



GARY R. HERBERT
Governor
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State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

MICHAEL R. STYLER
Executive Director

JOHN R. BAZA
Division Director

February 23, 2015

The Honorable Joseph G. Pizarchik, Director
Office of Surface Mining
1951 Constitution Avenue, N.W.
Washington, DC 20240

SUBJECT: NOTICE OF TERMINATION OF MOU BETWEEN OSM AND UTAH DOGM FOR EIS ACTIVITIES UNDER NEPA FOR STREAM PROTECTION RULEMAKING

Dear Director Pizarchik:

In September of 2010, the Utah Division of Oil, Gas and Mining (the Division) entered into a Memorandum of Understanding with the Office of Surface Mining Reclamation and Enforcement (OSM). The MOU designated the Division as a cooperating agency under the National Environmental Policy Act (NEPA) and the Council of Environmental Quality's (CEQ) regulations and guidance. Specifically, it established responsibilities for both agencies regarding preparation of the environmental impact statement (EIS) concerning OSM's ongoing stream protection rulemaking.

Both NEPA itself and CEQ's implementing regulations and guidance recognize the benefits of enhanced agency cooperation. The Division also recognizes the mutual benefit conferred by engaging federal agencies as a stakeholder in the regulatory process. Since signing the MOU however, the Division has become increasingly frustrated with OSM's reluctance or refusal to cooperatively engage with the Division. OSM has consistently failed in its obligations under the MOU and under CEQ regulation.

For instance, the Division understands from sources outside OSM that the draft stream protection rule and its associated draft EIS will be released this year. However, OSM has not contacted the Division about the EIS since January 2011, even though the review process has been ongoing. Additionally, OSM has never given the Division enough time to participate in a meaningful review of the EIS. As just one example of the compressed review schedule, OSM gave the Division only five business days to reply and comment on draft Chapter 3 of the EIS. The draft of that



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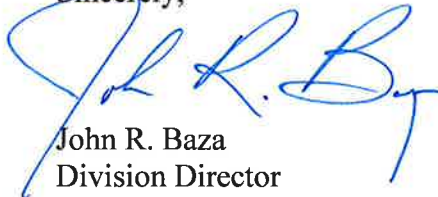
chapter was 961 pages long. As you know, it is impossible to provide substantive comments on a document of that length in such a constricted time period.

The benefits of cooperation envisioned by CEQ are nonexistent when OSM fails to provide a meaningful opportunity for the Division to actually cooperate. Because it has had no opportunity to contribute, the Division does not wish to ratify the draft EIS by signing on as a cooperating agency. Further, the Division wishes to remove its name from the EIS undertaking to protect the general public and Utah's citizenry from the incorrect assumption that the Division actually took part in the EIS's development.

As CEQ's guidance articulates, OSM's failure to engage the Division constitutes good cause to terminate the MOU and end the relationship. That said, the Division is hopeful that its experience in this case is merely an aberration. The Division hopes to cooperate with OSM in the future and remains open to future discussions and future collaboration assuming OSM were to provide meaningful opportunities for engagement.

For these reasons, please be advised that the Utah Division of Oil, Gas and Mining will terminate the referenced MOU on March 25, 2015. Also, please remove all references to the Division from the draft EIS.

Sincerely,



John R. Baza
Division Director

JRB:jrj:er

cc: Gregory E. Conrad, IMCC
Horst Greczmiel, CEQ
David Berry, OSM Western Region
Dana Dean, OGM

P:/Groups/Admin/JRB/OSM

