

StrataRossLAPem Resource

From: bschiffer [bschiffer@wwcengineering.com]
Sent: Thursday, December 05, 2013 4:22 PM
To: Moore, Johari
Cc: 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@crownsations.net)'; 'Crow Creek Sioux'; 'Flandreau Santee Lakota'; StrataRossLA Resource
Subject: Re: Ross Project Programmatic Agreement - Comments/Revisions from 11-21-13 Webinar
Attachments: 7458710-v1-Strata Edits Ross Project PA Stip A, C & D 12_5_13.DOCX

Johari--

As requested, please see Strata's suggestions focusing on Stipulations A, C and D. We understood that consensus had been reached during the webinar session on 11/21/13 regarding the remaining sections of the Draft PA. We are still working through the additional text provided by the BLM and may be sending comments to you on December 6. We look forward to the next iteration of the Draft PA and hope that the December 12 webinar will be fine tuning only as you suggested. Please let Mike or I know if you have any questions.

Ben

On 11/22/2013 11:06 AM, Moore, Johari 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,

Johari A. Moore
Project Manager
U.S. Nuclear Regulatory Commission
FSME/DWMEP/Environmental Review Branch
Mail Stop: T-8F05
Washington, DC 20555
Office: (301) 415-7694
Mobile: (301) 832-4919
Fax: (301) 415-5369
johari.moore@nrc.gov



Benjamin J. Schiffer, PG
WWC Engineering
1849 Terra Ave.
Sheridan, WY 82801
Ph. (307) 672-0761 ext. 148
fax (307) 674-4265
www.wwcengineering.com

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Subject: Re: Ross Project Programmatic Agreement - Comments/Revisions from
11-21-13 Webinar
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Received Date: 12/5/2013 4:22:35 PM
From: bschiffer

Created By: bschiffer@wwcengineering.com

Recipients:

"Monteith, Emily" <Emily.Monteith@nrc.gov>
Tracking Status: None
"Richard Currit (richard.currit@wyo.gov)" <richard.currit@wyo.gov>
Tracking Status: None
"Mary Hopkins (mary.hopkins@wyo.gov)" <mary.hopkins@wyo.gov>
Tracking Status: None
"Mike Griffin (MGriffin@stratawyo.com)" <MGriffin@stratawyo.com>
Tracking Status: None
"John Eddins" <jeddins@achp.gov>
Tracking Status: None
"Tratebas, Alice" <trateba@blm.gov>
Tracking Status: None
"kbo@kiowatribe.org" <kbo@kiowatribe.org>
Tracking Status: None
"Olmstead, Joan" <Joan.Olmstead@nrc.gov>
Tracking Status: None
"Fringer, John" <John.Fringer@nrc.gov>
Tracking Status: None
"Arapaho" <Narapahothpo_2009@ymail.com>
Tracking Status: None
"Cheyenne and Arapahoe Tribes of Oklahoma" <lgray@c-a-tribes.org>
Tracking Status: None
"Cheyenne River Lakota" <cpthpo@lakotanetwork.com>
Tracking Status: None
"Chippewa Cree (awindyboy@cccrpd.com)" <awindyboy@cccrpd.com>
Tracking Status: None
"Confederated Salish and Kootenai" <francisa@cskt.org>
Tracking Status: None
"Crow (hubertt@crownsations.net)" <hubertt@crownsations.net>
Tracking Status: None
"Crow Creek Sioux" <wandawells@midstatesd.net>
Tracking Status: None
"Flandreau Santee Lakota" <Jb.weston@fsst.org>
Tracking Status: None
"StrataRossLA Resource" <StrataRossLA.Resource@nrc.gov>
Tracking Status: None
"Moore, Johari" <Johari.Moore@nrc.gov>
Tracking Status: None

Post Office: wwcengineering.com

Files	Size	Date & Time	
MESSAGE	3268	12/5/2013 4:22:35 PM	
2002logo.jpg	14769		
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A. GENERAL STIPULATIONS

5. 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 on BLM lands.

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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, 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. "Project phase" is defined as a new mine unit.~~

Comment [STRATA1]: Need to clearly define 'phase' the first time it is used in the PA in this context (i.e., as opposed to a 'phase' as that term is used in the EIS). Each mine unit is a phase impacting a new piece of ground.

~~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.~~

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~~—~~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)

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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.

ii. Mitigation plan(s) for those resources relating to a historic period, or that were significant for values other than their potential research value (e.g., eligible under Criteria A, B, or C of the National Register of Historic Places), if warranted, shall specify approaches for treatment or mitigation of the property in accordance with the principles, standards, and guidelines appropriate to the resource. This may include, but not be limited to, use of such approaches as relocating the historic property, re-landscaping to reduce effects, public interpretation, ethnographic recordation, oral history, archival research, or prescribing use of a component or activity of this Undertaking in such a way as to minimize effects to historic properties or to those concerned about the effects of that component or activity. Methods of recordation and documentation described in the mitigation plan(s) shall conform with the Secretary of the Interior's Standards for Architectural and Engineering Documentation (48 FR 44730-44734) or other standards specified by NRC.

iii. In lieu of standard mitigation approaches described above, mitigation plan(s) may adopt other alternative approaches to avoid, minimize or mitigate effects to historic properties, including, but not limited to, assisting in the development of tribal historic preservation plans, developing detailed historic contexts for the region, developing educational materials, purchasing properties containing historic resources, or developing historic property management plans.

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).
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 100 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 use to make a determination of eligibility and effect, which the NRC shall make within 30 days of receiving Strata's recommendation. If the NRC determines that the

Comment [STRATA2]: Class III and Tribal surveys were done on 30 Meter transects. Based on surveys done at the Project Site, the probability of a cultural site extending beyond 30M (approximately 90 feet) seems extremely low. 100 feet therefore is a reasonable set-back distance.

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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. **If the NRC determines that there is no adverse effect to a historic property, the NRC shall issue a notice to proceed within 7 days.**

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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 3100 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.~~**

Comment [STRATA3]: Class III and Tribal surveys were done on 30 Meter transects. Based on surveys done at the Project Site, the probability of a cultural site extending beyond 30M (approximately 90 feet) seems extremely low. 100 feet therefore is a reasonable set-back distance.

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Comment [STRATA4]: 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 n~~Non-Native American human remains are found on federal~~Federal, state, or private~~ land, all work within 3100 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 [STRATA5]: Class III and Tribal surveys were done on 30 Meter transects. Based on surveys done at the Project Site, the probability of a cultural site extending beyond 30M (approximately 90 feet) seems extremely low. 100 feet therefore is a reasonable set-back distance.

Comment [J6]: BLM, please provide citation for this.

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- 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~~

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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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Comment [J7]: Moved to general stipulations.

~~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 [J8]: Deleted.