

0032

UtahAmerican Energy, Inc.



C/007/013 Incoming
Lila Canyon Project
P. O. Box 910
East Carbon, Utah 84520
Phone: (435) 888-4000
(435) 650-3157
Fax: (435) 888-4002

cc: John B.
Dana
Joe
Jim

#3053
K

May 26, 2009

Daron Haddock
Permit Supervisor
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801

RECEIVED
MAY 27 2009
DIV. OF OIL, GAS & MINING

Re: UtahAmerican Energy, Inc. Horse Canyon Mine C/007/013 Task #3259

Dear Mr. Haddock,

UtahAmerican Energy, Inc appreciated the opportunity to meet with you and your staff regarding the Notice of Violation No. 10036 which the Division has now vacated. As discussed at that meeting, UEI challenged the fact of violation because its MRP does not require mitigation plans for operations during wildlife exclusionary periods now that UEI has initiated construction and is operating full time at the Lila Canyon Mine site.

Your letter of May 14, 2009 confirms that the NOV is vacated. However, there seems to be some confusion on the part of the Division regarding this matter. By separate letter dated May 13, 2009, Jim Smith states that the Division has reviewed our response to the NOV and continues to find deficiencies in the mitigation plans addressing operation during wildlife exclusionary periods. These mitigation plans are no longer needed because UEI is conducting full scale construction and/or mining operations. The requirement to submit these mitigation plans is contrary to the MRP which provides, " the Operator will adhere to exclusionary periods when initiating construction and final reclamation projects. Chapter 3 MRP, Par. 7, Page 19. The Division's policy in this regard is set forth in an email for Wayne Western to UEI, dated January 28, 2008 which confirms that "the reason for continuous construction operations is that wildlife moving into the area will be aware of the disturbance before they begin nesting or lambing..." By letter dated February 15, 2008, the Interagency Wildlife Buffer Team acknowledge Mr. Western's e-mail as the intent of the exclusionary periods. UEI commenced full construction activities in December, 2008 and both the BLM and MSHA have recognized UEI's current activities as "mining", not construction.

Therefore, UEI, consistent with the approved MRP does not require mitigation for operation during wildlife closure periods. Further, the Division has provided no authority

for requiring UEI to modify its MRP to indicate that "closure period will be adhere to during the construction and reclamation phases of mining activities unless otherwise approved by the Division in consultation with State and Federal Wildlife agencies." Mr. Smith request this change in the MRP by his letter dated May 13, 2009. It is UEI's position that so long as UEI maintains its full time operations at the mine site, it is not required to seek additional approval from the Division or the USFWS regarding operation during wildlife exclusionary periods. This is the position of BLM and we understood from your vacation of the NOV that this is also the position of the Division.

We welcome the opportunity to review this matter with you during our meeting scheduled on June 18, 2009.

Sincerely;

A handwritten signature in cursive script that reads "R. Jay Marshall".

R. Jay Marshall

Chief Engineer/Project Manager