

StrataRossLAPem Resource

From: Tratebas, Alice [atrateba@blm.gov]
Sent: Wednesday, November 20, 2013 4:35 PM
To: Moore, Johari
Cc: Monteith, Emily; Richard Currit (richard.currit@wyo.gov); Mary Hopkins (mary.hopkins@wyo.gov); Benjamin J. Schiffer, P.G. (bschiffer@wwcengineering.com); Mike Griffin (MGriffin@stratawyo.com); John Eddins; kbo@kiowatribe.org; Olmstead, Joan; Fringer, John; Arapaho; Cheyenne and Arapahoe Tribes of Oklahoma; Cheyenne River Lakota; Chippewa Cree (awindyboy@cccrpd.com); Confederated Salish and Kootenai; Crow (hubertt@crownations.net); Crow Creek Sioux; Flandreau Santee Lakota; Fort Belknap; Fort Peck; Lower Brule Lakota (clairgreenoffice@gmail.com); Northern Cheyenne; Oglala Lakota; Rosebud Sioux (rstthpo@yahoo.com); Santee Sioux Nation; Shoshone; Sisseton-Wahpeton Lakota (dianned@swo-nsn.gov); Spirit Lake (malex@spiritlakenation.com); Standing Rock Lakota; Terrence Clouthier; Three Affiliated Tribes; Yankton Lakota (yst.thpo@gmail.com); jmflysdwn@gmail.com; Ohms, Rene; Ralph@stratawyo.com; Reed Robinson; Clark, Michael; Andrew Willey (awilley@c-a-tribes.org); StrataRossLA Resource; Doris Minor (doris@attenuation.us.com); Brad Noisat; Cheryl Chapman; Waldron, Ashley; Saxton, John; Hsueh, Kevin; Miller, Richard C (rcmiller@blm.gov)
Subject: Re: Ross Project Programmatic Agreement - WORKING DRAFT for 11-21-13 Webinar and Webinar Agenda
Attachments: Ross Project Programmatic Agreement_WORKING DRAFT 11-14-13 BLM.docx

Hi All,

Attached are edits for Whereas clauses 3, 4, and 6 on page 1 of the 11-14-13 version of the document.

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
Project Manager
U.S. Nuclear Regulatory Commission
FSME/DWMEP/Environmental Review Branch
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Email Number: 442

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Subject: Re: Ross Project Programmatic Agreement - WORKING DRAFT for 11-21-13
Webinar and Webinar Agenda
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Options

Priority: Standard

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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

WHEREAS, this Programmatic Agreement (PA) addresses the federal undertaking regarding the issuance of a license for the Ross *In Situ* Uranium Recovery (ISR) Project pursuant to the U.S. Nuclear Regulatory Commission's (NRC) authority under the Atomic Energy Act of 1954 (AEA), 42 U.S.C. §§ 2011 *et. seq.* for purposes of NRC's compliance with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470 *et. seq.*; and

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

WHEREAS, the U.S. Department of the Interior, Bureau of Land Management (BLM), Newcastle, Wyoming Field Office received from Strata Energy on January 21, 2011, a Plan of Operations for the Ross ISR Project for review and approval which requires compliance with Section 106 of the National Historic Preservation Act for the Undertaking as defined at 36 CFR 800.16(y) and pursuant to BLM's authority under the Mining Law of 1872, 30 U.S.C. §§ 22-54 and the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701-1784~~describe the BLM's federal action here~~; and

WHEREAS, the BLM, by letter dated ~~January~~^{November} 27¹, 2011, has designated the NRC as the lead agency for the NEPA approval document~~Section 106 consultation~~ regarding the Ross Project; and

WHEREAS, upon issuance of a license and approval of a mine plan, the project undertaking (the Undertaking) would use ISR technology to extract uranium and would process 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 of 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 direct 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; - an indirect APE analyzed for the Undertaking extends for three miles surrounding the Ross Project site; and the indirect APE may extend beyond the three-mile convention to encompass properties that have traditional religious and cultural importance when such effects have been determined by NRC, in consultation with SHPO and appropriate consulting parties, to extend beyond this distance;
and

Comment [JM1]: See Strata's previous comments

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WHEREAS, identification of ~~cultural resources~~ properties has been completed for the Undertaking including background research of the existing records and Class III and Traditional Cultural Property surveys within the APE, as shown in Appendix B; and

Comment [ELM2]: Cultural resources or cultural properties? Meeting notes not clear.

WHEREAS, the NRC has made determinations of eligibility for the National Register of Historic Places (NRHP) for two historic properties within the APE (48CK1603 and 48CK2083) and SHPO has concurred with these findings; and,

Comment [JM3]: Reword. Mary to provide language.

Update as we have more information

WHEREAS, the NRC has to make determinations of eligibility for the NRHP for ~~[x33] potentially eligible historic~~ unevaluated cultural properties within the APE as shown in Table 1-D and Table 3 of Appendix B; and

Comment [JM4]: Reference appendix for sites that are unevaluated.

WHEREAS, the applicable requirements of the NHPA, the American Indian Religious Freedom Act, 42 U.S.C. 1996 *et. seq.* (AIRFA), and the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 *et. seq.* and 43 CFR 10 (NAGPRA), and the Archaeological Resources Protection Act, 16 U.S.C 1979 *et. seq.* (ARPA) have been considered in this Agreement and this Agreement does not waive the responsibilities of the Signatories and Invited Signatory under these Acts and regulations; and,

Comment [JM5]: Add ARPA.

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 PA, as part of planning for and prior to any Notice to Proceed and Undertaking implementation; 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~~

Comment [JM6]:

ACHP: SHPO is a by-right consulting party. There is no 106 unless SHPO is consulting, except in the very rare situation when ACHP would agree to finish the 106 process when SHPO ends its participation.

Joan: From meeting notes – did WYSHPO wish to delete the “consulting party” clause?

WHEREAS, the NRC, by letter dated February 9, 2011, invited the following Indian tribes to participate in Section 106 consultation for the Ross Project: The Apache Tribe of Oklahoma; the Blackfeet Tribe; the Cheyenne and Arapaho Tribes of Oklahoma; the Cheyenne River Sioux 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 Community; the Fort Peck Assiniboine and Sioux Tribes; the Kiowa Indian Tribe of Oklahoma; the Lower Brule Sioux Tribe; the Northern Arapaho Tribe; the Northern Cheyenne Tribe; the Oglala Sioux Tribe; the Rosebud Sioux Tribe; the Santee Sioux Tribe of Nebraska; the Sisseton-Wahpeton Sioux 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 twenty-four tribes (Ross Project Consulting Tribes) have chosen to participate in the consultation~~are the Ross Project Consulting Tribes:~~ The Blackfeet Tribe; the Cheyenne and Arapaho Tribes of Oklahoma; 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 Community; the Fort Peck Assiniboine and Sioux Tribes; the Kiowa Indian Tribe of Oklahoma; the Lower Brule Sioux Tribe; the Northern Arapaho Tribe; the Northern Cheyenne Tribe; the

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Oglala Sioux Tribe; the Rosebud Sioux Tribe; the Santee Sioux Tribe of Nebraska, the Sisseton-Wahpeton Sioux 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, 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~~ development 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, Ross Project Consulting Tribes~~ 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~~ Ross Project Consulting Tribes have accepted the NRC's invitation to participate in preparation of this PA and to be Concurring Parties on the PA: [TBD]; and

WHEREAS, the following invited tribes did not accept the NRC's invitation and did not participate in the preparation of this PA: [] and are, therefore, not considered Concurring Parties 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~~ development of this PA, and ~~[note here whether the invitation was/was not accepted]~~ [no response was received]; and

WHEREAS, by email dated November 8, 2013, the National Park Service—Devils Tower National Monument informed the NRC that it would like to be involved with the development of 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 [], to be a signatory to the PA and Strata, by letter dated [], has [] the NRC's invitation; and

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

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

Comment [JM7]:

AChP: Can't we put the original date when NRC began its initial communications with the tribes about the project and about soliciting their concerns and knowledge about properties of religious and cultural significance to them that might be affected?

Comment [ELM8]: Joan: I think "development" is a better word than "preparation" to describe our activities.

Comment [JM9]: Add that NRC is inviting the tribes to be concurring parties

Comment [J10]: I thought I heard John E. say that this is unnecessary as it will be clear by viewing the signature line.

Comment [JM11]: Replace preparation with development throughout document

Comment [JM12]: NRC to send this letter

Comment [J13]: NRC to review.

Comment [ELM14]: Joan: Discuss with BLM whether to delete this whereas clause.

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Comment [JM15]: Also include in stipulations.

Comment [JM16]: Condition to be added to license

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

Comment [J17]: Add to stipulations

WHEREAS, the refusal of any Invited Signatory or Invited Concurring Party to sign this PA does not invalidate the PA;

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

Comment [J18]: NRC to review.

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

NOW, THEREFORE, the NRC, WYSHPO, ACHP, and Strata (collectively hereafter called "Signatories") 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.

Comment [JM19]: ACHP: only statutory signatories are to be listed here

Comment [JM20]: Move this to one WHEREAS clause and also define Strata

STIPULATIONS

The NRC shall require as a condition of any license issued to Strata and the BLM shall require as a condition of approval of Strata's Plan of Operations that Strata complies with all stipulations and other provisions in this PA.

Comment [J21]: ACHP:

Revise to state: "The NRC shall ensure that the following stipulations are carried out:" and move this text to the stipulations.

A. GENERAL STIPULATIONS

1. Strata shall fund all required fieldwork, analysis, reporting, curation, and mitigation necessary to comply with this PA and Section 106 of the NHPA.

2. Strata will ensure that all of its employees, contractors, subcontractors, inspectors, monitors, and any additional parties involved in the project not to search for, retrieve, deface, or impact historic and prehistoric materials (e.g., archaeological materials such as, arrowheads, [pottery shards, petroglyphs) and receive training regarding the sensitivity of all historic and cultural resources, both Native American and non-Native American. Strata shall ensure cooperate with the NRC, BLM and the WY SHPO to ensure compliance with the Archaeological Resources Protection Act (ARPA) of 1979 (16 U.S.C 470) on public lands, with Wyoming Statute §36-1-115 on state lands. and the Native American Graves Protection and Repatriation Action (NAGPRA) 25 U.S.C. 3001).

Comment [JM22]: See Strata's comment

3. Define role of NRC, BLM, and Strata in conducting future activities pursuant to the PA.

4. Define entity responsible and general direction for tribal consultation activities.

Comment [J23]: Language from SHPO example:

Strata, in cooperation with the NRC, and WYSHPO, shall ensure that all its personnel, and all the personnel of its contractors, are directed not to engage in the illegal collection of historic and prehistoric materials. Strata shall cooperate with the NRC to ensure compliance with the Archaeological Resources Protection Act (ARPA) of 1979 (16 U.S.C 470) on public lands and with Wyoming Statute §36-1-115 on state lands.

B. CONTINUING DETERMINATIONS OF ELIGIBILITY AND ASSESSMENTS OF EFFECT

Consistent with the phased process for Section 106 compliance under this PA, Strata shall submit a plan to complete the testing for eligibility for those historic properties that are unevaluated for eligibility for listing in the NRHP or for which there is no consensus on

Comment [JM24]: NRC as lead remains responsible?
NRC & BLM will determine roles

Comment [JM25]: NRC & BLM will determine roles

Describe how tribal consultation will occur

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eligibility determination by the NRC and WYSHPO. Strata shall submit a plan to complete the testing for effects to those historic properties for which no determination of effect has been made. Strata shall submit the testing plans for NRHP eligibility and/or effect, whichever is appropriate, to the NRC no later than two years prior to the date on which project activities are expected to commence within an area where historic properties have been identified. The testing plan shall include a map depicting the area where proposed project activities associated with the plan are expected to occur. The NRC staff shall consult with the WYSHPO to define the APE for these proposed activities (referred to henceforth as the limited APE), to determine which identified properties are within the limited APE, and to approve the testing plan. A determination of effect needs to be made for all historic properties in the limited APE, and adverse effects mitigated, prior to commencement of project activities that may affect the historic property.

1. Determination of Eligibility

Strata shall evaluate and make NRHP eligibility recommendations on historic and cultural resources properties identified within the limited APE that the NRC may use in making determinations of eligibility for the NRHP using the National Register Criteria for Evaluation (36 CFR 60).

2. Assessment of Effects

Strata shall evaluate and make recommendations that the NRC may use in making determinations of potential adverse effects on identified historic properties within the limited APE. ~~The determinations for the unevaluated potentially eligible sites must be completed prior to commencement of the project activities within the APE.~~

3. All cultural resource inventory reports and documentation must 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

Avoidance and Minimization of Adverse Effects

Strata shall notify the NRC if it can avoid historic properties within the limited 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.

1. Mitigation of Adverse Effects

- a. ~~If Strata~~ NRC determines that the adverse effects to historic properties within the limited APE cannot be avoided. Strata and NRC shall consult with the Signatories and Concurring Parties (collectively "Parties") to identify those measures to be implemented by Strata to minimize and mitigate adverse effects on affected historic properties. NRC shall consult with the Ross Project Consulting Tribes regarding minimization and mitigation of adverse effects to historic properties of traditional religious and cultural importance. ~~Measures to minimize and mitigation~~ will take into account be commensurate with the nature and significance of the cultural resources involved and the extent of the possible direct, indirect, and cumulative effects.
- b. Strata and NRC, in consultation with the Parties and Ross Project Consulting Tribes, shall ensure that plans are developed by Strata that outline mitigation for adverse

Comment [JM26]: Amy to send suggested language

Comment [ELM27]: Joan: Discuss whether other parties want to see the plan and supply comments to NRC. Also the plan should be submitted for NRC's approval

Comment [JM28]: Suggest discuss for each phase of development – Johari will revise

Comment [JM29]: SHPO Comment: General comment. We need to address consultation regarding determination of eligibility and effect. How and when will you consult with the SHPO on these determinations? Or do we just want a separate "reporting" section?

Comment [ELM30]: Joan: Are there additional consulting parties for the Ross Project that are not captured by this definition? We should also check on level of public involvement needed on subsequent determinations.

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effects to historic properties, including historic properties of traditional religious and cultural importance to the Tribes in the limited APE.

- c. Strata and NRC shall submit the mitigation plan(s) to the Parties (excluding SHPO) and Ross Project Consulting Tribes, as appropriate. The Parties will review and comment on the mitigation plan(s) within 30 days of receipt of the documentation. If a Party does not respond within 30 days, NRC may ~~assume concurrence~~ proceed with the mitigation plan(s). Strata will work with the NRC to address comments and recommendations in preparation of the final mitigation plan(s).
- d. After addressing comments and recommendations from the Parties, the NRC will submit the final mitigation plan(s) to the SHPO for review and comment. Upon final acceptance by the WYSHPO, and after informing the NRC, the mitigation plan(s) shall be appended to this PA. If the SHPO does not concur on the mitigation plan within thirty (30) days of receipt of the plan from the NRC, the NRC may proceed with the mitigation plan. The mitigation measures shall be completed prior to disturbance except as allowed under Stipulation D of this PA.

Comment [JM31]: See previous comments above.

Comment [JM32]: If reporting section is added this may not be necessary

D. DISCOVERIES

1. Inadvertent Discoveries of Historic and Cultural Resources

- a. If previously unknown cultural resources, including archaeological, are discovered during implementation of the Ross Project, all construction activities will cease within 150 feet of the area of discovery and Strata will immediately notify the NRC and the WYSHPO. Strata will have any discovered materials evaluated for NRHP eligibility by a professional meeting the Secretary of Interior's Standard for Archaeology and History. Documentation of the discovery and evaluation will be promptly provided to the NRC. Strata will then consult with and make recommendations that the NRC may use to make ~~WYSHPO and NRC on the~~ a determination of eligibility and ~~adverse~~ effect. If NRC determines that there is an adverse effect to a historic property, NRC will follow the procedure to resolve the adverse effect in accordance with Stipulation C.2.

- a-b. Work may continue in other areas of the site; however, construction will not resume in the area of discovery unless the NRC has issued a written notice to proceed.

2. Inadvertent Discoveries of Human Remains

- a. In the event human remains are discovered on private land during implementation of the Ross Project, all work within 300 feet of the discovery will cease, the area will be secured, and Strata will immediately contact local law enforcement and the county coroner per W.S. 7-4-104. The NRC shall notify the Crook County Sheriff's Office and Coroner's Office of the discovery.
- 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

Comment [JM33]: Include Strata's discovery plan as an appendix to this PA?

Formatted: Justified

Comment [j34]: ACHP: Can we put in citations to the "applicable" law?

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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 shall continue to consult with the Ross Project Consulting Tribes' representatives throughout the implementation of the PA. The Tribes shall be invited to participate in the development of any mitigation plans necessary to mitigate adverse effects to historic properties of traditional religious and cultural importance to the Tribes. Any information provided by the Tribes on sites of traditional religious and cultural importance will remain confidential to the fullest extent permitted by law.
2. The NRC shall coordinate with Strata and the Ross Project Consulting Tribes to allow Tribes to visit sites of known tribal interest within the APE. The NRC shall consider, in consultation with the Ross Project Consulting Tribes, the necessity to conduct of conducting additional site visits by tribal representatives to evaluate effects on, and convey tribal knowledge regarding historic properties of traditional cultural and religious importance. The NRC shall coordinate with Strata and the Ross Project Consulting Tribes to allow Tribes to visit sites of known tribal interest within the APE.

Comment [JM35]: ACHP: Include protocol (B1 & B2) timing – look at Strata comments also OR SHPO: add new reporting section – review times

Comment [JM36]: Move up to A? or WHEREAS?

Comment [j37]: ACHP: Does this include all archaeological sites? How do we know if the HPs are of religious and cultural significance?

JM: We have received feedback from the tribes on this. Appendix B might answer this question.

Comment [JM38]: Move to A?

E.F. CONFIDENTIALITY OF CULTURAL RESOURCE DATA

To the extent consistent with NHPA Section 304, eCultural resource data, including data concerning the precise location and nature of historic properties and properties of religious and cultural significance, will be treated as confidential by all Parties and any additional parties involved in the Ross Project, including but not limited to employees, contractors, and subcontractors of Strata. This data shall be protected from public disclosure to the fullest extent permitted by law, including conformance with Section 304 of the NHPA, as amended, Section 9 of the ARPA, and Executive Order No. 13007 on Indian Sacred Sites (Federal Register, Vol. 61 No. 104, May 24, 1996). Confidentiality concerns for properties that have traditional religious and cultural importance to the Ross Project Consulting Tribes will be respected and will remain confidential to the fullest extent permitted by law. Duplication or distribution of cultural resource data from BLM-managed lands by any Party requires written authorization from the BLM Newcastle Field Manager.

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.

Comment [JM39]: Look at adding any additional language for next time

Comment [JM40]: Strata's subcontractors to have this information for avoidance. "No go zone" map

Comment [JM41]: Alice will look into this

G. ANNUAL REPORT AND EVALUATION

1. On or before January 1 of each year, until/unless the Consulting Parties agree in writing that the terms of this PA have been fulfilled, Strata shall prepare and provide a letter report to the NRC detailing how the applicable terms of the PA are being implemented. Upon acceptance, Strata shall provide this annual report to all the Parties. The Parties may provide comments on the report to Strata within 30 days of receipt, and Strata will distribute all comments to the Parties.

Comment [ELM42]: As originally worded this may have conflicted with the automatic termination of the PA upon fulfillment of its terms or 20 years passing, whichever came first.

Comment [JM43]: NRC have a review time of 30 days?

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2. ~~Strata~~ shall coordinate a meeting or conference call of the ~~Parties~~ within 30-60 days after providing the annual report for the first five (5) years, and (if the PA is still in effect) every third year after that, unless the ~~Consulting~~ Parties agree to another timeframe. The purpose is to review implementation and achieved outcomes of the terms of this PA and to discuss the annual report, as needed. ~~If warranted, The Parties shall determine/evaluate whether amendments are needed to improve the effectiveness of this PA.~~

Comment [JM44]: Add sentence for meeting

Comment [JM45]: ok

Comment [JM46]: Do we need this sentence?

Comment [JM47]: May request to have separate meetings with tribes and other parties

Comment [ELM48]: Not necessary in light of Section I.

Comment [JM49]: Get suggested language from Richard

Comment [j50]: ACHP: Tribes and other consulting parties need a chance to.

Comment [ELM51]: Joan: Based on my meeting notes. ACHP said tribes could raise concerns to ACHP and they could raise the objection. So that would limit the signatories to being able to raise an objection. Then it's a question of the information going to all consulting parties or just the "Parties" (signatories and concurring parties on the PA.) Probably need to discuss this during the call Thursday.

F.H. DISPUTE RESOLUTION

1. ~~Any Party? Signatory to this PA who objects to an action under this PA, or the implementation of the measures stipulated to in this PA, shall provide notice to the NRC within 30 days of becoming aware of an action. The NRC Should any Signatory to this PA provide notice to the NRC of its objection to an action under this PA, or implementation of the measures stipulated in this PA, within 30 days of becoming aware of an action, the NRC shall consult with the [Signatories or Parties] Signatories objecting party to this PA to resolve the objection, unless otherwise specified in this document. If the NRC determines that the objection cannot be resolved, the NRC shall forward all documentation relevant to the dispute to the ACHP, including NRC's proposed response to the objection. The objecting party-Signatory must provide reasons for, and a justification of, its objection at the time it initially submits its objection to the NRC. Within 30 days after receipt of all pertinent documentation, the ACHP shall either:~~
- Advise the NRC that the ACHP concurs with the NRC's proposed final decision, whereupon the NRC shall respond accordingly;
 - Provide the NRC with recommendations, which the NRC shall take into account in reaching a final decision regarding the dispute; or
 - Notify the NRC that it will comment within an additional 30 days, in accordance with 36 CFR 800.7(c)(4). Any ACHP comment provided in the response to such a request will be taken into account, and responded to , by the NRC in accordance with 36 CFR 800.7(c)(4) with reference to the subject of the dispute.
 - Should the ACHP not exercise one of the above options within forty-five (45) days after receipt of all pertinent documentation, the NRC may proceed with its proposed response to the objection.
2. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. The NRC's responsibility to carry out all actions under this PA that are not the subject of the dispute shall remain unchanged.

Comment [JM52]: Compare to ACHP template: If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation ???, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.

Once the PA is terminated, and prior to work continuing on the undertaking, [Agency abbreviation] must either (a) execute an MOA/PA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. [Agency abbreviation] shall notify the signatories as to the course of action it will pursue

SHPO is ok with using ACHP language

G.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.

H.J. TERMINATION

1. ~~Any~~ Signatory to this PA may initiate termination by providing written notice to the other ~~parties~~ Signatories of their intent. After notification by the initiating Signatory, the

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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 the original this individual undertaking covered by this PA.

H.K. DURATION OF AGREEMENT

This PA shall remain in effect for 20 years 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.

J.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.

K.M. GENERAL PROVISIONS

1. **Entirety of Agreement.** This PA, consisting of number (xx) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral, regarding compliance with Section 106 of the National Historic Preservation Act.
2. **Prior Approval.** 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.
3. **Severability.** 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.
4. **Sovereign Immunity.** The State of Wyoming, the WYSHPO, the BLM, the NRC, the ACHP, [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.
5. **Indemnification.** 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 by NRC, BLM, ACHP, WY SHPO, Strata (and other signatories), the submission of documentation and filing of this PA with the ACHP pursuant to 36 CFR 800.6(b)(1)(iv) prior to the Signatories' approval of the undertaking, and implementation of its

Comment [JM53]: SHPO suggests 5-10 years if it goes beyond that we should review PA again. ACHP agrees this language shouldn't be open ended.

NRC - 10 year license period. Revise language here.

Comment [JM54]: Body of PA w/o appendices.

Comment [OJ55]: Add NRC, BLM etc. to this paragraph. However, it's covered in M. 3 below. Need to check for redundancy as we revise document.

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terms, are evidence that the NRC and BLM have taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

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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.

Lead Federal Agency

Lead Federal Agency Official Date

Any other federal agencies

Other Federal Agency Officials Date

Wyoming State Historic Preservation Officer

Mary Hopkins, SHPO Date

Advisory Council on Historic Preservation

John M. Fowler, Executive Director Date

Other signature lines as needed (interested parties, etc.)

Name and title Date

Approval as to Form:
Wyoming Attorney General's Office

S. Jane Caton, Date
Senior Assistant Attorney General