming
C/007/0013

July 31, 2007

Honorable Dirk Kempthorne **CERTIFIED MAIL # 7006 0810 0000 7220 0898**
Secretary - Department of the Interior
Main Interior Building
1849 C Street N.W.
Washington, D.C. 20240

Brent Wahlquist, Acting Director **CERTIFIED MAIL # 7006 0810 0000 7220 0904**
Office of Surface Mining Reclamation
and Enforcement
1951 Constitution Ave., NW
Washington, D.C. 20240

RE: 60-day Notice of Intent to Sue

Dear Secretary Kempthorne and Acting Director Wahlquist,

Pursuant to 30 U.S.C. §1270(a) & (b) and 30 C.F.R. §700.13, the Southern Utah Wilderness Alliance ("SUWA") hereby gives notice of its intent to sue the Secretary of the Interior and Acting Director of the Department of the Interior's Office of Surface Mining Reclamation and Enforcement ("OSM") for violating your mandatory duties under 30 U.S.C. § 740 and §746.

The provisions of 30 C.F.R. § 746.13 state that OSM "shall...submit to the Secretary a decision document" recommending approval or disapproval of the mining plan. Such a recommendation "shall be based, at a minimum, upon: (a) [t]he permit application package" as well as the "findings and recommendations" of the primary regulatory authority. Additionally 30 C.F.R. §746.11(a), prohibits an operator from mining until "the Secretary has approved the mining plan."

The Department of Interior approved a new mining plan for UtahAmerican Energy, Inc., ("UEI") on November 5, 2001, to mine coal in the Horse Canyon Mine - Lila Canyon Extension (referred to herein as the "Lila Canyon" mine). Unfortunately, OSM based its recommendation to approve the mining plan on a permit decision by the Utah Division of Oil, Gas and Mining ("Division") that was later reversed and remanded by the Utah Board of Oil Gas and Mining ("Board") on December 14, 2001 for numerous deficiencies. See Southern Utah Wilderness Alliance v. Division of Oil, Gas & Mining et al. (SUWA), Docket No. 2001-027, Cause No. C/007/013-SR98(1). Following the Board's December 2001 order, UEI submitted a new permit

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application package and the Division began anew its review process of the new permit application package.

Because the Board reversed and remanded the Division's permit decision, and because UEI submitted and the Division has reviewed a new permit application package, the Secretary and OSM can no longer rely on OSM's 2001 mining plan. Rather, the Secretary must instead decide whether to issue a new mining plan approval based on the recommendations of OSM after OSM reviews the new permit issued by the Division in May 2007, which is now under review by the Board. Reliance upon an invalidated permit decision and superseded permit application package means that OSM violated the regulatory requirements that it base its recommendation upon the permit application package and the state regulatory authority's findings and recommendations.

For these reasons, SUWA is providing notice of its plan to sue the Secretary of the Interior and the Acting Director for the Office of Surface Mining Reclamation and Enforcement. If you have any questions about his matter, please feel free to contact me at the address or phone number listed below.

Sincerely,



Stephen Bloch
Staff Attorney
Southern Utah Wilderness Alliance
425 E. 100 South
Salt Lake City, UT 84111
(801) 486-3161 x.3981

cc: Al Klein, OSM Western Regional Director **CERTIFIED MAIL # 7005 1820 0002 0261 3432**
John Baza, Director, Utah Division of Oil, Gas and Mining
CERTIFIED MAIL # 7005 1820 0003 7608 2799