

April 21, 2014

U.S. Nuclear Regulatory Commission  
Attn: Mr. Kevin Hsueh, Chief – Environmental Review Branch  
Mail Stop T-8F05  
FSME/DWMEP/Environmental Review Branch B  
11545 Rockville Pike, Two White Flint North  
Rockville, MD 20852-2738

**RE: Strata Energy Inc. Ross ISR Project, Docket #40-9091  
Response to NRC's March 31, 2014 Letter**

Dear Kevin:

Thank you for your letter dated March 31, 2014, providing Strata Energy Inc. (Strata) with additional information regarding the Nuclear Regulatory Commission's (NRC) *Tribal Field Surveys in the Ross Project Area* report ("NRC Tribal Survey Report") and the process leading up to the NRC's proposed eligibility determinations for the traditional sites. Strata appreciates the NRC's response and the opportunity to continue the dialogue on this important issue.

In accordance with ACHP Guidance, all parties with information relevant to an eligibility determination should be afforded a reasonable opportunity for consultation, to ensure the correct determination is ultimately made by the responsible federal Agency and/or Keeper of the National Register.<sup>1</sup> Although this process is no different for traditional sites, Strata recognizes that due to confidentiality concerns it may not be privy to all the information provided by the Tribes that informed the NRC's proposed eligibility determinations for the sites identified at Ross<sup>2</sup>. Based upon the information that it has reviewed, however, Strata offers the following observations for the NRC's consideration. Our intent here is not to criticize; rather, we believe that successful cultural preservation can be achieved more efficiently and effectively in the future through improved consultation with all Parties.

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<sup>1</sup> See ACHP, Section 106 Regulations Summary, available at <http://www.achp.gov/106summary.html> ("If the agency's undertaking could affect historic properties, the agency determines the scope of appropriate identification efforts and then proceeds to identify historic properties in the area of potential effects. The agency reviews background information, consults with the SHPO/THPO and others, seeks information from knowledgeable parties, and conducts additional studies as necessary.") (emphasis added).

<sup>2</sup> Strata notes that the information available to Strata includes the tribal survey reports prepared by the Northern Arapahoe and Cheyenne and Arapahoe tribes that were provided by NRC Staff with the approval of the Tribes.

Mr. Kevin Hsueh  
April 21, 2014

### **Application of the National Register Guidelines Should Inform All Eligibility Determinations**

National Register Bulletin 38 Guidelines for Evaluating and Documenting Traditional Cultural Properties, Chapter IV, Determining Eligibility Step by Step sets forth the process of evaluation for TCPs. *Step 2: Consider the property's integrity.* Two conditions must be met, integrity of relationship and integrity of condition. It does not appear that "integrity of relationship" has been demonstrated for several TCP sites, including 48CK2227, which the FSEIS indicates is a 'Plant Gathering Area.' None of the Tribes were aware of this plant gathering area prior to conducting the site surveys, have actually frequented the area to gather plants, or have provided any ethnographic or ethno historical data to support the location as an area of traditional use. Similarly, with respect to integrity of condition, public roads, oil production facilities, past and present uranium exploration, grazing and cropland hay production have significantly altered the Ross Project setting and environment. Integrity of condition for previously impacted traditional sites therefore seems questionable and with consultation with Strata a more accurate analysis could have been provided. Moreover, the analysis seems to ignore Section 3.2 of the FSEIS which clearly discusses existing land uses.

### **NRC's Tribal Survey Report Contains Inconsistent Adverse Effects Determinations**

NRC requested that Strata perform an adverse effects analysis on certain initial (provisional) site boundaries. NRC then revised these boundaries and added "avoidance buffers" and "avoidance boundaries" without requesting an updated adverse effects analysis from Strata. NRC then provided its interpretation of adverse effects in the NRC Tribal Survey Report. Our review has indicated that the adverse effects analysis included in the Tribal Survey Report narrative contains inaccuracies as well as inconsistencies with Figure 3-1. Although the NRC's adverse effects analysis is subject to the required Section 106 consultation process, which has not yet been completed, seeking input from Strata prior to its inclusion in the NRC's Tribal Survey Report might have been more efficient and would perhaps prevent confusion when the process reaches the mitigation phase. As the project proponent, Strata's involvement during the mitigation phase is crucial and inherently valuable in identifying and preventing adverse effects.

### **"Avoidance Buffers" are Not Part of a National Register Historic Property**

"Site boundaries" versus "avoidance buffers" were not clearly distinguished in the NRC's Tribal Survey Report. As the NRC is aware, "avoidance" buffers or boundaries are not part of a National Register Historic Property. Thus, clear delineation of the site boundary (and supporting rationale for any such boundaries that extend beyond the physical features of the proposed site) should be included in all final eligibility determinations. As you'll recall, both in correspondence with the NRC (8/26/13 email from B. Schiffer to J. Moore) as well as in our adverse effects analysis, we questioned NRC's application of avoidance buffers to which we received virtually no feedback from the NRC. Fundamentally, for Strata to adhere to our cultural preservation values particularly in terms of avoidance, the application of avoidance buffers and/or boundaries should arise during the mitigation phase of the process.

Mr. Kevin Hsueh  
April 21, 2014

### **"Avoidance Buffers" are a Mitigation Measure**

Inclusion in NRC's Tribal Survey Report of the "avoidance buffers" requested by the Tribes before determination of eligibility, and before adverse effects (if any) have been agreed upon, and before discussion as to appropriate mitigation measures has taken place, suggests that NRC is predisposed to this proposed mitigation measure before the required Section 106 consultation process has taken place. This is troubling to Strata. Many of the assumed "adverse impacts" noted in support of inclusion of the proposed "avoidance buffers" could also be mitigated by other measures such as fencing or flagging of the site boundary. Additionally, inclusion of an "avoidance boundary" to avoid adverse impacts from future Tribal visits – which are unrelated to impacts from the Undertaking – is not appropriate. Please also understand that upon receipt of the provisional site boundaries on August 22, 2013, Strata proactively (without request from NRC or BLM) avoided the sites and continues to do so today.

### **Inclusion of Traditional Sites Outside of the Direct APE**

Per the Programmatic Agreement (PA), adverse effects within the Indirect APE (i.e., that area within 3 miles of the Project boundary) are limited to indirect effects to known Historic Properties. Sites 48CK2117, 48CK2220 and 48CK2087 are outside of the direct APE (and outside the area the Tribes were authorized by the landowners to survey). As these three sites are not known Historic Properties and will not be directly affected by the Undertaking, they should not have been included in the NRC's eligibility determination process. Our August 30, 2013 description of potential adverse effects noted this inconsistency but we received no feedback from the NRC on this matter. Again, these minor inconsistencies could have been resolved with open consultation and further exchange of information.

### **National Register Criteria do Not Provide for 'Eligibility by Inference'**

There is a reference in NRC's Tribal Survey Report to cultural and historic sites being determined "eligible by inference." See page 15, 3<sup>rd</sup> paragraph. Sites must meet the National Register criteria to be eligible for inclusion in the National Register. There is no provision for 'eligible by inference.'

### **Unevaluated Sites that Will be Adversely Impacted Must Undergo Further Assessment**

As sites 48CK2076, 48CK2223 and 48CK2224 remained "unevaluated", and site 48CK2076 has the potential to be directly impacted by the proposed Undertaking, NRC should identify what 'further assessment' is required to determine eligibility to minimize the potential for delay.

In conclusion your letter states that *"Strata does not have a role in consultations on the National Register of Historic Places (NRHP) eligibility of sites of religious and cultural significance to Tribes"*. Although our experts advise us that this is not routinely the case in Section 106 consultations conducted by other agencies, Strata recognizes that NRC as the lead agency has the right to take this position. Your letter also notes that NRC recognizes *"the importance of conducting the Section 106 process in an efficient and effective manner..."* Strata shares this goal and would simply note that the preceding discussion has identified areas where input from Strata could have been of benefit to NRC while protecting confidential information from the Tribes.


Mr. Kevin Hsueh  
April 21, 2014

Strata looks forward to working with the NRC as a licensee to complete the Section 106 process under the terms of the Ross Programmatic Agreement and we strongly believe in the principles you cite as guiding NRC Environmental Review Branch reviews, including independence, efficiency, quality and openness. Strata hopes that these principles can be applied judiciously within the framework of the PA. Please notice that in addition to the carbon copy (cc) list provided in your letter, we have also copied Mr. John Eddins with ACHP as the successful implementation of the PA may benefit from his guidance, which seemed invaluable during the development of the agreement.

If you have any questions please do not hesitate to contact me at (307) 686-4066.

Sincerely,

Strata Energy, Inc.



Michael Griffin

Vice President, Permitting, Regulatory and Environmental Compliance

Cc: John Saxton, USNRC  
Johari Moore, USNRC  
Alice Tratebas, BLM-NFO  
M. Hopkins, WYSHPO  
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