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DEPARTMENT OF NATURAL RESOURCES

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Division of Oil, Gas and Mining

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Outgoing
C0070013
#3042
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April 28, 2009

Jay Marshall, Resident Agent
UtahAmerican Energy, Inc.
P.O. Box 910
East Carbon, Utah 84520-0910

Subject: Midterm Permit Review, Task ID #3042, UtahAmerican Energy, Inc(UEI), Horse Canyon Complex (Geneva and Lila Canyon Mines), C\007\0013, Outgoing

Dear Mr. Marshall:

This document completes the Midterm Mine Permit Review for the Horse Canyon Mine Complex. The Division's analysis and finding are included in the selected listed below. As you will note, there are some deficiencies that need to be addressed in Sections 1, 4 and 6. The deficiencies listed in this document are the same deficiencies previously sent to UEI on April 6, 2009. The response to those deficiencies will be processed as an amendment and given a new task number.

1. A review of the mine plan to ensure that the requirements of all permit conditions, division orders, notice of violation abatement plans, and permittee initiated plan changes are appropriately incorporated into the mine plan document.

UtahAmerican Energy Inc. (UEI) is a corporation organized and existing under the laws of the State of Utah. UEI is 100% owned by Murray Energy Corporation, a subsidiary of Murray Energy Holdings, Inc. Ownership and Control information is provided in Appendix 1-1. The officers and directors of Murray Energy Holdings, Inc was not included with the original application, but was provided prior to permit issuance (2007\Incoming\document 0263.pdf). This information was not incorporated into the MRP at the time of permit issuance and should be incorporated with this mid-term review.

Appendix 1-2 lists the Federal ID numbers and Permit ID numbers of all affiliated companies.

The officers and directors of Murray Energy Holdings, Inc was not included with the original application, but was provided prior to permit issuance



(2007\Incoming\document 0263.pdf). This information was not incorporated into the MRP at the time of permit issuance and should be incorporated with this mid-term review. In accordance with:

R645-301-112, Please update the organizational chart in Section 1, Appendix 1-1 to include Murray Energy Holdings, Inc.

2. A review to ensure that the mine plan has been updated to reflect changes in the Utah Coal Regulatory Program that have occurred subsequent to permit approval (example: compliance with U.S. Fish and Wildlife Department - Colorado River Endangered Fish Recovery Program).

The five-year permit for the UEI Horse Canyon Mine was issued on May 18, 2007. The permit will expire in May 2012. The permit has four permit conditions.

The first condition is to submit water quality data in an electronic format.

The second condition was to obtain mining plan approval. The recent decision by U.S. District Court Judge Kimball upheld the authority of the Secretary of Interior's previous Mining Plan Approval, dated November 5, 2001 (Memorandum of Decision and Order, Case 2:07CV678 DAK, United States District Court for the District of Utah, Central Division, dated November 13, 2008).

The third condition was to provide required information concerning raptors, water depletions, and cultural resources within 30 days of permit approval.

The fourth condition was to provide within 30 days of approval, the Programmatic Agreement and associated information, to conduct annual raptor surveys beginning in 2005, to adhere to raptor exclusionary periods, to illustrate raptor nests within the subsidence zone and provide corrections to Chapter 3 of the MRP with regard to the effects of subsidence on raptor nests.

Special Conditions were added to the mine permit that were completed within one year after permit issuance:

1. Provide a copy of the mitigation/recovery survey to DOGM, Part B, Section 411.142.
2. Implement the BLM's 70+ acre enhancement/mitigation plan for wildlife.
3. Install two guzzlers (Sec. 322.220 and Sec. 333).
4. Conduct a Seep and Spring survey along the escarpment.

5. Install two rain gauges.
6. Install crest gauges and siphon samplers.
7. Survey for sensitive plants (Sec. 321.100) and provide follow up report and protection plan.

Three commitments written in the MRP pertain to the protection of soil resources. They are: to have a qualified soil specialist on site during soil salvage, to salvage soil during optimum moisture content, and to keep records of soil volumes salvaged and locations of subsoil placement.

Volume one of the mining and reclamation plan, (MRP), contains a plan update register. This register is located at the beginning of chapter one and provides a current listing of the changes and updates to the MRP.

The Permittee has addressed the special conditions.

The mine plans for the Geneva and Lila Canyon Mines are current with the Utah Coal Rules.

3. A review of the applicable portions of the permit to ensure that the mine plan contains commitments for application of the best technology currently available (BTCA) to prevent additional contributions of suspended solids to stream flows outside of the permit area.

The Permittee is using the best technology currently available (BTCA) to prevent additional contributions of suspended solids to stream flows outside of the permit area. Hydrologic structures (culverts, berms, sedimentation ponds and surface roughening of reclaimed areas) route or contain disturbed surface runoff so it does not contaminate down stream sources.

4. An AVS check to insure that Ownership and Control information is current and correct, verify compliance status of unabated enforcement actions, determine status of any outstanding finalized penalties, and verify that there are no demonstrated patterns of violation.

Appendix 1-3 Part B contains violation information, which was current through the year 2006. In conjunction with the detailed design change amendment to the MRP (Task 3017), the Division has requested that Appendix 1-3 requires be updated for the years 2007 and 2008. The deficiency is repeated below.

An AVS check was conducted on November 20, 2008. As of this writing of this memo, there are no NOV's or CO's which are not corrected or in the process of being corrected for the UtahAmerican Energy, Inc controlled mines. There are no bond forfeitures or civil penalties in the name of UtahAmerican Energy, Inc.

The information provided does not meet the reporting requirements. Prior to approval, the application must include the following in accordance with:

R645-301-113.300, In conjunction with the detailed design change amendment to the MRP (Task 3017), please update Appendix 1-3 to include the violation records for all affiliates during the years 2007 and 2008.

5. A review of the bond to ensure that it is in order and that the cost estimate is accurate and is escalated to the appropriate current-year dollars.

On November 10, 2008, the Permittee filed an application for Phase III bond release for the Part A bonded area, which is under review as Task 3080.

Lincoln General Insurance Co. was issued on September 15, 1998 for Horse Canyon facilities (Part A) and was decreased by rider effective July 23, 2002 to its present amount of \$1,061,328. The Division notified the Permittee by letter dated October 8, 2008, that the rating of Lincoln General had fallen below that required by R645-301-860.110 and requested some action be taken to achieve compliance within 120 days (Feb. 2009). On November 10, 2008, the Permittee filed an application for Phase III bond release for the Geneva Mine bonded area, which is under bond release review as Task 3080.

XL Specialty Insurance Co. bond in the amount of \$1,556,000 was issued July 13, 2001 for the Lila Canyon Mine.

Rockwood Casualty Insurance Co. bond in the amount of \$130,000.00 was issued December 7, 2005.

The total of the XL Specialty and Rockwood Casualty bonds is \$1,686,000, all of which is for reclamation of the Lila Canyon Mine.

The total of all three bonds for the Horse Canyon and the Lila Canyon Extension is \$2,747,328.00.

The Lila Canyon Mine, Appendix 8-1 provides documentation for the Lila Canyon Extension \$1,686,000.00 bond. The bond was posted in May 2007. A pending

amendment (Task 3017) to revise the layout and construction of the site will increase the bond to \$1,855,000.00, which will require an increase of \$169,000 upon approval.

The Division notified the Permittee by letter dated October 8, 2008, that the rating of Lincoln General had fallen below that required bond rating (R645-301-860.110) and requested some action be taken to achieve compliance within 120 days (February 2009). The Permittee has applied for Phase III Bond release. Most of the property has been donated to the College of Eastern Utah. The only thing holding up the Phase III bond release is a few deficiencies. It is the Division's stand that the Lincoln General Insurance Co. bond issued on September 15, 1998 for Horse Canyon facilities (Geneva Mine) and was decreased by rider effective July 23, 2002 to its present amount of \$1,061,328. The existing bond stays in place until all of the deficiencies in Phase III bond release. Once everything is addressed and we have concurrence from the various agencies, we will release that bond [322468].

The Permittee, UtahAmerican Energy, Inc., posted an \$8,000.00 reclamation bond with the Division through Rockwood Casualty Insurance Company for Ditch 31 for the remaining time period prior to Phase III bond release Rockwood Casualty Insurance Company has an A.M. Best rating of "A", (as of March 23, 2009).

6. A review of the mining and reclamation plan for compliance with operator commitments related to variances or special permit conditions (including but not limited to subsidence control/monitoring plans and reporting requirements, variances to AOC, experimental practices, electronic database water monitoring reporting, raptor surveys, revegetation test plots, etc.).

R645-301-322, The Permittee must amend the Lila Canyon Mine Plan Appendix 7-3 page 19-22 to indicate that UEI is aware that regardless of state-appropriated water rights held by the Permittee, any water consumption over 100 acre-feet per year is subject to a per acre-foot fee payable to the USFWS. And, that the actual water consumption reported in the annual report once mining operations has commenced might be subject to a Section 7 consultation with the USFWS.

7. The Division may conduct a technical site visit, in conjunction with the assigned compliance inspector, to document the status and effectiveness of operational, reclamation, and contemporaneous reclamation practices.

The Division conducted a site visit for Phase III bond release at the Geneva Mine on December 17, 2008. The Horse Canyon Phase III inspection is accepted as part of the Midterm site visit.

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Jay Marshall
April 20, 2009
Midterm Review

A midterm field review was conducted at the Lila Canyon Mine was February 11, 2009. David Darby was the only DOGM representative on site although other DOGM personnel had visited the site previously. Pete Hess conducted inspections on January 21 and 29, 2009, February 5, 12, 19 and 26, and March 3, 2009. Joe Helfrich has also been to the mine site recently to evaluate raptor activity. There is an exclusionary period starting February 1, 2009 that requires the Permittee to stop mining activities during the nesting period. April Abate and Jim Smith visited the Lila Canyon Mine site on February 3, 2009. The surface facilities are under construction.

If you have any questions regarding these requirements or the Midterm Review, please call David Darby at (801)538-5341 or me at (801)538-5262.

Sincerely,

A handwritten signature in black ink, appearing to read "JDS", written over a horizontal line.

James D. Smith
Permit Supervisor

JDS/DD/sqs
cc: Price Field Office
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