

## StrataRossLAPem Resource

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**From:** Moore, Johari  
**Sent:** Tuesday, October 29, 2013 5:20 PM  
**To:** Moore, Johari  
**Subject:** Agenda and Draft PA for 10-31-13 Ross Project Programmatic Agreement Webinar  
**Attachments:** AGENDA - Ross Project Programmatic Agreement Webinar 103113.docx; Ross Project Programmatic Agreement\_WORKING DRAFT 10-29-13.docx

Good afternoon,

Attached, please find the current draft of the Programmatic Agreement (PA) that is being developed for the Ross Project. This version of the PA includes draft proposed WHEREAS clauses that we discussed during the webinar last week. We welcome you to provide your comments on these clauses (you may send comments to me via email). In addition, we invite you to join us this Thursday at our next webinar to discuss these clauses further. We are also planning to begin drafting the stipulations on Thursday. I have attached the webinar agenda, which includes the date/time and call in information.

For your information, the NRC has invited the following parties to participate in the webinar and the development of the PA:

BLM  
WYSHPO  
ACHP  
Strata Energy, Inc.  
Ross Project Consulting Tribes  
Crook County Museum District  
Alliance for Historic Wyoming

The following parties participated in the webinar on 10/24/13:

NRC  
BLM  
WYSHPO  
ACHP  
Strata Energy, Inc.

Thank you,

Johari A. Moore  
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**Created By:** Johari.Moore@nrc.gov

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# **AGENDA**

**October 31, 2013**

**3:00 PM to 5:00 PM EDT (1:00 PM to 3:00 PM MDT)**

**Development of a Programmatic Agreement for the  
Ross In-Situ Uranium Recovery Project  
Crook County, Wyoming**

**Link to Join Webinar:** <https://www1.gotomeeting.com/register/712236304>

**Number to Join Conference Call:** 1-888-913-9205/Access Code: 85576

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|------|--|-----|
| I.   | Welcome and Overview of the Agenda                             | NRC |
| II.  | Introductions of Attendees                                     | All |
| III. | Questions/Comments   | All |
| IV.  | Develop Programmatic Agreement –<br>Finalize “WHEREAS” Clauses | All |
| V.   | Develop Programmatic Agreement –<br>Draft Stipulations         | All |
| VI.  | Meeting Summary  | NRC |

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. NUCLEAR REGULATORY COMMISSION,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
THE WYOMING STATE HISTORIC PRESERVATION OFFICE,  
AND**

**[THE U.S. BUREAU OF LAND MANAGEMENT,  
STRATA ENERGY, INC., CONSULTING TRIBES, CROOK COUNTY MUSEUM  
DISTRICT, ALLIANCE FOR HISTORIC WYOMING]**

**REGARDING  
THE ROSS IN-SITU URANIUM RECOVERY PROJECT  
IN CROOK COUNTY, WYOMING**

**DRAFT AS OF October 29, 2013**

WHEREAS, the U.S. Nuclear Regulatory Commission (NRC) has authority by the Atomic Energy Act, as amended, to issue licenses to qualified individuals to possess, use, store and transport uranium-bearing material for the development of fuel for the commercial nuclear industry; and

WHEREAS, on January 4, 2011, Strata Energy, Inc. (Strata) submitted to NRC for review and approval a new source and byproduct materials license for an *in-situ* uranium recovery (ISR) project at the Ross Project site located in Crook County, Wyoming; and

WHEREAS, upon issuance of a license, the project undertaking (the Undertaking) utilizes ISR technology to extract uranium and processes the extracted uranium into yellowcake at the Ross Project site, which consists of 1,721 acres (696 ha) located approximately 38 km (24 mi) north or Moorcroft on County Route 68 in Crook County, Wyoming (in portions of Sections 7, 17, 18, and 19, Township 53 North, Range 67 West and portions of Sections 12, 13, and 24, Township 53 North, Range 68 West), as shown in Appendix A; and

WHEREAS, the area of potential effects (APE) for the Undertaking is the area at the Ross Project site and its immediate environs, which may be impacted by activities associated with the construction and operation of the proposed facility, as shown in Appendix A; and

WHEREAS, effects on all historic properties within the APE cannot be fully determined prior to approval of the Undertaking (36 CFR 800.14(b)(1)(ii)); and

WHEREAS, the NRC has determined that a phased process for compliance with Section 106 of the National Historic Preservation Act (NHPA) is appropriate for the Undertaking, as specifically permitted under 36 CFR 800.4(b)(2), such that completion of the evaluation of historic properties, determinations of effect on historic properties, and consultation concerning measures to avoid, minimize, or mitigate any adverse effects will be carried out in phases, as set forth in this Programmatic Agreement (PA); and

WHEREAS, the U.S. Department of the Interior, Bureau of Land Management (BLM), Newcastle, Wyoming Field Office [**describe the BLM's federal action here**]; and

WHEREAS, the BLM, by letter dated November 21, 2011, has designated the NRC as the lead agency for Section 106 consultation regarding the Ross Project; and

WHEREAS, the NRC, by letter dated August 19, 2011, initiated Section 106 consultation with the Wyoming State Historic Preservation Office (WYSHPO) and the WYSHPO is a consulting party; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1)(i)(C), the NRC, by letter dated September 19, 2013, has invited the Advisory Council on Historic Preservation (Council) to participate in Section 106 consultation and preparation of this PA and the Council, by letter dated October 28, 2013, has accepted the invitation and is a consulting party; and

WHEREAS, the NRC, by letter dated September 19, 2013, invited the following Indian tribes, which are Section 106 consulting parties for the Ross Project, to participate in preparation of this PA: the Northern Arapaho Tribe; the Cheyenne and Arapaho Tribe; the Blackfeet Tribe; the Cheyenne River Sioux Tribe; the Chippewa Cree Tribe, the Confederated Salish and Kootenai Tribe; the Crow Tribe; the Crow Creek Sioux Tribe; the Eastern Shoshone Tribe; the Flandreau Santee Sioux Tribe; the Fort Belknap Tribe; the Fort Peck Tribe; the Kiowa Indian Tribe of Oklahoma; the Lower Brule Sioux Tribe; the Northern Cheyenne Tribe; the Oglala Sioux Tribe; the Rosebud Sioux Tribe; the Santee Sioux Nation, the Sisseton-Wahpeton Tribe; the Spirit Lake Tribe; the Standing Rock Sioux Tribe, the Three Affiliated Tribes; the Turtle Mountain Band of Chippewa Indians; and the Yankton Sioux Tribe; and

WHEREAS, the following invited tribes have accepted the NRC's invitation and participated in the preparation of this PA: [redacted] and are, therefore, referred to as Consulting Tribes for the purposes of this PA; and

WHEREAS, the following invited tribes did not accept the NRC's invitation and did not participate in the preparation of this PA: [redacted] and are, therefore, not considered Consulting Tribes for the purposes of this PA but are considered to be Section 106 consulting parties; and

WHEREAS, the NRC, by letter dated September 19, 2013, has invited the Crook County Museum District and the Alliance for Historic Wyoming, to participate in the preparation of this PA, and [note here whether the invitation was/was not accepted]; and

WHEREAS, historic property identification efforts that have been completed for the Undertaking include background research of the existing records, Class II, Class III, and Traditional Cultural Property surveys within the APE, as shown in Appendix B; and

WHEREAS, the PA will be a condition of the NRC license, if granted; and

WHEREAS, the PA will be a condition of Strata's Plan of Operations, if approved by the BLM; and

WHEREAS, nothing in this PA will be construed to waive the responsibilities of signatories to this PA under other federal laws; and

WHEREAS, the NRC has invited the Consulting Tribes to be Concurring Parties on the PA and [note here which Consulting Tribes accepted] have accepted the NRC's invitation to be Concurring Parties on the PA; and

WHEREAS, the NRC has invited the Crook County Museum District and the Alliance for Historic Wyoming to be Concurring Parties on the PA and [note if the Crook County Museum District or

the Alliance for Historic Wyoming accepted] have accepted the NRC's invitation to be Concurring Parties on the PA; and

WHEREAS, the NRC has invited Strata, by letter dated [REDACTED], to be a signatory to the PA and Strata, by letter dated [REDACTED], has [REDACTED] the NRC's invitation; and

WHEREAS, the BLM has notified the NRC, by letter dated [REDACTED], that it will be a signatory to the PA; and

WHEREAS, the Council and WYSHPO have agreed to be signatories to this agreement; and

NOW, THEREFORE, the NRC, WYSHPO, ACHP, [REDACTED] agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties.

## STIPULATIONS

NRC shall require as a condition of any license issued to Strata that Strata complies with all stipulations and other provisions in this PA.

### A. GENERAL STIPULATIONS

[Objectives]

1. Define who will fund the activities to take place under the PA.
2. Define role of NRC, BLM, and Strata in conducting future activities pursuant to the PA.
3. Define entity responsible for tribal consultation activities.

### B. CONTINUING DETERMINATIONS OF ELIGIBILITY AND ASSESSMENTS OF EFFECT

[Objectives]

1. Require Strata to submit a plan to complete the testing for eligibility and/or effects for those historic properties that are unevaluated by the NRC and WYSHPO prior to commencing project activities within an area where historic properties have been identified.
2. Require Strata to conduct testing in accordance with an approved testing plan and evaluate cultural resources identified within the APE for eligibility for the NRHP using the National Register Criteria for Evaluation (36 CFR 60).
3. Require that Strata submit testing results, eligibility recommendations, and adverse effects recommendations to the NRC, the BLM, and/or WYSHPO (based on the roles defined in the general stipulations).
4. Require that all reports and documentation meet the Secretary of the Interior's Standards for Archaeology and Historic Preservation (48 FR 44716-42) and WYSHPO standards.

## **C. AVOIDANCE, MINIMIZATION and MITIGATION of ADVERSE EFFECTS**

[Objectives]

1. Avoidance and Minimization of Adverse Effects
  - a. Require that Strata notify the NRC, the BLM, and/or WYSHPO (based on the roles defined in the general stipulations) if it can avoid historic properties within the APE, including properties of traditional religious and cultural importance to the Tribes, through project design, redesign, relocation of facilities, or by other means in a manner consistent with this PA.
  - b. Require that Strata, in consultation with the other consulting parties, ensure that all its personnel, including contractors, inspectors and monitors, receive training regarding the sensitivity of all cultural resources, both Native American and historic properties not of tribal significance and in regards to Native American issues in general.
2. Mitigation of Adverse Effects
  - a. Define methodology and roles of consulting parties to develop a strategy to mitigate adverse effects on affected historic properties, including properties of traditional religious and cultural importance to the Tribes in the APE, if Strata determines that the historic properties cannot be avoided. Mitigation will be commensurate with the nature and significance of the cultural resources involved and the extent of the possible direct, indirect, and cumulative effects.
  - b. Define who will review and comment on the mitigation plan(s) and what timeframe will be expected. Define what will happen if a Party does not respond within the defined timeframe. Define how comments on the plan(s) will be addressed.
  - c. Define the roles and procedures for final acceptance of the mitigation plan(s).
  - d. Require that the final mitigation plan(s) will be appended to this PA and the mitigation measures will be completed prior to authorization by the NRC, the BLM, and/or WYSHPO (based on the roles defined in the general stipulations) of Strata's proposed activities.

## **D. DISCOVERIES**

[Objectives]

1. Define a plan for handling inadvertent discoveries of cultural resources
  - a. Define avoidance buffer of the area of discovery and Strata's notification requirements and follow-up activities.
  - b. Require that, although work may continue in other areas of the site, activities may not resume in the area of discovery unless the NRC, the BLM, and/or WYSHPO (based on the roles defined in the general stipulations) has issued a written notice to proceed.
2. Define a plan for handling inadvertent discoveries of human remains
  - a. Define buffer area of the discovery and Strata's notification requirements and follow-up activities (per W.S. 7-4-104). Require notification of Sheriff's Office and Coroner's Office.

- b. Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on federal land will be handled according to Section 3 of the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations (43 CFR § 10). BLM will be responsible for compliance with the provisions of NAGPRA on Federal land. Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on state or private land will be handled in accordance with applicable law. Non-Native American human remains found on federal, state, or private land will also be treated in accordance with applicable law. The NRC, BLM, and Strata recognize that any human remains, funerary objects, sacred objects, or items of cultural patrimony encountered during construction should be treated with dignity and respect.

#### **E. ONGOING TRIBAL CONSULTATION and COORDINATION**

1. The NRC and/or the BLM (based on the roles defined in the general stipulations) shall continue to consult with the Tribes throughout the Undertaking. The Tribes shall be invited to participate in the development of any mitigation plans necessary to mitigate adverse effects to properties of traditional religious and cultural importance to the Tribes.
2. Define opportunities for additional site visits by tribal representatives to evaluate effects on, and convey tribal knowledge regarding properties of traditional cultural and religious importance.

#### **F. CONFIDENTIALITY OF CULTURAL RESOURCE DATA**

To the extent consistent with NHPA Section 304, cultural resource data will be treated as confidential by all Parties and is not to be released to any person, organization, or agency not a Party to this PA. Duplication or distribution of cultural resource data from BLM-managed lands by any Party requires written authorization from the BLM Newcastle Field Manager. Confidentiality concerns for properties that have traditional religious and cultural importance to the Tribes will be respected and will remain confidential to the fullest extent permitted by law.

#### **G. ANNUAL REPORT AND EVALUATION**

1. Define the annual reporting requirements, including the date by which reports should be filed by Strata and who should receive the reports. Define when comments should be received and how they will be addressed.
2. Define the frequency of meetings or conference calls to review implementation and achieved outcomes of the terms of this PA and to discuss the annual report, as needed. The Parties shall determine whether amendments are needed to improve the effectiveness of this PA.

#### **H. DISPUTE RESOLUTION**

Should any Signatory to this Agreement object to any action carried out or proposed by the NRC with respect to the implementation of this Agreement, the NRC shall consult with that Signatory party to resolve the objection. If the NRC, after initiating such consultation determines that the objection cannot be resolved, the NRC shall forward documentation relevant to the objection to the ACHP, including the NRC's proposed response to the objection. Within forty-five (45) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:



1. Advise the NRC that the ACHP concurs with the NRC's proposed final decision, whereupon the NRC shall respond accordingly;
2. Provide the NRC with recommendations, which the NRC shall take into account in reaching a final decision regarding its response to the objection; or
3. Notify the NRC that the objection will be referred to the ACHP membership for formal comment and proceed to refer the objection and comment within forty-five (45) days. The resulting comment shall be taken into account by the NRC in accordance with 36 CFR § 800.7(c)(4).
4. Should the ACHP not exercise one of the above options within forty-five (45) days after receipt of all pertinent documentation, the NRC may assume the ACHP's concurrence in its proposed response to its objections.

The NRC shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the NRC's responsibility to carry out all actions under this Agreement that are not the subject of the objection shall remain unchanged.

#### **I. AMENDMENT**

Any Signatory to this PA may request that it be amended, whereupon the Signatories will consult to reach agreement. Such amendment shall be effective upon the signature of all Signatories to this PA, and the amendment shall be appended to the PA as an Appendix.

#### **J. TERMINATION**

1. Any Signatory to this PA may initiate termination by providing written notice to the other parties of their intent. After notification by the initiating Signatory, the remaining Signatories shall have 60 business days to consult to seek agreement on amendments or any other actions that would address the issues and avoid termination. If such consultation fails, the termination will go into effect at the end of the 60-day period, unless all the Signatories agree to a longer period.
2. In the event of termination, the NRC will comply with any applicable requirements of 36 CFR §§ 800.4 through 800.6 with regard to this individual undertaking covered by this PA.

#### **K. DURATION OF AGREEMENT**

This PA shall remain in effect for [define time period] from its date of execution by the Signatories (last date of signature), or until completion of the work stipulated, whichever comes first, unless extended by agreement among the Signatories.

#### **L. ANTI DEFICIENCY ACT**

The stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act (31 U.S.C. §1341). If compliance with the Anti-Deficiency Act alters or impairs the NRC's ability to implement the stipulations of this Agreement, the NRC will consult in accordance with the amendment and termination procedures found in this Agreement.

#### **M. GENERAL PROVISIONS**

1. This PA shall not be binding upon any party unless this PA has been reduced to writing before performance begins as described under the terms of this PA, and

unless the PA is approved as to form by the Wyoming Attorney General or his representative.

2. Should any portion of this PA be judicially determined to be illegal or unenforceable, the remainder of the PA shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.
3. The NRC, ACHP, WYSHPO, [other parties] do not waive their sovereign or governmental immunity by entering into this PA and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of the PA.
4. Each Signatory to this PA shall assume the risk of any liability arising from its own conduct. Each Signatory agrees they are not obligated to insure, defend or indemnify the other Signatories to this PA.

Execution of this PA and implementation of its terms evidences that the NRC has taken into account the effects of the Undertaking on historic properties.

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**SIGNATURES:** In witness thereof, the Signatories to this PA through their duly authorized representatives have executed this PA on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this PA as set forth herein.

The effective date of this PA is the date of the last signature affixed to this page.

**Consulting Parties:**

Entity

By. \_\_\_\_\_ Date: \_\_\_\_\_  
Title:

**Invited Concurring Parties**

Entity

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: