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Outgoing 0070013

From: Angela Nance
To: ddragoo@swlaw.com; jmarshall@utahamerican.com; John Harja
Date: 1/22/2007 3:54:38 PM
Subject: Request for Comments on PA and MOA

Please see the attached letter. A hard copy is being sent via regular mail.

CC: Jerriann Ernstsens; Mary Ann Wright; Pam Grubaugh-Littig; Sheila Morrison; Wayne Hedberg

**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 22, 2007

Jay Marshall, Resident Agent
UtahAmerican Energy, Inc.
P.O. Box 986
Price, Utah 84501Subject: Request for Comments on Programmatic Agreement and Memorandum of Agreement, Lila Canyon Extension of the Horse Canyon Mine, C/007/0013, Task #2708, Outgoing File

Dear Mr. Marshall:

The Division, in consultation with the Office of Surface Mining (OSM), Bureau of Land Management (BLM), and State Historic Preservation Office (SHPO), considers that the proposed Lila Canyon Extension to the Horse Canyon Mine would have an "adverse effect" on cultural resources. A Programmatic Agreement (PA) drafted by the Division and a Memorandum of Agreement (MOA) drafted by the BLM are measures designed to address known or unknown potential effects that could occur as a result of this federal action. Attached are copies of the DRAFT PA and MOA for your review and comment.

As a signee of these Agreements, we are seeking your input regarding these Agreements. To expedite our process, please provide your comments to me as soon as possible. We will send these DRAFT Agreements with our Decision Memo to SHPO as soon as we address any comments you may have.

Please call me if you have any questions at (801) 538-5306.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Ann Wright".

Mary Ann Wright
Associate Director, MiningAttachments (PA and MOA)
cc: Denise Dragoo, Snell and Wilmer
John Harja, PLPCO
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DRAFT AS OF JANUARY 22, 2007

January 22, 2007

**PROGRAMMATIC AGREEMENT
AMONG UTAHAMERICAN ENERGY INC. (UEI)
(or any permit successor),
OFFICE OF SURFACE MINING (OSM),
DIVISION OF OIL GAS AND MINING (OGM),
BUREAU OF LAND MANAGEMENT (BLM),
AND UTAH STATE HISTORIC PRESERVATION OFFICER (SHPO)
REGARDING THE
LILA CANYON EXTENSION OF THE HORSE CANYON MINE
(C/007/0013)**

UNDERTAKING: Proposed Lila Canyon Extension of the Horse Canyon Mine.

STATE: Utah

AGENCY: Division of Oil Gas and Mining (OGM)

WHEREAS, the Office of Surface Mining (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 (Division) 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 a program which leases coal within public lands and a surface owner of a portion of the proposed project area (4660 acres; Exhibit A). UEI, Josiah Eardley, and SITLA own other portions of the property (fee) within this 4660 acres; 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, UEI has applied for a permit by application for the Lila Canyon Extension of the Horse Canyon Mine to mine coal under an approved mine plan; 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 change the character or nature of recorded cultural or historical resources; and

WHEREAS, reasonable and good faith identification efforts per 36CFR800.4(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 36CFR800.5(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 42CB2517; 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 resources not identified during identification efforts for the project, 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 may also have repetitive and predictable effects to cultural or historical resources; 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) and has invited the Council's comments and participation in the review for this undertaking pursuant to 36 CFR § 800;

NOW, THEREFORE, Pursuant to 36 CFR 800.14, the OSM, OGM, BLM, UEI, and SHPO agree this Agreement shall be implemented in accordance with the following stipulations to take into account the effects of development of the Lila Canyon Extension of the Horse Canyon Mine and corresponding mining operations may have on cultural or historic resources.

Stipulations

1. **Lead Federal Agency.** The lead Federal Agency (LFA) role for the purposes of this Agreement is determined as follows: BLM is the LFA until such a time as there is an approved Federal mining plan. Upon approval of OSM's recommendation of the Secretarial Mining Plan, OSM will become the LFA and OGM will assume the role of LFA for OSM. Upon request, OSM will continue to provide OGM cultural resource assistance.
2. **Treatment of Site 42CB2517.** The BLM shall draft a Memorandum of Agreement for mitigation of 42CB2517 (Attachment 2). UtahAmerican Energy Inc., (UEI) will assure that a mitigation plan for 42CB2517 is prepared, approved, and implemented in accordance with the BLM MOA. Consultation with tribes and consulting parties will occur during this process at a level appropriate to the nature of the cultural resources (if any) and effects to the cultural resources (if any) taking into account comments and concerns received previously from the tribes and consulting parties. The MOA will become an attachment to this PA subsequent to the official signing of the MOA.
3. **Monitoring of Subsidence.** 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, which ever comes later. The accuracy of this survey will be within plus or minus 6" horizontally and vertically. UEI will provide an accurate map showing the subsidence isopacks to the Division. UEI initiate and coordinate with the Division to ensure that a qualified archaeologist will then examine the location of the subsided area relative to previous archaeological inventories and known archaeological sites within seven (7) 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 occurs 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, no further work will need to be done. UEI (or their consulting archaeologist) will notify OGM regarding this determination within seven (7) days of making the determination, and OGM will provide the information to OSM, BLM, and SHPO.

- b. **Previously Inventoried and Known Sites.** If subsidence occurs 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. UEI's archaeologist will provide a report, 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 36CFR800.6 and the stipulations below regarding evaluation and archaeological treatment will be followed.
- c. **Not Previously Inventoried.** If subsidence occurs 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. 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, 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 36CFR800.4(c).
 - ii. **Inventoried Sites.** If a site or sites are present within the area of subsidence, UEI's archaeologist will provide a report and make recommendations of eligibility and effect to OGM (per 36CFR800.4(c)(2) and 36CFR800.5) 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 36CFR800.6 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.

- e. **Conducting Consultation.** Consultation with tribes and consulting parties will occur during this process at a level appropriate to the nature of the resources (if any) and effects to the resources (if any) taking into account comments and concerns received previously from the tribes and consulting parties.
4. **Discoveries in APE.** 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 OGM attention, UEI will halt any work within the vicinity of the discovery that could harm the discovery and notify OGM within 24 hours of the discovery. UEI will also protect the site 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 seven (7) 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 correlating 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 Effects is made, OGM will consult with the SHPO regarding the determination following 36CFR800.4-5.
 - 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 recommend and draft 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.
 - d. **Conducting Consultation.** Consultation with tribes and consulting parties will occur during this process at a level appropriate to the nature of the resources (if any) and effects to the 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 (described below) for such discoveries. Potential human burial discoveries will be subject to the provisions of the Native American Graves Protection and Repatriation Act.

6. **Funding of Work.** UEI will fund and implement any future and all 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 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 Advisory Council on Historic Preservation (ACHP). Within thirty days after the receipt of all pertinent documentation, ACHP 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 ACHP 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 from its date of execution by the signatories. This stipulation applies to UEI or any coal mine permit successor of the proposed (or amended) extension area. Any new company will accept all provisions within this Agreement.
11. **Permit Changes.** Subsequent additions, deletions or other changes to the permit that may affect cultural resources will be handled in compliance with the normal Section 106 consultation process as described in 36CFR800, and amended into this Programmatic Agreement and/or its attachments.

12. **Expedited Treatment.** For any incidental discovery where the OSM, OGM, and BLM agree that timing is critical because of mining activities, the agencies may invoke the following expedited treatment option:
- 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.

Signatories

Bureau of Land Management

By: _____ Date:

Utah State Division of Oil, Gas, and Mining

By: _____ Date:

Office of Surface Mining

By: _____ Date:

Utah State Historic Preservation Officer

By: _____ Date:

Utah American Energy, Inc.

By: _____ Date:

ATTACHMENT 1: Tribal List

The following tribes were consulted with 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.

ATTACHMENT 2: BLM's Memorandum of Agreement for mitigation of 42CB2517.

DRAFT AS OF JANUARY 22, 2007

**MEMORANDUM OF AGREEMENT FOR
RECOVERY OF SIGNIFICANT INFORMATION**

FOR ARCHEOLOGICAL SITE: 42EM2517

UNDERTAKING: Lila Canyon Extension Of The Horse Canyon Mine

STATE: Utah

AGENCIES: Bureau of Land Management, Price Field Office (BLM); Office of Surface Mining; Utah State Division of Oil Gas and Mining; Utah State Historic Preservation Office

CONSULTING PARTY: Utah American Energy Corp.

Whereas, in accordance with 36 CFR Part 800, the BLM acknowledges and accepts the advice and conditions outlined in ACHP's "Recommended Approach for Consultation on the Recovery of Significant Information from Archeological Sites," published in the Federal Register on May 18, 1999; and

Whereas, the agencies and consulting party agree that recovery of significant information from the archeological site listed above will be done in accordance with the published guidance; and

Whereas, the agencies and consulting party agree that it is in the public interest to expend funds to implement this project through the recovery of significant information from archeological sites to mitigate the adverse effects of the project; and

Whereas, the agencies and consulting party agree that Indian Tribes or Native Hawaiian organizations that may attach religious or cultural importance to the affected property have been consulted and have raised no objection to the work proposed; and

Whereas, to the best of our knowledge and belief, no human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), are expected to be encountered in the archeological work;

Now, therefore, the BLM shall ensure that the following terms and conditions, including the appended Archeological Data Recovery Plan, will be implemented in a timely manner, as designated in the BLM Archaeology Permit and Notice to Proceed, and with adequate resources to be done in compliance with the National Historic Preservation Act of 1966 (16 U.S.C. 470).

DRAFT AS OF JANUARY 22, 2007**OTHER TERMS AND CONDITIONS FOR 42EM2517:**

- The BLM will implement the mitigation plan for 42EM2517 as directed in this Agreement, prior to construction of the facilities site.
- Modification, amendment, or termination of this Agreement as necessary shall be accomplished by the signatories in the same manner as the original Agreement.
- Disputes regarding the completion of the terms of this Agreement shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, any one of the signatories may request the participation of ACHP to assist in resolving the dispute.
- This Agreement shall be null and void if its terms are not carried out within 5 (five) years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms.

Bureau of Land Management: date:

Office of Surface Mining: date:

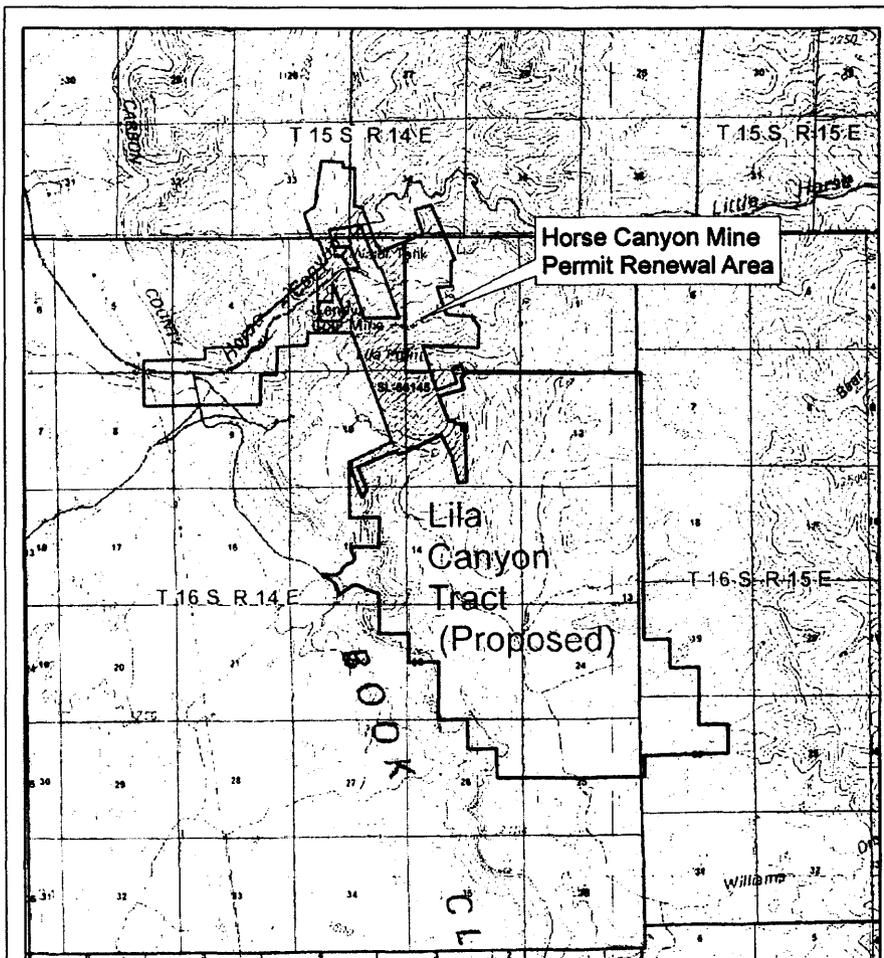
Utah State Division of Oil Gas and Mining: date:

Utah State Historic Preservation Officer: date:

Utah American Energy Corp.: date:

[Archeological Data Recovery Plan Attached]

EXHIBIT 1: Map of Permit Area



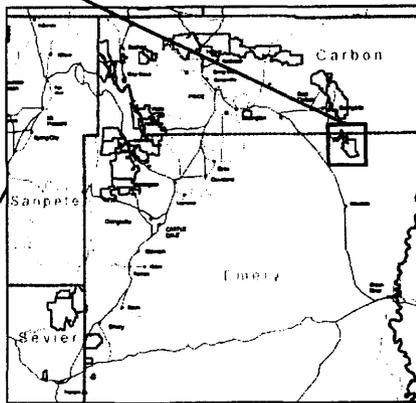
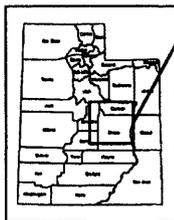
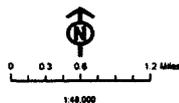
Horse Canyon Mine - Map 1

C0070013
Carbon County, Utah
March 2006

Township 15 South Range 14 East
Township 16 South Range 14 East

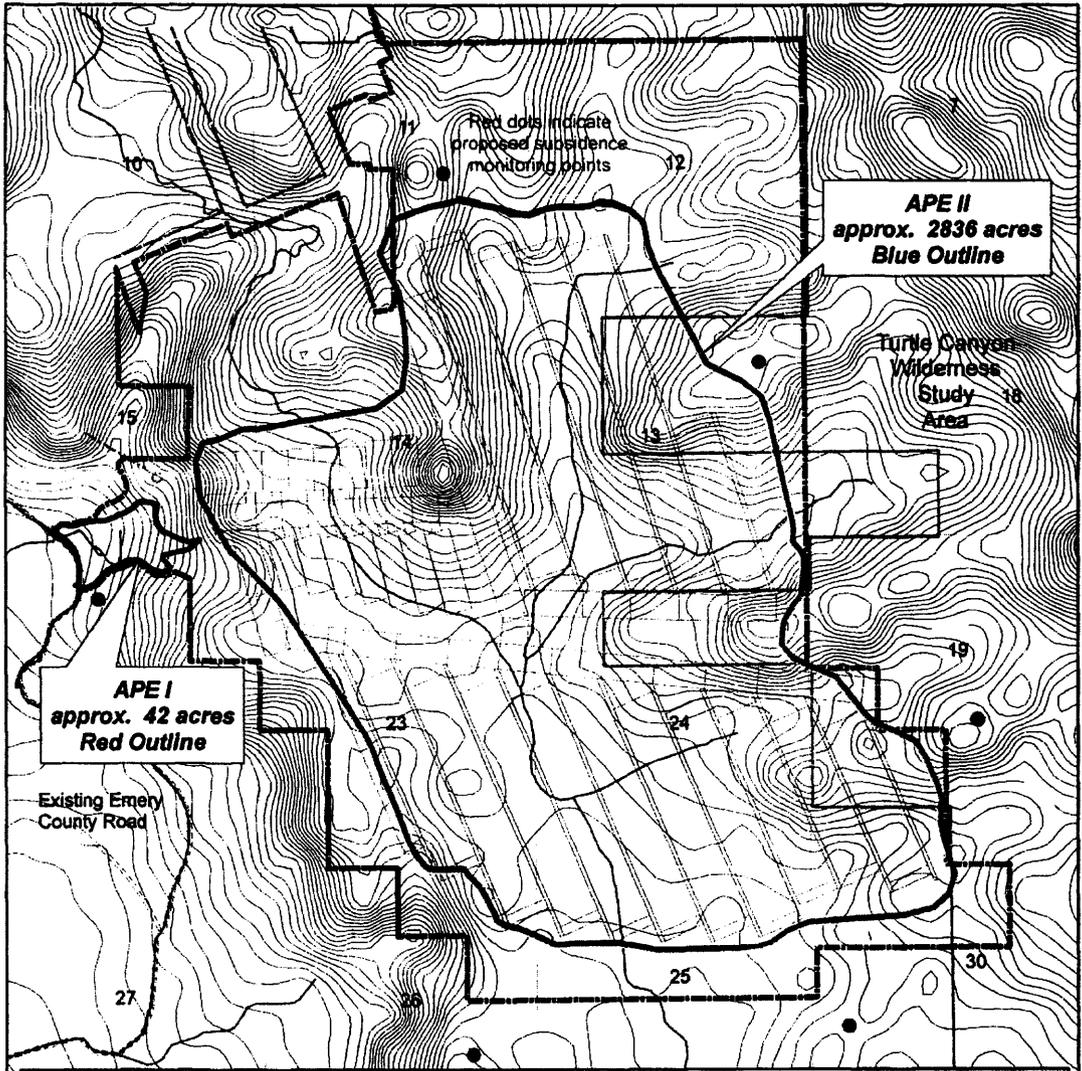
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- Permit Area
- Proposed Mine Plan Modification (if shown)
- Federal Lease Areas



Locator Map

EXHIBIT 2: Map of Area of Potential Effect



Lila Canyon Project - Map 2

Legend

PIPING SLING Layer

- CONTOUR
- INDEX CONTOUR
- ▬ DISTURBED
- LAYOUT
- OLD PERMIT
- ▬ PERMIT
- ROAD
- ▬ PROPOSED SECTION
- VISA
- ▬ SUBSIDENCE

0 0.25 0.5 1 Miles

Utah Oil Gas and Mining

Map Produced
January 2008