



GARY R. HERBERT  
Governor

GREGORY S. BELL  
Lieutenant Governor

# State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA  
Division Director

Outjoins  
C0070013

# 3988

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March 26, 2012

CERTIFIED MAIL  
70101670000148103263

R. Jay Marshall  
UtahAmerican Energy, Inc.  
PO Box 910  
East Carbon, UT 84520-0910

SUBJECT: FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR NOV 10093 UTAHAMERICAN ENERGY INC., HORSE CANYON MINE C/007/0013.

Dear Mr. Marshall:

On January 31, 2012 an Informal Conference was held at the Utah Department of Natural Resources to review the fact of violation and assessment for Notice of Violation ("NOV") No. 10093. As a result of a review of all pertinent data and facts, including those presented in the Informal Conference, the attached document constitutes the Findings of Fact, Conclusions of Law, and Order ("ORDER").

Within fifteen (15) days of your receipt of this ORDER, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so you must escrow the assessed civil penalty with the Division of Oil, Gas, and Mining within thirty (30) days of receipt of this ORDER, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right to further recourse. Your written appeal may be filed with Julie Ann Carter, Board Secretary, P.O. Box 145801 Salt Lake City, UT 84114-5801. If you have questions regarding the filing, she can be contacted at [juliecarter@utah.gov](mailto:juliecarter@utah.gov) or (801) 538-5277.

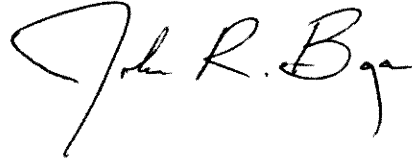
If no timely appeal is made, the total assessed civil penalty of \$374.00 must be tendered within thirty (30) days of your receipt of this ORDER. Please remit payment to the Division of Oil, Gas and Mining, c/o Vickie Southwick 1594 West North Temple Suite 1210, Salt Lake City, Utah 84116.



Page Two  
UtahAmerican Energy, Inc.  
March 26, 2012

If you have questions or concerns please contact me at (801) 538-5334.

Sincerely,

A handwritten signature in black ink that reads "John R. Baza". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

John Baza  
Director  
Division of Oil, Gas and Mining  
Informal Conference Officer

**BEFORE THE DIVISION OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

--ooOoo--

<b>IN THE MATTER OF THE</b>	:	
<b>INFORMAL CONFERENCE</b>	:	
<b>FOR THE FACT OF THE VIOLATION</b>	:	<b>FINDINGS OF FACT,</b>
<b>AND PROPOSED ASSESSMENT</b>	:	<b>CONCLUSIONS OF LAW,</b>
<b>FOR NOTICE OF VIOLATION</b>	:	<b>AND ORDER</b>
<b>NO. 10093 UTAHAMERICAN</b>	:	
<b>ENERGY INC., LLC.</b>	:	<b>CAUSE NO. C/007/0013</b>

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**PROCEDURAL HISTORY**

1. On December 22, 2011 UtahAmerican Energy Inc., ("UEI"), timely requested: 1) an informal conference before the Division of Oil, Gas and Mining ("Division") to review the fact of the violation for Notice of Violation No. 10093 ("NOV") issued to UEI for failure to comply with the terms and conditions of the permit; and 2) if the fact of violation is upheld an assessment conference immediately following the informal conference.
2. Pursuant to Utah Administrative Code R645-401-700, on January 31, 2012 at 2:00 p.m. at the Utah Department of Natural Resources Building, 1594 West North Temple, Salt Lake City, Utah, the Division held an Informal Conference to review the fact of the violation and the assessment for the NOV.
3. John Baza, Executive Director of the Division of Oil, Gas and Mining served as the Hearing Officer for the Informal Conference. Mr. Baza was represented by Emily E. Lewis, Assistant Attorney General.
4. Dana Dean, Associate Director of the Division of Oil, Gas and Mining facilitated the Division's presentation of arguments and witnesses. Ms. Dean and the Division were represented by Steven F. Alder, Assistant Attorney General.
5. Joe Helfrich, Division staff, presented arguments in support of the issuance of the NOV.
6. Daron Haddock, Assessment Officer for the NOV, presented arguments in support of the assessment of \$347.00 for the NOV.
7. Amanda Daniels, Division hydrologist and Earlene Russell, Administrative Assistant, were also present on behalf of the Division.

8. R. Jay Marshall was present on behalf of UEI. Mr. Marshall was represented by counsel, Denise Dragoo of Snell & Wilmer, LLC.
9. In early March 2012 the parties verbally stipulated to extending the 30 day deadline established in Utah Admin. Code R645-401-730 for issuing this ORDER.

### FINDINGS OF FACT

Based on information provided at the Informal Conference, statements presented by those speaking, and information in Division files, I make the following Findings of Fact.

10. The interest of the Division is to ensure Division files, including approved permit applications, adequately reflect conditions at a mine site so that the operator, Division, and public are equally informed about current operations and operator obligations.
11. UEI, either directly or through subsidiary companies, holds four coal permits with the Division: Horse Canyon/Lila Canyon Mine C/007/0013; Centennial Mine C/007/0019; Crandall Canyon Mine C/015/0032; and the West Ridge Mine C/007/0041.
12. UEI has had substantial interactions with the Division, Division personnel, and Division rules and regulations.
13. On May 18, 2007 the Division approved UEI's mining permit C/007/0013 ("permit") for the Horse Canyon Mine ("mine").
14. In May 2007 the Division approved a Mining and Reclamation Plan ("MRP") for the mine. To account for impacts to wildlife from the mine, page 18 of Chapter 3 of the MRP requires UEI to install two guzzlers for wildlife and that  

"[t]he overseeing agency for the EA mitigation/enhancement will be the BLM. The implementation dates, and project locations will not be determined until the BLM notice to proceed is given, after permit approval. The Permittee will submit the BLM mitigation plan as an Appendix to this volume within one year of the initial mine construction. The BLM plan will include: project goal, expected benefits, projected procedures, company commitment, implementation dates, project location and agencies contacts . . ."
15. On May 16, 2010 UEI submitted to the Division "Lila Canyon Project Wildlife Enhancement: April 2, 2010," otherwise known as the BLM mitigation plan. This BLM mitigation plan was jointly developed by UEI, the BLM, and the Utah Division

of Wildlife Resources (“DWR”). The Division was not a participating agency in the development of the original BLM mitigation plan.

16. On June 16, 2010 the Division incorporated the BLM mitigation plan as Appendix 3-7 of the MRP.
17. Once incorporated, Appendix 3-7 became part of the approved permit application.
18. Page 5 of Appendix 3-7 identified July 2010 as the deadline for DWR to provide UEI with a list of materials and supplies to construct the two guzzlers. These materials were to be purchased by UEI by August 2010 and the guzzlers were to be installed by DWR and the BLM after August 15, 2010.
19. Page 6 of the Appendix 3-7 identified October 30, 2010 as the completion date for the vegetation treatment project.
20. UEI did not complete the required mitigation actions by the deadlines established in Appendix 3-7.
21. At the expiration of these deadlines UEI did not submit an amendment to Appendix 3-7 indicating a new compliance deadline.
22. On September 7, 2011 David Waller of the BLM sent Jay Marshall of UEI an email indicating that the BLM mitigation plan was “ready to go.” The email included a completed Interdisciplinary Team Checklist (“Checklist”) listing the 36 requirements or approvals requiring completion before the BLM mitigation project could commence. The signatures associated with each completed task span from November 20, 2009 to August 31, 2011.
23. As indicated by the Checklist, UEI was aware that before it could commence the BLM mitigation plan, the participating agencies needed to complete these 36 time intensive tasks.
24. Division representative Joe Helfrich was included on the September 7, 2011 email.
25. On September 16, 2011 Jay Marshall sent a letter to the BLM indicating that because of the time needed to complete the BLM mitigation plan and the fear of an early winter, UEI would not commence the project until spring 2012.
26. The Division was not included on this September 16, 2011 email.
27. UEI did not amend the deadlines in Appendix 3-7 to reflect the delays involved in completing the tasks on the Checklist or the Spring 2012 start date.
28. On October 28, 2011 Division representative Pete Hess wrote an email to Jay Marshall inquiring about the status of the BLM mitigation plan. Jay Marshall

responded on October 31, 2011 stating the plan would commence in the Spring of 2012.

29. On November 9, 2011 Daron Haddock, Division Coal Program Manager, sent a letter to Jay Marshall, indicating UEI needed to take further action on Appendix 3-7 to complete its Wildlife Enhancement and Mitigation requirements. Specifically, Mr. Haddock provided a list of materials to construct 2 guzzlers and instructed UEI to deliver those materials to the DWR Price Office so the guzzlers could be installed. Mr. Haddock also indicated the vegetation treatment project "units have been marked, GPS'd and surveyed, and are now ready for the underground work."
30. The November 9, 2011 letter also stated "[a]s the timeline for completing these wildlife enhancement projects has already slipped, we encourage UEI to complete projects as quickly as possible to avoid enforcement actions."
31. UEI did not make any amendments to Appendix 3-7 to reflect that the guzzler mitigation project was proceeding or that UEI had taken any further actions on the plan.
32. On December 6 or 7, 2011 Jay Marshall indicated to Division representative Joe Helfrich that the BLM mitigation plan would not be initiated until the spring of 2012.
33. On December 13, 2011 Joe Helfrich issued NOV 10093 for "failure to comply with the terms and conditions of the permit, (Appendix 3-7, Lila canyon Project Wildlife Enhancement Project, Vegetation Treatment Project)."
34. The NOV listed Utah Code Ann. R645-300-143, "the permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program," as the relevant regulation violated.
35. The NOV required UEI "to submit an amendment to Appendix 3-7, (revised Wildlife Enhancement Project), of the approved MRP by no later than 5:00 PM, Thursday January 12, 2012. The amendment shall be complete and adequate and include at a minimum a revised timeline for the implementation of the Guzzler Mitigation and vegetation treatment not to exceed October 15, 2012."
36. On January 10, 2012 Pursuant to Utah Admin. Code R645-401, Division Assessment Officer Daron Haddock assessed, 1 history point, 8 total seriousness points, 8 negligence points, and zero good faith points totaling 17 points and a total assessed fine of \$374.00 for the NOV.
37. On January 4, 2012 UEI complied with the abatement deadline in the NOV and submitted to the Division an amended timeline for compliance with Appendix 3-7.
38. At the Informal Hearing UEI, through counsel requested the NOV be vacated because: 1) UEI had completed the Guzzler Enhancement Project at the time the

NOV was issued; and 2) Division is without authority to enforce a timeline agreed to by BLM and UEI.

39. On February 2, 2012 UEI submitted a supplemental response arguing that that because the BLM has not issued a formal Notice to Proceed on the BLM mitigation plan the NOV is premature and should be vacated.

### CONCLUSIONS OF LAW

40. UEI is a sophisticated operator who knows or should know the relevant Division rules and regulations.
41. Utah Admin. Code R645-300-142 states “the permittee will conduct all coal mining and reclamation operations only as described in the approved application . . .”
42. Utah Admin Code R645-301-111.200 provides that it is the responsibility of the permit applicant to provide to the Division all of the information required by R645-301-100.
43. Utah Admin Code R645-301-121 provides that a permit application will contain current information.
44. Utah Admin Code R645-301-142 provides for the submission of plans and maps as part of a permit application.
45. Pursuant to R645-300-124, barring an exception recognized in rule, all permit applications are to be available for public inspection.
46. The MRP is a public document on file with the Division and is intended to include the most recent information available to equally inform the Division, operator, and public about current mining operations and operator obligations.
47. Utah Admin Code R645-303-221 provides that at any time during the term of a permit, the permittee may submit to the Division . . . an application for Permit Change. *See also*, Utah Admin. Code R645-303-227, Permit amendment.
48. An operator should avail themselves of the permit amendment process to keep an approved permit application current.
49. Utah Admin. Code R645-400-320 authorizes the Division to issue a Notice of Violation if it “finds a violation of the State [Coal] Program or any condition of a permit . . .” (emphasis added).
50. Utah Admin. Code R645-400-323.200 allows for the Division to require remedial actions to abate the violation.

51. The Division can only enforce an approved permit application as it is written. At the time of the violation, the MRP stated UEI would complete the actions of Appendix 3-7 by fall of 2010.
52. As evidenced by extensive communication between the UEI, BLM, and DWR, in the Checklist, UEI was aware it would require substantial time beyond that identified in Appendix 3-7 to complete the BLM mitigation plan.
53. Under these circumstances, a prudent operator would have sought to amend Appendix 3-7 to reflect delays in compliance with the BLM mitigation plan.
54. As UEI is a sophisticated operator, UEI knew or should have known it had the burden to amend the MRP to reflect the anticipated delays in meeting the deadlines established in Appendix 3-7 mitigation schedule.
55. While UEI has made efforts to comply with the required actions of the BLM mitigation plan, it has not made corresponding efforts to amend the MRP to reflect these actions or to update the MRP to reflect delays in the BLM mitigation schedule.
56. Under Utah Code Ann. R645-400-320 the Division has authority to enforce the deadlines or require amendment to the deadlines of Appendix 3-7. Even if the Division was not involved in the design or implementation of the original BLM mitigation plan, once the plan was incorporated into the MRP as Appendix 3-7 it became part of the approved application and under the regulatory authority of the Division.
57. Under Utah Admin. Code R645-300-142 UEI must "conduct all coal mining and reclamation operations only as described in the approved application . . ." UEI has failed to comply with the deadlines as stated in the approved application and the NOV appropriately required amendment
58. While the Division always encourages communication between its representatives and operators, UEI's communications with Division personnel are not a substitute for making the necessary publically viewable amendments to the MRP.
59. UEI's contentions that UEI has not received the BLM formal Notice to Proceed with the mitigation plan does not cure UEI's failure to amend the MRP to reflect this delay.

### **ORDER**

1. The fact of the violation for NOV 10093 will stand due to the failure of UEI to amend Appendix 3-7 of the MRP to reflect delays in compliance with BLM mitigation plan.



2. UEI will receive 0 Good Faith points for normal compliance for an easy abatement situation. The total points assessed for the violation will remain at 17. The total assessed fine will remain at \$374.00

### **RIGHTS OF APPEAL**

This ORDER may be appealed to the Board of Oil, Gas and Mining in accordance with the procedures set out in R645- 401-800 by filing a written petition for appeal with the Board within fifteen (15) days of receipt of the ORDER. To do so, you must escrow the assessed civil penalties with the Division within thirty (30) days of receipt of this ORDER, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right to further recourse.

SO DETERMINED AND ORDERED this 26<sup>th</sup> day of March 2012.



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John Baza, Director  
Division of Oil, Gas and Mining  
Informal Conference Officer

**CERTIFICATE OF SERVICE**

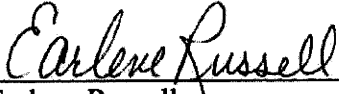
I hereby certify that I caused a true and correct copy of the foregoing Letter dated March 26, 2012 and FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR NOV 10093 UTAHAMERICAN ENERGY INC., HORSE CANYON MINE C/007/0013 to be mailed with postage prepaid, this 28<sup>th</sup> Day of March, 2012, to the following:

R. Jay Marshall  
Utah American Energy, Inc.  
PO Box 910  
East Carbon, UT 84520-0910

Denise Drago  
Snell & Wilmer, LLP  
15 West South Temple, Suite 1200  
Salt Lake City, UT 84101  
[Via Email]

Steven F. Alder  
Assistant Attorneys General  
Utah Division of Oil, Gas & Mining  
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Salt Lake City, UT 84116  
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Emily E. Lewis  
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Earlene Russell  
Administrative Assistant  
March 28, 2012