

StrataRossLAPem Resource

From: bschiffer [bschiffer@wwcengineering.com]
Sent: Thursday, November 21, 2013 1:09 PM
To: Moore, Johari; Monteith, Emily; 'Richard Currit (richard.currit@wyo.gov)'; 'Mary Hopkins (mary.hopkins@wyo.gov)'; 'Mike Griffin (MGriffin@stratawyo.com)'; 'John Eddins'; 'Tratebas, Alice'; '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'
Cc: 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: 7415381-v1-Strata Edits _ Ross Project PA Appendix A_WORKING DRAFT 11-20-13.DOCX; 7260418-v6-Strata Edits Ross Project Programmatic Agreement_WORKING DRAFT 11-20-13.DOCX

Johari--

Please see the attached two word documents providing some minor suggestions on the draft PA and Appendix A. We have not had time to work through all of the late day BLM documents. However, we look forward to the call and getting this agreement finalized.

Ben

On 11/20/2013 12:42 PM, Moore, Johari 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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Subject: Re: Ross Project Programmatic Agreement - WORKING DRAFT for 11-21-13
Webinar and Webinar Agenda
Sent Date: 11/21/2013 1:08:36 PM
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Created By: bschiffer@wwcengineering.com

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"Confederated Salish and Kootenai" <francisa@cskt.org>
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"Crow Creek Sioux" <wandawells@midstatesd.net>
Tracking Status: None
"Flandreau Santee Lakota" <Jb.weston@fsst.org>
Tracking Status: None

Post Office: wwcengineering.com

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4496492		
7260418-v6-Strata Edits Ross Project Programmatic Agreement_WORKING DRAFT 11-20-13.DOCX		
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Options
Priority: Standard
Return Notification: No
Reply Requested: No
Sensitivity: Normal
Expiration Date:
Recipients Received:



PREDECISIONAL DRAFT

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Appendix A

Description of Undertaking and Area of Potential Effects

Undertaking

On January 4, 2011, Strata Energy, Inc. (Strata or the applicant) submitted to the U.S. Nuclear Regulatory Commission (NRC) a license application to construct and operate the Ross Project, which is a proposed uranium *in situ* recovery (ISR) facility located in Oshoto, Crook County, Wyoming.

The Atomic Energy Act of 1954, as amended, authorizes the NRC to issue licenses, either as a general or specific license, to qualified applicants for the receipt, possession and use of byproduct and source materials resulting from the removal of uranium ore from its place of deposit in nature. An NRC specific license is issued to a commercial uranium or thorium ISR facility pursuant to NRC implementing regulations listed in Title 10 of the Code of Federal Regulations (10 CFR) Part 40.

On January 21, 2011, Strata submitted to the U.S. Department of the Interior, Bureau of Land Management (BLM), Newcastle, Wyoming Field Office a Plan of Operations for the Ross Project for review and approval.

[Describe the BLM's authority here]

Ross Project Location and Proposed Activities

The proposed activities consist of constructing and operating an ISR facility at the Ross Project located in Oshoto, Crook County, Wyoming. Strata is a U.S.-based corporation registered in Wyoming and a wholly owned subsidiary of Peninsula Energy Limited, an Australian registered company. Peninsula Energy is a publicly traded corporation on the Australian Securities Exchange. For this Undertaking, Strata is the applicant.

As shown in Figure 1, Crook County is located in the northeastern corner of Wyoming, abutted by Montana to the north, South Dakota to the east, Weston County, Wyoming, to the south, and Campbell County, Wyoming to the west. The total area encompassed by Crook County is 2871 square miles. The nearest town to the project is Moorcroft, which is located approximately 22 miles south of the Ross Project. The closest community is Oshoto, which includes 11 residences located within 2 miles (mi) [3.2 kilometers (Km)] of the project area. In addition to Moorcroft, the other nearest major urban centers include Sundance, Hulett, and Pine Haven, all of which are located in Wyoming. The largest population in those nearby urban centers is in Sundance with a 2010 population of 2602 persons (Strata, 2011a).

~~The Ross Project area is located within the headwaters of the Little Missouri River near the settlement of Oshoto, approximately 18 miles north of Moorcroft, Wyoming. Elevations range between 4,120—4,260 feet (ft). The local geological setting in the Ross Project area is the Upper Cretaceous, Lance Formation, a non-marine shale and sandstone. Upland landforms,~~

including hills, ridgelines, cuestas, and higher elevation tablelands, dominate the topography. Interfluvial valleys and narrow draws divide the uplands from the Little Missouri River, which flows on a northeasterly course through the central portion of the Project area. A dam in the Project area, across the Little Missouri River, impounds the Oshoto Reservoir. Deadman Creek, a reliable seasonal stream, is a major tributary of the Little Missouri River joining the River in the southwestern part of the Project area. Extensive terrace systems occur in the Little Missouri River and Deadman Creek drainages. Vegetation is mixed grass prairie intermingled with stands of big sagebrush and sand sagebrush on open drier slopes. Deciduous woodlands occur in several deeply entrenched draws, and wetland flora occurs around ponded holes in some sections of these draws. Soils generally consist of residual sandy loams forming on clays, sands, and paralithic bedrock.

The public natural resources located within Crook County include portions of the Black Hills National Forest, Devils Tower National Monument, Missouri Buttes, and the Keyhole Reservoir State Park. Devils Tower National Monument and Missouri Buttes are located approximately 12 miles east of the Ross Project. The Keyhole Reservoir State Park is located approximately 18 miles south southeast of the Ross Project. In addition to uranium mining, other mineral resources in Crook County include oil and gas, and bentonite mining.

Access to the project is through several county roads including Road 68 (D Road) and Road 164 (New Haven Road), all of which are gravel capped. The closest interstate highway is Interstate 90; the closest point to the interstate highway is located at Moorcroft, Wyoming.

As shown in Figure 2, The Ross Project comprises approximately 696 hectares (ha) [1,721 acres (ac)]. Surface ownership of land located within the Ross Project is as follows: private entities, 553 ha [1367.2 ac]; State of Wyoming, 127 ha [314.1 ac]; and the Federal Government as administered by the BLM, 16 ha [40.0 ac]. Mineral rights are owned by the same entities as the surface rights; however, the distribution differs slightly from that of the surface ownership in that federal mineral rights ownership occurs in several quarter/quarter sections for which surface land is owned by private entities. the Ross Project includes parts of the following sections of the Public Land Survey System:

Section	Township	Range
7, 17, 18 & 19	53 North	67 West
12, 13 & 24	53 North	68 West

The proposed activities for the Ross Project include the construction of wellfields and a central processing plant (CPP) with ancillary equipment. The ancillary equipment includes underground piping from the wellfield to the CPP and from the CPP to the deep disposal wells, two to three dozen header houses, an administrative and warehouse/maintenance building, chemical and equipment storage area, lined retention ponds, and deep disposal wells. Except for the wellfields, header houses, deep disposal wells and piping, most of the development is limited to a 50-acre area referred to as the "CPP area" within the project.

The applicant proposes in situ recovery processes for this project. The ISR process involves extracting uranium from underground ore bodies without bringing the ore bodies to the surface by injecting a leaching solution through wells into underground ore bodies to dissolve the uranium. The leaching solution is recovered from the subsurface through the extraction wells and piped to the CPP through a system of underground piping. At the CPP, two generic processes produce the final product, which is referred to as yellowcake.

~~The applicant requests that the Ross Project be licensed to process 28,400 liters per minute (Lpm) [7,500 gallons per minute (gpm)] of leaching solution through the resins and produce 1.36 million kilograms (kg) [3 million pounds (lbs)] per year of yellowcake at the CPP.~~

From the initial construction to final decommissioning, the applicant proposed timeline for the Ross Project is approximately 10 years; however, the applicant also requests processing of uranium-rich resins derived from other ISR operations (either a future Strata facility or a facility operated by another licensee) or other entity (e.g., water treatment resins). The applicant states that processing of resins outside sources could extend the life of the CPP to 20 years.

The applicant proposes restoration of the production aquifer and stability monitoring. Restoration of portions of wellfields may occur simultaneously with operations (recovery of uranium) at other wellfields. After restoration is completed and approved by NRC staff, the wellfields will undergo decommissioning and reclamation by removing the piping and other ancillary equipment. Upon completion of operations, all surface facilities that were installed for the Ross Project will be decommissioned to allow unrestricted future use of the property. All equipment not fully decontaminated for unrestricted use will be disposed of at an NRC-licensed facility.

Ross Project Area of Potential Effects

As indicated in the NRC's letters to the Wyoming State Historic Preservation Office and the Advisory Council on Historic Preservation, dated August 19, 2011, the Area of Potential Effects (APE) 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. The physical APE (the area within the Ross Project boundary) is comprised of the areas that may be directly affected by physical ground disturbance and construction of the Ross Project, as shown in Figure 3, and the setting APE is comprised of the area within three (3) miles of the Ross Project boundary wherein potential visual and audible effects to historic properties may occur

By letter dated August 27, 2012, Strata provided to the NRC the results of its analysis to identify and assess the potential visual effects to properties located within ~~three (3)~~ miles of the Ross Project boundary. Strata determined that three (3) of 58 previously recorded sites fall in areas that may be visible from the Ross Project and recommended that there is zero indirect effect on the prehistoric sites within this APE. The NRC staff's review of this analysis will be incorporated into the NRC's Tribal Field Survey Report.

The NRC's review and assessment of potential noise effects to receptors located within 2 miles of the Ross Project boundary has previously been included in Chapters 3.7 and 4.7 of the Environmental Report (insert publish date), which is incorporated herein by reference.

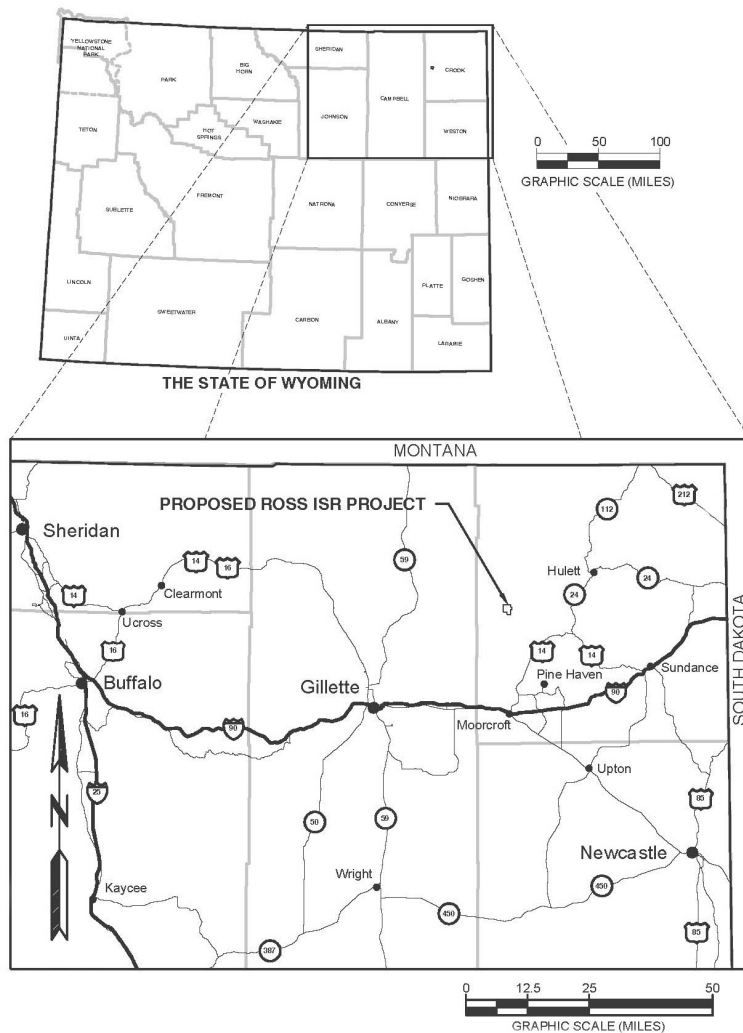


Figure 1 Ross Project Location Map

Source: Figure 1.4-1 of the Ross ISR Project USNRC License Application, Technical Report, Crook County, Wyoming, prepared by Strata Energy, Inc., Docket No. 040-09091. ADAMS Accession No. ML110120063, January 2011.

APPENDIX A TO THE PROGRAMMATIC AGREEMENT AMONG THE U.S. NUCLEAR REGULATORY COMMISSION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE WYOMING STATE HISTORIC PRESERVATION OFFICE, AND STRATA ENERGY, INC. REGARDING THE ROSS IN-SITU URANIUM RECOVERY PROJECT IN CROOK COUNTY, WYOMING

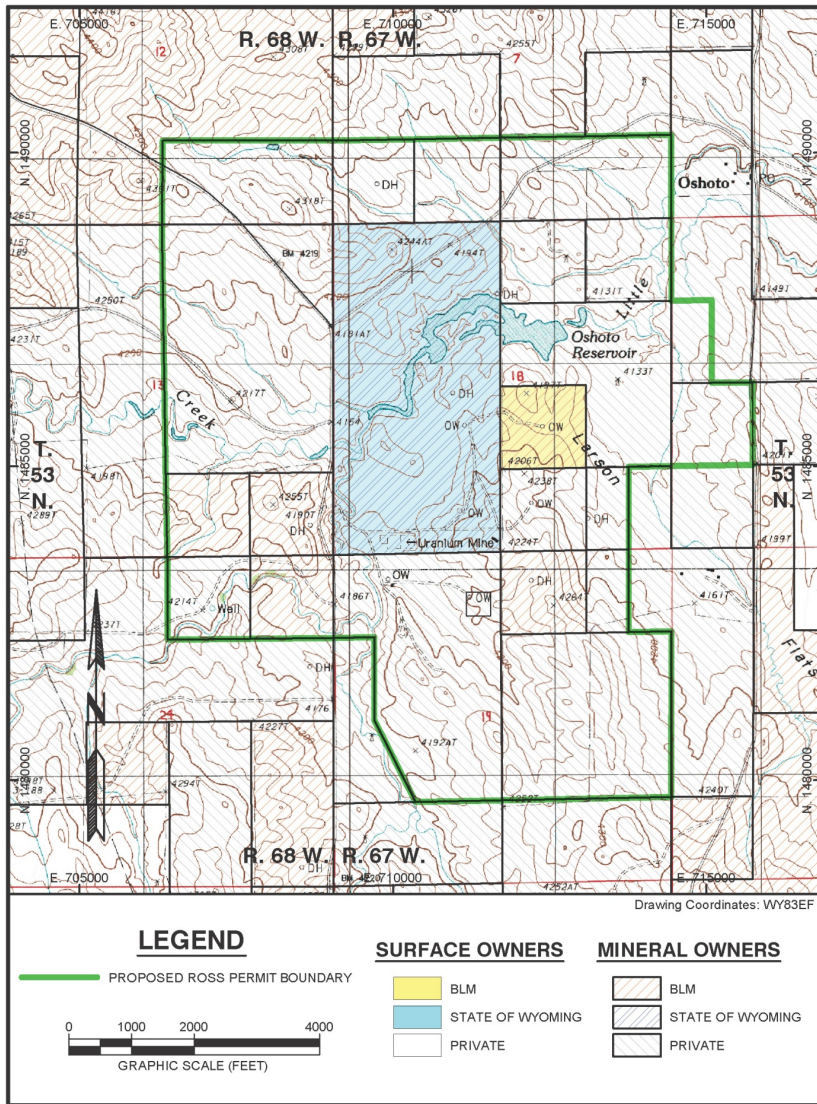


Figure 2 Ross Project License Boundary and Distribution of Land Ownership

Source: Figure 2.1-1 of the Ross ISR Project USNRC License Application, Technical Report, Crook County, Wyoming, prepared by Strata Energy, Inc., Docket No. 040-09091. ADAMS Accession No. ML110120063, January 2011.

APPENDIX A TO THE PROGRAMMATIC AGREEMENT AMONG THE U.S. NUCLEAR REGULATORY COMMISSION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE WYOMING STATE HISTORIC PRESERVATION OFFICE, AND STRATA ENERGY, INC. REGARDING THE ROSS IN-SITU URANIUM RECOVERY PROJECT IN CROOK COUNTY, WYOMING

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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
STRATA ENERGY, INC.,
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 [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, 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 NRC, by letter dated August 19, 2011, initiated Section 106 consultation with the Wyoming State Historic Preservation Office (WYSHPO); and

WHEREAS, the NRC, in consultation with WYSHPO as provided at 36 CFR Part 800.4(a) and Part 800.16(d), established the area of potential effects (APE) for the Undertaking as 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. The physical APE (the area within the Ross Project boundary) is comprised of the areas that may be directly affected by physical ground disturbance and construction of the Ross Project, and the setting APE is comprised of the area within three miles of the Ross Project boundary wherein potential visual and audible effects to historic properties may occur, as ~~described~~^{shown} in Appendix A; and

WHEREAS, identification of cultural 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~~^{described} in Appendix B; and

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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 WYSHPO has concurred with these findings; as described in Appendix B; and

WHEREAS, the NRC has to make determinations of eligibility for the NRHP for 33 unevaluated cultural properties within the APE as shown in Table 1-D and Table 3 of Appendix B; 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 PA; and

WHEREAS, by letter dated April 17, 2013, Strata has submitted an Additional Testing Plan to the NRC to test the two unevaluated sites (48CK2076 and 48CK2073) that are located within proposed disturbance areas for NRHP eligibility and to test the two eligible sites (48CK1603 and 48CK2083) for effects; and

WHEREAS, the NRC is coordinating with the BLM to review Strata's Additional Testing Plan and, if accepted by the NRC in consultation with WYSHPO, the Additional Testing Plan will be appended to this PA as the Phase I Testing Plan; and

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: 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 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 applicable requirements of the NHPA, the American Indian Religious Freedom Act, 42 U.S.C. 1996 *et. seq.* (AIRFA), the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 *et. seq.* and 43 CFR 10 (NAGPRA), and the Archaeological Resources

Comment [A1]: The testing plan is confidential. Do we append a public version?

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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

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 development of this PA and the Council, by letter dated October 28, 2013, ~~has~~ accepted the invitation and is a ~~consulting party~~ Signatory; and

WHEREAS, the NRC, by letter ~~s~~ dated September 19, 2013, invited ~~each of~~ the Ross Project Consulting Tribes to be a party to PA ~~and to participate in its development, and [TBD]~~ ~~participated~~; and

WHEREAS, the ~~following~~ Ross Project Consulting Tribes ~~have accepted the NRC's invitation to participate in development of this PA and to be a party to the PA; [TBD] will be invited to sign the PA as Concurring Parties~~; and

WHEREAS, the NRC, by letter dated September 19, 2013, invited the Crook County Museum District and the Alliance for Historic Wyoming, to participate in the development of this PA, and 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~~ Strata ~~is an~~ Invited Signatory ~~and has, by letter dated [], to be a signatory to participated in the development of the this PA and and Strata, by letter dated [], has [] the NRC's invitation shall implement the Undertaking in accordance with this PA~~; and

Comment [A2]: Understood from last week's webinar that invitational letter would be forthcoming shortly. Have not received to date.

WHEREAS, the NRC, WYSHPO, ACHP, and Strata are collectively hereafter called ~~"Signatories;" 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

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

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

NOW, THEREFORE, the NRC, WYSHPO, ~~ACHP~~, and ~~ACHP~~ 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.

STIPULATIONS

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

A. GENERAL STIPULATIONS

- ~~1. The NRC shall require as a condition of any license issued to Strata that Strata complies with all stipulations and other provisions in this PA.~~
- ~~2. The BLM shall require as a condition of Strata's Plan of Operations that Strata complies with all stipulations and other provisions in this PA.~~
- ~~4-3. The NRC shall require as a condition of any license issued to Strata and the BLM shall require as a condition of Strata's Plan of Operations that~~ Strata shall fund all required fieldwork, analysis, reporting, curation, and mitigation necessary to comply with this PA and Section 106 of the NHPA.
- ~~2-4. Strata will ensure that~~direct all of its employees, contractors, subcontractors, inspectors, monitors, and any ~~authorized~~ additional parties involved in the ~~Ross P~~project not to search for, retrieve, deface, or impact historic and prehistoric materials (e.g., archaeological materials such as, arrowheads, ~~pottery shards, petroglyphs~~) and ~~ensure that they~~ receive training regarding the sensitivity of all historic and cultural resources, both Native American and non-Native American. Strata shall 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)
- ~~3-5. Define role of NRC, BLM, and Strata in conducting future activities pursuant to the PA~~The NRC will remain in lead role for implementation of the PA. Strata shall provide to the BLM Newcastle Field Office point of contact copies of all reports required to be provided to the NRC pursuant to the PA. The NRC will coordinate with the BLM when fulfilling the duties assigned to the NRC under the PA. When requested to provide input to the NRC to complete coordinated tasks, the BLM shall provide timely input in accordance with the schedule provided by the NRC. If timely input is not provided to the NRC by the BLM, the NRC may complete the task. The NRC may designate the BLM staff as the local point of contact to address unanticipated discoveries.
- ~~6. 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 determinations of eligibility for the unevaluated properties, the determination of effect to historic properties, and the development of any plans to avoid, minimize, or mitigate adverse effects to historic properties. Any information provided by the Tribes on sites of traditional religious and cultural importance will remain confidential to the fullest extent permitted by law.~~

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

~~B. 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 properties that are unevaluated for eligibility for listing in the NRHP or for which there is no consensus on 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~~

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~~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 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. Testing Unevaluated Properties for NRHP Eligibility

If direct disturbance will occur within the APE in an area other than the area considered in the Phase I Testing Plan, then, consistent with the phased process for Section 106 compliance under this PA, Strata shall submit a plan to the NRC for approval to complete the testing for eligibility for any unevaluated properties within that area. Strata shall submit a notice of intent (NOI) to NRC at least 3 months prior to submittal of the testing plans for NRHP eligibility for subsequent Ross Project phases, and Strata shall submit the testing plans to the NRC no later than 48 months prior to the date on which the proposed Ross Project activities are expected to commence. Upon receipt of Strata's testing plan, the NRC will have 30 days to either accept or provide Strata with comments on the testing plan. Based on the comments received, within 30 days, Strata will revise the testing plan and submit it to the NRC. Upon receipt of Strata's revised testing plan, the NRC will then have 15 days to review the plan, confirm that its comments have been incorporated, and accept or reject the plan. If rejected, Strata will address the NRC's comments and resubmit the testing plan as described above. If accepted, the NRC will then provide the testing plan to the WYSHPO for a 30-day review period. If the WYSHPO concurs with the NRC's acceptance of Strata's testing plan or fails to respond within 30 days, the NRC will notify Strata that it may proceed with the testing plan. If a dispute arises, it will be resolved in accordance with Stipulation G (Dispute Resolution).

If NRC Site #1, 2, 3, or 4 (see Appendix B) is located within the area considered in the Additional Testing Plan (ATP) associated with Phase I of the Ross Project, then within thirty (30) days of the date of execution of this PA, Strata shall submit a Revised ATP to the NRC to include those sites. Upon receipt of Strata's Revised ATP, the NRC staff will have 30 days to either accept or provide Strata with comments on the Revised ATP. Based on the comments received, within 30 days, Strata will revise the testing plan and submit it to the NRC. Upon receipt of Strata's Revised ATP, the NRC will then have 15 days to review the plan, confirm that its comments have been incorporated, and accept or reject the plan. If rejected, Strata will address the NRC's comments and resubmit the Revised ATP as described above. If accepted, the NRC will then provide the Revised ATP to the WYSHPO for a 30-day review period. If the WYSHPO concurs with the NRC's acceptance of Strata's testing plan or fails to respond within 30 days, the NRC will notify Strata that it may proceed with the testing plan. If a dispute arises, it will be resolved in accordance with Stipulation G (Dispute Resolution).

2. Determination of Eligibility

In accordance with an approved testing plan, Strata shall evaluate and make NRHP eligibility recommendations on unevaluated properties identified within the direct disturbance area of each Ross Project phase that the NRC may use in making

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determinations of eligibility for the NRHP using the National Register Criteria for Evaluation. Upon receipt of Strata's eligibility recommendations, the NRC will have 30 days to evaluate the recommendations and consult with the WYSHPO and the Ross Project Consulting Tribes in accordance with 36 CFR § 800.4(c)(1). If the recommendations provided by Strata are insufficient to allow the NRC to make a determination, the NRC will consult with WYSHPO and Strata to resolve the issue. The NRC will then provide its final eligibility determinations to the WYSHPO for a 30-day review period. If the WYSHPO agrees with the NRC's determinations or fails to respond within 30 days, the NRC's eligibility determinations will be final. If there is disagreement regarding eligibility between the NRC and the WYSHPO and that disagreement cannot be resolved, or if the ACHP so requests, the NRC will refer the property(ies) in question to the Keeper of the National Register and request a formal determination of eligibility per 36 CFR § 800.4(c)(2). The Keeper's decision is final.

3. Testing Historic Properties for Adverse Effect

If the NRC in consultation with WYSHPO determines, after reviewing the results of Strata's NRHP eligibility testing for unevaluated sites conducted under Strata's Phase I Testing Plan or testing plans for subsequent phases, that a property is eligible for listing on the NRHP, Strata shall submit to the NRC a plan for approval to complete the testing for effects to those historic properties. Upon receipt of Strata's testing plan, the NRC staff will have 30 days to either or accept or provide Strata with comments on the testing plan. Based on the comments received, within 30 days, Strata will revise the testing plan and submit it to the NRC. Upon receipt of Strata's revised testing plan, the NRC will then have 15 days to review the plan, confirm that its comments have been incorporated, and accept or reject the plan. If rejected, Strata will address the NRC's comments and resubmit the testing plan as described above. If accepted, the NRC will then provide the testing plan to the WYSHPO for a 30-day review period. If the WYSHPO concurs with the NRC's acceptance of Strata's testing plan or fails to respond within 30 days, the NRC will notify Strata that it may proceed with the testing plan. If a dispute arises, it will be resolved in accordance with Stipulation G (Dispute Resolution).

4.4. Assessment of Effects

In accordance with an approved testing plan, Strata shall evaluate and make recommendations that the NRC may use in making determinations of potential ~~adverse~~ effects on identified historic properties within the direct disturbance area of each Ross Project phase ~~limited-APE~~. The NRC will have 30 days to evaluate the recommendations. The NRC will then distribute its effect determinations and the associated documentation to the Signatories and Concurring Parties (collectively "Parties") and the Ross Project Consulting Tribes for a 30-day review period. If the recommendations provided by Strata are insufficient to allow the NRC to make a determination, the NRC will consult with WYSHPO and Strata to resolve the issue. If the Parties and the Ross Project Consulting Tribes concur with NRC's determinations of effect, or if no objections are received within the 30-day review period, the effect determinations are final. The NRC will consult to resolve any objections received regarding determinations of effect received in writing within the 30-day review period. If the NRC cannot resolve the objection, the NRC will follow the dispute resolution procedure in accordance with Stipulation G.

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The NRC, in consultation with the WYSHPO, will make NRHP eligibility determinations and effects determinations for the 18 properties identified during the tribal field survey (see Appendix B).

If any eligible properties will be adversely affected, plans to avoid, minimize, or mitigate the adverse effects will be developed in accordance with the Stipulation C of this PA.

2-5. 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

Once the assessment of adverse effect to an eligible historic property has been finalized per Stipulation B.4., Strata shall notify the NRC within 30 days if it can avoid the historic property that would be adversely affected within the direct disturbance area of each Ross Project phase, 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.

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.

—Minimization and Mitigation of Adverse Effects

2-1. If the NRC determines adverse effects to historic properties within the direct disturbance area of any Ross Project phase~~limited APE~~, cannot be avoided, within 30 days, the NRC will consult with the Parties and Ross Project Consulting Tribes to identify those measures to be implemented by Strata to minimize and/or mitigate adverse effects to affected historic properties. Measures to minimize and mitigate adverse effects will take into account the nature and significance of the cultural resources involved and the extent of the possible direct, indirect, and cumulative effects.

2. The NRC, in consultation with the Parties and Ross Project Consulting Tribes, will ensure that plans are developed by Strata that outline minimization or mitigation for adverse effects to historic properties, including historic properties of traditional religious and cultural importance to the Tribes in the direct disturbance area of any Ross Project phase~~limited APE~~. Within 30 days of receiving the recommended adverse effects mitigation measures in Stipulation C.1 from the NRC, Strata will develop draft mitigation plans and submit them to the NRC.:

- i. For historic properties that are archaeological in nature and significant for their research data potential (Eligibility Criterion D, National Register of Historic Places), the treatment measures may follow standard mitigation through data recovery. Mitigation plan(s) for data recovery shall include, at a minimum, a research design with provisions for data recovery and recordation, analysis, reporting, and curation of resulting collection and records, and shall be consistent with the Secretary of Interior's Standards and Guidelines (48 FR 44734-44737). Mitigation plan(s) must be consistent with easement and permit requirements of other agencies, when applicable. To the extent possible, mitigation plan(s) should group related sites or areas, so that treatment of related resources can be considered in context, and to minimize the burden of review and approval by agencies.

- ## D. DISCOVERIES

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- 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~~ the area 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.~~

Comment [A3]: Seems redundant, and potentially confusing to local resource providers.

- ~~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 procedures agreed upon by the NRC and WYSHPO for State and private land, applicable law. ~~If a Non-Native American human remains are found on federal, state, or private land, all work within the area 300 feet of the discovery will cease, the area will be secured, and Strata shall immediately notify the NRC and BLM such that BLM will also be treated and dispose of such remains in accordance with applicable law. See 43 CFR §10.6.~~ 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.

Comment [A4]: 43 CFR 10.4 states that work shall cease 'in the area of the discovery'. 300 feet would restrict Strata's ability to conduct operations that have no reasonable expectation of impacting additional human remains.

Comment [A5]: BLM, please provide citation for this.

- ~~b. The activity that resulted in the inadvertent discovery may resume thirty (30) days after certification by NRC of receipt of the written confirmation of notification of inadvertent discovery if the resumption of the activity is otherwise lawful. The activity may also resume, if otherwise lawful, at any time that a written, binding agreement is executed between the NRC and the affiliated Indian tribes that adopt a recovery plan for the excavation or removal of the human remains, funerary objects, sacred objects, or objects of cultural patrimony.~~

~~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.~~

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- ~~c. The NRC shall consider, in consultation with the Ross Project Consulting Tribes, the necessity 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 [A6]: Moved to general stipulations.

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Comment [A7]: Deleted.

~~F.E.~~ **CONFIDENTIALITY OF CULTURAL RESOURCE DATA**

Cultural 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

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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.

Comment [A8]: BLM will look into this

G.F. ANNUAL REPORT AND EVALUATION

1. On or before January 1 of each year, unless the 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 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.
2. Strata shall coordinate a meeting or conference call of the Parties within 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 Parties agree to another timeframe. As appropriate, Parties may request a separate meeting to discuss the annual report. The purpose is to review implementation and achieved outcomes of the terms of this PA and to discuss the annual report, as needed.

H.G. 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 shall consult with the [Signatories or Parties]-objecting Signatory 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 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:
 - a. Advise the NRC that the ACHP concurs with the NRC's proposed final decision, whereupon the NRC shall respond accordingly;
 - b. Provide the NRC with recommendations, which the NRC shall take into account in reaching a final decision regarding the dispute; or
 - c. 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.
 - d. 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.

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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.

H.H. 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.I. TERMINATION

1. Any Signatory to this PA may initiate termination by providing written notice to the other Signatories 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 the original Undertaking covered by this PA.

K.J. 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.

L.K. 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.L. GENERAL PROVISIONS

1. **Entirety of Agreement.** This PA, consisting of ~~number eleven (11)~~ 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.

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4. **Sovereign Immunity.** The State of Wyoming, the WYSHPO, ~~the BLM,~~ the NRC, the ACHP, [~~other Invited Signatories or Concurring Parties~~~~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 the NRC, ~~BLM,~~ ACHP, WY-SHPO, Strata (~~and other Invited signatories~~~~Signatories or Concurring Parties~~), 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~~~~Undertaking~~, and implementation of its terms, are evidence that the NRC ~~and BLM have~~~~has~~ taken into account the effects of this ~~undertaking~~~~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