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VIA FIRST CLASS MAIL

March 24, 2006

Mary-Ann Wright  
Jeriann Ernstsén  
Utah Division of Oil, Gas and Mining  
1594 West North Temple  
P.O. Box 145801  
Salt Lake City, Utah 84114

*incoming  
C/007/013*

Re: Phased Identification and Evaluation  
Horse Canyon Mine, Lila Canyon Extension C/007/013

Dear Mary Ann:

This letter responds to brief conversations that I have had over the past few weeks with yourself, Jeriann, and Wayne Hedberg regarding DOGM's intention to rely on "phased identification and evaluation" (36 C.F.R. § 800.4(b)(2)) to avoid requiring UEI to conduct a comprehensive Class III inventory within APE II (as that term is used in DOGM's March 7, 2006 Supplemental Information letter to Native American tribes) for the proposed Lila Canyon mine. As a consulting party on this proposed undertaking, and in a good faith effort to keep DOGM apprised of our concerns, SUWA strongly disagrees that phased identification is appropriate in this circumstance. See 36 C.F.R. § 800.4(b)(2) (DOGM must take into account the views of consulting parties, among others, on the appropriateness of phased identification).

As the Advisory Council on Historic Preservation explain in the preamble to the Section 106 regulations:

This new section [800.4(b)(2)] is also intended to provide Federal agencies with flexibility when several alternatives are under consideration and the nature of the undertaking and its potential scope and effect has therefore not yet been completely defined. . . . Under this phased alternatives, Agency Officials are required to follow up with full identification and evaluation once project alternatives have been refined or access has been gained to previously restricted areas. Any further deferral of final identification would complicate the process and jeopardize an adequate assessment of effects and resolution of adverse effects.

65 Fed. Reg. 77698, 77719 (Advisory Council Historic Preservation; Protection of Historic Properties) (Dec. 12, 2000) (emphasis added). In short, the few, narrow circumstances described in Section 800.4(b)(2) and elaborated upon in the Advisory Council's preamble simply do not

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425 East 100 South  
Salt Lake City, Utah 84111  
Phone: 801-486-3161  
Fax: 801-486-4233  
Website: www.suwa.org

exist here. Rather, to fully comply with the letter and spirit of Section 106, DOGM should require that UEI conduct a Class III survey for all lands that may be subject to subsidence or other project related surface disturbance (direct or indirect). See 36 C.F.R. §§ 800.4 and 800.5.

In addition, because DOGM still has not provided the SHPO, native American tribes, or SUWA with any indication of whether DOGM believes that the proposed undertaking will – or will not – have an adverse effect on historic properties, it is premature for DOGM to cut-off contact with any tribe or consulting party based on their non-response to DOGM's correspondence to date.

Per 36 C.F.R. §§ 800.5 and 800.6, SUWA looks forward to reviewing DOGM's findings regarding the effects of the proposed undertaking on historic properties. Feel free to contact me with any questions regarding SUWA's analysis of Section 106's requirements: 486-3161 x.3981.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Stephen Bloch  
Staff Attorney

cc: Advisory Council on Historic Preservation  
State Historic Preservation Office  
Hopi Cultural Preservation Office  
National Trust for Historic Preservation