State of Utah

School and Institutional
TRUST LANDS ADMINISTRATION

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Minerals file
S/019/056

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April 26, 2004

Mr. Jerry Stocks
1581 Murphy Lane
Moab, Utah 84532

Re: Mineral Lease 48874-OBA

Dear Mr. Stocks:

Kevin Carter of this agency has asked me to respond to your letters dated April 12, 2004 to Thomas B. Faddies and John T. Blake of this agency. To summarize, you contend that the School and Institutional Trust Lands Administration ("SITLA") does not have legal authority to require you to contract for a cultural resources survey before commencing mining operations on the above-referenced state clay lease. We disagree.

As an initial matter, we note that SITLA's staff archaeologist, at our agency's expense, has visited the five acre parcel proposed in your small mine permit for archaeological resources, and determined that a cultural resources survey will not be required for any operations within the five acre area described in the Notice of Intent and Application to Commence Mining Operations filed with this agency on February 12, 2003. Therefore, so long as surface-disturbing operations are limited to that area, your claim that SITLA does not have authority to require cultural surveys is purely a philosophical dispute. John Blake of this office informed you by letter dated March 26, 2004 that the cultural resources survey requirement was being waived for the entire 5 acres, and that your project was approved subject to receipt of a mine permit from the Utah Division of Oil, Gas & Mining ("DOGM"). In light of the project approval, we do not understand your continued concern with this issue.

That said, we at SITLA believe that it is both legally justified and good public policy to ensure that the State's cultural heritage is not unknowingly destroyed by mining operations undertaken without prior investigation for the potential of cultural resources on affected lands. This is in keeping with the Utah legislature's declaration that the general public and the beneficiaries of the school and institutional trust lands grants have an interest in the preservation and protection of the state's archaeological resources and a right to the knowledge gained from scientific study of those resources. *Utah Code Ann.* § 9-8-301 (1). Our staff archaeologist has indicated that, in his twelve years of working with Utah's mineral industry, not one other mineral lessee has questioned the appropriateness of such investigation prior to surface disturbing activities.

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The possibility that a cultural resources survey might be required is clearly expressed in both the above- referenced state mineral lease agreement, which you signed on March 19, 2002, and SITLA's mineral regulations. The lease contains the following language:

ARTICLE III. APPLICABLE LAWS AND REGULATIONS

> This lease is issued pursuant to the provisions of Title 53C, Utah Code Annotated, 1953 as amended, and **subject to all valid Rules and Regulations and requirements adopted by the School and Institutional Trust Lands Administration**, and of the Board of Oil, Gas & Mining, applicable to the subject matter of this lease, **together with all requirements of ... the State Antiquities Act, Title 9, Chapter 8....**

(Emphasis added).

SITLA's mineral lease regulations quite clearly indicate that:

> **The agency may require the [mineral] lessee to: (a) provide a cultural, paleontological or biological survey on lands under mineral lease; and (b) be responsible for reasonable mitigative actions as specified by the agency ....**

Utah Administrative Code R850-20-2200(3).

The Legislature has required state agencies, before approving any undertaking, to take into account the effect of the undertaking on archaeological resources. *Utah Code Ann.* § 9-8-404. SITLA's cultural resources rules define an undertaking as a use of trust lands that can result in changes in character or use of historic properties. *Utah Administrative Code* R850-60-200(8). The obvious purpose of a cultural resources survey is to determine if such resources exist.

We understand that you claim that SITLA does not own state trust lands, and therefore cannot enforce R850-20-2200, which makes reference to lands "owned" by the agency. While this reference is admittedly inartfully drafted, the Utah Legislature has clearly delegated responsibility for management of state school trust lands to SITLA, *see, e.g. Utah Code Ann.* § 53C-1-201(1)(a). I have no doubt that a reviewing court would agree that our agency may apply the regulation to lands that it manages by statute notwithstanding the poor word choice in the regulatory language, particularly in light of the Legislature's commitment to protection of cultural resources on trust lands. Accordingly, if your future operations expand beyond the five acre site contained in your permit application, SITLA reserves the right to require a cultural resources survey, and mitigation if necessary.

In preparing this response, I have reviewed the voluminous and argumentative correspondence you have sent to this and other agencies about the cultural resources issue. As noted above, Mr. Blake's letter of March 26, 2004 gave you approval to proceed with the project, subject to your receipt of a mine permit from DOGM. While we absolutely respect your right to respond and comment on SITLA's activities in managing this lease and trust lands generally, it appears to us that additional correspondence on this issue will not be productive.

Sincerely yours,

John W. Andrews
Associate Director/General Counsel

cc: Kevin S. Carter
Thomas B. Faddies
John T. Blake
Kenny Wintch
Lowell Braxton, DOGM
Sen. Mike Dmitrich
Judy Carmichael, Grand County Council