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January 31, 2012

Director John Baza
Utah Division of Oil, Gas & Mining
1594 West North Temple, Suite 1210
Salt Lake City, UT 84116

Re: Request to Vacate Notice of Violation No. 10093 ("NOV")
Utah American Energy, Inc.
Lila Canyon Coal Mine, C\007\0013

Dear Director Baza:

On behalf of UtahAmerican Energy, Inc. ("UEI") we respectfully request that you vacate NOV 10093 issued by inspector Joe Helfrich on December 12, 2011 at the Lila Canyon Mine. The NOV alleges that UEI failed to follow the terms and conditions of Appendix 3-7, Lila Canyon Project, Wildlife Enhancement Project, Vegetation Treatment Project. NOV attached as Exhibit A. The Operator was required by January 12, 2012 to submit an amendment to Appendix 3-7 to revise the timeline for implementation of: (1) the Guzzler Mitigation Plan and (2) the Vegetation Treatment Plan. On January 4, 2012, UEI abated the violation by submitting the required timeline. However, UEI challenges the fact of violation because: (1) as confirmed by the Division's proposed assessment, UEI had completed the Guzzler Enhancement Project at the time the NOV was issued and, (2) the vegetation treatment timetable results from the Bureau of Land Management's (BLM's) 2000 EA/FONSI/Decision Record and the Division is without authority to enforce a timeline agreed to by BLM and UEI. Therefore the NOV should be vacated as to both of the proposed treatment plans.

I. The Vegetation Treatment Plan has been approved by BLM with revised timelines and DOGM is without authority to require compliance with the outdated schedule.

A. The Plan is Required by BLM's Decision Record.

The NOV improperly cites UEI for failure to implement the Vegetation Treatment Plan by October 15, 2011 when BLM and UEI have agreed to extend this schedule until the Spring of 2012. BLM required UEI to participate in the Vegetation Treatment Project

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Director John Baza
January 31, 2012
Page 2

to improve the habitat for small game to provide more food for foraging raptors. This requirement was incorporated in BLM's Decision Record issued on October 27, 2000. Lila Canyon Project, 2000 Environmental Assessment, Finding of No Significant Impact, Decision Record UT-070-99-22 (herein "BLM's Decision Record.") Following issuance of the Lila Canyon Mine Permit C/007/0013, UEI, BLM and the Utah Division of Wildlife Resources developed a site-specific Wildlife Enhancement Plan to address Guzzler Mitigation and Vegetation Treatment. See Lila Canyon Project Wildlife Enhancement Plan, April 2, 2010, attached as Exhibit B.

The Vegetation Treatment Project involves 93 acres on two units of BLM public lands. Two units (67 acres) require hand crews to cut and limb Pinyon Pine and Juniper trees. One additional unit (26 acres) will be treated by hand crews by cutting and piling vegetation. BLM may burn some piles and then reseed the burned area.

B. DOGM is Not Involved in the Mitigation Plan

The three units subject to the Vegetation Enhancement Plan are located on public lands subject to BLM jurisdiction. Because this area is BLM public lands the project was designed by BLM (not DOGM). UEI's role is to fund and administer the project including preparation of a cultural resource inventory, hiring the vegetation treatment contractor, purchasing seed and overseeing the project. Under this plan submitted as Appendix 3-7 only BLM, DWR and UEI (not DOGM) are involved in project design and implementation. DOGM is not listed as a contact agency under the approved Plan and does not have a designated role in the Vegetation Enhancement Project. See Plan, Exhibit B, pp. 5-6. The Vegetation Plan was initially proposed to be initiated by BLM in June 2010 with UEI's cultural survey completed in June 2010, hand cutting and limbing completed by October 2010 and BLM's burning and reseeded completed by October 2011. See Exhibit B. The Division of Oil, Gas & Mining ("DOGM") has no role in designing or implementing the plan or enforcing the time schedule. DOGM is not even listed as a contact agency. Exhibit B, Plan at 7. This fact was acknowledged by Joe Helfrich in the DOGM technical memo accepting the Wildlife Enhancement Plan for incorporation into the MRP, ("Responsibilities for the BLM, DWR and UEI are set forth in the Plan.").

C. BLM Delayed Approval of the Plan

Due to the numerous factual reviews and approvals required, the Wildlife Enhancement Project was delayed from the proposed schedule until September 17, 2011. BLM email and attachments set forth at Exhibit D. Joe Helfrich was notified by this email of BLM's delayed schedule. *Id.* The notice from BLM includes an interdisciplinary team checklist (which does not include DOGM) listing some 36 resources and issues considered by the agency and the 36 required signatures to "sign off" on the mitigation plan. See Exhibit D, Checklist, pp. 1-3.

Director John Baza
January 31, 2012
Page 3

Among these sign-offs is the August 29, 2011 approval by BLM of UEI's cultural resource inventory (U-11-MQ-0480b) *Id.* In addition, the Project could not proceed without the BLM's Determination of NEPA Adequacy, DOI-BLM-UT-G021-2010-0027-DNA, attached as Exhibit E. This DNA, required to satisfy the National Environmental Policy Act, was not issued until August 2011, more than one year after the proposed schedule set forth in MRP Appendix 3-7. DOGM is not in control of the schedule for approval and the NOV should be vacated.

D. DOGM was aware of Delay

On September 7, 2011, UEI confirmed receipt of BLM's approval of the Wildlife Habitat Enhancement Project and confirmed that the bid process had been initiated. Exhibit F, email from Jay Marshall dated September 7, 2011. UEI proceeded to implement the Guzzler Mitigation Project, but, on September 16, 2011, UEI notified BLM of its intention to delay implementation of the vegetation mitigation project due to the delayed approval, and safety concerns caused by wet conditions and anticipated early winter. Exhibit "G", email from Jay Marshall, dated September 15, 2011. These inclement weather conditions are confirmed by the September 13-14, 2011 Lila Canyon Inspection Report by Pete Hess confirming cool weather and monsoon rains. Exhibit "H", Inspection Report, September 13-14, 2011. In October, Jay Marshall confirmed the delay in the schedule with Pete Hess. Exhibit "I", email exchange between Jay Marshall and Pete Hess, October 28-29, 2011.

On November 9, 2011 the DOGM sent a letter to UEI confirming the cost of materials to be purchased by UEI for the Guzzler Mitigation Project and encouraging UEI to complete the mitigation projects. Exhibit J, letter date November 9, 2011 from DOGM to Jay Marshall. On December 6, 2011 Mr. Helfrich contacted Jay Marshall and UEI confirmed that although the Guzzler mitigation was proceeding, the schedule for BLM and UEI's vegetative treatment project was delayed until Spring of 2012. Exhibit "K", Inspector's Statement, December 21, 2011. Despite being specifically informed of BLM's delayed approval and receiving notice of the revised schedule, Inspector Joe Helfrich issued the NOV on December 12, 2011. Exhibit "A". The Division's Proposed Assessment for the NOV was issued on January 10, 2012, Exhibit "L".

II. Conclusion.

In sum, the outdated timelines set forth in Appendix 3-7 had been revised by BLM and UEI in September 2011 well prior to the issuance of the NOV in December 2011. The project was delayed due to the numerous approvals required by BLM to undertake the project. UEI could not undertake the project until critical cultural resource surveys and the DNA were completed. UEI and BLM have agreed to a new schedule and will commence the vegetation plan in the Spring of 2012. UEI notified the Division of the revised schedule, caused by the delay in BLM approvals and concern that an early winter could present safety issues for the crew

Director John Baza
January 31, 2012
Page 4

performing the cut and limb project. BLM not DOGM is the agency authorized to design, approve and implement the Vegetation Enhancement Project on BLM public lands. DOGM is not a party to the mitigation plan and does not have authority to enforce a timeline independent from that agreed to by BLM and UEI. Therefore, the fact of violation must be vacated.

We appreciate your consideration of this information during the informal conference.

Very truly yours,

Snell & Wilmer



Denise A. Dragoo

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Enclosures

cc: Jay Marshall (w/encs.)