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DIV. OF OIL, GAS & MINING

December 29, 2011

Via E-Mail and Certified Mail, Return Receipt Requested

Mr. John R. Baza, Director
Utah Division of Oil, Gas and Mining
1594 West North Temple
Salt Lake City, Utah 84114

RE: *Background Information -- Informal Conference on Fact of Violation and Assessment Conference for Proposed Penalty Assessment for State Violation No. 10093, UtahAmerican Energy, Inc., Lila Canyon Coal Mine, C007/0013*

Dear Director Baza:

UtahAmerican Energy, Inc. ("UEI") has requested an informal conference to review the fact of the violation for Notice of Violation No. 10093 ("NOV") regarding the Lila Canyon Mine. We understand that the Division has tentatively scheduled this conference for January 31, 2012, and this letter serves to provide you with additional background information.

The alleged violation is based on the very general provisions of R645-300-145 providing that the permittee will comply with the terms of its permit and the requirements of the Utah Coal Program. The NOV relates to a wildlife mitigation enhancement project ("**Mitigation Project**"), involving UEI, the Bureau of Land Management ("**BLM**") and the Utah Division of Wildlife Resources ("**DWR**"). The Mitigation Project is a condition of BLM's approval of the Lila Canyon Project which occurs on BLM public lands. The Mitigation Project resulted from the 2000 EA/FONSI/Decision Record for the Lila Canyon Project, approved by BLM on October 27, 2000 ("**Decision Record**"). Pursuant to BLM's Decision Record, BLM, not the Utah Division of Oil, Gas and Mining ("**DOG M**"), has authority to approve the Mitigation Project on public lands. The Mitigation Project has been submitted for informational purposes only to DOGM, as described in Appendix 3-7. BLM and UEI have agreed to a new timeline for implementation of the Mitigation Project. This new timeline governs the Mitigation Project and DOGM is without authority to enforce the outdated timeline set forth in Appendix 3-7.

Therefore, the NOV should be vacated as a result of the informal conference. However, in the event that the fact of violation is upheld over UEI's objection, we also request an assessment conference immediately following the informal conference to review any proposed assessment regarding this NOV. The following facts submitted pursuant to R645-401-610 should be considered by DOGM in its deliberations regarding the requested vacation of the NOV and/or determination of any proposed penalties.

Mr. John R. Baza
December 29, 2011
Page 2

1. **APPENDIX 3-7 IS INFORMATIONAL ONLY AND SHOULD BE REMOVED FROM THE MINING AND RECLAMATION PLAN ("MRP")**

The NOV asserts that UEI has failed to comply with Appendix 3-7, Lila Canyon Project Wildlife Enhancement Project. However, UEI is in compliance with the Mitigation Project timeline as recently approved by BLM. Appendix 3-7 outlines the Mitigation Project and timelines as initially proposed by UEI for approval by the BLM and was provided to DOGM for informational purposes only. To avoid any confusion, by letter dated December 29, 2011, UEI is removing Appendix 3-7 Mitigation Plan from the MRP. This plan was informational only and should not be used as the basis for enforcement action by DOGM.

2. **THE MITIGATION PROJECT HAS BEEN APPROVED BY BLM WITH REVISED TIMELINES AND DOGM IS WITHOUT AUTHORITY TO REQUIRE COMPLIANCE WITH THE OUTDATED SCHEDULE**

The outdated timelines set forth in the Appendix 3-7 have been revised by BLM and DOGM is without authority to enforce the prior proposed schedule. In fact, BLM only recently approved the proposed Mitigation Project. The guzzler mitigation and vegetation treatment could not be undertaken by UEI until BLM had completed cultural resources studies and complied with the requirements of the National Environmental Policy Act ("NEPA"). Although installation of guzzlers and vegetation treatment was initially projected to occur in 2010, BLM did not issue a proposed determination of NEPA adequacy ("DNA") for the Project until August, 2011. **Exhibit A**, DNA, Lila Canyon—Wildlife Habitat Enhancement and Bighorn Sheep Guzzlers (Price BLM, August 2011), attached. The Mitigation Project involves "cut and limb" and "cut and pile" work to provide habitat enhancement. Both types of work required a Class 3 cultural resource inventory which was not completed until June, 2011. **Exhibit B**, e-mail dated September 27, 2010, from BLM to Jay Marshall, attached. This inventory was required before BLM could issue the DNA regarding the Mitigation Project. Because of the delay in BLM approval, and concern that an early winter could present safety issues, UEI notified BLM that the mitigation project would be undertaken in Spring, 2012. **Exhibit C**, e-mail dated September 16, 2011, from Jay Marshall to BLM, Price Field Office. BLM is the federal agency authorized to approve the Mitigation Project on federal lands. DOGM is not a party to the Mitigation Project and does not have authority to enforce a timeline independent from that agreed to by BLM and UEI.

We appreciate your consideration of this information with respect to the upcoming informal conference.

Very truly yours,



Denise A. Dragoo

DAD:jmc
cc: Jay Marshall
Enclosures

EXHIBIT A

DNA, Lila Canyon—Wildlife Habitat Enhancement and Bighorn Sheep Guzzlers
(Price BLM August 2011)

**United States Department of the Interior
Bureau of Land Management**

**Determination of NEPA Adequacy
DOI-BLM-UT-G021-2010-0027-DNA**

August 2011

**Lila Canyon - Wildlife Habitat Enhancement
and Bighorn Sheep Guzzlers**

Location: The project area is located near Horse Canyon, approximately 20 miles south and east of Price, Utah. The closest mapped geographic place is Lila Point. The project area is in T16S, R14E, Sec 10 and 26 and is along the Little Park Road.

Applicant/Address: UtahAmerican Energy Inc.,
P.O. Box 910, East Carbon, UT 84520

Price Field Office
125 South 600 West
Price, Utah 84501
435-636-3600
FAX: 435-636-3657



Worksheet

Determination of NEPA Adequacy

U.S. Department of the Interior
Utah Bureau of Land Management

The signed CONCLUSION at the end of this worksheet is part of an interim step in the BLM's internal analysis process and does not constitute an appealable decision; however, it constitutes an administrative record to be provided as evidence in protest, appeals, and legal procedures.

OFFICE: Price Field Office

TRACKING NUMBER: DOI-BLM-UT-G021-2010-0027-DNA

CASEFILE/PROJECT NUMBER: None

PROPOSED ACTION TITLE/TYPE: Lila Canyon - Wildlife Habitat Enhancement and Bighorn Sheep Guzzlers

LOCATION/LEGAL DESCRIPTION: The project area is located near Horse Canyon, approximately 20 miles southeast of Price, Utah. The closest mapped geographic place is Lila Point. The general legal description for the habitat project area is T16S, R14E, Sec 10, at an elevation of 7400 feet, and surrounds existing sagebrush areas. The general legal description for the guzzlers is T16S, R14E, Sec 26, at an elevation of 6800 feet and is on an escarpment edge. (see attached maps)

APPLICANT (if any): UtahAmerican Energy Inc.
P.O. Box 910
East Carbon, UT 84520

A. Description of the Proposed Action and Any Applicable Mitigation Measures

These projects are part of the Lila Canyon Project Emery County, Utah described in the 2000 EA/FONSI/DR (UT-070-99-22), approved by BLM on October 27, 2000. The projects are to fulfill the mitigation/enhancement for displacement and direct disturbance of wildlife and vegetation loss, during the development and operation of the underground coal mine.

On page 27 of the EA it was stated "Wildlife Enhancement Projects - UEI would provide two rainfall water catchments to benefit bighorn sheep populations and habitat use within the area above the proposed mine site. These guzzlers would be installed by BLM and Utah Division of Wildlife Resources (UDWR) in suitable locations along the cliff-talus habitat south of the Lila Canyon area."

"In addition to this project, UEI would complete a vegetation treatment project within the affected area to increase small mammal populations, and thus increasing the forage capacity for area raptor populations. Project design would be provided by BLM and UDWR and involve treating and reseeding approximately 93 acres of habitat. The vegetation treatment would be designed to improve diversity and density of vegetation cover types and create a mosaic of treated and untreated areas to maximize benefits of edge for wildlife species."

Rainfall Water Catchments (Guzzler) mitigation

The purpose of this wildlife enhancement is to provide water for bighorn sheep. Springs and seeps, which are used by bighorns when flowing, could be disrupted by the coal mining activities. The guzzlers would replace those. The bighorn water catchments would not be available to livestock.

Description of Work: The Utah Division of Wildlife Resources has already purchased, installed, and is operating a bighorn sheep guzzler on privately owned land (UEI owned) near the mine portal and facilities. The location is north of the mine portal, on the opposite side of Lila Canyon, and the legal description for this guzzler is T16S, R14E, Sec 15 and is identified as the Lila Canyon Guzzler. This guzzler is now providing water to bighorn sheep in the immediate vicinity of the mine. UEI would compensate UDWR for the materials used for this existing guzzler; by purchasing the supplies and materials that could be used to construct another guzzler. In addition, UEI would be responsible for purchasing another guzzler. This would include all the parts and materials, including fencing materials to exclude livestock, to provide another guzzler in the immediate area. In total, UEI would purchase and deliver enough supplies, parts, and materials for 2 complete guzzlers. The materials would be delivered to the Utah Division of Wildlife Resources (UDWR). The guzzlers would be installed by BLM and UDWR. Attached is a photograph of the existing guzzler (Williams Draw) located on state land, which is very similar to the proposed installation, except that the guzzler would be painted to blend in with the landscape.

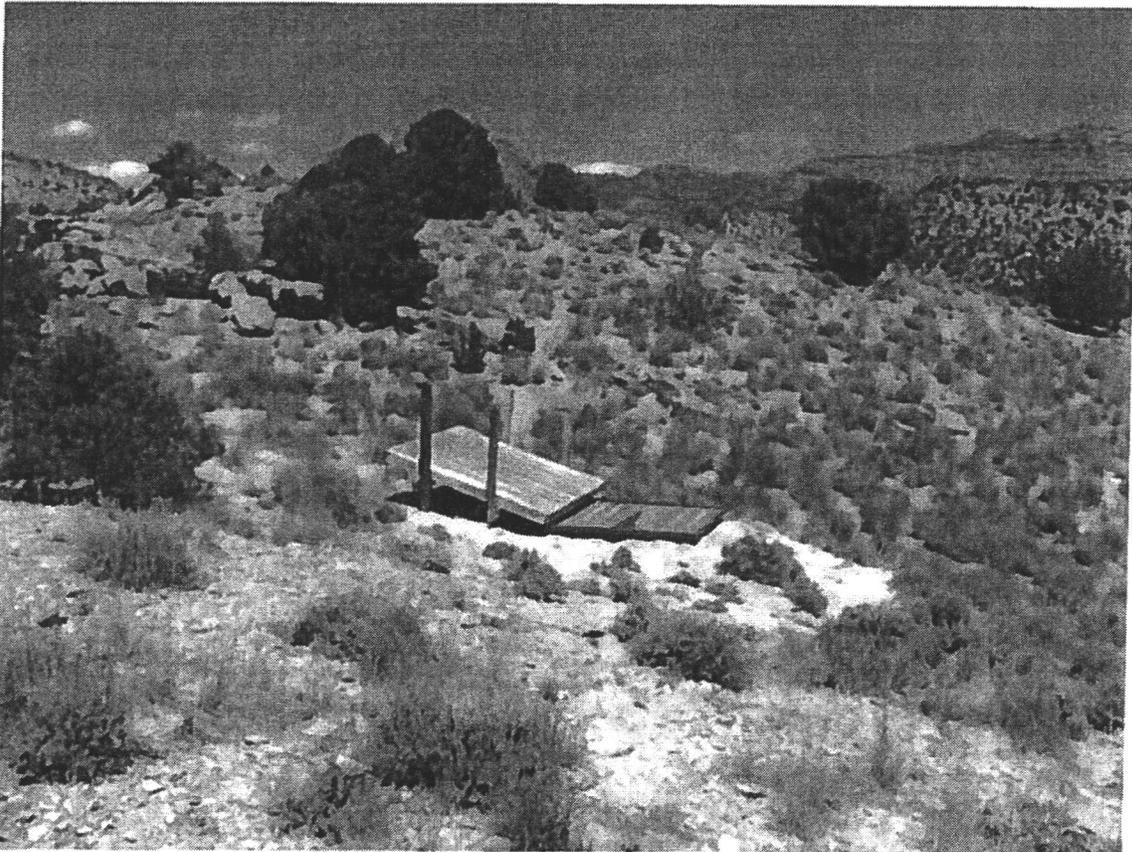


Figure 1 - Existing Williams Draw Guzzler, located on state land

If a helicopter is available, then the guzzler location in T16S R14E Sec 26 SW1/4NE1/4 (E558272 N4361795) is the preferred location (shown in Figure 2). By ground access, the next preferred location is in T16S R14E Sec 26 NE1/4 (E558582 N4361988) (shown in Figure 3). The springs and seeps (Stinky Springs) below these locations are heavily used by bighorn sheep. If these springs ceased to flow, then both of the locations may be needed to provide replacement water for the bighorn sheep.

Access for construction would be by traveling on the Little Park Road (a BLM system road) and then onto an old trail/road (which would become an administrative access road for this project), which had been used in the past for access to coal mine test drill holes, and then by using the Little Park Wash bottom. After construction, the visible tracks would be drug out or raked out, as specified by the BLM. In addition, the guzzler, including the apron would be painted a non-reflective color to blend in with the surrounding landscape. A fence would have to be added around the guzzler to keep livestock from drinking the water in the guzzler location shown in Figure 3.

Both of these proposed guzzler locations are in non-WSA lands with wilderness characteristics. None of the guzzler locations are in WSAs.



Figure 2 - Proposed guzzler location is on the point, in the center of the photo.

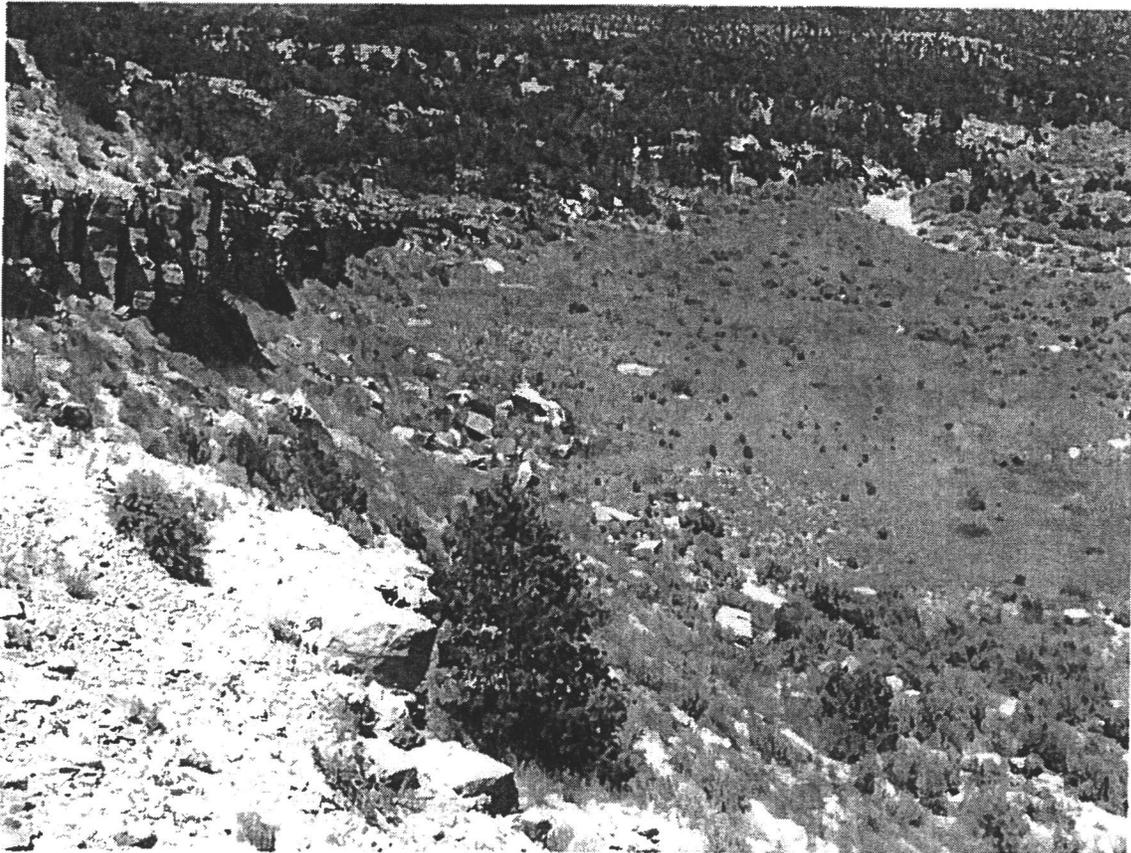


Figure 3 – Second location for a guzzler, with the guzzler being placed on the slope above the flat.

Vegetation treatment project

The purpose of this enhancement project is to increase the habitat (security cover) for small game (rabbits, mice, and other small mammals). Brush piles provide more security for rabbits, thereby increasing the numbers of rabbits, which provide more food for foraging raptors. The traffic on the coal haul road could disturb raptors from hunting next to the road. The road and mine facilities are placed on top of habitat that would have produced small game that would have been food for raptors. The vegetation treatment project would be located in areas with fewer disturbances and the productivity of small game would be enhanced. UEI would be responsible for contracting and completing this part of the project.

General Description of Work: The two units are approximately 93 acres in total. Only green Pinyon Pine and Juniper trees would be treated. All trees and shrubs not identified as Pinyon Pine or Juniper shall be designated as leave trees. Most of the area (77 acres) would be treated by hand crews cutting, limbing, and then leaving the trees and limbs. The loose accumulations of limbs and trunks would be left as is (in a loose pile) and would not be burnt. In a smaller subset of the units, some of the piles could be burned to reduce the fuel loading. This unit (16 acres) would be treated by hand crews cutting and piling. No heavy equipment would be used, with the crews walking on the ground and forming the piles by hand. Only green Pinyon Pine and Juniper trees would be treated. About half of the piles would be left as is and would not be burned. The remaining piles could be burned by the BLM, in areas where the BLM has decided the fuel load is excessive. None of these units are in WSAs or non-WSA lands with wilderness characteristics.



Figure 4 - Cutting and limbing is planned for trees surrounding the sagebrush opening in this location.

Detailed Work Description: *Cut and Limb*

Specific Description of Work: This unit would be treated by hand crews cutting, limbing, and then leaving the trees and limbs. The loose accumulations of limbs and trunks would be left as is (in a loose pile). All green Pinyon Pine and Juniper trees, up to a bole diameter of 16 inches, measured at the root collar, within the project boundaries, shall be completely severed from the stump(s). Stump height shall not exceed 6 inches measured on the uphill side. No live or dead limbs shall be left on the stump of cut trees. All main branches, limbs, or stems shall be cut from the severed trunks of the trees. The loose accumulations of limbs and trunks would be left as is. Both ends of the severed trunk shall be resting on the ground. All small green Pinyon Pine and Juniper trees standing taller than 24 inches shall be completely severed from the stump(s). All trees and shrubs not identified as Pinyon Pine or Juniper shall be designated as leave trees. All large green or dead Pinyon Pine and Juniper trees, which are greater than a bole diameter of 16 inches measured at the root collar, are also leave trees. All leave trees would be left as is, not severed or limbed.

All trees cut, that are within 100 feet of the Little Park Road (the main access road), shall be pulled away from the road, limbed, and left there. The unit is approximately 77 acres in total, all on BLM-administered lands, with none on private or State of Utah lands. Reseeding is not planned, since there is a seed source from the existing shrubs, forbs, and grasses.

EXHIBIT B

E-mail dated September 27, 2011, from BLM to Jay Marshall

Marshall, Jay

From: Marshall, Jay
Sent: Friday, September 16, 2011 4:31 PM
To: dwaller@blm.gov; Steve_Rigby@blm.gov; 'Derris R. Jones'
Cc: Hibbs, David
Subject: Lila EA mitigation

Tracking:	Recipient	Read
	dwaller@blm.gov	
	Steve_Rigby@blm.gov	
	'Derris R. Jones'	
	Hibbs, David	Read: 9/16/2011 5:16 PM

Gents:

Because of the length of time projected to complete the EA mitigation project, and the indications that we could have an early winter, UEI has decided to delay the EA mitigation project until spring. Rushing a job can result in a tendency to cut corners, take short cuts, and perform unsafe acts which can lead to accidents. We don't want to get into a race with the weather. The delay will provide additional time next spring allowing the contractor to complete the job in a safe timely manner. The delay will result in a better job with less exposure to accidents.

We have received bids and selected the likely contractor but have not awarded any contracts. UEI does not believe that it would be a good situation to start the project this late in the fall then rush to try to complete the project before inclement weather sets in. UEI will use the delay to properly set-up vendors and contractors and to get the appropriate contract paper work in order.

UEI is committed to complete the project and we will be anxiously awaiting early spring so the project can be completed in an orderly and safe manner.

If you have any questions please give me a call.

Thanks

R. Jay Marshall P.E.
Chief Engineer/Project Manager
Lila Canyon Mine

435 888 4007 Office
435 650 3157 Cell

EXHIBIT C

E-mail dated September 16, 2010, from Jay Marshall to BLM

Dragoo, Denise

From: Marshall, Jay [jmarshall@coalsource.com]
Sent: Wednesday, December 21, 2011 12:57 PM
To: Dragoo, Denise
Subject: FW: Cultural Resource Inventory for Wildlife Enhancement - Lila Canyon Project

Attachments: LilaProjectWildlifeAreas.jpg



LilaProjectWildlifeAr
eas.jpg (...)

Denise:

Additional letter from BLM not allowing UEI to proceed until NEPA is complete, which was not done until September of 2011.

Jay

-----Original Message-----

From: David_Waller@blm.gov [mailto:David_Waller@blm.gov]
Sent: Monday, September 27, 2010 3:19 PM
To: Marshall, Jay
Cc: eisec@preciscom.net; Karl_Ivory@blm.gov; Steve_Rigby@blm.gov; JoeHelfrich@UTAH.gov
Subject: Cultural Resource Inventory for Wildlife Enhancement - Lila Canyon Project

Jay and Mel,

Attached is a map showing the location of the proposed wildlife enhancement work for the Lila Canyon Project.

(See attached file: LilaProjectWildlifeAreas.jpg)

This wildlife habitat enhancement work is both "cut and limb" and "cut and pile". Both types of work would require a Class 3 cultural resource inventory.

Based upon that inventory the BLM would finish its NEPA analysis (a DNA is proposed), after approval of that document then UEI could proceed with implementing the enhancement work.

David

David L. Waller, 435-636-3624, Wildlife Biologist, BLM, Price Field Office, 125 South 600 West, Price, UT 84501-2833