March 22, 2013

The Honorable Rob Bishop
123 Cannon House Office Building
Washington, D.C. 20515

Dear Representative Bishop,

On behalf of the Utah Mining Association (UMA), thank you for your letter of February 22, 2013 requesting a prioritized list of public lands issues we would like to see addressed. As you stated in your letter, too often the acrimonious debate over public lands issues has centered on the false choice between conservation and multiple-use. We agree the two are not mutually exclusive, and we applaud your effort to end the gridlock and bring a more reasoned, balanced approach to public land use in Utah.

As you know, mining is the beginning of the supply chain for everything our highly technological society uses or consumes on a daily basis. The federal government needs to enact policies and incentives that will ensure access to mineral deposits, reduce permitting delays and encourage investment and production of America's vast mineral resources to supply the strategic and critical metals and minerals necessary to create and sustain U.S. manufacturing jobs, a robust economy, energy security and our standard of living. It is within that context that we are pleased to offer the following suggestions.

I. Access to Public and National Forest System Lands

The number one priority for the mining industry regarding public and National Forest System lands (hereafter, public lands) management is access to public lands for mineral exploration. Of course, we feel the other items listed in this letter also are critically important, but without access to public lands for prospecting, exploration, development, mining, production and processing, everything else becomes moot.

Mineral deposits are rare and hard to find. Discovery, delineation and development of ore bodies require years of fact-finding, including ground, aerial and satellite reconnaissance, exploration drilling, environmental baseline gathering, workforce hiring and training, mine and mill planning, design and construction and closure and reclamation.

In a 1999 report, the National Research Council of the National Academy of Sciences recognized just how rare economically viable mineral deposits are:

> Only a very small portion of Earth's continental crust (less than 0.01%) contains economically viable mineral deposits. Thus, mines can only be located in those few places where economically viable deposits were formed and discovered. *Hardrock Mining on Federal Lands,* National Research Council, National Academy Press, 1999, p. 2-3.

Without access to public lands for exploration, those economically viable deposits cannot be discovered, and there will be no future mine to provide the corresponding economic and societal benefits.

The issue of access to public lands can and should be addressed in several ways, as outlined below.

A. We need to reform, or put sideboards on, the use of the Antiquities Act to designate national monuments. At the very least, the designation of a national monument should require the consent of the state.

B. We need restrictions on the use of administrative withdrawals. A case in point is the withdrawal from mineral entry of more than 1 million acres near the Grand Canyon National Park (GCNP), under the auspices of protecting the Park. One only needs to read the Environmental Impact Statement (EIS) to understand the withdrawal was made for political, not environmental reasons.

   The protections and regulatory tools already are in place to ensure lands like the GCNP are protected, while allowing the development of critical domestic mineral resources. Existing law, including the *Clean Air Act* (CAA), the *Clean Water Act* (CWA), the *Endangered Species Act* (ESA), the *Federal Land Policy and Management Act* (FLPMA), the *National Environmental Policy Act* (NEPA), the *National Historic Preservation Act* (NHPA), Forest Service (USFS) and Bureau of Land Management (BLM) surface management regulations and policies, as well as applicable state and local permitting and financial assurance requirements provide sufficient authorities and tools for the protection of all resources while providing for multiple-use.

   The BLM and the USFS have numerous tools in their respective "tool boxes" to protect the environment, prevent unnecessary or undue degradation, minimize or mitigate adverse environmental impacts, address cultural resource and threatened and endangered species issues and ensure compliance with all applicable federal and state environmental laws and regulations. While a mineral withdrawal is one of those tools, it is, or at least should be, the tool of last resort.

C. We need a resolution to the status of Wilderness Study Areas (WSA's). Too often, WSA's end up in a state of perpetual study, for twenty years or more, leading to a *de facto* Wilderness designation. If these areas truly are worthy of Wilderness designation, Congress should act to do so. Otherwise, they should be released to multiple-use in a timely manner.

II. NEPA Reform

As one of the first environmental laws in this country, the *National Environmental Policy Act* (NEPA) was landmark legislation, signaling the dawning of environmental awareness and the first step down the path of enacting what has become a comprehensive and effective federal and state statutory framework to protect the environment. NEPA is a procedural law that creates a process to seek public comments, consider alternatives, and disclose impacts. It does not include any substantive, on-the-ground environmental protection requirements or standards. These environmental protection authorities are derived from the many other environmental laws passed since the enactment of NEPA.

We want to emphasize that substantive U.S. environmental laws and regulations are not the problem. Rather, it is the process of obtaining agency permits and approvals. Our members take great pride in protecting the environment while producing the minerals America needs. The U.S. mining industry is the most environmentally responsible mining industry in the world. Mining and environmental protection are compatible, and mineral products make possible both the development of our society and the mitigation of modern society's impact on the environment.

Since enactment, our members have seen material changes in the application and interpretation of NEPA and associated regulations, and at the same time it has become increasingly inconsistent in its implementation. While a NEPA analysis has become "standard operating procedure" for our members, it has also become much more cumbersome, time consuming and expensive.

It is imperative that the NEPA process be reviewed and reformed to remove inappropriate barriers to domestic mineral activity without sacrificing environmental protection. We believe reforming the NEPA process and streamlining the permitting system are critical to improving the competitiveness of the domestic mining industry and job creation. Unfortunately, NEPA is no longer the planning tool it was designed to be. Rather, it has become a tool used by obstructionist groups who oppose responsible and lawful mineral development on federal public lands.

Recommendations for NEPA reform include, but are not limited to:

A. Conduct a study to evaluate how NEPA interacts with the plethora of environmental laws and regulations enacted since NEPA, with a focus on minimizing the duplication in the evaluative processes of NEPA and those environmental laws.

B. Set mandatory timelines for the completion of NEPA documents; limit to 18 months the time for completing an Environmental Impact Statement (EIS) and 9 months for completing an Environmental Assessment (EA). NEPA documents not concluded by these timeframes will be considered completed.

C. NEPA appellants should be required to post bonds to cover the government's and the private-sector's costs due to delays and legal fees if the agency's NEPA decision is sustained.

D. Issues and concerns raised by local interests should be accorded higher standing than comments from outside groups and individuals who are not directly affected by a proposed project or land use decision.

E. There should be a statute of limitations for the challenge of NEPA analysis. Presently, NEPA has no statute of limitations and the general six-year limit is applied to NEPA under the Administrative Procedures Act.

F. Greater use of programmatic documents to evaluate mineral and energy exploration projects that propose using a pre-determined set of Best Management Practices. Following preparation of a statewide or agency-wide programmatic NEPA document, exploration projects should be approved using categorical exclusions or NEPA checklists rather than individual NEPA documents.

G. All NEPA decisions should be required to analyze impacts to domestic mineral and energy resource development and require that NEPA decisions evaluate compliance with the following:

- *The Mining and Mineral Policy Act of 1970*, 30 U.S.C. § 21(a), that states the federal government must encourage the development of an economically sound and stable domestic mining industry and the development of domestic mineral resources to satisfy industrial, security and environmental needs;

- *The Federal Land Policy and Management Act of 1976* at 43 U.S.C. § 1701(a)(12) which requires managing the public lands in ways that recognize the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands.

H. Limit supplemental NEPA documentation only to those situations where substantial changes in the proposed actions are relevant to environmental concerns, or when there are significant and substantially new circumstances that may impact the applicant's proposed action.

I. Re-affirm and clearly provide that NEPA is procedural and may not be used to withhold, deny or impose conditions on any permit required pursuant to substantive state and federal environmental laws and regulations.

J. One of the many problems with NEPA is redundant or duplicative analysis. One way to address this problem is to provide that agency permitting processes that are the "functional equivalent" of a NEPA analysis satisfies the requirements of the law.

K. The Environmental Protection Agency's role in the NEPA process needs to be re-evaluated and even eliminated, especially in states with *Clean Water Act* and *Clean Air Act* primacy.

L. The NEPA process needs to be streamlined regarding the relationship between the lead agency and other agencies that have input in the process, most typically between the BLM and the USFS. Simply getting agreement on what has to be done and who will be the lead can take a year, severely delaying the NEPA process.

The mining industry is not alone in the view that delays in the permitting process are a significant problem. For example, the National Research Council of the National Academy of Sciences has concluded:

> The permitting process is cumbersome, complex, and unpredictable because it requires cooperation among many stakeholders and compliance with dozens of regulations for a single mine. As a result, there is a tendency for the process to drag on for years, even a decade or more. This drains and diverts the resources of land management agencies that should be managing their full range of responsibilities. It is also burdensome to operators and does not provide the best environmental protection. The public, the land management agencies, and the permit applicants would all benefit if the permitting process were conducted more efficiently. *Hardrock Mining on Federal Lands* ("NRC Report") pp.122-123.

According to a report by Behre Dolbear, a highly respected mining industry consulting firm, the United States ranked dead last, tied with Papua New Guinea, in delays in receiving permits due to bureaucratic and other delays. In terms of permitting delays, the 2011 report stated:

> Permitting delays are the most significant risks to mining projects in the United States. A few mining friendly states (Nevada, Utah, Kentucky, West Virginia, and Arizona) are an exception to this rule but are negatively impacted by federal rules that they are bound to enforce resulting in a 7- to 10-year waiting period before mine development can begin.

Consequently, the U.S. is seeing fewer investment dollars for new projects, leading to an increased reliance on foreign imports. In fact, the U.S. has become increasingly vulnerable and dependent on foreign sources of strategic and critical minerals and this vulnerability has serious national defense and economic consequences.

III. ESA Reform

Far too often, under the guise of species protection under the *Endangered Species Act* (ESA), federal agencies ignore Congressional mandates to manage public lands for multiple-use, sustained yield and the production of fiber, food, minerals and energy the Nation requires. Just one example of the latter is the BLM and USFS Notice of Intent to incorporate Greater Sage-Grouse conservation measures into Land Use and Land Management Plans. The conservation measures proposed by the Sage-Grouse National Technical Team (NTT) are overly broad, prohibit or restrict use of public lands for mineral and energy development and place conservation of sage-grouse habitat above all other multiple-uses, in violation of FLPMA.

The ESA has a horrible track record of successfully recovering species, and, similar to NEPA, has expanded greatly in its application since its enactment. Today, the ESA is less about species protection than another tool used by obstructionists to institute land use restrictions.

Comprehensive ESA reform is needed to focus on recovering threatened and endangered species in a more timely and effective manner, while recognizing and maintaining important multiple-uses of the public lands. Comprehensive reform should include ending the “sue and settle” practice that is used to list species and hinder responsible development of public lands, as well as reform of the Equal Access to Justice Act (EAJA).

IV. Financial Assurance under CERCLA is Unnecessary

The Environmental Protection Agency (EPA) has declared the mining industry their number one target for writing rules pursuant to the *Comprehensive Environmental Response, Compensation and Liability Act* (CERCLA) §108(b), better known as Superfund, to require financial assurance. An EPA financial assurance program will be duplicative of federal land management agency and state programs, which already have extensive environmental programs and financial assurance requirements in place. Worst-case scenario bonding by the EPA will cause some existing mines to close prematurely and prevent new mines from opening by unnecessarily tying up capital that would otherwise be used to create new wealth and jobs. Congress should act to prohibit the EPA form pursuing this unnecessary and misguided initiative.

V. Good Samaritan Legislation

Hardrock abandoned mine lands (AML’s) are historic, the result of 140 years of mining practices used prior to the enactment of modern environmental laws and regulations and the requirement to provide financial assurance to guarantee proper reclamation. Today’s mining industry is governed by a comprehensive body of modern federal and state environmental laws and regulations and financial assurance requirements that work together to ensure that today’s mines will not become tomorrow’s AML’s.

Thus, the AML problem is finite and historical, and not one that will grow in the future. Nevertheless, mining opponents use pictures of historic, unreclaimed abandoned mines to foment public opposition to new mine proposals, suggesting disingenuously that these historic practices reflect modern practices.

Although some progress has been made, the number one impediment to voluntary mitigation and cleanup of hardrock AML’s is the potential for immediate and “cradle to grave” liability imposed by existing federal and state environmental laws on anyone who wants to voluntarily mitigate & reclaim an AML.

That impediment would be removed by comprehensive and effective Good Samaritan legislation that would allow mining companies and others with no previous involvement at an AML site to voluntarily improve safety and environmental conditions and reclaim that site, in whole or in part, without the threat of potentially enormous liability under CERCLA, the Clean Water Act, and other federal and state environmental laws.

VI. Land Exchange

As you noted in your letter, the land ownership pattern in Utah contributes to the conflict between state and federal interests. Most school trust land holdings still exist as a checkerboard pattern of isolated square-mile sections surrounded by federal lands, often precluding the state from realizing their full potential for the school trust.

A land exchange holds the potential to consolidate school trust land holdings and lead to more effective management of the school trust lands, as well as federal public lands. Given the length of time required to complete even a small land exchange administratively, much less one of this potentially large scale, a legislatively directed exchange is likely in order.

VII. Designation of Mineral/Energy Zones

The BLM recently designated wind and solar energy zones in several western states, including Utah, to promote the development of renewable energy on public lands. We believe it would be beneficial to also designate mineral and/or energy zones to facilitate the production of critical minerals and the reliable, affordable energy our society demands.

VIII. Mining Law Reform

Although beyond the scope of this process, we thought it useful to mention that we support common sense amendments to the Mining Law that address the well recognized shortcomings in the current law – the lack of a royalty or a fund to reclaim abandoned mine lands. An amended Mining Law also must ensure miners' rights to enter upon, use and occupy public lands to explore for minerals and to develop mines and use the existing environmental regulatory framework for mineral activities.

We believe a royalty should be net of operating costs (a net royalty) that provides the public fair compensation for minerals produced from future discoveries. The royalty must be prospective. Assessing a royalty on existing mining claims on which there has been substantial investment in reliance on existing law may subject the United States to substantial takings litigation.

A future royalty should be used to create an AML fund, and to distribute this fund to existing state and federal AML programs.

It is very important for an amended Mining Law to provide security of land tenure. The law must provide secure rights to enter public lands and to use and occupy those lands for the purpose of making a mineral discovery and developing a mine. This security of land tenure is necessary throughout the entire mineral lifecycle of prospecting, exploration, development, mining, and reclamation to attract investment capital for exploration and mine development and to support business investment decisions to build a mine.

IX. Conclusion

The public lands provide a major source of domestic mineral production. Mining on federal lands provides the Nation's highest paid non-supervisory wage jobs. These jobs are one of the cornerstones of western rural economies and are the foundation for the creation of much non-mining service and support business found in or near federal lands in the West, including Utah. Mining is the cornerstone of sustainable development in many western rural communities.

Mining on federal lands also provides substantial local and state tax revenues for infrastructure and services, as well as federal tax revenues. Mineral development also creates new wealth, which is distributed throughout the U.S. economy and society. These economic and social benefits are dependent upon the U.S. mining industry's ability to attract investment capital in an intensely competitive global mining market. If the United States is going to compete in this global mineral environment, it must adopt policies that guarantee access to lands with mineral deposits and reduce permitting delays.

Thank you for the opportunity to provide our input. The Utah Mining Association is committed to working with you to develop a reasonable, balanced approach to public lands management in Utah, and we look forward to continued engagement in this process.

Sincerely,

Mark Compton
President