Denise A. Dragoo (0908)
James P. Allen (11195)
SNELL & WILMER L.L.P.
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101
Telephone: 801-257-1900
Facsimile: 801-257-1800

Bennett E. Bayer *(Pro Hac Vice)*
LANDRUM & SHOUSE LLP
106 West Vine Street, Suite 800
Lexington, KY 40507
Telephone: 859-255-2424
Facsimile: 859.233.0308

Attorneys for Permittee
Alton Coal Development, LLC

FILED
OCT 15 2013
SECRETARY, BOARD OF
OIL, GAS & MINING

BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

UTAH CHAPTER OF THE SIERRA CLUB, et al, Petitioners, vs. UTAH DIVISION OF OIL, GAS & MINING, Respondent, ALTON COAL DEVELOPMENT, LLC and KANE COUNTY, UTAH, Respondent/Intervenors.	**MOTION FOR LEAVE TO CONDUCT DISCOVERY – AWARD OF FEES AND COSTS** Docket No. 2009-019 Cause No. C/025/005

Alton Coal Development, LLC ("**Alton**" or "**ACD**") moves the Utah Board of Oil, Gas and Mining ("**Board**"), pursuant to Utah Code § 63G-4-205, Utah Admin. Code R641-105-300 and R641-108-900, for an Order allowing ACD to conduct discovery of Petitioners Utah Chapter of the Sierra Club, Natural Resources Defense Council, Southern Utah Wilderness Alliance, and

National Parks Conservation Association (collectively referred to herein as "Petitioners") specifically related to Alton's proposed petition for an award of fees and costs in this matter. Copies of proposed Interrogatories and Request for Production of Documents are attached. Alton further requests leave to take oral depositions of each Petitioner, together with depositions of persons identified during written discovery. The attached Memorandum of Points and Authorities explains that good cause exists for Alton's request. A proposed Order Granting Leave to Conduct Discovery and setting forth the discovery schedule is also attached for the Board's consideration.

SUBMITTED this 15th day of October, 2013.

SNELL & WILMER, LLP
Denise A. Dragoo
James P. Allen

LANDRUM & SHOUSE LLP
Bennett E. Bayer (*Pro Hac Vice)*

Attorneys for Alton Coal Development, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October, 2013, I e-mailed a true and correct PDF copy of the foregoing **MOTION FOR LEAVE TO CONDUCT DISCOVERY – AWARD OF FEES AND COSTS** to the following:

Stephen Bloch, Esq. (steve@suwa.org)
Southern Utah Wilderness Alliance

Walton Morris, Esq. (wmorris@charlottesville.net)
Utah Chapter of the Sierra Club

Sharon Buccino, Esq. (sbuccino@nrdc.org)
Michael E. Wall, Esq. (mwall@nrdc.org)
Jennifer A. Sorenson, Esq. (jsorenson@nrdc.org)
Natural Resources Defense Council

Michael S. Johnson, Esq. (mikejohnson@utah.gov)
Steven F. Alder, Esq. (stevealder@utah.gov)
Kassidy Wallin, Esq. (kassidywallin@utah.gov)
Assistant Attorneys General

James Scarth, Esq. (attorneyasst@kanab.net)
Kent Burggraaf, Esq. (kentb@kane.utah.gov)
Kane County Attorney

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BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

UTAH CHAPTER OF THE SIERRA CLUB, et al, Petitioners, vs. UTAH DIVISION OF OIL, GAS & MINING, Respondent, ALTON COAL DEVELOPMENT, LLC and KANE COUNTY, UTAH, Respondent/Intervenors.	**ALTON COAL DEVELOPMENT, LLC'S MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO CONDUCT DISCOVERY – AWARD OF FEES AND COSTS** Docket No. 2009-019 Cause No. C/025/005

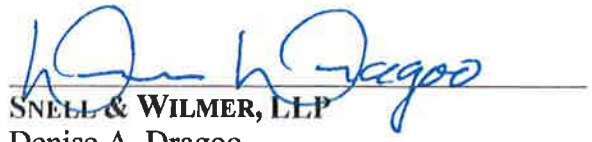
Alton Coal Development, LLC ("**Alton**" or "**ACD**") submits this Memorandum in support of its Motion for Leave to Conduct Discovery – Award of Fees and Costs in the above-captioned matter before the Utah Board of Oil, Gas and Mining ("**Board**").

The Board's rules provide that a party seeking discovery against any other party must seek the Board's permission by submitting an appropriate motion. Utah Admin. Code R641-108-900. The Board may authorize discovery upon a showing of good cause. *Id.* This Board has never had occasion to rule on what facts and circumstances constitute "good cause" for purposes of discovery, and has observed that its "good cause" findings are heavily dependent on the facts of each individual case. *See* Bd. of Oil, Gas & Mining, *Order Concerning Discovery* 7 Dkt. No. 2007-015 (Sept. 7, 2007) (citing *Road Runner Oil, Inc. v. Bd. Of Oil, Gas & Mining*, 76 P.3d 692, 696 (Utah Ct. App. 2003).

The unique facts of this case justify Board approval of the discovery sought by Alton. This Board has determined that unpublished Rule B-15, adopted in 1981, governs all fee petitions in this matter. According to Rule B-15, to obtain an award of fees against Petitioners (individually or collectively), Alton must demonstrate that one or more Petitioners initiated or participated in the proceeding "in bad faith for the purpose of harassing or embarrassing the permittee." Alton will use the information developed through discovery to prepare its fee petition and to support allegations regarding Petitioners' purpose in initiating and pursuing its challenge to the Coal Hollow Mine permit. Alton seeks to investigate the purposes or motives of the Petitioners through appropriate discovery "to obtain full disclosure of relevant facts" to provide Alton with a reasonable opportunity to present their petition. R641-108-100.

In view of the foregoing, Alton respectfully requests that the Board grant its Motion for Discovery and enter the attached Order to authorize Alton to conduct discovery of Petitioners according to the Utah Rules of Civil Procedure.

SUBMITTED this 15th day of October, 2013.



SNELL & WILMER, LLP
Denise A. Dragoo
James P. Allen

LANDRUM & SHOUSE LLP
Bennett E. Bayer (*Pro Hac Vice)*

Attorneys for Alton Coal Development, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October, 2013, I e-mailed a true and correct PDF copy of the foregoing **ALTON COAL DEVELOPMENT, LLC'S MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO CONDUCT DISCOVERY – AWARD OF FEES AND COSTS** to the following:

Stephen Bloch, Esq. (steve@suwa.org)
Southern Utah Wilderness Alliance

Walton Morris, Esq. (wmorris@charlottesville.net)
Utah Chapter of the Sierra Club

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Michael E. Wall, Esq. (mwall@nrdc.org)
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James Scarth, Esq. (attorneyasst@kanab.net)
Kent Burggraaf, Esq. (kentb@kane.utah.gov)
Kane County Attorney

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

UTAH CHAPTER OF THE SIERRA CLUB, et al, Petitioners, vs. UTAH DIVISION OF OIL, GAS & MINING, Respondent, ALTON COAL DEVELOPMENT, LLC and KANE COUNTY, UTAH, Respondent/Intervenors.	**[PROPOSED]** **ORDER GRANTING DISCOVERY** Docket No. 2009-019 Cause No. C/025/005

Pursuant to Utah Code § 63G-4-205, Utah Admin. Code R641-108-900, and for good cause shown, the Board of Oil, Gas & Mining ("Board") hereby GRANTS THE MOTION of Alton Coal Development, LLC ("Alton"), for leave to conduct discovery in Alton's proposed petition for an award of fees and costs in this matter. Alton is permitted to conduct the following discovery of the Petitioners according to the applicable Utah Rules of Civil Procedure.

1. Alton may take written discovery of Petitioners in the form of the attached Interrogatories and Request for Production of Documents.

2. Alton will serve the Interrogatories and Request for Production of Documents on Petitioners within ten (10) days after issuance of this Order.

3. Petitioners will answer the Interrogatories and Request for Production of Documents within thirty (30) days from the date of service of the same.

4. Alton may take the oral depositions of Petitioners.

5. Alton may take the deposition of and obtain the production of documents from any other person identified during discovery.

6. Ten days after the issuance of this Order, Alton may begin to serve Notices of Deposition and any subpoena *duces tecum*.

7. Depositions are to be completed on or before ninety (90) days from the date of issuance of the Order.

8. The parties may by mutual agreement adjust any deadline or due date in this Order without Board approval.

SO ORDERED this _____ day of _____, 2013.

UTAH BOARD OF OIL, GAS & MINING

_____

Ruland Gill, Jr., Chairman

Denise A. Dragoo (0908)
James P. Allen (11195)
SNELL & WILMER L.L.P.
15 West South Temple, Suite 1200
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Telephone: 801-257-1900
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Attorneys for Permittee
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BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

UTAH CHAPTER OF THE SIERRA CLUB, et al, Petitioners, vs. UTAH DIVISION OF OIL, GAS & MINING, Respondents, ALTON COAL DEVELOPMENT, LLC, and KANE COUNTY, UTAH, Respondent/Intervenors.	**[PROPOSED]** **ALTON COAL DEVELOPMENT, LLC'S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS** Docket No. 2009-019 Cause No. C/025/0005

Pursuant to Utah Code § 63G-4-205, Utah Admin. Code R641-108-900 and Rules 33 and 34 of the Utah Rules of Civil Procedure (the "Rules"), and pursuant to the Order of the Board of Oil, Gas & Mining ("Order"), Alton Coal Development, LLC ("Alton") serves this First Set of Interrogatories and Request for Production to Petitioners Utah Chapter of the Sierra Club, Natural Resources Defense Council, Southern Utah Wilderness Alliance and National Park

Conservation Association (collectively, "Petitioners"), as set further herein. Please produce a copy of all documents responsive to these requests within thirty (30) days of the date of issuance of the Order at the offices of Snell & Wilmer, 15 West South Temple, Suite 1200, Salt Lake City, Utah 84101, during regular business hours. If a specific request results in a voluminous response, please make such response available in Salt Lake City, Utah for inspection and copying on that date.

I. DEFINITIONS

A. "You" or "your" shall mean Petitioners and any employees, staff, representatives and/or persons presently or formerly acting on its behalf.

B. "Alton" shall refer to Alton Coal Development, LLC, and any employees, agents, representatives and/or persons presently or formerly acting on its behalf.

C. "Division" shall refer to the Utah Division of Oil, Gas and Mining and any employees, agents, representatives and/or persons presently or formerly acting on its behalf.

D. "Document" or "documents" shall be given the broadest construction permitted under the Rules, and shall include without limitation: (1) all manner of written, typed, printed, reproduced, graphic, filmed and recorded material; (2) all information contained in the form of electronic mail and all information that exists in electronic or magnetic form; (3) all reports, data, information, articles, publications, agency findings, photographs, pictures, graphs, video tapes, maps, plans, agreements, contracts or other representations of anything concerning, describing, referring or relating, directly or indirectly, in whole or in part, to the subject matter of the discovery request at issue; (4) originals and all non-identical copies; and (5) all drafts, summaries, attachments and notes.

E. "Including" shall mean "including, but not limited to."

F. "And" and "or" shall be construed both conjunctively and disjunctively and shall mean whichever construction makes the request more inclusive. The singular form of a word shall be construed as also including the plural form of the word and vice-versa.

G. "Permit Application" shall broadly mean Alton's application for the Coal Hollow Mine Permit No. C/025/0005.

H. "Application" and "Board" shall be further defined pursuant to Utah Admin. Code R645-100-200.

I. "Communication" shall broadly mean and include any oral or written utterance, notation or statement of any nature whatsoever, including, but not limited to: documents, as that word is herein defined, correspondence, personal conversations, telephone calls, dialogues, discussions, interviews, consultations, facsimiles, e-mails, text messages, agreements and voice mail messages.

J. "Coal Hollow Mine" means the coal mine located on private lands near Alton, Utah, within the boundaries of Coal Hollow Permit No. C/025/005.

K. "Coal Hollow Permit," "Alton's permit," or "permit" shall mean the Permit Application Approval, Coal Hollow Permit No. C/025/005, issued by the Division to Alton Coal Development, LLC.

L. "Petitioner" or "Petitioners" shall mean each of the Petitioners and their affiliates including Utah Chapter of the Sierra Club, Natural Resources Defense Council, Southern Utah Wilderness Alliance and National Park Conservation Association.

M. "Request for Agency Action" or "RFAA" shall mean any administrative or judicial appeal of the Coal Hollow Permit, and federal or state permits related to the Coal Hollow Permit.

II. INSTRUCTIONS

A. For each request, each Petitioner is requested to produce all responsive documents in your possession, custody or control and please identify the request to which each responsive document relates.

B. For all responsive documents in electronic or magnetic form, please produce this material in both soft copy and hard copy form.

C. Unless otherwise stated in an individual request, each request for production set forth herein shall encompass the timeframe from January 1, 2008, to the present.

D. This request for production is a continuing request and any additional documents discovered or identified by you subsequent to the date of your response up to and including the time of the agency hearing shall be promptly furnished to the undersigned counsel for Alton.

III. INTERROGATORIES

INTERROGATORY NO. 1: Please provide names and addresses of all officers and board members on and since January 1, 2008.

INTERROGATORY NO. 2: Please provide the identity of any boards or committees that considered any motion or resolution to discuss or authorize action to be taken regarding the Alton permit, or the Coal Hollow Mine.

INTERROGATORY NO. 3: Please provide the names and titles of all persons who participated in the decision making process that authorized filing the RFAA or that otherwise

opposed the Alton permit or authorized any action regarding Alton or the Coal Hollow Mine. This includes the identity of any person who voted on any motion to authorize the action in a meeting; any person who made any decision to authorize the action without it being part of a committee or board decision; and any officers, directors or similar executive or staff individuals who individually authorized any action be taken.

INTERROGATORY NO. 4: Please provide the names and addresses of all experts consulted prior to the time that the decision was made to authorize action be taken against the Alton permit.

INTERROGATORY NO. 5: Please provide the names and addresses of all experts consulted after the time that the decision was made to authorize action be taken against the Alton permit.

INTERROGATORY NO. 6: Please provide the names and addresses of any consultants, marketers, public relations or public opinion researchers that have been: (i) utilized, hired or otherwise contacted or consulted by the Petitioners; and (ii) who either received or provided any information regarding Alton or the challenge to the Alton permit, or the Coal Hollow Mine from the Petitioner or prepare the same for the Petitioner.

INTERROGATORY NO. 7: Please provide the names and addresses of any contributors who donated specifically for the Alton permit opposition, or in response to fund raising materials specifically targeting Alton or the Coal Hollow Mine, or in any way referred to Alton.

INTERROGATORY NO. 8: Please provide the names and addresses of persons providing in-kind support to the permit opposition.

INTERROGATORY NO. 9: Please provide the names and addresses of persons who were and are the contact person for counsel, or who direct counsel as to the steps to be taken in the actions opposing the permit before the Board of Oil, Gas and Mining and the Utah Supreme Court.

IV. REQUESTS FOR PRODUCTION OF DOCUMENTS:

REQUEST NO. 1: Please provide any board agenda, minutes, and recordings from meetings in which the organization considered or approved bringing the RFAA, or any action involving Alton or the Coal Hollow Mine, including proposed written motions and resolutions.

REQUEST NO. 2: Please provide any resolutions approving the RFAA, or any action involving Alton or the Coal Hollow Mine, including minutes regarding discussions of the proposed motion or resolution and the voting outcome.

REQUEST NO. 3: Please provide reports, memoranda, correspondence, e-mails or writings of any kind discussing, approving or initiating the RFAA or any action involving Alton or the Coal Hollow Mine: (i) between members of the Petitioner organization; and (ii) between individuals providing advice, guidance or critique to the organization or that the organization received a copy.

REQUEST NO. 4: Please provide reports, memoranda, correspondence, e-mails or writings of any kind from experts consulted prior to the time that the decision was made by Petitioner to authorize that action be taken against the Alton permit or any action involving Alton or the Coal Hollow Mine.

REQUEST NO. 5: Please provide reports, memoranda, correspondence, e-mails or writings of any kind of all experts consulted after the time that the decision was made to authorize action be taken against the Alton permit or any action involving Alton or the Coal Hollow Mine.

REQUEST NO. 6: Please provide reports, memoranda, correspondence, e-mails or writings of any kind from any consultants, marketers, public relations or public opinion researchers that have been utilized, hired or otherwise provided Petitioners with any information regarding Alton or the challenge to the Alton permit or any action involving Alton or the Coal Hollow Mine.

REQUEST NO. 7: Please provide reports, memoranda, correspondence, e-mails or writings of any kind directing the claims to be raised in the RFAA or any action involving Alton or the Coal Hollow Mine.

REQUEST NO. 8: Please provide reports, memoranda, correspondence, e-mails or writings of any kind supporting the positions taken in the RFAA or any action involving Alton or the Coal Hollow Mine.

REQUEST NO. 9: Please provide grant proposals or requests related to the permit appeal before the Board of Oil, Gas and Mining and the Utah Supreme Court or any action involving Alton or the Coal Hollow Mine.

REQUEST NO. 10: Please provide Petitioners' grant proposals or requests related to Sierra Club's Beyond Coal program.

REQUEST NO. 11: Please provide correspondence, including newsletters and fundraising materials, discussing the Petitioners' organizations opposition to the Alton permit or any action involving Alton or the Coal Hollow Mine.

REQUEST NO. 12: Please provide correspondence to or from donors or other financial supporters of Petitioners relating to the Alton permit or any action involving Alton or the Coal Hollow Mine.

REQUEST NO. 13: Please provide board actions expressing a position regarding the Sierra Club's Beyond Coal campaign.

REQUEST NO. 14: Please provide correspondence with Petitioners' members, fundraising materials, and publications regarding the coal-mining industry.

REQUEST NO. 15: Please provide correspondence with Petitioners' members, fundraising materials, and publications regarding coal-fired electric power plants.

REQUEST NO. 16: Please provide correspondence between Petitioner, Petitioners' members and affiliates and Los Angeles Department of Water and Power, the City of Los Angeles, the Board and members of Intermountain Power Agency and any municipalities affiliated with Intermountain Power Project regarding coal supply agreements and/or coal supplied by the Coal Hollow Mine.

REQUEST NO. 17: Please provide Petitioners' postings on social media regarding the coal industry.

REQUEST NO. 18: Please provide social media postings referencing the Coal Hollow Mine.

REQUEST NO. 19: Please provide Petitioners' annual reports.

REQUEST NO. 20: Please provide all of Petitioners' television, radio and print advertisements since November 18, 2009.

REQUEST NO. 21: Please provide all Youtube media authored, posted, linked, or re-posted by Petitioners referencing the Coal Hollow Mine.

REQUEST NO. 22: Please provide all Youtube media authored, posted, linked, or re-posted by Petitioners referencing Sierra Club's Beyond Coal Campaign.

REQUEST NO. 23: Please provide all photographs of the Coal Hollow Mine taken or used by Petitioners as well as any editing or alteration of the photographs made or used by Petitioners.

REQUEST NO. 24: Please provide all information provided by Petitioners to any agency, organization, interest group, NGO, marketer, public relations or public opinion researcher regarding the Coal Hollow Mine, or Alton.

REQUEST NO. 25: Please provide all brochures, pamphlets, reports, letters, photographs, or other materials either created, published or disseminated by Petitioners discussing or referencing the Coal Hollow Mine or Alton.

Respectfully submitted this _____ day of _____, 2013.

_____

SNELL & WILMER, LLP
Denise A. Dragoo
James P. Allen

LANDRUM & SHOUSE LLP
Bennett E. Bayer (*Pro Hac Vice)*

Attorneys for Alton Coal Development, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2013, I e-mailed a true and correct pdf copy of the foregoing **ALTON COAL DEVELOPMENT, LLC'S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS** to:

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