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April

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
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Phone 800-227-8917
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RECEIVED
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DIV. OF OIL, GAS & MINING

June 12, 2014

Mr. Barclay Cuthbert
Vice President, Operations
U.S. Oil Sands, Inc.
Suite # 1600, 521 – 3rd Avenue SW
Calgary, Alberta T2P 3T3
CANADA

Dear Mr. Cuthbert:

The U.S. Environmental Protection Agency is in receipt of your April 15, 2014, response on behalf of U.S. Oil Sands, Inc. (U.S. Oil Sands), to the EPA's request that U.S. Oil Sands meet with EPA technical staff so that the EPA can better understand U.S. Oil Sands' proposed tar sands, bitumen extraction project in Uintah County, Utah. Specifically, the EPA wants to discuss potentially affected media such as air, surface and groundwater, and soils, as well as waste streams and any applicable permitting or other requirements in Indian country. Your response requested a list of specific questions that the EPA plans to discuss during our meeting, and our jurisdictional basis for asking them.

While we recognize U.S. Oil Sands has had some previous communications with the EPA, there still may be gaps in our data and understanding of the project and the potential applicability of various programs for which the EPA has responsibility. Moreover, our goal is to understand the proposed project comprehensively. The EPA believes it is far more efficient to meet in person to share information, at least at the initial stages, rather than to exchange letters containing a list of detailed questions, or for the EPA to send formal information requests pursuant to relevant statutes, such as the Resource Conservation and Recovery Act (RCRA).

Regarding your question concerning jurisdiction, the U.S. Oil Sands proposed project is located on land straddling the boundary of the Uintah and Ouray Reservation. Portions of the proposed project in Township 15S, Range 23E, Sections 35 and 36 are on the north side of the boundary and are within the Uintah and Ouray Reservation, while the parts in Township 15S, Range 24E, Sections 31 and 32 would be outside of the reservation. Land located within the Uintah and Ouray Reservation is Indian country, as that term is defined at 18 U.S.C. § 1151 and as held in *Ute Indian Tribe v. Utah*, 114 F.3d 1513 (10th Cir. 1997), *cert. denied*, 522 U.S. 1107 (1998). Please note that as defined by 18 U.S.C. § 1151, Indian country includes all reservation lands, including lands owned by non-members of the relevant tribes. The EPA implements federal environmental programs in Indian country, unless it has explicitly approved a tribe or state to do so. The EPA has not approved the Ute Indian Tribe or the state of Utah to implement any federal environmental regulatory program on Indian country lands within the Uintah and Ouray Reservation.

The EPA is in the process of making its first Bevill determination for tar sands development. In order to complete that determination, the Agency needs detailed information from U.S. Oil Sands regarding its

proposed process. We anticipate the proposed meeting will lead to further questions to provide the EPA the information necessary to make such a determination. Without that determination, U.S. Oil Sands, the EPA, the Tribe and the state of Utah may not be aware of applicable federal requirements regarding the management of solid and hazardous waste pursuant to RCRA. In addition, U.S. Oil Sands will be required to apply for a National Pollutant Discharge Elimination System (NPDES) industrial stormwater permit if its stormwater discharges have resulted in the discharge of reportable quantities of hazardous substances or oil, or if its stormwater discharges contribute to a violation of a water quality standard.

Please contact me at (303) 312-6468 to schedule a meeting between the EPA and U.S. Oil Sands, or if you have further questions.

Sincerely,

Joan Card
Senior Policy Advisor

cc: Mr. A. John Davis, Holland and Hart (*via email to: ajdavis@hollandhart.com*)
Gordon Howell, Chairman, Ute Indian Tribe
Manuel Myore, Director, Energy and Minerals Department, Ute Indian Tribe
Tom Fredericks, Fredericks Peebles & Morgan
Amanda Smith, Director, Utah Department of Environmental Quality
John Baza, Director, Utah Division of Oil, Gas and Mining