



JON M. HUNTSMAN, JR.  
Governor

GARY R. HERBERT  
Lieutenant Governor

# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Oil Gas and Mining

JOHN R. BAZA  
Division Director

OK

April 19, 2007

Pete Rutledge  
Office of Surface Mining  
1999 Broadway, Suite 3320  
P.O. Box 46667  
Denver, Colorado 80201-6667

Subject: Requesting Signatures of the Programmatic Agreement - Protection Measures for Lila Canyon Extension, UtahAmerican Energy, Inc. (UEI), Horse Canyon Mine, C/007/0013, Task #2741, Outgoing File

Dear Mr. Rutledge:

### Action Request

The Utah Division of Oil, Gas, and Mining (DOG M) is now requesting your signature for the Programmatic Agreement (PA) for the Lila Canyon Extension of the Horse Canyon Mine. This PA provides protection measures to cultural and historic resources as per Section 106 of the National Historic Preservation Act, as amended, and its implementing regulation at 36 CFR Part 800.

### Background

In accordance with 36 CFR Part 800.2 (a), Pete Rutledge, Chief, Program Support Division at the Western Regional Coordinating Center, Office of Surface Mining (OSM), delegated the legal authority to the DOGM to act on behalf of OSM and to meet Section 106 requirements of the National Historic Preservation Act regarding federal undertakings. The DOGM assumed the role of agency official on January 4, 2006 with continuing assistance from OSM.

The DOGM, in consultation with OSM, prepared a draft PA. This PA is intended to serve as a measure to protect, avoid, or mitigate known and unknown archaeological resources. This PA will become a condition to the approval of the Horse Canyon Mine - Lila Canyon Extension permit.

During the development of the draft PA, the DOGM and OSM anticipated that State Historic Preservation Officer (SHPO), Advisory Council on Historic Preservation (ACHP), BLM, and UEI might participate as signatories of the PA. The SHPO provided valuable comments throughout the process and plans to serve as a signatory. The ACHP responded to a letter sent by the DOGM in February 2007, but provided no comments and declined to participate as a signatory at this time.

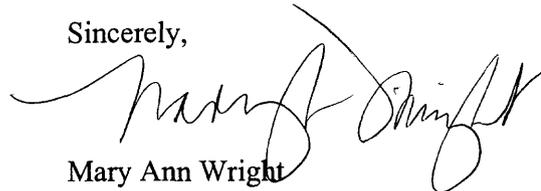
The BLM provided valuable comments, but has reserved the right to decline to sign if they believe that the final version is "not consistent with BLM's position". UEI declined to serve as a signatory, but provided comments as a consulting party. The Southern Utah Wilderness Association (SUWA), a consulting party, also provided comments and requested that they should serve as a signatory, which the DOGM declined.

The DOGM also anticipated that Native American tribes might choose to participate as consulting parties of the PA. The DOGM sent letters to numerous tribes on February 6, 2007 requesting their comments. In March and April, the DOGM has made efforts to follow up the letter with phone calls to the tribes. At this time, the DOGM has not received any comments specifically concerning the PA from the tribes.

However, three tribes have requested extensions for more time to review. The DOGM will contact these tribes on April 23, 2007 as per their request. One other tribe has expressed their concern and may decide to visit the site. The DOGM considers that the protective measures in this PA provide processes that will insure that considerations, such as from the tribes, will be addressed in a manner that will protect cultural and historic resources. The DOGM will contact you immediately if these tribes provide comments that need incorporating before you sign.

We would appreciate your response and return of the enclosed signature page at the close of business on April 26, 2007. If you have any questions or concerns, please contact us - Mary Ann Wright (801) 538-5306, Pamela Grubaugh-Littig (801) 538-5268, or Jerriann Ernstsen (801) 538-5214.

Sincerely,



Mary Ann Wright  
Associate Director, Mining

an  
Enclosure

cc: James Kohler, BLM-SLO  
Stephen Bloch, SUWA  
Jay Marshall, UEI  
Denise Dragoo, Snell & Wilmer

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### Division of Oil Gas and Mining

JOHN R. BAZA  
Division Director

April 19, 2007

Roger Bankert, Field Manager  
Bureau of Land Management  
125 South 600 West  
Price, Utah 84501

Subject: Requesting Signatures of the Programmatic Agreement - Protection Measures for Lila Canyon Extension, UtahAmerican Energy, Inc. (UEI), Horse Canyon Mine, C/007/0013, Task #2741, Outgoing File

Dear Mr. Bankert:

#### **Action Request**

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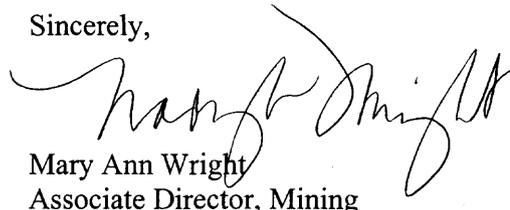
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Sincerely,



Mary Ann Wright  
Associate Director, Mining

an  
Enclosure

cc: James Kohler, BLM-SLO  
Stephen Bloch, SUWA  
Jay Marshall, UEI  
Denise Drago, Snell & Wilmer

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### Division of Oil Gas and Mining

JOHN R. BAZA  
Division Director

April 19, 2007

Wilson Martin, Assistant Director  
Division of State History  
300 Rio Grande  
Salt Lake City, Utah 84101

Subject: Requesting Signatures of the Programmatic Agreement - Protection Measures for Lila Canyon Extension, UtahAmerican Energy, Inc. (UEI), Horse Canyon Mine, C/007/0013, Task #2741, Outgoing File

Dear Mr. Martin:

A handwritten signature in black ink, appearing to read "John R. Baza".

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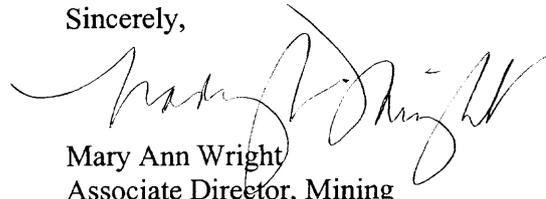
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Denise Dragoo, Snell & Wilmer

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**April 19, 2007**

**PROGRAMMATIC AGREEMENT  
AMONG  
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT,  
DIVISION OF OIL GAS AND MINING,  
BUREAU OF LAND MANAGEMENT,  
AND  
UTAH STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE  
LILA CANYON EXTENSION OF THE HORSE CANYON MINE  
(C/007/0013)**

**UNDERTAKING:** Proposed Mining and Reclamation Plan (MRP), Lila Canyon Extension of the Horse Canyon Mine (C/007/0013).

**STATE:** Utah

**AGENCY:** Utah Division of Oil, Gas and Mining (OGM)

**WHEREAS,** the Office of Surface Mining Reclamation and Enforcement (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 (OGM) 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 leased federal coal leases to UEI within the MRP permit area (Exhibit A). UtahAmerican Energy, Inc. (UEI), Josiah Eardley, and School and Institutional Trust Lands Administration own other portions of the property (fee) within this 4660 acres; and

**WHEREAS,** UEI has applied for a permit for the Lila Canyon Extension of the Horse Canyon Mine to mine coal and OGM is required by R645-300.133.600, R645-300.113, and R645-301-411.140 to 144 rules and the requirements of the state and federal coal programs to comply with the National Historic Preservation Act in issuing the permit; 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 effect recorded cultural or historical resources; 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**, reasonable and good faith identification efforts per 36 CFR 800.4(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 36 CFR 800.5(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 42EM2517. BLM has drafted a Memorandum of Agreement to treat the potential impacts to this site; 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 cultural or historic resources not identified during identification efforts for the project, and

**WHEREAS**, the OSM, OGM, and BLM, in consultation with SHPO, have determined that the effects on cultural or historical resources from development of the proposed Lila Canyon Extension of the Horse Canyon Mine and corresponding mining operations cannot be fully determined; 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), has invited the Council's comments and participation in the review for this undertaking pursuant to 36 CFR § 800 and the Council has chosen not to participate at this time;

**NOW, THEREFORE**, Pursuant to 36 CFR 800.14, the OSM, OGM, BLM, and SHPO agree this Agreement shall be implemented in accordance with the following stipulations to take into

account the effects that mining operations of the Lila Canyon Extension of the Horse Canyon Mine may have on cultural or historic resources.

### Stipulations

1. **Lead Agency.** Upon approval, the LA will be OGM. OGM, as the agency official, will continue to consult and coordinate with OSM, BLM, and SHPO on archaeological matters covered under this Agreement.
2. **Treatment of Site 42EM2517.** The BLM drafted a Memorandum of Agreement for mitigation of 42EM2517. UEI will assure that a mitigation plan for 42EM2517 is prepared, approved, and implemented in accordance with the BLM MOA. BLM will assure that signatories of this Agreement are kept informed on the processes of the MOA.
3. **Monitoring of Subsidence.** For this Agreement, surface impacts due to subsidence are defined as, but not limited to, tension fractures, fractures, compression bulges, slope/escarpment failure, bumps, tilting, deformation of the ground surface, sag, slumping, strata displacement at or near the surface, ground movement, and/or even disturbances that are unlikely such as sinkholes, subsidence troughs, mine water breakout, or any other subsidence-related surface impacts. 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, whichever comes later. The precision of this survey will be within plus or minus 6" horizontally and vertically. UEI will provide an accurate map showing the subsidence isopachs to OGM. UEI will initiate and coordinate with OGM to ensure that a qualified archaeologist will examine the location of the mapped-subsided areas relative to previous archaeological inventories and known archaeological sites within fourteen (14) 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-related or upsidence-related surface impacts (as defined above) occur 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, UEI will have a qualified archaeologist examine the location of the subsidence-related or upsidence-related surface impacts relative to the geomorphological setting of the site. If the area of the subsidence-related or upsidence-related surface impacts is in an area with a high probability that such impacts could expose previously unseen sites potentially eligible to the National Register of Historic Places (such as areas of alluvial deposition), the qualified archaeologist will examine the effects of subsidence upon the area(s) in question within fourteen (14) days of making this determination. If accessibility to the site, or current safety conditions of the site prohibits examination, UEI will ensure that examination will proceed within fourteen (14) days from the last day

of the first fourteen (14) day timeline. If a site is identified in this examination, procedures defined below under item (c.ii) will be followed. If no site is present, procedures defined below under item (c.i) will be followed. If the area is not a high probability area, no further work need be done. UEI will notify OGM regarding the determination(s) under this section within fourteen (14) days of making the determination(s), and OGM will provide the information to OSM, BLM, and SHPO.

- b. **Previously Inventoried and Known Sites.** If subsidence-related or upsidence-related surface impacts (as defined above) occur 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. If known archaeological sites previously determined not eligible to the National Register of Historic Places are present in the subsidence area, and such sites are in geomorphological settings or have other characteristics that indicate a high probability that subsidence-related or upsidence-related surface impacts could have exposed significant new information to view, the qualified archaeologist will examine the effects of subsidence upon the site(s) in question within fourteen (14) days of making this determination. If accessibility to the site, or current safety conditions of the site prohibits examination, UEI will ensure that examination will proceed within fourteen (14) days from the last day of the first fourteen (14) day timeline.

UEI will provide a report by an archeologist, 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 36 CFR 800.6 and the stipulations below regarding evaluation and archaeological treatment will be followed.

- c. **Not Previously Inventoried.** If subsidence-related or upsidence-related surface impacts (as defined above) occur 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. If accessibility to the site, or current safety conditions of the site prohibits examination, UEI will ensure that examination will proceed within fourteen (14) days from the last day of the first fourteen (14) day timeline. 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-related or upsidence-related surface impacts, 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 36 CFR 800.4(c).
  - ii. **Inventoried Sites.** If a site or sites are present within the area of subsidence-related or upsidence-related surface impacts, UEI's archaeologist will provide a report and make recommendations of eligibility and effect to OGM (per 36 CFR 800.4(c)(2) and 36 CFR 800.5) 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 36 CFR 800.6 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 to the OGM.
- e. **Conducting Consultation.** Consultation with tribes and other consulting parties will occur during this process at a level appropriate to the nature of the cultural or historic resources (if any) and effects to the cultural or historic resources (if any) taking into account comments and concerns received previously from the tribes and consulting parties.
4. **Discoveries in APE I and II.** 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 UEI's attention, UEI will notify OGM within twenty four (24) hours of the discovery. UEI will immediately implement protection measures to prevent harm of the discovery 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 fourteen (14) 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 supporting 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 Effect is made, OGM will consult with the SHPO regarding the determination following 36 CFR 800.4-5.
  - 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 determine 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 unless following an “expedited treatment” (see Stipulation 5).
  - d. **Conducting Consultation.** Consultation with tribes and other consulting parties will occur during this process at a level appropriate to the nature of the cultural or historic resources (if any) and effects to the cultural or historic 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 for such discoveries as follows:
- 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.
6. **Funding of Work.** UEI will fund and implement any and all future 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 a written 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 the Advisory Council on Historic Preservation. Within thirty days after the receipt of all pertinent documentation, the Council 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 Council 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. This Agreement applies to UEI or any coal mine permit successor of the proposed (or amended) extension area. Any new Permittee will accept all provisions within this Agreement.
11. **Permit Changes.** Subsequent additions, deletions or other changes to the permit that may affect cultural or historic resources will be handled in compliance with the normal Section 106 consultation process as described in 36 CFR 800, and amended into this Programmatic Agreement and/or its attachments.

### Signatories

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Wilson G. Martin, Utah State Historic Preservation Officer  
Utah State Division of State History

By: \_\_\_\_\_ Date: \_\_\_\_\_  
John R. Baza, Director  
Utah State Division of Oil, Gas, and Mining

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Peter A. Rutledge, Chief, Program Support Division  
Office of Surface Mining Reclamation and Enforcement, Western Region

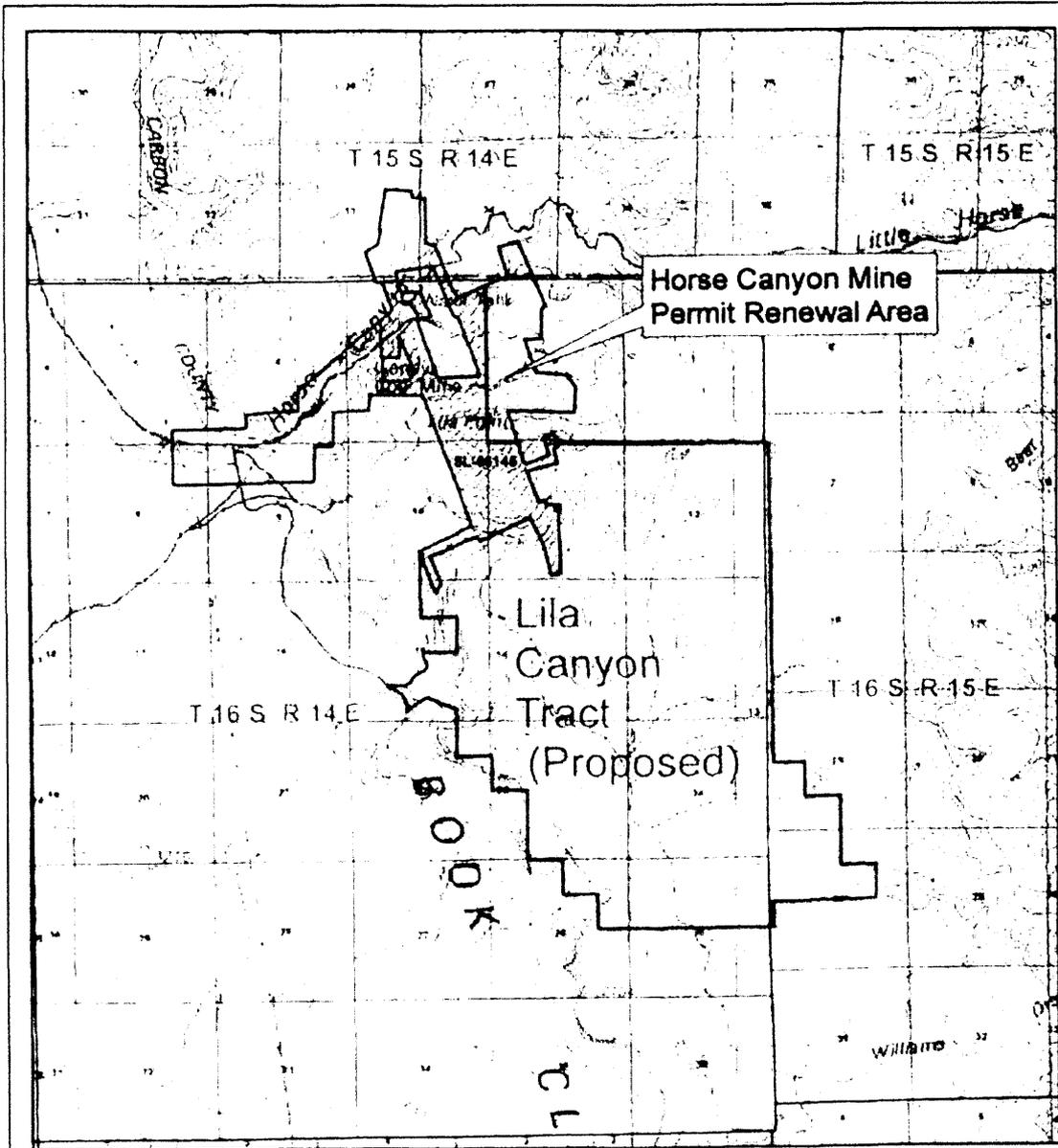
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Roger Bankert, Field Manager  
Bureau of Land Management, Price Field Office

## **ATTACHMENT 1: Tribal List**

The following tribes were consulted 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.

**EXHIBIT A: Map of Permit Area**



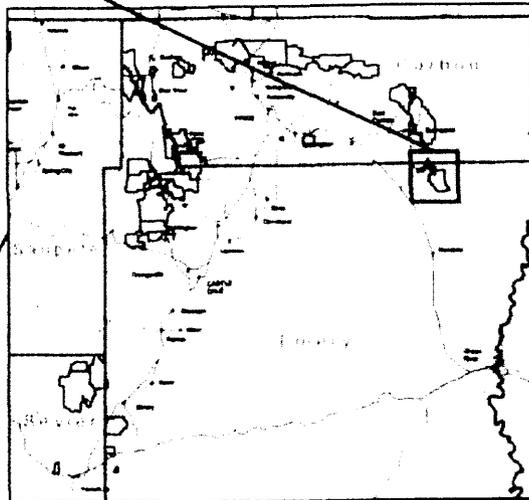
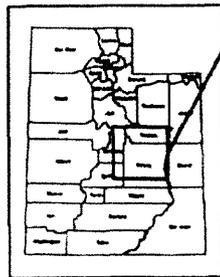
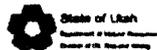
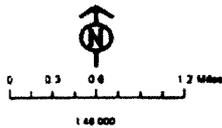
**Horse Canyon Mine - Map 1**

C0070013  
Carbon County, Utah  
March 2006

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

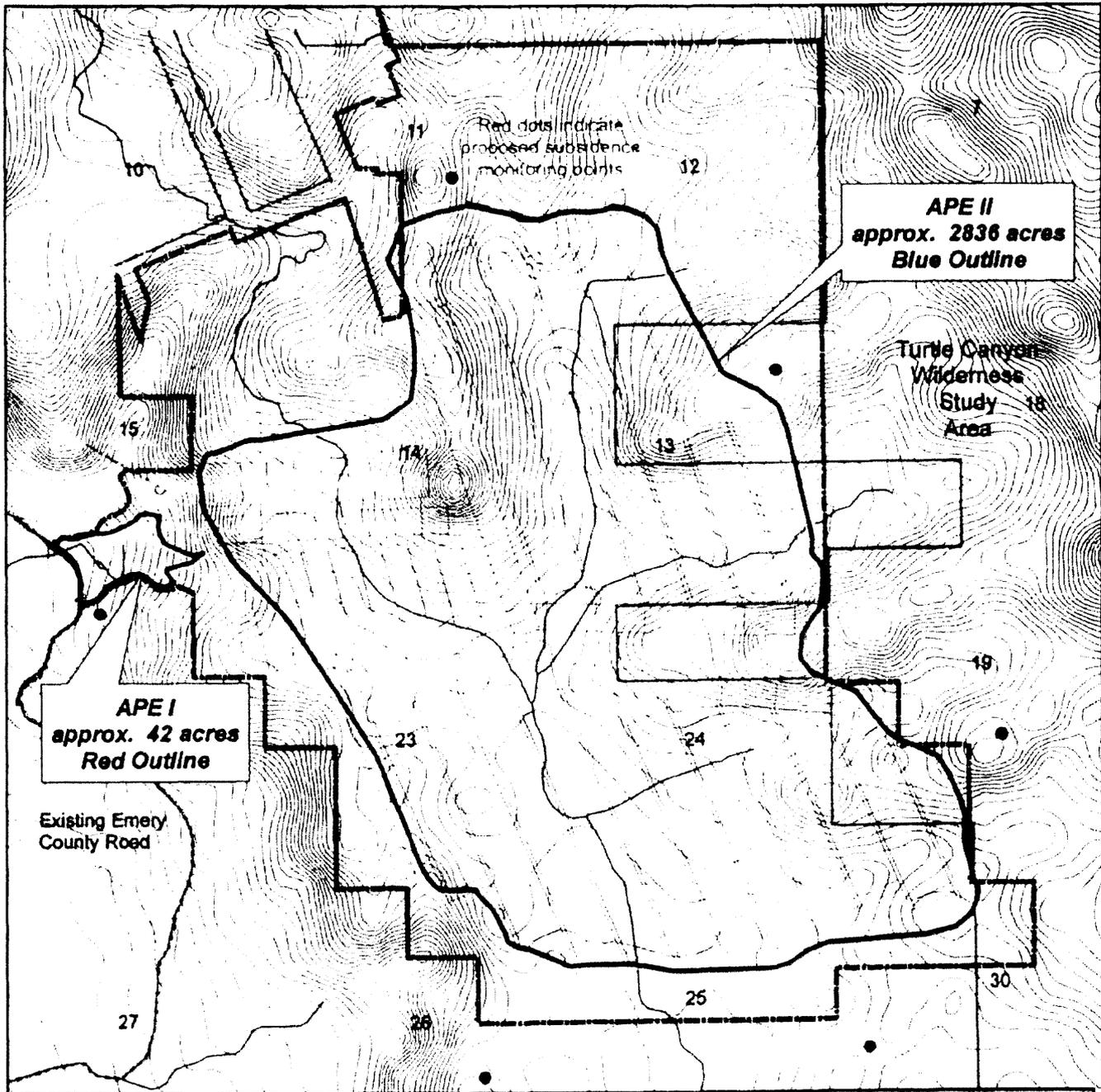
PNR0013R0013R0013 HORR013R0013

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



Locator Map

**EXHIBIT B: Map of Area of Potential Effect**



## Lila Canyon Project - Map 2

- Legend**
- Phase-1-Env Layer**
- CONTOUR
  - INDEX CONTOUR
  - DISTURBED
  - LAYOUT
  - OLD PERMIT
  - PERMIT
  - ROAD
  - PROPOSED SECTION
  - VMA
  - SUBSIDENCE



0 0.25 0.5 1 Miles



Utah Oil Gas and Mining

Utah Geological Survey