

**State of Utah****Department of  
Natural Resources**

MICHAEL R. STYLER  
*Executive Director*

**Division of  
Oil, Gas & Mining**

JOHN R. BAZA  
*Division Director*

JON M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

January 19, 2007

Jay Marshall, Resident Agent  
Utah American Energy Inc.  
P.O. Box 986  
Price, Utah 84501

Subject: Decision on the Lila Canyon Extension "Requiring Modification of" Mining and Reclamation Plan (MRP), Utah American Energy, Inc. (UEI), Horse Canyon Mine, C/007/0013, Task ID #2708, Outgoing File

Dear Mr. Marshall:

The Division of Oil, Gas and Mining (the Division) has reviewed the supplemental information that was submitted to the Division on December 1, 2006. There are still sections of the MRP "requiring modification of" information (pursuant to R645-300-131.100) in the areas of hydrology, cultural and historic resources and ownership and control that must be adequately addressed prior to permit issuance.

Accordingly, it is the determination of the Division that the MRP requires modification – which is one of the actions allowed by the referenced rule. This is the Division finding per my letter dated January 8, 2007, which requires a permitting decision by January 22, 2007 (attached). UEI's appropriate response to this requirement for modification will allow the Division to proceed with actions for issuance of permit approval. I do not believe that any of remaining requirements will be difficult or time-consuming for UEI to accomplish, but they must be performed in order for the Division to fulfill its responsibilities under statute and rule.

The requirements for modification are broken into three lists: List of Baseline Information (List 1), Conditional List (List 2), and Courtesy Reminder List of Items Needed to Issue a Permit (List 3) (see attached).

The "List of Baseline Information" includes areas of hydrology, cultural and historic resources, and ownership and control. Please note that the Cultural and Historic Resources requirement on List 1 represents an item of responsibility for the Division that may take the longest period of time to fulfill. I believe that state review - which includes decision-making by the State Historical Preservation Officer (SHPO) for this requirement – will likely occur within the near future. Then there must be 30-day comment period allowed for tribal review and consultation. Thus, it may represent merely a few more weeks to accomplish this specific requirement.

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Jay Marshall  
January 19, 2007

The "Courtesy Reminder List of Items Needed to Issue a Permit" includes bonding and ownership and control and compliance information. UEI must completely and accurately address the requirements from these two lists (List 1 and List 3) prior to any permit issuance.

All of these modifications to the MRP must be made and submitted to the Division for review; however, after List 1 and List 3 are satisfied, the Division could issue a conditional permit approval predicated on timely receipt of the remaining items from List 2. I am confident that reaching this milestone will allow continuing review of the Division's permit decision at the federal level (i.e. by the U.S. Office of Surface Mining and Department of Interior). These items would need to be completely and adequately addressed within 30 days of permit issuance. If these items are added as conditions of the permit and are not adequately met within that 30-day timeframe, the Division would necessarily initiate compliance actions to meet the terms of the permit.

For your information, other steps that must be accomplished as part of a fully approved mining permit include the following actions (most of which have already been accomplished) involving other governmental entities. The decision on the permit application must be forwarded to the Office of Surface Mining (OSM), together with the Division's final Cumulative Hydrologic Impact Assessment (CHIA), confirmation that there are no violations in the Applicant Violator System (AVS), and confirmation of the federal and state consultations with regard to wildlife (Section 7 consultation with the United States Fish and Wildlife), cultural and historic resources (Section 106 concurrence from SHPO), consent from the land management agency (the Bureau of Land Management), and the recommendation for approval for the Resource Recovery and Protection Plan (Bureau of Land Management). This is the Decision Document that OSM bases their recommendation to send to the Department of Interior, Assistant Secretary of Land and Minerals for mining plan approval.

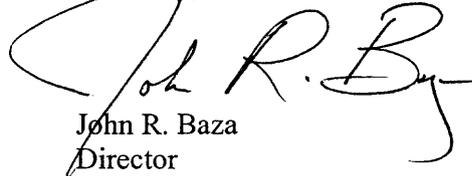
As a point of clarification, the Technical Analysis (TA) that was issued on September 21, 2005 was a preliminary finding issued in anticipation of reconvening the informal conference for further input. Although the Division stated that this was a "final determination of Technical Adequacy", issues arose after the Informal Conference that are currently being addressed by UEI. The final Technical Analysis will be issued at the time of permit approval.

You should understand that the Division is doing all that it can move this process forward; however, it is the burden of the applicant to satisfy the criteria of the rules before the Division can issue a permit.

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Jay Marshall  
January 19, 2007

If you have any questions, please advise.

Sincerely,



John R. Baza  
Director

an

Attachments

cc: Denise Dragoo, Snell & Wilmer  
Steve Bloch, SUWA  
Ray Peterson, Emery County Commissioners  
Jim Kohler, Bureau of Land Management  
John Harja, PLPCO  
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## List 1

### List of Baseline Information Deficiencies Lila Canyon Extension to the Horse Canyon Mine January 19, 2007

#### Baseline Deficiencies

Deficiencies that preclude a finding by the Division of baseline adequacy. These deficiencies must be adequately corrected prior to permit issuance.

#### Ownership and Control Information

**R645-301-112.310 and -112.340**, The employer identification number is listed for only Murray Energy Corporation, but is required for all other owners and controllers. All information required by R645-301-100 is the responsibility of the permit applicant (see R645-301-111.200).

#### Cultural and Historic Resources

**R645-301-300.113**, The application must include proof of the completion, by the Division (as per the delegation by OSM on January 4, 2006 pursuant to 30 CFR 944.30 Article VI (C) (4) (g)), of coordination efforts that meet the requirements under The National Historic Preservation Act (36CFR800; R645-301-300.113). Correspondingly, the application must also include proof of clearances by the SHPO (R645-301-411.142).

#### Hydrology

**R645-301-725**, The Permittee must amend Water Rights Table 7-2 to be complete and accurate and in agreement with Plates 7-1 and 7-3.

**R645-301-724.100**, Pages VII-30, -32, and -34 of the Kaiser Steel water quality information for S-32 are missing from Appendix 6-1. The Permittee needs to include those pages in the application.

**R645-301-121.120, -542.710, -731.760**, The Permittee needs to redo the Figure 7-1 cross section so that it is accurate and agrees with information on Plates 6-1 and 7-1. The corrections must include the following:

1. The horizontal scale and vertical exaggeration need to be accurate and to scale with Plate 7-1;

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List 1  
January 19, 2007

2. The topography needs to match the topography on Plate 7-1;
3. The surface geology needs to match that on Plate 6-1;
4. Dip and thickness of geologic units need to correlate with the cross section vertical exaggeration and information on the maps;
5. The location of the coal/potentiometric surface contact needs to match be accurately depicted, generally corresponding with the data on Plate 7-1; and
6. The projections of the IPA piezometers need to be removed or projected taking surface elevations and strike of the strata into account.

**R645-301-121.120, -542.710, -731.760**, The coal/potentiometric surface contact depicted on Plate 7-1 needs to correspond with the coal elevation and potentiometric surface contour lines, as it was in prior application submittals.

## List 2

### Conditional List Lila Canyon Extension to the Horse Canyon Mine January 19, 2007

#### Conditional Deficiencies

Deficiencies that could be "conditioned" on the permit and must be corrected within 30 days of permit issuance to facilitate a clear and concise mining and reclamation plan (MRP) (R645-301-121.200).

#### Engineering

**R645-301-525.240, -525.460 and -525.490**, The Permittee must submit on the confidential subsidence map (Plate 5-3 Confidential) the anticipated effects of subsidence including but not limited to projected subsidence isopachs and strains. In addition, the Permittee must also accurately show the location of all raptor nests in and around the subsidence zone. Specifically, the Division needs to be able to make a finding of how many raptor nests are within the subsidence zone.

**R645-301-521.140**, The legend on Plate 5-2 needs to be corrected. Over-printing has left some icons and definitions missing.

#### Biology/Cultural and Historic Resources

**R645-300-124.300**, The Permittee must move Appendix X-1 and X-2 from the MRP-Part A Volume IV to the Confidential File. (Note, this deficiency was carried over from a previous list of deficiencies.)

**R645-301-121.200**, The Permittee must clarify entries in the Historic Resource Information section concerning the Programmatic Agreement, protection of listed sites, direct/indirect impact, and information on sites within the permit and surrounding area. • The Permittee must address why the mitigation project acreage is presented as 70+ in the MRP instead of approximately 93 acres as stated in the 2000 EA. • The Permittee must remove the conflicting information on pages 10 and 16/17.

**R645-301-322.100, -322.220, R645-301-322.100, -322.220**, • As part of normal mining operation requirements, the Permittee must submit all results of the raptor fly-over surveys to the Division in Annual Reports and must immediately contact the Division, BLM, and USFWS following any raptor survey that shows that eagles are tending nests or nesting. The agencies will immediately coordinate to

determine if the Permittee must implement appropriate measures. If the agencies recommend mitigation, the Permittee must submit all plans to the Division for incorporation into Appendix 3 of the MRP. These provisions must be included in Section 358.100 of the MRP as a complement to the existing commitment on page 38 as well as in Section 333.300 as part of the existing "protection" list. • Although the Permittee agrees to adhere to the exclusionary period, the provisions in this paragraph add additional protection in the event of unforeseen changes in construction or mine plans, or in the case of emergency situations that may force the Permittee to conduct activity near or within the 0.5 mile buffer zone of raptor nest and during raptor exclusionary periods (February 1 to July 15 for golden eagles). The MRP must include a provision that states that, in the event of unforeseen events, the Permittee will immediately contact the Division, BLM, DWR, and USFWS. The agencies will immediately coordinate to determine appropriate measures that may include conducting ground surveys, in coordination with DWR, to determine if birds are tending nests or nesting and possibly determine the life stage of the offspring; developing a mitigation plan, in coordination with the agencies, for possible impacts to nests or birds; or ceasing operations until the end of breeding season to avoid 'take'. If the agencies recommend surveys, the Permittee must submit all survey results to the Division in Annual Reports. If the agencies recommend mitigation, the Permittee must submit all mitigation plans to the Division for incorporation into Appendix 3 of the MRP. These provisions must be included in Section 358.100 of the MRP as a complement to the existing commitment on page 38 as well as in Section 333.300 as part of the existing "protection" list. • The Permittee must clearly illustrate the number of all raptor nests (not just golden eagle) within the subsidence zone. If the mining plan shows that there are one or more raptor nests located within the subsidence zone, the Permittee must provide a mitigation plan for possible subsidence of the nest(s). The Permittee must coordinate with the Division, DWR, USFWS, and BLM to develop a mitigation plan similar to the plan developed for the Bear Canyon Mine between 2006-2008. The plan must include the name of the lead agency, proposed date of implementation, a reporting mechanism, as well as the mitigation proposal. The MRP must include a provision that states the Permittee will apply for a nest 'take' permit, through the USFWS, if the mitigation plan includes preventing raptors from accessing nests. The Permittee must apply for 'take' permits 6-12 months prior to potentially subsiding nests. The Permittee must submit all mitigation plans and final reports to the Division for incorporation into Appendix 3 of the MRP. These provisions must be included in Section 358.100 of the MRP as a complement to the existing commitment on page 38 as well as in Section 333.300 as part of the existing "protection" list.

### Geology

**R545-301-722**, The Permittee needs to clarify the Legend panel on Plate 6-1 and reconcile it with the map. The corrections must include the following:

1. Surface water monitoring sites are shown by both red stars and red dots. If there is a difference, it needs to be clarified; otherwise, the same symbol should be used for all similar sites;
2. The symbol and text for seeps L-16-G and L-17-G need to match the other seeps and springs. These two seeps are shown by a red dot and red lettering (matching the surface water monitoring points) rather than by the blue dot and black lettering used for the other seeps and springs; and
3. Under the Description of Map Units, the arrangement of these units in the Legend is confusing. The Price River Formation units (Kpb and Kpm) are out of stratigraphic sequence; the Price River units should be between the Flagstaff and North Horn (TKfn) and Castlegate (Kc) units, the relationship between Upper Mudstone Member of the Kenilworth Member of the Blackhawk Formation (Kbk) and the Upper Member of the Sunnyside Member of the Blackhawk Formation (Kbs) is reversed, and the Sunnyside Member should be above the Kenilworth Member.

### Hydrology

**R645-301-722.200**, Appendix 7-9, pages 1 and 3, need updating to reflect current conditions of stream diversions and water rights status on stock ponds.

**R645-301-121.200**, Update the Chapter 7 Table of Contents to reflect proper title for Appendix 7-11.

**R645-301-722.200**, Update Plates 5-3, 7-1 and 7-3 to show the actual locations of stock ponds located southwest of the permit area (Water Rights Nos.91-2617 through 91-2621) as was found during the site visit of December 19, 2006.

**R645-301-738, -755**, Update Sections 738 and 755 of the MRP to be consistent with the commitment of casing, sealing, and reclamation of piezometers as stated in Sections 748 and 765.

**R645-301-728**, Update the PHC (p. 11) to accurately describe the conditions, source water, and use associated with stock ponds located southwest of the permit area.

**R645-301-521-260, -731.600**, Section 731.600, Buffer Zones, should be updated to remove the statement that “buffer zones are not required”. In addition, this section should state that buffer zones will be retained throughout Phase 1 of the reclamation period.

**R545-301-722**, The Permittee needs to clarify the Legend panel on Plate 7-1 and reconcile it with the information on the map. The corrections must include the following:

1. Water rights are not indicated in the Legend, yet water rights are shown on the map;
2. Water right numbers used to identify some surface-water monitoring locations and springs need to be consistent with those used throughout the rest of the plan;
3. Some water -right numbers are black, others green. Some spring symbols are green, others blue. Resolving points 1 and 2 may take care of this; otherwise, these distinctions need to be clarified in the Legend;
4. If a water right is also a monitoring location, it should be indicated as such;
5. Surface water monitoring site L-18-S is a red dot, and the other surface-water monitoring points are stars. If there is a difference, it needs to be clarified; otherwise, the same symbol should be used for all similar sites; and
6. Some water right numbers and water monitoring sites are printed on top of each other or obscured by other text so they are difficult and at times impossible to read. The Permittee needs to make all spring and seep and water right IDs legible.

**R645-301-731.200**, Update Water Monitoring Table 7-3 and the monitoring list in Section 731.220, so sites L-14-S and L-18-S continue as operational and reclamation monitoring sites. Table 7-3 should also identify the period of monitoring for these sites (baseline, operational, reclamation).

### List 3

#### Courtesy Reminder List Of Items Needed to Issue a Permit Lila Canyon Extension to the Horse Canyon Mine January 19, 2007

##### Needed to Issue a Permit

These three items must be completed prior to permit issuance.

##### Bonding

**R645-300-151 and R645-301-830.200**, If the application is approved, the permit will be issued upon submittal of a performance bond in accordance with R645-301-800. The Permittee must increase their bond amount by a minimum of \$131,000 prior to permit issuance. The total bond amount for the Horse Canyon Mine and the Lila Canyon Extension would be \$2,747,328. (Horse Canyon Mine bond - \$1,061,328 and the Lila Canyon Extension - \$1,686,000 [\$1,556,000 is already posted]).

##### Ownership and Control and Compliance Information

**R645-301-112.900**, After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under R645-301-112.100 through R645-301-112.800.

**R645-301-113.400**, After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under R645-301-113.



**State of Utah**

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*Lieutenant Governor*

January 8, 2007

Denise Dragoo, Esq.  
Snell & Wilmer  
15 West South Temple, Suite 1200  
Gateway Tower West  
Salt Lake City, Utah 84101-1547

Re: Request to Sign Stipulation to Modify Order Extending 60 Day Time Limits for Permit Decision for Lila Canyon Extension, UtahAmerican Energy, Inc., Horse Canyon Mine, C/007/0013

Dear Denise:

It appears after our pre-hearing meeting on Thursday, January 4, 2007, that the January 19, 2006 Stipulation to extend the 60 day deadline is no longer supported by UEI, SUWA, and Emery County. Additionally all parties agreed that the informal conference convened at the request of SUWA has been closed since December 2005. The Division believes that many of the reasons that justified this Stipulation in January 2006 still exist and has asked the parties to reconsider their decision and to reaffirm the Stipulation. However, none of the parties expressed any desire to do so.

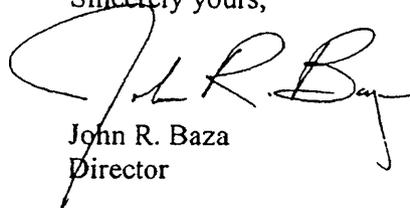
The January 19, 2006 Stipulation was essentially an agreement of those persons signing it to withhold any legal action to compel a decision pursuant to Utah Code 40-10-14(1) until the cultural resource review was complete. Accordingly it was dependent upon the mutual acquiescence of all parties. Due to the withdrawal of all of the parties except the Division from the Stipulation and due to the written notice by UEI that it will bring suit if a decision is not made by January 22, 2007, there is no basis for the Division to do anything but abide by the statutory requirement for a decision no later than January 22, 2007. The Stipulation can no longer forestall such action.

Since it would be futile for the Division to oppose the withdrawal of the Stipulation, and equally pointless to execute the Stipulation to Amend the Order that you have submitted, I am returning it to you unsigned.

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Denise Drago, Esq.  
January 8, 2007

If there are any questions, please advise.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John R. Baza". The signature is fluid and cursive, with the first name "John" being particularly large and stylized.

John R. Baza  
Director

Enclosures (2)  
cc: John E. Jevicky  
Ray Peterson, Emery County  
Stephen Bloch, SUWA

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

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<b>IN THE MATTER OF LILA CANYON</b>	<b>:</b>	<b>STIPULATION TO AMEND</b>
<b>EXTENSION TO THE HORSE CANYON</b>	<b>:</b>	<b>ORDER</b>
<b>MINE, CARBON AND EMERY</b>	<b>:</b>	
<b>COUNTIES, UTAH</b>	<b>:</b>	<b>CAUSE NO. C/007/013</b>

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The Division of Oil, Gas and Mining ("**Division**"), UtahAmerican Energy, Inc. ("**UEI**"), Emery County and the Southern Utah Wilderness Alliance ("**SUWA**"), parties to the informal conference in the matter, hereby agree and stipulate as follows:

**RECITALS:**

1. By Stipulation to Amend Order executed on January 17, 2006 by UEI, SUWA and Emery County, and on January 18, 2006 by the Division, the parties to the informal conference agreed that the December 2, 2005 Order could be amended to allow the Division additional time to make its final decision on UEI's permit application as necessary to complete the tribal consultations and determinations required by the National Historic Preservation Act ("**NHPA**").

2. By letter dated November 21, 2006, UEI requested the Division to issue the mine permit and allow the United States Department of the Interior ("**DOI**") to complete further tribal consultation, if any, as the Secretary of DOI may determine.

3. By letter dated November 22, 2006, UEI withdrew its Stipulation to Amend Order and requested the Division to perform its mandatory duty under Utah law to issue findings on the pending application within sixty (60) days.

**CERTIFICATE OF MAILING**

I hereby certify that on this \_\_\_\_ day of December, 2006, I mailed, via U.S. mail, postage prepaid, a true and correct copy of the foregoing Amendment to Order to the following:

Steven Alder, Esq.  
Utah Assistant Attorney General  
1594 West North Temple  
Salt Lake City, Utah 84114

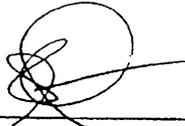
Denise A. Dragoo, Esq.  
Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

Stephen Bloch, Esq.  
Southern Utah Wilderness Alliance  
425 East 100 South  
Salt Lake City, Utah 84111

Ira Hatch  
P.O. Box 629  
Castle Dale, Utah 84513

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SOUTHERN UTAH WILDERNESS  
ALLIANCE (SUWA)



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Stephen Bloch, Esq.  
Southern Utah Wilderness Alliance  
425 East 100 South  
Salt Lake City, Utah 84111  
Attorney for SUWA

Dated: 12/6/06

EMERY COUNTY

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Ira Hatch  
Emery County Commissioner  
P.O. Box 629  
Castle Dale, Utah 84513

Dated: \_\_\_\_\_