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pR C/025/005 Incoming

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June 16, 2008

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

RE: Informal Conference – Coal Hollow Mine, C/025/0005

Dear Director Baza:

On behalf of Alton Coal Development, LLC ("**Alton Coal**"), we appreciate this opportunity to respond to your letter dated June 2, 2008 and to participate in the informal conference and public hearing in this matter. We agree with your conclusion that the Utah Division of Oil, Gas and Mining's ("**Division's**") determination of administrative completeness is a final decision which was not timely challenged. We also request that the Division limit its permit deliberations to those comments timely received. Following closure of the record on the informal conference, Alton Coal will respond to comments deemed by the Division to be timely and pertinent to its technical analysis of the proposed Coal Hollow Mine Permit Application, C/025/0005.

I. PROCEDURAL OBJECTIONS – INFORMAL CONFERENCE

Alton Coal continues to object to any public comments or requests to participate in the informal conference which were not timely received by the Division by May 16, 2008, the date the public comment period ended for the mine permit application.[1] Pursuant to R645-300-123.100 and 130, comments were to be submitted and an informal conference sought within the 30-day public comment period following last publication of notice in the *Southern Utah News* on April 16, 2008. In addition, Alton Coal objects to any public comments which exceed the scope of those issues outlined in timely written objections to the permit. R645-300-123.100 requires the person requesting the informal conference to "summarize the issues to be raised by the

[1] This objection supplements Alton Coal's protests set forth in the enclosed letters to the Division from Snell & Wilmer L.L.P. dated May 23, 2008, and May 27, 2008.

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requestor at the conference." Alton Coal also objects to the Division's consideration of any comments related to the Highway 89 corridor and transportation issues which are not within the jurisdiction of the Division. To comment and request an informal conference, a person must have an interest which is adversely affected by the Division's decision on the mine permit application. Utah Code Ann. § 40-10-13(2)(a); R645-300-123.100. Transportation impacts on the Highway 89 corridor are not among the criteria which can be considered by the Division in reviewing and approving a mine permit application under Utah Code Ann. § 40-10-11.

Finally, Alton objects to the untimely comments and request for informal conference submitted by the Southern Utah Wilderness Alliance ("**SUWA**") on May 22, 2008, after the public comment period closed on May 16, 2008. SUWA claims to be submitting their comments in response to the agency notification of administrative completeness under R645-300-121.300. However, SUWA is not a governmental agency and should not be singled out as the only member of the public to receive special treatment by being allowed to comment after closure of the public comment period on May 16, 2008.

In addition, SUWA has submitted comments regarding Alton Coal's federal lease by application ("**LBA**") pending before the federal Bureau of Land Management ("**BLM**") which are beyond the scope of the Coal Hollow Mine permit application being considered by the Division. The LBA for federal coal reserves involves issues of federal law such as compliance with the National Environmental Policy Act ("**NEPA**"), not applicable to the state-issued permit for the Coal Hollow Mine which is located exclusively on private lands.

Further, SUWA improperly attempts to "boot strap" agency comments filed with BLM over a year ago on the NEPA analysis of the federal LBA and presumes to submit them on behalf of an agency as though they were comments intended to be submitted by an agency regarding the Coal Hollow Mine Permit. This procedure is wholly inappropriate in that SUWA is not a governmental agency and should not be allowed to submit comments as a surrogate for these agencies. These comments were developed for a federal lease approval process separate from the state-issued mine permit. Each of these agencies was notified of the Division's determination of administrative completeness regarding mine permit C/025/0005, and only one, the U.S. Forest Service, chose to comment on the application. SUWA is attempting to submit untimely and irrelevant comments on behalf of these agencies contrary to the following provisions of R645-300-122.100 which only allow timely comments to be submitted by the agencies which prepared them for the purpose of commenting on the mine permit:

> Within 30 days of last newspaper publication, written comments or objections to an application for a permit . . . may be submitted to the Division by public entities notified under R645-300-121.300 with respect to the effects of the proposed coal mining and reclamation operation on the environment within their areas of responsibility (emphasis added).

SUWA cannot be allowed to supplement the record herein after the deadline for public comment with government agency comments which the agency did not prepare for this purpose and which the agency did not choose to submit to the Division.

In sum, Alton Coal objects to the consideration of any comments which are untimely, beyond the jurisdiction of the Division or not submitted by the governmental entity authorized to comment and requests that those comments be stricken from the Division's technical analysis of the Coal Hollow Permit Application C/025/0005.

II. PUBLIC ROAD RELOCATION

As a matter separate from the informal conference, the Division has simultaneously scheduled a public hearing today pursuant to R645-103-234 on the proposed relocation of Kane County Road 136.[2] Comments presented at the public hearing are limited to the issue of the public road relocation and the Division should not consider public comments regarding the permit application which relate to the informal conference and were not otherwise timely filed. *Compare* R645-300-123.100 (person requesting informal conference will submit timely comments and request for informal conference which summarizes issues to be raised at the conference) and R645-300-123.400 (informal conference may be used by the Division as the public hearing under R645-103-231 on proposed relocation or closing of public roads).

In this regard, Alton Coal seeks to strike as untimely SUWA's comments regarding Kane County Road 136. SUWA's comments relate not to the relocation of this public road, but to whether Kane County Road 136 should be included in the mine permit application. SUWA makes the incorrect and unsupported statement that the proposed realignment of Kane County Road 136 must be included within the mine permit area under the federal Surface Mining Control and Reclamation Act ("**SMCRA**") and the Utah Coal Mining and Reclamation Act ("**UCMRA**"). In fact, the realigned Kane County Road 136 is a "public road" exempt from the mine permit under the Division's July 3, 1995 public road policy.

Alton Coal is working with Kane County to realign 3.1 miles of County Road 136, currently located within the boundaries of the proposed mine permit, to a location on BLM lands outside of the permit area. The re-routed road is not intended as a coal haul road or for every day access to the Coal Hollow Mine. Rather, the relocation promotes public health and safety by rerouting the road outside of the mine area to prevent interaction of public traffic with mining activities and equipment. The realigned Kane County Road 136 is a Class B multiple use public road which is part of the Kane County and Utah State road system and should not be regulated under the mine permit nor subjected to reclamation requirements under the Utah Coal Program. The County Commission exercises sole jurisdiction and control of Kane County Road 136 pursuant to Utah Code Ann. § 72-3-103(4).

[2] Kane County Road 136 is also referred to as State Road 136 and as County Road K3900.

The findings issued by the Division pursuant to R645-103-234.400 must recognize that the realignment of this road is ultimately within the jurisdiction of Kane County and involves a right of way grant across public lands issued by BLM. The BLM right of way application is currently undergoing NEPA analysis and public comments for the environmental scoping process will be received by the BLM Kanab Field Office through June 22, 2008. Pursuant to R645-103-234, Alton Coal will obtain the necessary land use approvals from BLM and Kane County to realign the County Road 136. The Division does not issue such approvals for a public road. The relocated Kane County Road 136 will be maintained by Kane County and will remain a multiple use public road located outside the boundaries of the mine permit.

Once again, on behalf of Alton Coal, we appreciate your consideration in this matter.

Very truly yours,

Denise A. Dragoo

DAD:jmc
Enclosures
cc: Chris McCourt
Steve Alder, Esq.

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May 27, 2008

Mr. Daron Haddock
Utah Division of Oil, Gas and Mining
1594 West North Temple
Salt Lake City, Utah 84114

RE: Alton Coal Development, LLC – Coal Hollow Mine, C/025/0005

Dear Mr. Haddock:

On behalf of Alton Coal Development, LLC ("**Alton Coal**"), and in addition to the objection filed with Director John R. Baza on Friday, May 23, 2008, we continue to object to the Southern Utah Wilderness Alliance's ("**SUWA's**") untimely comments and request for informal conference on the pending Coal Hollow Mine Permit Application No. C/025/0005. The public comment period on the legal notice for the permit application ended on Friday, May 16, 2008. SUWA's comments and request for an informal conference were stamped "*Received*" by the Utah Division of Oil, Gas & Mining ("**Division**") on May 22, 2008. Pursuant to R645-300-123.100 and 130, SUWA must have submitted comments and sought the informal conference within the public comment period, i.e., no later than Friday, May 16, 2008.

We understand that, consistent with R645-300-121.300, the Division provides certain governmental agencies until May 22, 2008 to provide comment. However, SUWA is not one of these governmental agencies and should not be singled out by the Division as the only member of the public to receive special treatment by being allowed to file comments after the public comment period has closed. The Division does not have discretion to allow SUWA to submit untimely comments, to request an informal conference or to participate in an informal conference when its comments and request were untimely. R645-300-123.100 and .300 specifically provide that a request for an informal conference "will... be filed with the Division no later than 30 days after the last publication of the newspaper advertisement required under R645-300-121."

In sum, we request that the Division disregard SUWA's untimely comments and requests. In the event that the Division holds an informal conference, SUWA should not be allowed to participate because they have failed to comply with the requirements of the Utah Coal Program. We appreciate your consideration in this matter. Please contact me if you have further questions.

Very truly yours,

Denise A. Dragoo

DAD:jmc:8811849
cc: John R. Baza (via e-mail)
Chris McCourt (via e-mail)
Dana Dean (via e-mail)
Priscilla Burton (via e-mail)
Steve Alder, Esq. (via e-mail)

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May 23, 2008
Via E-Mail and Hand Delivery

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

RE: Alton Coal Development, LLC – Coal Hollow Mine, C/025/005

Dear Director Baza:

On behalf of Alton Coal Development, LLC ("**Alton Coal**"), we object to the Utah Division of Oil, Gas and Mining's ("**Division's**") proposal to hold an informal conference on the pending Coal Hollow Mine Permit Application No. C/025/005. The public comment period on the legal notice for the permit application ended on Friday, May 16, 2008. The only timely comments received by the Division which request an informal conference address matters related to the Highway 89 corridor and transportation issues which are not within the jurisdiction of the Division.[1] Pursuant to Utah Code Ann. § 40-10-13(2)(a), and implementing rules at R645-300-123.100, to comment and request an informal conference, a person must have an interest which is adversely affected by the Division's decision on the application. Impacts on the Highway 89 corridor are not matters which are addressed by the Division's decision regarding the pending coal mine permit application. In addition, pursuant to R645-300-123.130, the requestor must have sought the informal conference within the public comment period, i.e., no later than Friday, May 16, 2008.[2]

Should the Division go forward with the informal conference over the objection of Alton Coal, the applicant further requests that, consistent with R645-300-123.100, participants be limited to those parties who have requested an informal conference and to the issues raised in comments filed by those parties. R645-300-123.100 requires that the person requesting a conference will "summarize the issues to be raised <u>by the requestor</u> at the conference." Further, the Division is to provide the date, time and place of the conference "to the applicant and <u>other</u>

[1] E-mail from Eric C. Fawson dated May 2, 2008; e-mail from Bobbi Bryant dated May 2, 2008; e-mail from Peter and Louella McMahan dated May 8, 2008; e-mail from Brian Douglas dated May 15, 2008.
[2] Comments received by the Division from the Southern Utah Wilderness Alliance and other parties filed later than May 16, 2008, are untimely and these parties lack standing to request or participate in an informal conference.

parties to the conference" and is then required to advertise the schedule two weeks prior to the informal conference. The Division is only required to accept statements from "any party to the conference." *Id.* Clearly, according to the Division's rules, only those parties requesting an informal conference have standing to participate at the conference and must limit their statements to those issues summarized in their request.

Finally, should the Division go forward with the informal hearing over the objection of Alton Coal, the applicant requests that the informal conference be held separate from any public hearing required under R645-103-234 on the proposed relocation of County/State Road 136. The relocation of this road is within the jurisdiction of Kane County and involves a right of way grant across public lands to be issued by the federal Bureau of Land Management ("**BLM**"). Pursuant to R645-103-234, Alton Coal will obtain necessary approvals from these entities to relocate the road. The Division does not issue such approvals regarding a public road. Therefore, the applicant requests that the Division designate Kane County as the appropriate entity for holding a public hearing regarding the relocation of the road. This procedure was recently followed by the Division with respect to a public road impacted by the Horse Canyon Mine, Lila Canyon Extension, C/007/0013. By letter dated August 6, 2007, the Division delegated Emery County the duty of providing an opportunity for public hearing pursuant to R645-1-3-234, copy attached.

We appreciate your consideration in this matter. Please contact me if you have further questions.

Very truly yours,

Denise A. Dragoo

DAD:jmc:8807405
Attachment
cc: Chris McCourt (via e-mail, with attachment)
Daron Haddock (via e-mail, with attachment)
Dana Dean (via e-mail, with attachment)
Priscilla Burton (via e-mail, with attachment)
Steve Alder, Esq. (via e-mail, with attachment)

0091

State of Utah
DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil Gas and Mining

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

August 6, 2007

Drew Sitterud, Chair
Emery County Commission
P.O. Box 629
Castle Dale, Utah 84513

Re: Delegate Emery County Process to Provide Opportunity for Public Hearing – Public Road EC 126, Horse Canyon Mine, Lila Canyon Extension, C/007/0013, Outgoing File

Dear Commissioner Sitterud:

This letter is sent in order to delegate to Emery County and/or its Planning Commission the process of providing an opportunity for a public hearing under the Utah coal mining rules at R645-103-234. The Division may delegate this responsibility for the purposes of determining "if the interests of the public and affected landowners will be protected from coal mining and reclamation operations", which are proposed to be conducted with 100 feet of Public Road EC 126 at the Lila Canyon Extension of the Horse Canyon mine.

Following is a proposed notice that would be placed in a newspaper of general circulation in the affected locale at least two weeks prior to any hearing:

NOTICE OF PUBLIC HEARING

Notice is hereby provided that UtahAmerican Energy Inc. intends to conduct coal mining and reclamation operations within 100 feet of EC 126, a public road in Emery County. A Public Hearing of the Emery County Planning Commission will be held on [date] at [time & location] for the purpose of determining whether the interests of the public and affected landowners will be protected. Pursuant to Utah Administrative Code R645-103-234, the Utah Division of Oil, Gas and Mining identifies the Emery County Planning Commission as its designated public roads authority to receive comments from the public and affected landowners.

If you have any questions, please call me at 801-538-5306 or e-mail me at maryannwright@utah.gov.

Sincerely,

Mary Ann Wright
Associate Director, Mining

cc: Ray Peterson, Emery County
Jay Marshall, UtahAmerican Energy, Inc.
Denise Dragoo, Snell and Wilmer
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