

StrataRossLAPem Resource

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Sent: Tuesday, December 03, 2013 12:38 PM
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Subject: Re: Ross Project Programmatic Agreement - Comments/Revisions from 11-21-13 Webinar
Attachments: Ross PA Appendix A SHPO comments 11-20-13.docx; Ross PA Appendix B SHPO comments 12-3-13.docx; Ross PA Draft SHPO comments 12-3-13.docx

Hi Johari,

Here are my comments. I think that we are really close. It looked as though the BLM Stipulations Draft had been rolled into the PA, correct?

Richard L. Currit
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On Fri, Nov 22, 2013 at 11:06 AM, Moore, Johari <Johari.Moore@nrc.gov> wrote:

Greetings,

In yesterday's webinar to develop the Ross Project Programmatic Agreement (PA), we discussed and proposed revisions to the "whereas" clauses and Stipulations A and B. **We also discussed the path forward for developing the PA and decided to hold another webinar on 12/12/13.** In preparation for the next webinar, we are requesting comments on the current draft of the PA and appendices as well as the suggested revisions to the stipulations that have been provided by BLM. **Please provide your comments on the attached documents by 12/5/13.** So that we can best anticipate any additional terms for discussion in the 12/12/13 webinar, please also consider taking this opportunity to share the current version of the draft with those in your organization who may need to provide input on the PA. As requested, please email your comments/revisions to the entire group.

For those of you that have not yet been able to participate in a webinar, we also welcome you to provide your comments on the PA and to join us at our next webinar. Each of the Ross Project Consulting Tribes will be invited to sign the final PA as a Concurring Party. I will provide the information to join the next webinar in a follow-up email.

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, 11/14, and 11/21

BLM - 10/24, 10/31, 11/7, 11/14, and 11/21

WYSHPO - 10/24, 10/31, 11/7, 11/14, and 11/21

ACHP - 10/24, 11/7, 11/14, and 11/21

Strata Energy, Inc. - 10/24, 10/31, 11/7, 11/14, and 11/21

Cheyenne and Arapaho Tribes of Oklahoma THPO – 11/7, 11/14, and 11/21

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,

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Ross PA Appendix B SHPO comments 12-3-13.docx		41298
Ross PA Draft SHPO comments 12-3-13.docx		67750

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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. Inter-fluvial 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:~~

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

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 indirect~~ 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.~~

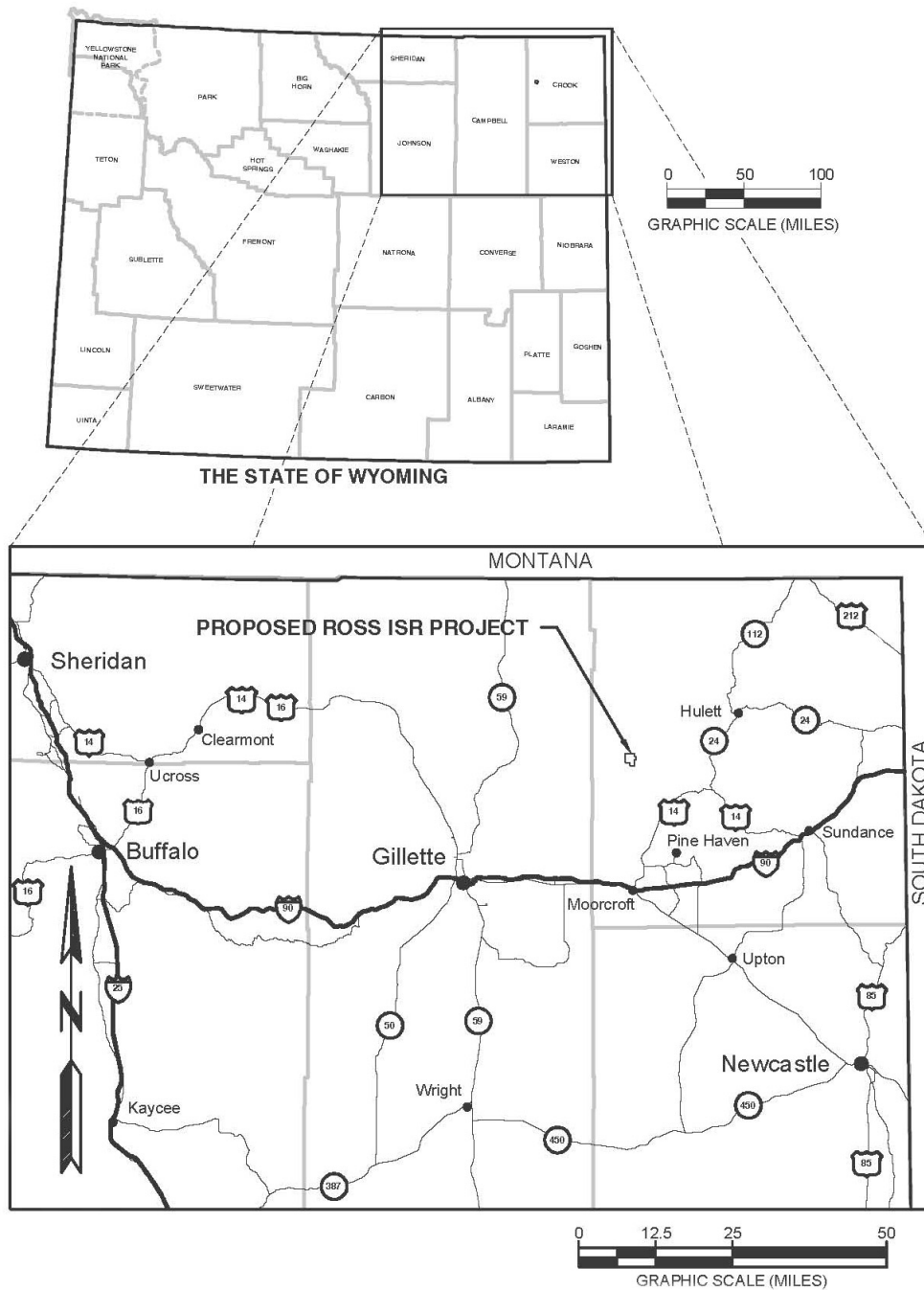


Figure 1 Ross Project Location Map

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

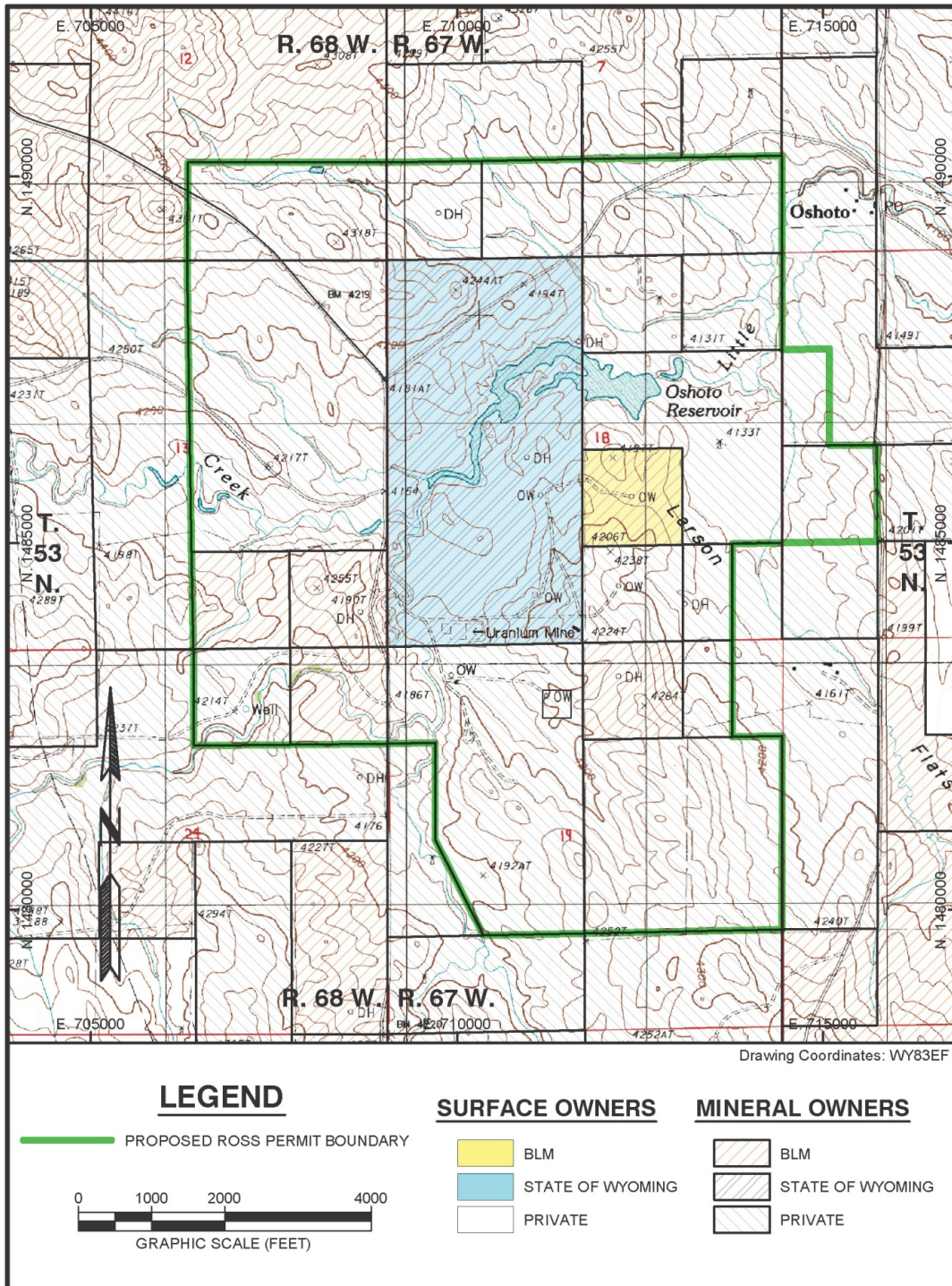


Figure 2 Ross Project License Boundary and Distribution of Land Ownership

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.

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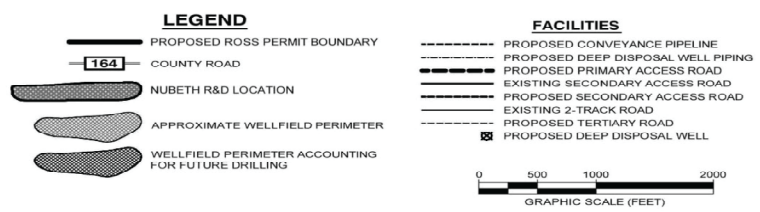
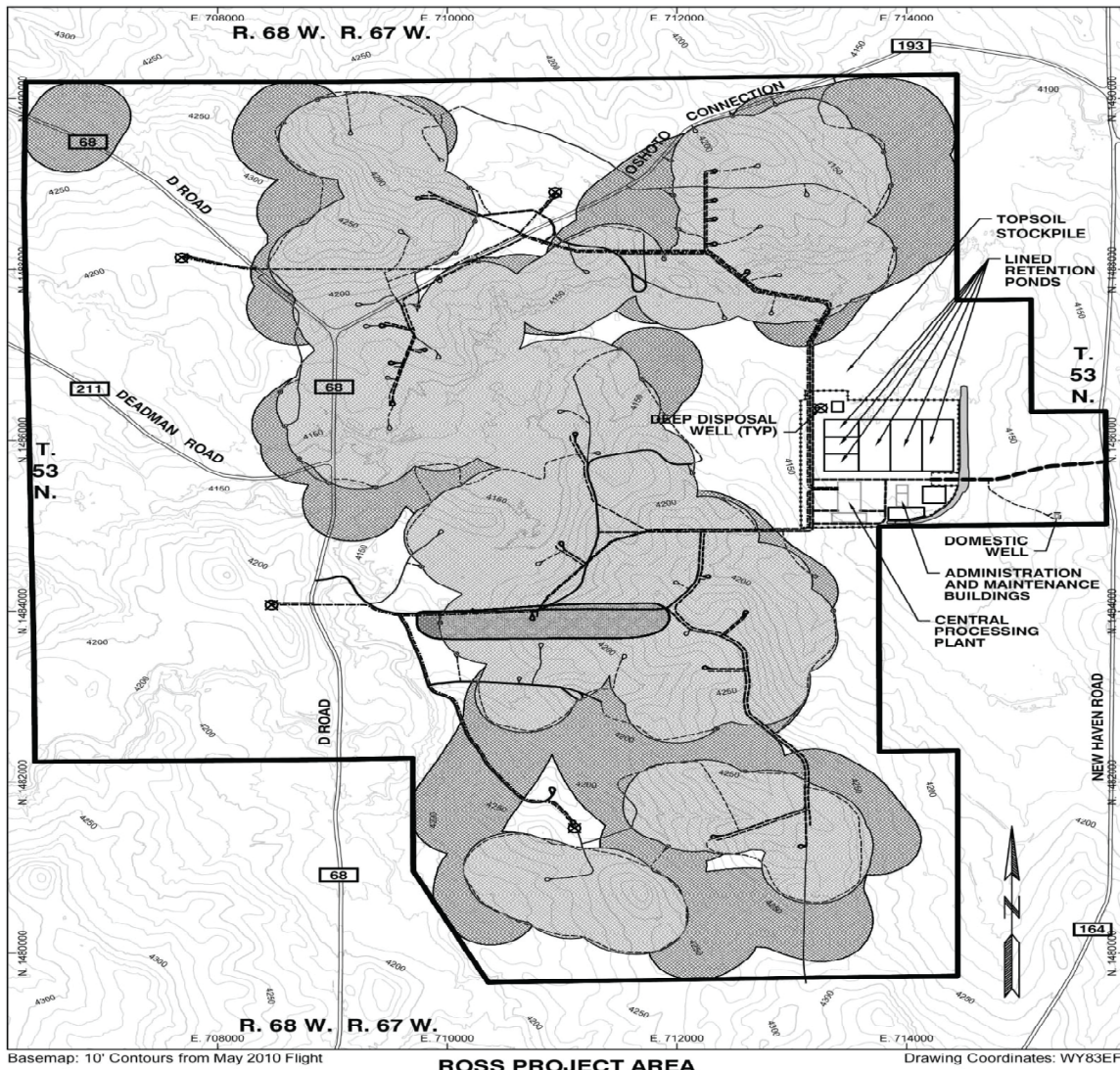


Figure 3 Ross Project Location Map

Source: Figure 1.2-6 of the Ross ISR Project USNRC License Application, Environmental 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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Appendix B

Ross Project Cultural Resource Inventories

Cultural Resource Inventory

A Class III Cultural Resource Inventory (Class III Inventory) was conducted in support of the Ross Project in April 2010 and July 2010 (Ferguson, 2010). The Inventory included a pedestrian survey in transects of 30-m [102-ft] intervals throughout the Ross Project area. Subsurface exposures such as cut banks, anthills, rodent burrows, roads ruts, and cow tracks were examined. Shovel probes were placed at the discretion of the surveyors, primarily in locations where artifacts or features were located or where soil had accumulated. The Inventory focused on landforms where intact sites might be expected, such as intact, stable terraces and their margins as well as areas of exposure (Ferguson, 2010).

In November 2011, additional evaluative work was accomplished: A geophysical magnetometer survey was conducted at several sites, but found to be ineffective because of the nature of the soils. Then, 6 back-hoe trenches, approximately 27 test pits measuring 0.5 m x 0.5 m [1.6 ft x 1.6 ft], and approximately 44 test pits measuring 1.0 m x 1.0 m [3.3 ft x 3.3 ft] were excavated to further evaluate sites near areas where road construction would be expected.

In preparation for the Class III Inventory, a Class I Inventory (i.e., a records search) was conducted for the Ross Project area in 2010; this search included the records of the Wyoming Cultural Records Office (WYCRO), the WYCRO online data base, and the BLM's Newcastle Field Office (Ferguson, 2010). The records search showed that, prior to the 2010 Class III Inventory, no substantial block inventory (i.e., survey) had been conducted in the Project area. Small-scale investigations, including two associated with power lines and buried telephone cables as well as a drilling-pad and access-road survey, have been conducted in the Ross Project area. Only one survey, an inventory for a linear buried telephone cable in Section 13, identified one prehistoric campsite, 48CK1603. Avoidance of this campsite was recommended as a result. The campsite lies on both State of Wyoming and private land, and it was described as "bisected" by D Road (Ferguson, 2010).

Buildings and Structures

No buildings or structures eligible for the National Register of Historic Places (NRHP) or Wyoming State Register were identified within the Ross Project area (Ferguson, 2010). An earthen structure in the Ross Project area, the Oshoto Dam, did not meet the criteria for eligibility for listing in the NRHP (48 CFR Part 2157). The original dam has been rebuilt numerous times because of flood damage, most recently in 2005, and is considered to be essentially a reconstruction rather than the original dam.

Archaeological Sites

During the Applicant's Class III Inventory for the Ross Project, 24 new sites and 21 isolated finds were recorded. Twenty-three of the recorded sites are prehistoric camps, and one is a historic-period homestead. Paleontological material, believed to be out of context, was found at two of the sites. These two sites produced projectile points that represent Middle Archaic and Late Archaic periods; other fragments found indicate Late Prehistoric-period occupation. Twenty-one isolates were also recorded during the Inventory. All but two of these are prehistoric artifacts; the two historic isolates are trash scatters. In addition to the sites identified during the Class III Inventory, the potential exists for deeply buried sites to be found within the Ross Project area because of its propitious location near the headwaters of the Little Missouri River.

Comment [RLC1]: I'm not sure how the location at the headwaters of the Little Missouri relates to the potential for deeply buried sites. If there are deep Holocene soils that may be a reason to suspect buried sites.

As described in the Tribal Consultation section below, a Class III Inventory in the Ross Project area designed to identify and evaluate the NRHP significance of Traditional Cultural Properties (TCPs) properties of religious and cultural significance to Tribes in the Ross Project area was performed by representatives of ten Tribes during May and June 2013. During the June TCP Inventory Tribal field surveys, additional archaeological content including bone and lithic artifacts was found at No. 48CK2087, a site formerly limited to a hill-top cairn. The new cultural finds at No. 48CK2087 (identified preliminarily as NRC Site #3) potentially extend the boundary of 48CK2087. Additionally, three new archaeological sites were found within the Ross Project Area: Temporary Nos. NRC Site #1, NRC Site #2, and NRC Site #4.

Comment [RLC2]: Permanent Smithsonian Trinomials are needed. Please contact WYCRO for these numbers.

The 28 sites along with the previously identified 48CK1603 are listed in Table 1-A, Table 1-B, Table 1-C, and Table 1-D. The eligibility determinations for site #1 through site #25 shown in Table 1-A are documented in the following letters between the NRC and the Wyoming State Historic Preservation Office (WYSHPO): NRC letter to WYSHPO, dated March 8, 2013; WYSHPO letter to NRC, dated March 28, 2013; NRC letter to WYSHPO, dated September 20, 2013; WYSHPO letter to NRC, dated October 22, 2013.

Table 1-A. Summary of Ross Project Cultural Properties

#	Site Number	NRHP Eligibility
1	48CK1603	Eligible
2	48CK2070	Unevaluated
3	48CK2071	Not Eligible
4	48CK2072	Not Eligible
5	48CK2073	Unevaluated
6	48CK2074	Not Eligible
7	48CK2075	Unevaluated
8	48CK2076	Unevaluated
9	48CK2077	Not Eligible
10	48CK2078	Unevaluated
11	48CK2079	Unevaluated
12	48CK2080	Unevaluated
13	48CK2081	Unevaluated
14	48CK2082	Unevaluated
15	48CK2083	Eligible
16	48CK2084	Not Eligible
17	48CK2085	Unevaluated

APPENDIX B 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

18	48CK2086	Not Eligible
19	48CK2087	Unevaluated
20	48CK2088	Not Eligible
21	48CK2089	Unevaluated
22	48CK2090	Unevaluated
23	48CK2091	Unevaluated
24	48CK2092	Unevaluated
25	48CK2093	Not Eligible
26	NRC Site #1	Unevaluated
27	NRC Site #2	Unevaluated
28	NRC Site #3	Unevaluated
29	NRC Site #4	Unevaluated

Table 1-B. Summary of NRHP Eligible Ross Project Cultural Properties

#	Site Number	NRHP Eligibility
1	48CK1603	Eligible
2	48CK2083	Eligible

Table 1-C. Summary of NRHP Not Eligible Ross Project Cultural Properties

#	Site Number	NRHP Eligibility
1	48CK2071	Not Eligible
2	48CK2072	Not Eligible
3	48CK2074	Not Eligible
4	48CK2077	Not Eligible
5	48CK2084	Not Eligible
6	48CK2086	Not Eligible
7	48CK2088	Not Eligible
8	48CK2093	Not Eligible

Table 1-D. Summary of Unevaluated Ross Project Cultural Properties

#	Site Number	NRHP Eligibility
1	48CK2070	Unevaluated
2	48CK2073	Unevaluated
3	48CK2075	Unevaluated
4	48CK2076	Unevaluated
5	48CK2078	Unevaluated
6	48CK2079	Unevaluated
7	48CK2080	Unevaluated
8	48CK2081	Unevaluated
9	48CK2082	Unevaluated
10	48CK2085	Unevaluated

APPENDIX B 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

11	48CK2087	Unevaluated
12	48CK2089	Unevaluated
13	48CK2090	Unevaluated
14	48CK2091	Unevaluated
15	48CK2092	Unevaluated
16	NRC Site #1	Unevaluated
17	NRC Site #2	Unevaluated
18	NRC Site #3	Unevaluated
19	NRC Site #4	Unevaluated

Tribal Consultation

According to Executive Order (EO) No. 13175, *Consultation and Coordination with Indian Tribal Governments*, the NRC is encouraged to “promote government-to-government consultation and coordination with Federally-recognized Tribes that have a known or potential interest in existing licensed uranium-recovery facilities or applications for new facilities.” Although the NRC, as an independent regulatory agency, is explicitly exempt from the Order, NRC remains committed to its spirit. The agency has demonstrated a commitment to achieving the Order’s objectives by implementing a case-by-case approach to interactions with Native American Tribes. The NRC’s case-by-case approach allows both the NRC and the Tribes to initiate outreach and communication with one another.

As part of its obligations under Section 106 of the NHPA and the regulations at 36 CFR 800.2(c)(2)(B)(ii)(A), the NRC must provide Native American Tribes “a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties and evaluation of historic properties, including those of religious and cultural importance, articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects.” Tribes that have been identified as potentially having concerns about actions near Devils Tower were formally invited by the NRC staff, by letter dated February 9, 2011, to participate in the Section 106 consultation process for the proposed Ross Project (see Table 2). The NRC staff invited the Tribes to participate as consulting parties in the NHPA Section 106 process and sought their assistance in identifying Tribal historic sites and cultural resources that may be affected by the [Proposed Action Undertaking](#).

Table 2. Tribes Invited to Participate in Section 106 Consultation for the Ross Project

1	Apache Tribe of Oklahoma ^a
2	Blackfeet
3	Cheyenne and Arapaho Tribes of Oklahoma
4	Cheyenne River Sioux
5	Chippewa Cree
6	Confederated Salish & Kootenai Tribes
7	Crow Tribe
8	Crow Creek Sioux Tribe
9	Eastern Shoshone Tribe
10	Flandreau Santee Sioux Tribe
11	Fort Belknap Community

APPENDIX B 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

12	Fort Peck Assiniboine and Sioux Tribes
13	Kiowa Tribe of Oklahoma
14	Lower Brule Sioux Tribe
15	Northern Arapaho Tribe
16	Northern Cheyenne Tribe
17	Oglala Sioux Tribe
18	Rosebud Sioux Tribe
19	Santee Sioux Tribe of Nebraska
20	Sisseton-Wahpeton Sioux Tribe
21	Spirit Lake Tribe
22	Standing Rock Sioux Tribe
23	Three Affiliated Tribes
24	Turtle Mountain Band of Chippewa Indians
25	Yankton Sioux Tribe

^aThe Apache Tribe of Oklahoma notified the NRC by email dated August 19, 2011 that it did not wish to participate in consultation on the Ross Project.

Culturally Significant Locations

No Native American heritage, special interest, or sacred sites have been formally identified or recorded to date that are directly associated with the Ross Project area. The geographic position of the Project area between mountains considered sacred by various Native American cultures (the Big Horn Mountains to the west, the Black Hills and Devils Tower to the east), however, creates the possibility that existing, specific locations could have special religious or sacred significance to Native American groups.

Traditional Cultural Properties of Religious and Cultural Significance to Tribes

As required by Section 106 of the NHPA, the NRC requested information about places of cultural, religious, and traditional significance that could be affected by the Ross Project from various interested Tribes in order to complete government-to-government consultation efforts. Places of cultural, religious, and traditional significance that meet the NRHP criteria are included in the definition of Historic Property under 36 CFR Part 800.16(l)(1). ~~According to the NPS' American Indian Liaison Office (at <http://www.nps.gov/tribes/Documents/TCP.pdf>), "A TCP is a property that is eligible for inclusion in the NRHP based on its associations with the cultural practices, traditions, beliefs, lifeways, arts, crafts, or social institutions of a living community."~~

~~TCPs that are considered eligible for listing on the NRHP could include any prehistoric or historic entity (i.e., a district, site, building, structure, or object), as defined in 36 CFR Part 64.4 (Parker and King, 1998). TCPs also include all artifacts, records, and remains that are related to and located within such TCPs. Not all TCPs qualify as eligible properties; consequently, not all TCPs are subject to preservation measures or mitigation treatments. The evaluation process to evaluate eligibility involved three steps.~~

~~The first step in the evaluation process is to determine if the entity being evaluated for eligibility for inclusion on the NRHP is tangible (Parker and King, 1998). In this respect, the entity must be a "site" as defined for the NRHP, that is, the location of a significant event, a prehistoric or~~

historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archeological value regardless of the value of any existing structure. All TCP resources identified in the Ross Project area meet this threshold.

The second step in the evaluation process is to assess site integrity. In order to be eligible for inclusion on the NRHP, an entity must also exhibit "integrity of location, design, setting, materials, workmanship, feeling, and association" per 36 CFR Part 60. As with other historic properties, a TCP that once had traditional cultural significance can lose its significance through physical alteration of its location, setting, design, or materials (Parker and King, 1998). This loss can occur if the traditional, spiritual, or ceremonial values upon which the TCP might achieve NRHP significance have been significantly altered by severe erosion, post-use damage, or surrounding land-use developments inconsistent with the setting of the TCP.

The final step in the evaluation process is to assess the TCP in terms of four NRHP criteria (A – D). All TCPs in the Ross Project area have been evaluated under Criterion A, which refers to an "association with events that have made a significant contribution to the broad patterns of our history." As applied to the Ross Project TCPs, Criterion A has been met if the TCP is associated with significant traditional events reflecting a broad pattern or theme in a Native American group's history; the cultural practices or beliefs of a living community (e.g., a Tribe) that 1) are rooted in that community's history and 2) are important in its maintaining continuing cultural identity of the community (Parker and King, 1998).

NRC invited the Ross Project Consulting Tribes (see Table 2) to participate in a field survey of the Ross Project area under an "Open-Site approach" and a "Tribal Working Group" approach. A detailed description of the NRC's efforts to provide an opportunity for Consulting Tribes to conduct a field survey of the Ross Project site is provided in the NRC's letter to the Advisory Council on Historic Preservation (ACHP), dated August 14, 2013 ([ML13197A139](#)). A Class III Inventory [in the Ross Project area](#) designed to identify and evaluate the NRHP significance of [TCPs-properties of religious and cultural significance to Tribes in the Ross Project area](#) was performed by representatives of six Tribes on May 13 – 16, 2013. The six Tribes participating in the May [TCP-Tribal field sSurvey](#) included:

- Santee Sioux Tribe of Nebraska (Niobrara, Nebraska)
- Crow Creek Sioux Tribe (Fort Thompson, South Dakota)
- Rosebud Sioux Tribe (Rosebud, South Dakota)
- Yankton Sioux Tribe (Wagner, South Dakota)
- Northern Cheyenne Tribe (Lame Deer, Montana)
- Turtle Mountain Band of Chippewa Indians (Belcourt, North Dakota)

A second [Class III Inventory for TCPsTribal field survey](#) was performed by representatives of four Tribes on June 3 – 6, 2013. The four Tribes participating in the May [TCP-SurveyTribal field survey](#) included:

- Cheyenne and Arapaho Tribes of Oklahoma (Concho, Oklahoma)
- Northern Arapaho Tribe (Fort Washakie, Wyoming)
- Fort Belknap Indian Community (Harlem, Montana)
- Eastern Shoshone Tribe (Fort Washakie, Wyoming)

APPENDIX B 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

The entire 696.46 [1,721-ac] Ross Project area was evaluated-inventoried using current Class III-inventory methods during both Tribal field surveys. Crew members performed the surveys using transects spaced no greater than 30 meters (m) [100 ft]. Skirmish-line transects were walked across the Ross Project area, guided by GPS bearings in addition to natural and cultural features, and the transects were adjusted in direction when major obstacles, such as Oshoto Reservoir, were met. Because of the large numbers of personnel involved in the two surveys, radio communications were provided by Strata to Tribal leaders to facilitate survey communications and coordination. In most instances, a limited time was spent at previously recorded archaeological sites. To facilitate relocation and recording, newly discovered archaeological sites were located by a single GPS datum and briefly noted as to the site's general content and setting. Newly discovered prehistoric individual finds were also mapped and recorded during both surveys.

When properties of religious and cultural significance to Tribes were noted during the May Tribal field survey, the pedestrian survey was brought to a halt, and the find was recorded by Mr. Schwab in consultation with leaders of the May Tribal crew. Properties of religious and cultural significance to Tribes noted during the June Tribal field survey were briefly identified as properties of religious and cultural significance to Tribes by the Tribal crew and plotted by GPS location. The survey then resumed. Once the walkover was completed, the June crew returned to the mapped properties and recorded them. The eight-hour days of each survey were warm and dry. No unusual problems were encountered during either survey.

As a result of the May and June TCP-S Tribal field surveys, 18 TCP-sites properties of religious and cultural significance to Tribes were located, recorded, and evaluated for NRHP eligibility in the Ross Project area (see Table 3). A TCP-Tribal Field Survey Report documenting these findings, based on the recommendations provided by the Northern Arapaho Tribe, the Cheyenne and Arapaho Tribes of Oklahoma, archaeologist Mr. David Schwab, who accompanied the May TCP Survey participants, and Mr. Brad Noisat, the archaeologist who accompanied the June TCP Survey participants, will be submitted to the Wyoming SHPO for review and comment. 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. The NRC staff's review of this analysis will be incorporated into the NRC's Tribal Field Survey Report.

Comment [RLC3]: This is the first reference to this individual. Who is he? It may be easier to just delete the name.

Comment [RLC4]: Not sure this is necessary.

Comment [RLC5]: Hopefully, this will be past tense by the time we execute the PA.

Table 3. Summary of Ross Project ~~Traditional-Cultural~~ Properties of Religious and Cultural Significance to Tribes

#	Site Number	NRHP Eligibility
1	48CK2070	Unevaluated
2	48CK2080	Unevaluated
3	48CK2087	Unevaluated
4	48CK2089	Unevaluated
5	48CK2214	Unevaluated
6	48CK2215	Unevaluated
7	48CK2216	Unevaluated
8	48CK2217	Unevaluated

Comment [RLC6]: Hopefully, we will have concurrence on these by the time of execution..

APPENDIX B 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

9	48CK2218	Unevaluated
10	48CK2219	Unevaluated
11	48CK2220	Unevaluated
12	48CK2221	Unevaluated
13	48CK2222	Unevaluated
14	48CK2223	Unevaluated
15	48CK2224	Unevaluated
16	48CK2225	Unevaluated
17	48CK2226	Unevaluated
18	48CK2227	Unevaluated

Reference:

Ferguson, D. *A Class III Cultural Resource Inventory of Strata Energy's Proposed Ross ISR Uranium Project, Crook County, Wyoming* (Redacted Version). Prepared for Strata Energy, Inc., Gillette, Wyoming. Butte, MT: GCM Services, Inc. 2010.

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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 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 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 direct 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

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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setting indirect 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

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 will be implemented as necessary; 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;

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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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 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 letters 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 ~~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

WHEREAS, the NRC, WYSHPO, ACHP, BLM, 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

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

Comment [JM1]: State that we have invited Strata as invited signatory – parallel language to what was written for tribes

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~~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, and BLM 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

The NRC and the BLM shall ~~ensure, as appropriate, that the following measures are carried out:~~

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) ~~and the Native American Graves Protection and Repatriation Action (NAGPRA) 25 U.S.C. 3001~~ 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 the lead role agency 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

~~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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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 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

a. 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 the testing plans for NRHP eligibility for subsequent Ross Project phases to the NRC no later than 18 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).

~~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~~

Comment [JM2]: Insert -Strata shall have a qualified archaeologist, as defined in the Secretary of Interior's Professional Qualifications and Standards (48 FR 22716), conduct the testing and prepare a testing report. Strata shall submit the report concurrently to NRC and BLM.

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Comment [JM3]: Strata suggests submitting a notice of intent (NOI) 3 months prior to the date to submit the testing plan. Group agreed to replace this text with NOI date. NRC and BLM will consider whether 3 months is sufficient notice.

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b. 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).

Comment [RLC4]: Contact WYCRO and get Smithsonian Trinomials for these sites.

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 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 the recommendations of the Ross Project Consulting Tribes in accordance with 36 CFR § 800.4(c)(1). 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.

Comment [JM5]: Notify other parties of final determination – see BLM language and John to provide language?

3. Testing Historic Properties for Adverse Effect

If the NRC in consultation with SHPO 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 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).

Comment [JM6]: Review BLM language

Comment [JM7]: Consult on testing plan?

Comment [RLC8]: The review process for determinations of effect needs to be consistent with the other determinations. Particularly regarding concurrent reviews.

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4.4. Assessment of Effects

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a. 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. All reasonable efforts to avoid or minimize the effect should be completed prior to making any recommendations or determinations of adverse effect. 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 then provide the effect determinations to the WYSHPO for a 30-day review period. If the SHPO concurs with the NRC's effect determinations, or fails to respond within 30 days, the effect determinations will be 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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Comment [RLC9]: This is confusing. Why would the recommendations be sent to the parties for review prior to NRC's acceptance of them?

Comment [RLC10]: The WYSHPO wishes to review the determinations after NRC's consultation with the other parties is complete and final determinations have been made.

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.

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Comment [JM11]: Move to general stipulations

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Comment [RLC12]: It is the preference of the WYSHPO that all efforts to avoid or minimize adverse effects be concluded prior to a determination of adverse effect.

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.

5. Sites of Traditional and Cultural Importance

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.

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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.

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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, 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.

3.2. 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.

4.3. The NRC will submit the draft mitigation plan(s) developed by Strata to the Parties (excluding SHPO) and Ross Project Consulting Tribes, as appropriate. The Parties and Ross Project Consulting Tribes will have 30 days after receipt of the documentation to review and comment on the draft mitigation plan(s). At the end of the 30-day period, the NRC will consult with Strata to address all comments and recommendations received from the Parties and to develop the final mitigation plan(s). If a Party or Ross Project Consulting Tribe does not respond within 30 days, the NRC may proceed with development of the final mitigation plan(s).

5.4. The NRC will submit the final mitigation plan(s) to the WYSHPO for a 30-day review period. Upon final concurrence by the WYSHPO, or if WYSHPO fails to respond within 30 days, the mitigation plan(s) will be finalized and appended to this PA.

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 the may use to make a determination of eligibility and effect. If the NRC determines that the there is an adverse effect to a historic property, the NRC will follow the procedure to resolve the adverse effect in accordance with Stipulation C-2.

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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 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 procedures agreed upon by the NRC and WYSHPO for State and private land. applicable law. If non-Native American human remains are found on federal, state, or private land, all work within 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. 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 [J13]: BLM, please provide citation for this.

~~E. ONGOING TRIBAL CONSULTATION AND COORDINATION~~

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~~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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~~b. 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 [J14]: Moved to general stipulations.

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Comment [J15]: Deleted.

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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 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).

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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 [JM16]: 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.
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.

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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. 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~~ (xx11) 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 Invited Signatories or Concurring Parties]~~ ~~other parties~~ do not waive

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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 signatoriesSignatories 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 undertakingUndertaking, and implementation of its terms, are evidence that the NRC ~~and BLM have~~has taken into account the effects of this undertakingUndertaking 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

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Senior Assistant Attorney General

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