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May 18, 2012

Kevin Hsueh
Branch Chief
Environmental Review Branch
US Nuclear Regulatory Commission
Mail Stop T-8F5
Washington, DC 20555

RE: Review of Impacts to Cultural Resources from the Proposed Ross ISR Project as Defined by Section 106 of the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA)

Dear Mr. Hsueh:

On behalf of Strata Energy, we have appreciated working with you and your staff over the past year and believe significant progress has been achieved. While I am still trying to get integrated into this project, I am writing to request clarification regarding the current status of the Section 106 process being conducted in conjunction with Strata's application for a Combined Source and 11e.(2) Byproduct Material License for the Ross ISR Project (Ross Project) in northeastern Wyoming. In our April 12, 2012 meeting, both you and Johari provided valuable information, particularly when it was indicated that the Environmental Review Branch (ERB) did not envision the Section 106 Tribal consultation process delaying issuance of the Draft SEIS. The following is my understanding of events that have led to this critical point, some questions that have arisen during my brief tenure with Strata, and some suggested paths forward for your consideration.

Ross Project Section 106 History

November 19, 2010 - The Section 106 process for the Ross Project was informally initiated with a letter from NRC to 14 Native American Tribes advising them of Strata's intent to submit an application for the Ross Project, and providing the Tribes with an opportunity to discuss the project and any concerns. This letter does not appear to have been provided to the Wyoming State Historic Preservation Office (WSHPO) or the Advisory Council on Historic Preservation (ACHP).

February 9, 2011 – NRC sent a letter to 24 Tribes entitled "Invitation for Formal Section 106 Consultation...". This letter does not appear to have been provided to WSHPO or ACHP.

July 26, 2011 - NRC sent a notice to "interested parties," including 24 Tribes, of the opportunity to request a hearing or petition to intervene on the Ross Application, as it had been found administratively complete and acceptable for technical review. This notice does not appear to have been provided to WSHPO or ACHP.

August 11, 2011 - NRC sent a letter to 22 Tribes inviting them to attend a September 13-14 site visit and Section 106 Consultation for the Ross Project. The letter was copied to the WSHPO, but is not directed to WSHPO and does not formally invite WSHPO participation. The letter was not directed or copied to ACHP. It is important to note that as of this point, a letter to either WSHPO or ACHP formally initiating the Section 106 process had not been sent and the process had not "officially" begun.

August 19, 2011 – NRC sent letters to WSHPO and ACHP formally notifying them of initiation of the Section 106 process for the Ross Project.

September 13-14, 2011 - 4 tribes attended the first site visit and Section 106 Consultation for the Ross Project. WSHPO representatives did not attend.

September 20, 2011 – NRC sent an email to 17 Tribes as follow up to the September 13-14 site visit/consultation stating that there would be a "second and final site walkover" and consultation on October 26-27, 2011.

September 29, 2011 – Strata sent follow-up letters and packets to tribes currently listed as having a potential interest in the project or whose level of interest was yet undetermined. Packets included information provided at the September 13 site visit, as well as additional information requested by attending Tribes during the site visit.

October 7, 2011 – NRC sent an email to 17 tribes, notifying them that the date for the upcoming site visit was changed from October 26-27 to November 2-3, 2011.

October 7 - 21, 2011 – Email correspondence was sent between tribes and NRC regarding a change in the date for the next site visit/consultation from October 26-27 to November 2-3, 2011. Several tribes expressed concern about their inability to attend the Ross consultation due to conflicting consultations on November 2-3.

November 2-3, 2011 – 4 tribes attended the second site visit and Section 106 Consultation for the Ross Project. The record does not show that WSHPO representatives attended.

December 6, 2011 – NRC sent a letter to Strata requesting a written proposal for acquiring information regarding potentially eligible sites of traditional cultural significance in the project area. The letter was copied to WSHPO and 15 tribes.

Strata Response to NRC Request for Proposal

In January 2012, Strata submitted a letter to the NRC indicating its intent to issue a request for proposals to conduct a cultural resources assessment at the Ross site. In that letter, Strata stated the intent to issue the RFP to relevant consulting parties, to a listing of qualified ethnographic consultants, and to the National Association of Tribal Historic Preservation Officers, an organization working to establish best practices for cultural heritage preservation. In the letter, Strata stated its belief that issuance of such an RFP would result in selection of a qualified consultant, a better end product, and improved concurrence among the consulting parties.

Strata's RFP was issued on February 20, 2012, with responses requested by March 9. On March 6, 2012, Strata was advised via teleconference with NRC that NRC had decided to issue a Scope of Work to its EIS contractor to conduct the work necessary to complete the Section 106 process. Strata requested formal notification of this course of action but, to date, has received no such notification.

As of March 9, Strata had received two proposals from qualified contractors interested in performing the work described in the RFP. Strata has not yet responded to those proposals, since we are uncertain as to the scope of work NRC will have its EIS contractor perform (or subcontract) those duties.

Requests for Clarification

As you are aware, time is of the essence in advancing the Section 106 process and avoiding delays to the overall licensing process. NRC has previously stated a desire to avoid such delays, as well. In the interest of adhering to the current project review schedule, which projects issuance of the draft SEIS on or before January 10, 2013, Strata therefore submits the following requests for clarification:

1. What is the current status of Section 106 compliance? Based upon our understanding of the process, it appears that we are still in step two: "Identification of Historic Properties."
2. Have evaluations for potentially eligible sites of traditional cultural significance been submitted to WSHPO? If so, has WSHPO concurred with those evaluations?
3. Is the cultural resources/ethnographic assessment data associated with eligible sites of traditional cultural significance the only outstanding item for completion of the Section 106 package?
4. Will the NRC's EIS contractor complete the cultural resources/ethnographic study work?
5. If the EIS contractor will complete the cultural resources/ethnographic study work:
 - a. What is the scope of said work?
 - b. Will Strata have the opportunity to review the scope prior to the award for said work?
 - c. What is the schedule, including specific dates and milestones, for completion of said work? How does that schedule intersect with the overall schedule for issuance of the draft SEIS?
 - d. What is the total estimated number of hours required to complete said work?
 - e. What bounding conditions will be placed on site activities in conjunction with completion of said work?
6. It was suggested by NRC staff in March 14, 2012 that an update on the status of the Section 106 process be sent to all consulting parties on a monthly basis. When will this practice be initiated?

In addition to the questions listed above, Strata further wishes to reiterate the following questions and/or requests for information from our previous letter to you dated January 12, 2012. Strata believes these questions must be answered in order for a qualified consultant to prepare an accurate and comprehensive assessment of potentially eligible sites of traditional cultural significance in the Ross Area of Potential Effect (APE):

1. Will the NRC be present should the consultant and consulting parties elect to include a site visit(s) in the assessment? Has a date been circulated among the consulting parties on when any site visits might occur?
2. Strata requests that the NRC issue a formal map and description of the APE as determined by consultation between NRC and WSHPO (per 36 CFR 800.4(a)), in order to define the boundaries within which ethnographic and field survey work will be conducted.

In keeping with its core values, Strata continues to strive to set the standard for the industry with regard to best practices in ISR licensing and public outreach, including activities associated with the Section 106 process. While Strata understands that Section 106 consultation is a "government-to-government" process between the Tribes and NRC, Strata wishes to support and facilitate that process by encouraging proactive communications to engender strong trust relationships between all parties. To that end, Strata respectfully requests that NRC provide written clarification to the questions detailed above at the earliest possible opportunity.

NRC has consistently stressed the importance of communication, particularly in regards to successful Tribal consultations. We heard this most recently at the NRC/NMA Uranium Recovery Conference. In light of this emphasis, we would request that NRC increase the amount of communication with all consulting parties.

The Strata team appreciates the opportunity to bring these requests for clarification to NRC in the interest of ensuring the best possible outcome in the Section 106 process. Please do not hesitate to contact me if you have any questions or require additional information. We look forward to your response.

Best regards,

Ralph Knode
Chief Executive Officer

cc: Senator Mike Enzi
Senator John Barrasso
Representative Cynthia Lummis
Larry Camper
Director, NRC Division of Waste Management and Environmental Protection
Drew Persinko
Deputy Director, Environmental Protection and Performance Assessment
Directorate