



Preserving America's Heritage

October 20, 2017

Cinthya I. Román
Branch Chief, NMSS/FCSE/ERB
Environmental Review Branch
U.S. Nuclear Regulatory Commission
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Washington, DC 20555-0001

Ref: *Strata Energy Inc. Ross ISR Project, License Number SUA-1601, Docket #40-9091,
NRC Request for ACHP Assessment Regarding Closing the Ross ISR Programmatic Agreement
Crook County, Wyoming*

Dear Ms. Román:

The U.S. Nuclear Regulatory Commission (NRC) has requested the Advisory Council on Historic Preservation (ACHP) provide its advisory opinion regarding whether the agency can use Stipulation L.4 of the *Programmatic Agreement (PA) among the NRC, the ACHP, the Wyoming State Historic Preservation Office (WY SHPO), the Bureau of Land Management - Newcastle Field Office (BLM), and Strata Energy, Inc., regarding the Ross In Situ Uranium (ISR) Project in Crook County, Wyoming*, to unilaterally end the PA, or if NRC must amend the PA pursuant to Stipulation K to account for the changed circumstances. The ACHP began discussions with NRC about amending this PA in 2016 due to changes to the U.S. Bureau of Land Management's (BLM) responsibilities in regard to this undertaking and we considered whether an amendment to the PA was needed at that time. Additionally, we discussed whether an amendment to the PA was needed due to the pending Wyoming Agreement application that will transfer the current license NRC issued for this undertaking to the State of Wyoming. In response to these changes, and the pending finalization of the Mitigation Plan for this first phase of the project in accordance with Stipulation D, the NRC and ACHP have continued this discussion. This letter provides a summary of the changes to the undertaking, and the ACHP's advisory opinion that Stipulation L.4 is not applicable to this situation and that NRC should amend the PA to close out the agreement.

As NRC is aware, a series of changes have occurred since 2015 that modify the undertaking and would necessitate an amendment to the agreement. The licensee formally withdrew its Plan of Operations (POO) from BLM, and BLM accepted this withdrawal. This withdrawal means the undertaking no longer involves BLM land and therefore, BLM no longer has any Section 106 responsibilities for this undertaking. The consulting parties agreed that BLM's role in the agreement should be changed to that of an invited signatory, requiring that the PA be amended to clarify this modification. NRC sent the ACHP a draft amendment on April 29, 2016, to reflect the changes to BLM's responsibilities and role in the undertaking. ACHP submitted comments on the draft amendment on May 5, 2016; however, the amendment was not executed at that time.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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In 2015, the State of Wyoming submitted a letter of intent to NRC for a limited agreement that would transfer the authority from NRC to Wyoming to regulate source material involved in uranium or thorium recovery or milling facilities and byproduct material (<https://www.nrc.gov/about-nrc/state-tribal/agreement-states/wyoming.html>). Once this agreement is approved, the NRC will transfer the licenses for 15 uranium mill facilities to the State of Wyoming, including the NRC license for this undertaking, the Ross ISR Project. NRC anticipates this Agreement State application to be approved within the next 1 -2 years. During a conference call on May 22, 2017, the ACHP recommended NRC amend the PA to address this license transfer, resolve any outstanding Section 106 questions or commitments, and specify in the amendment that the PA would close once the license is transferred. However, NRC elected not to pursue an amendment to the PA at that time.

Recently, NRC again requested the ACHP's advisory opinion as to whether Stipulation L.4 in the PA could be utilized to unilaterally close the agreement once the Mitigation Plan was finalized. Stipulation L.4 states the following:

“If the terms of this PA are satisfied prior to its expiration date, the NRC shall provide written notification to the other Signatories and Ross Project Consulting Tribes of the completion of the terms of this PA.”

The Ross ISR undertaking is still on-going with only half of Phase I completed at this time. A subsequent Phase II still must be completed based upon our knowledge of the undertaking. Therefore, this undertaking has on-going Section 106 requirements, including the Implementation of the Mitigation Plan (Stipulation D.3), Curation (Stipulation E), Discoveries (Stipulation F), Confidentiality (Stipulation G), and Annual Reporting and Evaluation (Stipulation H). Consequently, the ACHP does not believe that Stipulation L.4 allows NRC to close this agreement as all of the PA's terms have not been satisfied. To properly close this PA, we recommend that NRC amend its terms pursuant to Stipulation K and in that amendment, clarify the changed circumstances and the transfer of the license for the Ross ISR Project to the State of Wyoming, clarify what has been completed in the PA, and provide a new expiration date to end the PA. The amendment should also account for BLM's modified role in the review process and any final commitments. Examples of amendments recently executed to end existing Section 106 agreement documents are provided for your review (see enclosed).

In closing, we believe it is important for NRC to execute this amendment to the Ross ISR PA to clarify the status of implementation of the PA, to memorialize the changes to the undertaking, and to provide clear language on how NRC should close the PA going forward. If you have any questions, please contact Sarah Stokely at (202) 517-0224 or via email at sstokely@achp.gov.

Sincerely,



Charlene Dwin Vaughn, AICP
Assistant Director
Office of Federal Agency Programs
Federal Permitting, Licensing and Assistance Section
Enclosure