



Preserving America's Heritage

May 3, 2013

Mr. Kevin Hsueh
Chief, Environmental Review Branch
Division of Waste Management
and Environmental Protection
Office of Federal and State Minerals
and Environmental Management Programs
Nuclear Regulatory Commission
Washington, DC 20555-0001

Ref: *Proposed Ross In-Situ Uranium Recovery Project*
Crook County, Wyoming

Dear Mr. Hsueh:

The Advisory Council on Historic Preservation (ACHP) has received expressions of concern from Indian Tribes involved in the consultation being carried out by the Nuclear Regulatory Commission (NRC) for the referenced undertaking in compliance with Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, "Protection of Historic Properties" (36 CFR 800). We have received similar expressions of concern regarding a number of other in-situ uranium recovery (ISR) projects proposed in the region. The concerns are focused primarily on the NRC's efforts to identify historic properties of religious and cultural significance to tribes that may be affected by the undertaking. Those concerns have been summarized in a letter to the ACHP from the Tribal Historic Preservation Officer (THPO) of the Standing Rock Sioux Tribe (SRST), dated March 20, 2013. Based on this letter, the ACHP requests that the NRC clarify the status of the Section 106 review for these undertakings, and indicate how the NRC is meeting its responsibility to carry out a reasonable and good faith effort to identify historic properties of significance to tribes, recognizing tribal special expertise to identify such properties.

By letter of March 20, 2013, Ms. Waste Win Young, the SRST THPO, indicated that in late 2012, a number of tribes involved in the Section 106 consultation for this undertaking collaborated to develop a scope of work for identification of properties of religious and cultural significance to tribes. The scope called for utilizing a contractor acceptable to the tribes to coordinate the work of tribal Traditional Cultural Specialists/Tribal Monitors to carry out systematic field work in the identification effort. In December, 2012, the scope of work was apparently finalized after consultation among the tribes, NRC, and the project proponent, Strata Energy, Inc. (Strata). Based on the recommendation of the consulting tribes, a consultant, Makoche Wowapi, was selected. The consultant proceeded to develop a cost proposal for carrying out the approved scope of work, entering into negotiations with Strata in December 2012.

Based on the information provided in the letter from the SRST THPO and in a March 11, 2013, letter from NRC to the consulting tribes, Strata ended negotiations with Makoche Wowapi on February 15,

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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2013. NRC subsequently sent a letter to the consulting tribes indicating that it was discarding the scope of work developed in consultation with the tribes and agreed to by NRC in December 2012, and proposing a one-to-two week field survey opportunity for tribes to identify properties of concern to them in the undertaking's Area of Potential Effects (APE). The survey opportunity, which would be open to four representatives of each interested tribe, has limited methodological requirements and will be supported by a fixed stipend for each tribe. Participating tribal representatives would receive a per diem. The SRST THPO has challenged the sufficiency of the identification effort that is likely to result from this alternative field work opportunity proposed by NRC. Further, the THPO is concerned that this opportunity was developed by NRC and Strata without the required consultation with the tribes.

It is our understanding that NRC staff have communicated with the THPO since they distributed their letter on March 11, 2013. NRC staff suggested that their letter was intended as a proposed option to the December 2012 scope of work, and presented for consideration by the tribes. It was not meant to be taken as the final option for conducting the identification effort necessary to identify properties of religious and cultural significance to tribes.

The ACHP requests that NRC clarify the current status of the Section 106 review process for this undertaking. We also would like NRC to specify how it intends to address the concerns expressed by the SRST THPO in the March 20, 2013 letter. The Section 106 regulations require that federal agencies consult with tribes in carrying out the identification of historic properties of religious and cultural significance to them, and that the special expertise of Indian tribes be recognized when identifying and assessing the eligibility of such properties for inclusion on the National Register of Historic Places. It is the agency's responsibility to make a reasonable and good faith effort to identify these and other historic properties that may be affected by an undertaking that it authorizes. The project proponent may agree to sponsor the identification efforts, but the federal agency ultimately remains responsible for determining the scope of the identification effort in consultation with SHPO/THPO and tribes concerned about the historic properties that may be affected. Until the agency can detail how it will carry out a reasonable and good faith effort to identify historic properties of concern to the consulting tribes, it will be difficult to move forward on this undertaking.

There are a number of similar ISR projects in the region of the Ross Project that are experiencing challenges regarding the identification and evaluation of properties of religious and cultural significance to tribes. The ACHP acknowledges receipt of a letter from NRC dated April 24, 2013, regarding the current status of the Dewey Burdock ISR project in South Dakota. In this letter, NRC notes similar difficulties in attempting to consult with tribes to develop a scope of work. The ACHP will respond to this letter soon. In the interim, when responding to this letter regarding the Ross project, we request that NRC clarify the status of the Section 106 consultation for other ISR projects in the same region, including Crow Butte in Nebraska.

We look forward to your response in resolving these issues. Should you have any questions, please contact John T. Eddins, PhD at 202-606-8553, or by e-mail at jeddins@achp.gov.

Sincerely,



Charlene Dwin Vaughn, AICP
Assistant Director, FPLAS
Office of Federal Agency

Enclosure