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State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

MICHAEL R. STYLER
Executive Director

JOHN R. BAZA
Division Director

OK

February 15, 2008

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

Subject: Exclusionary Periods and Construction Activity, Lila Canyon Extension to the Horse Canyon Mine, UtahAmerican Energy, Inc. (UEI), Horse Canyon Mine, C/007/0013, Outgoing File

Dear Mr. Marshall:

On January 16, 2008, the Interagency Wildlife Buffer Team (Team) discussed construction efforts at the Lila Canyon Mine. The Bureau of Land Management (BLM) stated that the work at the site was minimal and sought clarification of the intent and details of the exclusionary periods. The Team discussed certain details and BLM mentioned that they would contact you to discuss the concern of stopping and restarting or increasing the level of activity during exclusionary periods. In addition, on January 28, 2008, Wayne Western from the Utah Division of Oil Gas and Mining (Division) sent you an email that provided his understanding of the intent of exclusionary periods. This letter and "Implementation Plan" (Plan) is a follow-up to the on-going effort to provide a clear explanation of what is expected by the Division concerning commitments on wildlife exclusionary periods.

The United State Fish Wildlife Service, Utah Division of Wildlife Resources, and Division biologists have been working diligently to develop a plan that addresses the comments made during the Interagency Wildlife Buffer Team meeting. The attached Plan considers the entire level of work that is currently being conducted at the Lila Canyon Mine and the Best Management Practices for protecting golden eagles and Rocky Mountain sheep.

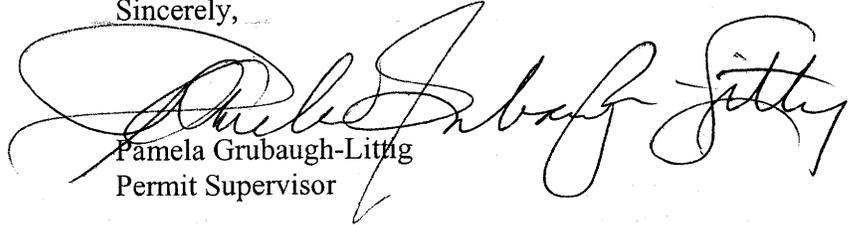
Previously, the Division believed that when UEI received the Permit for the Lila Canyon Extension to the Horse Canyon Mine, full construction would begin, as stated during the Board hearings on the Lila Canyon Mine issues. UEI did start construction (albeit limited construction activities) on or prior to the golden eagle and Rocky Mountain sheep exclusionary periods. UEI may continue work at the current level of activity.

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It is important to stress that execution of the attached Plan is required ONLY if the Permittee decides to increase construction activity at the Lila Canyon Mine site. Furthermore, restrictions on increased construction activity will apply only if ground surveys (following the protocol in the Plan) definitively show that the nests are active or if increased efforts would disturb Rocky Mountain sheep.

Please refer to the attached Plan and call me at (801) 538-5268, Daron Haddock at (801) 538-5325, or Jerriann Ernsten at (801) 538-5214 if you have any questions.

Sincerely,



Pamela Grubaugh-Littig
Permit Supervisor

an
cc: Betsy Herrman, FWS
Nathan Darnall, FWS
Leroy Mead, DWR
Tony Wright, DWR
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**Golden Eagle and Rocky Mountain Sheep
Exclusionary Period Implementation Plan
For
Lila Canyon Extension to the Horse Canyon Mine**

February 15, 2008

Introduction

The United State Fish Wildlife Service (USFWS), Utah Division of Wildlife Resources (DWR), and Utah Division of Oil Gas and Mining (Division) biologists developed this Implementation Plan (Plan) for the Utah American Energy Inc. (UEI) Lila Canyon Extension to the Horse Canyon Mine (aka Lila Canyon Mine). The Plan is intended to provide a clearer explanation of what is expected by these agencies concerning commitments on wildlife exclusionary periods. The Plan includes a summary of a recent DWR visit to the site, exclusionary provisions for the golden eagle (GE) and Rocky Mountain sheep (RMS), GE biology and survey considerations, USFWS/Division survey requirements, and Division inspection intentions.

DWR Update

On February 8, 2008, DWR visited the Lila Canyon Mine site. DWR reported that the area was under light snow cover, which should not have significantly prohibited construction up to the visit date. Construction was not occurring the morning of the February 8, 2008 visit. UEI had previously cleared approximately 3-4 acres of vegetation and boulders, but had not started leveling the surface. The equipment that was currently there was assessed as being incapable of doing the work necessary to develop the site. Furthermore, DWR estimated that at the present rate of work, it would take months to just level the site.

DWR observed GEs and unidentified raptors both perched and flying, but they were all around 4 miles from the mine site and near the highway (US-6).

DWR considered that disturbance to GE would depend on the level of excavation. Current excavation activity was very minimal. DWR considered that disturbance to the birds in the future would depend on the level of increased construction activity. DWR observed only 2 pieces of large equipment: probably a D8 bulldozer (or smaller) and a medium sized trackhoe.

GOLDEN EAGLES

2007 Fly-over Raptor Survey Results and Estimations of Distances

Golden Eagle Nest #	Notes of 2007 fly-over survey	Est of distances between nest and closest reach of disturbed area (2640'=0.5mile)*
456	Inactive	465'
455	Inactive	808'
719	Could not spot (DWR ground truthed site and found location, but only a few twigs remain)	1040'
946	Not found	1156'
947	Inactive	1389'

*UEI could take the opportunity to correct these estimations and provide an updated Plate to the MRP. UEI should include the horizontal and vertical distance to provide the most accurate accounting of the distance between each nest (5 nest/locations) to the nearest point of planned disturbance (as shown in existing Plates in the MRP).

Exclusionary Provisions for GE

Since UEI has already started construction on or prior to the GE and RMS exclusionary periods, UEI may continue at the current level of construction effort. If UEI decides to increase efforts, however, UEI will need to contact the Division and comply with this Plan or request a meeting with the Division to present alternative Best Management Practices. It is important to stress that execution of this Plan is required **ONLY** if UEI decides to increase construction efforts at the Lila Canyon Mine site.

Furthermore, restrictions on increased construction activity will apply only if ground surveys (following the protocol in this Plan) definitively show that the nests are active or if increased efforts would disturb RMS.

UEI may conduct work activities during the Feb 1 - July 1 nesting season only if work activity has been initiated prior to and up through February 1. The work activities conducted during the nesting season (Feb. 1 – July 1) must be at an equivalent or lesser level of intensity than the activity that occurred prior to and up until Feb. 1. The "level of intensity" takes into account: days per week, hours per day, and noise/disturbance level of the work activities.

GE Biology and Survey Considerations

Jim Parish (DWR) and Nathan Darnall (USFWS):

- ❖ Need to determine which nest within the territory the birds are tending or laying eggs.
- ❖ Peak GE egg laying occurs last week of February to first week of March, but ranges from January through April. The birds at Lila may have already laid their eggs or may not start for another month or more, if conditions are suitable.
- ❖ It will be very important to record behavior at the nest to clearly determine if the pair has laid their eggs.

- ❖ GE are more likely to abandon eggs than chicks, so the most critical time for the birds are during the egg laying periods and approximately 17 days into the incubation period.
- ❖ GE are secretive and can easily leave a nest without being seen. They also do not typically call near the nest. Unless the observation point allows one to see into the nest, a quick visit would not suffice to determine whether a nest is active or if there are eggs.
- ❖ Approximate critical periods depending on elevation:
 - Egg laying period: Jan 1 to mid April
(mean February 27 through March 9 for Central Utah*; for the pair at Lila the laying may be around Mid March**).
 - Hatching period (42 day incubation period): Feb 24 to mid May
(mean April 9 to April 19 for Central Utah*; for the pair at Lila the hatching may be around May 5**).
 - Fledging period: May 4 to July 20
(mean June 17 to June 27 for Central Utah*; for the pair at Lila fledging may be around July 14**).

*Kent Keller (2007) Golden Eagle Nesting Survey Report For The Central Utah Study Area February – July 2007.

**Leroy Mead (2007) DWR observations during 2007 fly-over survey.

USFWS/Division Survey Requirements

- ❖ Biologist must be knowledgeable in raptor behavior and habitat.
- ❖ Contracted biologist should be accompanied by a representative from DWR depending on DWR's time availability or DWR may plan independent visit(s).
- ❖ Biologist(s) will determine
 - Line-of-sight for all 5 nest/habitat locations
 - Whether GE are present
 - Whether GE are exhibiting nesting and other notable behavior
 - Which, if any, nest within the territory is being tended or is active
 - Whether GE are tending eggs
- ❖ Surveys must be conducted by the following protocol to confirm a nesting pair
 - At least 4 times between last week of Feb through first week of April
 - At 2-3 week intervals
 - At dawn plus four hours for each survey, unless available observations show without doubt the stage of nesting, or if it is possible to see into the nest
 - In a sensitive manner to not disturb the GE
 - With scopes and binoculars
 - To include, records in writing, the details of behavioral observations including times associated with the behaviors (e.g., minutes bird was in nest).
- ❖ If, by end of the first week of April, there are no GE nesting, then UEI will be cleared for increased construction activity (after consideration of RMS).
- ❖ If GE are nesting at any time during the exclusionary period, then UEI must follow the provisions described above in "Exclusionary Provisions".
- ❖ Division must receive a verbal report within 24 hours of each survey.
- ❖ Division must receive a final written report for all the nests within 45 days of the last survey.

ROCKY MOUNTAIN SHEEP

Exclusionary Provisions for RMS

The exclusionary periods for RMS are

- ❖ Winter range: Dec 1 – April 15
- ❖ Parturition: May 1 – June 15

If UEI determines that he would like to request consideration for approval to increase construction activity between February 1 – April 15 and May 1 - June 15, then UEI must contact the Division. The Division will contact the involved agencies and may facilitate a meeting with UEI to discuss the request. The provisions to increase activity may include (but not limited to) conducting a series of surveys conducted by biologists.

UEI may conduct work activities during these sensitive periods only if work activity has been initiated prior to and up through February 1. The work activities conducted during the sensitive season must be at an equivalent or lesser level of intensity than the activity that occurred prior to and up until Feb. 1. The "level of intensity" takes into account: days per week, hours per day, and noise/disturbance level of the work activities.

Division Inspections

- ❖ Will conduct inspections of the Lila Canyon Mine project area
- ❖ Will assess
 - Level of operations
 - UEI work log for Lila Canyon Mine
 - Footprint of operations

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