

0295

**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  
ddragoo@swlaw.com

RECEIVED  
JUL 27 2007  
DIV. OF OIL, GAS & MINING

SALT LAKE CITY, UTAH  
PHOENIX, ARIZONA  
TUCSON, ARIZONA  
IRVINE, CALIFORNIA  
DENVER, COLORADO  
LAS VEGAS, NEVADA

July 25, 2007

*Via E-Mail and U.S. Mail*

Ms. Mary Ann Wright  
Utah Division of Oil, Gas & Mining  
1594 West North Temple  
Salt Lake City, Utah 84116

**RE: Location of Emery County Road in Relation to the Lila Canyon Extension,  
Horse Canyon Mine, C/007/013**

Dear Mary Ann:

On behalf of UtahAmerican Energy, Inc. ("UEI"), we have been asked to confirm that the requirements of R645-103-234.200-300 have been met in that public notice and an opportunity for hearing have been provided regarding the location of certain coal mining operations within 100 feet of the existing Emery County Road near the Lila Canyon Mine. These requirements were met in 1999 in conjunction with Emery County's approval of the Large Site Development Plan for the Lila Canyon Mine submitted by UEI on December 29, 1998, a copy of the application is attached as Exhibit A-1.

1. **Governing Provisions:** R645-103-234.200-400 implements Section 40-10-24(4)(c) of the Utah Coal Mining and Reclamation Act which provides that no "surface coal mining operations" shall be permitted:

(c) within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join this right of way line and except that the division may permit these roads to be relocated on the area affected to lie within 100 feet of the road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected;

R645-103-234.200, .300 and .400 further provides:

234. Where coal mining and reclamation operation is proposed to be conducted within 100 feet, measured horizontally of the outside right of way line of any public road (except as provided in 40-10-24(4)(c)), or where the applicant proposes to relocate or close any

Ms. Mary Ann Wright  
July 25, 2007  
Page 2

---

public road, the Division or public road authority designated by the Division will:

234.200. Provide an opportunity for a public hearing in the locality of the proposed coal mining and reclamation operation for the purpose of determining whether the interests of the public and affected landowners will be protected;

234.300. If a public hearing is requested, provide appropriate advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least two weeks prior to the hearing; and

234.400. Make a written finding based on information received at the public hearing within 30 days after completion of the hearing, or after any public comment period ends if no hearing is held as to whether the interests of the public and affected landowners will be protected from the proposed coal mining and reclamation operation. No mining will be allowed within 100 feet of the outside right of way line of a road nor may a road be relocated or closed unless the Division or public road authority determines that the interests of the public and affected landowners will be protected.

2. **Compliance with Utah Code Ann. § 40-10-24(4)(c) and R645-234.200-.400.**

UEI has met the requirements of the Utah Coal Mining & Reclamation Act and implementing regulations regarding the location of certain coal mining and operations within 100 feet of a public road. The location of the Lila Canyon Mine Project relative to the existing Emery County Road was subject to public notice and hearing in Emery County, Utah, in connection with approval of the Large Site Development Plan for the mine. Among other things, the Large Site Development Plan identified coal mining and operations proposed to be located near the Emery County Road. *See* UEI Large Site Plan Development Application, Fig. 2, attached as Exhibit A-1. Following preliminary approval of the plan, the Planning/Zoning Commission requested the Board of County Commissioners to hold a public hearing regarding UEI's pending application. *See* ¶ 3, Notice of Regular Meeting of the Board of County Commissioners of Emery County, Utah, dated February 12, 1999, attached as Exhibit A-2; ¶ 3, Notice and Agenda, Emery County Planning Commission, February 10, 1999, attached as Exhibit A-3; Minutes of the Emery County Planning Commission, held February 10, 1999 regarding "Large Site Development Plan Approval—Utah American Energy, Inc.," attached as Exhibit A-4.

Ms. Mary Ann Wright  
July 25, 2007  
Page 3

---

Consistent with the public notice and hearing requirements of the Coal Program Rules, subsections 234.200 and .300, the Board of Emery County Commissioners published notice of a public hearing regarding UEI's Large Site Development Plan for the Lila Canyon Mine in the *Emery County Progress* (a newspaper of general circulation in the County), on February 23, 1999, March 2, 1999 and March 9, 1999. See Affidavit of Publication dated March 8, 1999, attached hereto as Exhibit B-1. The hearing was held as advertised on March 16, 1999 at 10:00 a.m. in the Commission chambers of Emery County Courthouse. See ¶ 6, Minutes of the Regular Meeting of the Board of Emery County Commissioners, dated March 16, 1999, attached as Exhibit B-2 ("Public Hearing—To Receive Public Comment Regarding Proposed Large Scale Site Plan Which Includes a Coal Mine in Lila Canyon.") The County Commission approved UEI's Large Scale Development Plan following the hearing on March 16, 1999. *Id.* at ¶ 7; June 4, 1999 letter from Emery County to UEI, attached as Exhibit B-3.

Consistent with Coal Program Rule Subsection 234.400, the County has conditioned UEI's mining activities near the Emery County Road to protect the public from hazards. Conditions for the location of mining and reclamation operations within 100 feet of the road are set forth in an agreement between Emery County and UEI dated October 19, 1999 ("**Agreement**"), copy attached as Exhibit B-3 herein. Paragraph 7 of the Agreement specifically provides:

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.

See also letter dated February 23, 2000 from Emery County Road Supervisor to UEI, attached as Exhibit B-4 (confirming that Emery County understands that mining and reclamation activities will occur within 100 feet from a County road and confirming that a 6 foot chain link fence will be installed around UEI's activities occurring within 100 feet from the public road); letter dated January 10, 2001, from Rex Funk, Road Supervisor for Emery County to UEI, attached as Exhibit B-5 (confirming that Emery County's Large Site Development Plan approval authorizes mining activities to be conducted within 100 feet of the public road); letters dated March 22, 2001 and March 27, 2001 from Emery County, Utah, to UEI attached as Exhibits B-6 and B-7 (confirming that a 60 foot culvert will be installed adjacent to UEI's proposed sedimentation pond and will extend under the existing County road and further confirming that Emery County's approval of the Large Site Development Plan includes authority to rehabilitate a sedimentation pond).

Ms. Mary Ann Wright  
July 25, 2007  
Page 4

---

In sum, a public hearing was held in 1999 regarding the Large Site Development Plan for the Lila Canyon Mine and Emery County has specifically authorized the location of the mining and reclamation activities within 100 feet of the Emery County Road. Therefore, UEI's mining and reclamation plan for the Lila Canyon Extension meets the requirements of Utah Code Ann. § 40-10-24(4)(c) and R645-103-234.200-.300.

Please let me know if you have further questions.

Very truly yours,



Denise A. Dragoo

DAD:jmc:451619  
Enclosures

cc: Steven Alder, Esq.  
Jay Marshall  
Bruce Hill  
Michael McKown, Esq.