

StrataRossLAPem Resource

From: Tratebas, Alice [atrateba@blm.gov]
Sent: Wednesday, November 20, 2013 6:19 PM
To: Moore, Johari
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Subject: Re: Ross Project Programmatic Agreement - WORKING DRAFT for 11-21-13 Webinar and Webinar Agenda
Attachments: stipulations draft BLM 11-20-13.docx

Hi All,

Attached is a draft revision of some of the stipulations.

Alice

Alice M. Tratebas, Ph.D.

Archaeologist

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On Wed, Nov 20, 2013 at 12:42 PM, Moore, Johari <Johari.Moore@nrc.gov> wrote:

Good afternoon,

During the 11/14/13 webinar to develop the Ross Project Programmatic Agreement (PA), we discussed and proposed revisions to the appendices, the draft “whereas” clauses, and the draft stipulations. In preparation for the next scheduled webinar (Thursday, 11/21), which is currently the

last scheduled webinar, the NRC was to revise the language in these sections of the PA per the comments provided. Attached, please find the current draft of the PA, which includes revisions to the “whereas” clauses and the draft stipulation language. Also, attached, please find the draft appendices to the PA, which include revisions based on the comments received to-date.

We welcome you to provide your comments on all sections of the draft PA and appendices (you may send comments to me or to the group via email). In addition, we invite you to join us this Thursday, 11/21/13, at our next webinar where we are planning to discuss the revisions to the PA and appendices. Given that tomorrow’s webinar is currently the last scheduled webinar, we will also discuss the path forward for completing the PA and we encourage those of you that have not been able to attend a webinar to join us tomorrow. Each of the Ross Project Consulting Tribes will be invited to sign the final PA as a Concurring Party. 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 webinars and the development of the PA:

BLM

WYSHPO

ACHP

Strata Energy, Inc.

Ross Project Consulting Tribes

Crook County Museum District

Alliance for Historic Wyoming

National Park Service (Devils Tower)

The following parties participated in the webinars on the dates shown:

NRC - 10/24, 10/31, 11/7, and 11/14

BLM - 10/24, 10/31, 11/7, and 11/14

WYSHPO - 10/24, 10/31, 11/7, and 11/14

ACHP - 10/24, 11/7, and 11/14

Strata Energy, Inc. - 10/24, 10/31, 11/7, and 11/14

Cheyenne and Arapaho Tribes of Oklahoma THPO – 11/7 and 11/14

Chippewa Cree Tribe THPO – 11/7

Northern Cheyenne Tribe THPO – 11/7

Fort Peck Assiniboine and Sioux Tribes THPO – 11/7

National Park Service (Devils Tower) – 11/14

Thank you,

Johari A. Moore
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Options

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This draft of the Ross project PA edits and adds more detail to the Stipulations beginning with B. in the Working Draft. This draft is in a new file to avoid confusion of having to add blocks of text into many places in the Working Draft text. Sections and sentences from the Working Draft version of 11-14-13 have been block moved into this text. Because more lettered sections have been added to the stipulations, references to stipulations that are in quotes refer to the lettered sections in the Working Draft.

B. Continuing Identification and Determinations of Eligibility

1. The NRC shall ensure that all work undertaken to satisfy the terms of this PA meets the Secretary of the Interior's Standards for Archeology and Historic Preservation (48 FR 44716) and is consistent with the ACHP guidance on archaeology found at www.achp.gov/archguide and the Guidelines for Evaluating and Documenting Traditional Cultural Properties, National Register Bulletin 38.

2. Cultural resources located but not fully recorded as of the date of the execution of this PA shall be fully recorded in accordance with the standards specified in B.1, and a report addendum shall be prepared and submitted concurrently to the NRC and BLM. The NRC and BLM shall review the report and request any corrections or modifications within 30 days. Following review of the report or receipt of the corrected report, the NRC shall submit the report to the SHPO for concurrence within 30 days. If recordation fieldwork is completed at the same time as further testing for site eligibility, a combined report may be submitted and will be reviewed as in 3.d – 3.e.

3. For each phase of mining activity, all cultural resources that may be affected by that stage of the Undertaking shall be evaluated by the NRC in consultation with the Consulting Parties pursuant to 36 CFR 800.4(c)(1) if not previously evaluated. For Phase 1 of mining activity, work on site evaluations will continue work already in progress.

a. For each phase of mining activity, Strata shall submit a plan to complete the testing for eligibility for those cultural resources that are unevaluated for eligibility for listing in the NRHP under Criterion D or for which there is no consensus on eligibility determination by the NRC, BLM, and WYSHPO. The testing plan shall include a map depicting the area where proposed project activities associated with this phase of mining are expected to occur. For future stages of mine development, Strata is encouraged to submit the plan well in advance of proposed mining expansion in order to allow adequate time for plan review, fieldwork, report review, assessment of effects, development and implementation of mitigation plan, and consultation throughout these processes.

b. The testing plan shall be submitted concurrently to the NRC and BLM who shall review the testing plan and request any corrections or modifications within 30 days of receipt. NRC shall then distribute the testing plan or revised plan to the appropriate

Consulting Parties for a 30 day review and opportunity to provide comments. Following receipt of comments and any required corrections, NRC shall submit the final testing plan to SHPO for 30 day review and concurrence.

c. Strata shall have a qualified archaeologist, as defined in the Secretary of Interior's Professional Qualifications and Standards (48 FR 22716), conduct the testing and prepare a testing report. Strata shall submit the report concurrently to NRC and BLM.

d. NRC and BLM shall review the report and request any corrections or modifications within 45 days of receipt. NRC shall then distribute the testing report or revised report to the appropriate Consulting Parties for a 30 day review and opportunity to provide comments. Following review of the report or receipt of the corrected report, NRC shall submit determinations of eligibility and the final report to SHPO for 30 day review and concurrence.

e. For unevaluated cultural resources that are of concern to Native Americans, the NRC shall conduct further consultation with tribes and if needed schedule additional site visits in order to complete eligibility assessments. The NRC and BLM shall prepare a report on the results of this assessment and submit it to the SHPO for concurrence within 30 days.

f. If after appropriate consultation the SHPO, NRC, and BLM agree that a cultural resource is not eligible for the NRHP, no further review or consideration under this PA will be required for the cultural resource except in the case of an inadvertent discovery. If after appropriate consultation the SHPO, NRC, and BLM agree that the property is eligible, then a determination of effect will be made in accordance with Stipulation C. If the SHPO, NRC, and BLM do not agree on eligibility, then the NRC will consult further with the SHPO. If agreement cannot be reached, procedures in the Dispute Resolution, Stipulation "H", shall be used.

C. Continuing Assessments of Effects

1. For each phase of mining activity, the NRC shall, in consultation with SHPO, ACHP, BLM, and Consulting Tribes, make determinations of direct effect and identify any adverse effects for each historic property that may be affected by that stage of the Undertaking. Future determinations of effects may be done concurrently with submittal of a report on cultural resource identifications and/or site testing and evaluations. For Phase 1 of mining activity, work on assessments of effects will continue work already in progress.

2. The NRC, in consultation with SHPO, ACHP, BLM, and Consulting Tribes, shall make determinations of the indirect effects of the proposed Undertaking on historic properties within the three-mile indirect effects area to be analyzed and beyond this three-mile convention to encompass properties that have traditional religious and cultural importance, including Devils Tower and Missouri Buttes.

3. The NRC, in consultation with SHPO, ACHP, BLM, and Consulting Tribes, shall broadly assess the cumulative effects of the proposed Undertaking on historic properties in order to identify all reasonably foreseeable, potentially adverse effects as a result of the proposed Undertaking.

4. These determinations will serve as the basis for the development of a Mitigation Plan. If further test excavation is needed to assess the effects of the proposed Undertaking on a historic property, Strata shall submit a testing plan as in Stipulation 3.a. and the plan shall be implemented and reviewed as in Stipulations 3.b through 3.d. The results of the testing for effect shall be incorporated into the Mitigation Plan.

E. Avoidance, Minimization, and Mitigation of Adverse Effects

1. For each phase of the Undertaking, NRC shall discuss project effects with Strata to determine whether any historic properties can be avoided by project redesign, alternative methods of extracting minerals, moving pipelines, roads, monitoring wells, and other disturbances to alternative locations, or other measures.

2. If NRC determines that adverse effects to historic properties within the APE cannot be avoided, for each phase of the Undertaking NRC shall consult with the Signatories and Concurring Parties (collectively "Parties") to identify measures that may be implemented by Strata that would minimize or mitigate adverse effects to historic properties. A wide range of options for mitigation shall be considered.

3. NRC shall consult with Consulting Tribes regarding minimization and mitigation of indirect adverse effects to historic properties of traditional religious and cultural importance.

4. Meetings and conference calls shall be scheduled as needed to develop mitigation measures for the Undertaking. Meetings and telephone conferences may involve all Parties or subsets of Parties such as Consulting Tribes.

5. Following development of measures to minimize and mitigate effects, Strata shall prepare a Mitigation Plan. The plan will identify specific avoidance, minimization, and mitigation strategies proposed to address the direct, indirect, and cumulative effects of the Undertaking on each individual historic property.

a. The Mitigation Plan shall contain a map of all proposed effects for that mining phase, a description of the effects on each historic property, and a description of the proposed treatment for each historic property.

b. If monitoring by a qualified archaeologist and/or by Native American tribal monitors is part of the strategy for identifying and resolving adverse effects, the Mitigation Plan shall include a Monitoring Plan. The objective of monitoring is to protect extant sites from construction impacts, identify at the time of discovery any archaeological materials exposed during ground disturbance, and protect such resources from damage until the procedures for Discoveries, Stipulation "D" are implemented.

c. If data recovery is part of the strategy for resolving adverse effects, the Mitigation Plan shall specify all details of the research design, field and laboratory work methodology (including mapping, geomorphological studies, controlled scientific excavation methods, analyses of data recovered, and photographic documentation), and report preparation.

6. Strata shall submit the Mitigation Plan concurrently to the NRC and BLM for review. NRC and BLM shall review the Mitigation Plan and request any corrections or modifications within 45 days of receipt. NRC shall then distribute the Mitigation Plan or revised Plan to the appropriate Consulting Parties for a 30 day review and opportunity to provide comments. Following receipt of comments and any required corrections, NRC shall submit the final Mitigation Plan to SHPO for concurrence within 30 days. If the SHPO, NRC, and BLM do not agree on acceptance of the mitigation plan, then NRC will consult further with the SHPO. If agreement cannot be reached, procedures in the Dispute Resolution, Stipulation H, shall be used.

7. The potential effects of the Undertaking include effects that lack an exact location on the ground, especially monitoring wells which may be located anywhere along a radius and their locations may be selected only after mining has begun. To protect historic properties that may be affected by these effects of undetermined location, the NRC and BLM shall stipulate in the license conditions and conditions of approval of the mining plan, respectively, that all potentially affected historic properties must be avoided and cannot be impacted unless Strata initiates a request for consideration of an additional effect. NRC and BLM shall then assess the proposed impact and consult the Consulting Parties to determine if the effect can be avoided, minimized, or mitigated. An addendum to the Mitigation Plan shall be prepared and approved only after consultation with SHPO has been completed. Any required mitigation shall be implemented and reviewed as in Stipulations E.1 through E.6. Strata shall notify NRC, BLM, and SHPO of any change in size or location of mining/construction that may become necessary during mining/construction and the same procedures shall be followed to assess the newly identified effects and mitigate such effects as needed.

F. Implementation of Mitigation Plan

1. Upon concurrence and acceptance of the Mitigation Plan, the Plan shall be appended to this PA.

2. If the Mitigation Plan requires data recovery, Strata shall have a qualified archaeologist, as defined in the Secretary of Interior's Professional Qualifications and Standards (48 FR 22716), conduct the data recovery and prepare a data recovery report. For any data recovery on BLM-administered lands, the archaeologist shall have a BLM Cultural Resource Use permit for Excavation and/or Removal. For data recovery on State lands, the archaeologist shall have an Authorization for Archaeological Investigations on State Lands.

3. Upon completion of data recovery fieldwork, Strata shall submit a data recovery report documenting implementation and results. The report shall be submitted concurrently to NRC and BLM for 45 day review, allowing additional time if fieldwork inspection is needed and is not feasible within the 45 day review period. NRC shall then distribute the data recovery report or revised report to the appropriate Consulting Parties for a 30 day review and opportunity to provide comments. Following receipt of comments and any required corrections, NRC shall submit the final data recovery report to SHPO for concurrence within 30 days. If the SHPO, NRC, and BLM do not agree on acceptance of the data recovery report, then NRC will consult further with the SHPO. If agreement cannot be reached, procedures in the Dispute Resolution, Stipulation "H", shall be used.

4. Prior to issuance of a Notice to Proceed with implementation of each phase of mining/construction, fieldwork for data recovery shall be completed and the data recovery report shall be submitted and accepted.

5. For other mitigation measures specified in the Mitigation Plan that result in a product or process that requires review and acceptance, the process of review and acceptance shall be specified in the Mitigation Plan. Prior to issuance of a Notice to Proceed with implementation of each phase of mining/construction, such review and acceptance shall be completed.

G. Curation

1. NRC shall ensure that curation of all records and other archaeological items resulting from identification and data recovery efforts is completed in accordance with 36 CFR Part 79 and the provisions of 43 CFR Part 10 (NAGPRA). All archaeological materials recovered from Federal and State land shall be curated at the University of Wyoming Archaeological Repository. Strata shall provide documentation of the curation of the materials to the NRC, BLM, and SHPO within 60 days of acceptance of the final cultural resource inventory report and/or data recovery report.

2. Private landowners shall be encouraged to curate archaeological materials recovered from their lands in accordance with Federal curation policies. Materials from private lands to be returned to private landowners shall be maintained in accordance with 36 CFR Part 79 until all necessary analysis has been completed. Strata shall provide documentation of the disposition of private collections to the NRC, BLM, and SHPO.

H. Discoveries

1. Inadvertent Discoveries of Archaeological, Historical, or Cultural Resources

a. If previously undiscovered archaeological, historical, or cultural remains are encountered during mining/construction, or previously known properties will be affected in an unanticipated manner, all activity will cease within 300 feet of the discovery to avoid or minimize harm to the resource until NRC, in consultation with SHPO, BLM, and

any affected Tribes, can evaluate and, if necessary, authorize steps to mitigate impacts to the new discovery. Evaluation and mitigation will be carried out by NRC in consultation with SHPO, affected Tribes, BLM, and Strata as expeditiously as possible in accordance with 36 CFR 800.13(b).

b. Inadvertent discoveries may include artifacts, bone, features, or concentrations of these materials outside previously identified sites or in and adjacent to previously identified eligible and not eligible sites. Discoveries may also include stones and groups of stones that are out of place in their sedimentary contexts and may be parts of stone features. Discoveries may also include changes in soil color, texture, or content suspected to be of anthropic origin, such as burned soil, ash, or charcoal fragments.

c. If a cultural resource monitor or Native American monitor is present, the monitor shall have the authority to temporarily halt construction operations within 300 feet of the find or exposed resource and shall flag or otherwise mark the area of avoidance. If a monitor is not present Strata shall halt work and mark the location for avoidance.

d. Strata shall have a qualified archaeologist and if needed a Native American monitor inspect the area for additional resources, document the discovery, make recommendations concerning eligibility, and submit the findings to the NRC and BLM. The NRC, BLM, SHPO, and, as appropriate, Consulting Tribes shall confer and determine what data recovery or other mitigation may be needed. Avoidance of the vicinity of the resource shall remain in force until the field work for data recovery or other mitigation is completed and accepted and the NRC has issued a written notice to proceed. Work may continue in other areas outside the discovery vicinity.

2. Inadvertent Discoveries of Human Remains

(This section picks up at Section D.2 in the Working Draft.)