

Tribal Historic Preservation

Cultural Resource Management Office

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Protecting the Land, Cultural,
Heritage and Tradition for
the Future Generation



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March 25, 2013

Re: Ross In-Situ Uranium Project

Dear Ms. Moore:

The Rosebud Sioux Tribe (RST), a Federally recognized Tribe, is sending this letter to the Commission regarding the proposed Ross In-Situ Uranium Project, Crook County, Wyoming. The Tribe has been in consultation meetings with officials from your agency in the past but has reached an impasse in negotiations concerning compliance with Section 106 of the National Historic Preservation Act of 1966 (as amended). A recent proposal by your agency with concurrence from the applicant (Strata) concerning terms relating to the conducting and monetary compensation of performing a Traditional Cultural Property survey was enclosed in the letter. We are not in agreement with the terms as written in the letter as we feel that NRC and Strata did not consult with the RST or other Tribes regarding modification of previous understandings agreed upon in previous meeting consultations. This has prompted the RST to request a government to government consultation between your Office and the Rosebud Sioux Tribe. Government to government in this instance means that a time and date will be proposed by the RST and the NRC will need to be present on the Council floor of the Rosebud Sioux Tribe on that date to discuss the problems that have arisen.

As the Rosebud Sioux Tribe has attempted to comply with all requests from your Commission to date, and in addition to our relatives within the Oceti Sakowin who have complied to date, the RST feels that a government to government consultation is the likely remedy for the impasse that has developed in the process of Section 106 negotiation.

A recent communique with your Commission and submitted as a reminder to this process from a colleague at the Cheyenne River Sioux Tribe Historic Preservation Office, Mr. Steve Vance, CRST-THPO is included here:

Section 106 (clearly) states *"The Federal Government has a unique legal relationship with Indian Tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian Tribes should be conducted in a sensitive manner respectful of tribal sovereignty"* and I feel this offer of minimal opportunity for proper identification falls short of that statement as Strata is not the "government".

Mr. Vances statement makes for clear and direct responsibility of a Federal agency or Commission to adhere to the requirements within the NHPA and recognize that Tribal sovereignty is now being exercised in this process.

In support of Mr. Vances statement of law, we the RST, are including the following:

Section 110 (16 U.S.C. 470h-2) of the NHPA specifically states:

(2) Each Federal agency shall establish (unless exempted pursuant to Section 214), in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure-

(A) *that historic properties under the jurisdiction or control of the agency, are identified, evaluated, and nominated to the National Register;*

(B) *that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values in compliance with section 106 and gives special consideration to the preservation of such values in the case of properties designated as having National significance;*

(C) *that the preservation of properties not under the jurisdiction or control of the agency, but subject to be potentially affected by agency actions are given full consideration in planning;*

(D) *that the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector; and*

(E) *that the agency's procedures for compliance with section 106-*

(i) *are consistent with regulations issued by the Council pursuant to section 211;*

(ii) *provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and*

(iii) *provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3002(c)).*

Section 110(a)(d)

*(d) Consistent with the agency's mission and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any **Federal license, permit**, or other approval is required) in accordance with the purposes of this Act and, give consideration to programs and projects which will further the purposes of this Act.*

In stating segments of Section 110 of the NHPA above, the RST-CRM-HPO asks for your specific attention to (2) (A) and (C) and (E) (ii) and (d) all of which have been italicized and/or are in bold for your attention.

Supportive of the above stated law, the following states the requirement within 36CFR Part 800 Subpart § 800.2 (C) and (D)

(C) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes. The agency official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(D) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process. Federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part.

Additionally the following is a Memorandum to all Federal agency heads and departments:

Memorandum on Government-to-Government Relations with Native American Tribal Governments

The United States government has a unique legal relationship with Native American Tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American Tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of Tribal sovereignty.

Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American Tribal governments. *The purpose of these principles is to clarify our responsibility to ensure that the Federal government operates within a government-to-government relationship with Federally-recognized Native American Tribes.* I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign Tribal governments.

William J. Clinton

The above italicized portion of the Memorandum is of specific importance to the purpose of government to government consultation.

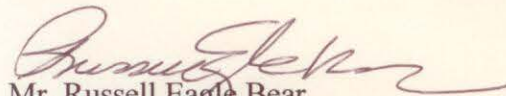
And finally:

Government-to-Government Consultation

- A. The relationship between the United States and federally recognized Indian tribes was reaffirmed in the President's Memorandum on "Government to Government Relations with Native American Tribal Governments" (April 29, 1994). The memorandum directs Federal agencies to operate "within a government-to-government relationship with federally recognized tribal governments." It also directs agencies to consult with tribes prior to making decisions that affect tribal governments and to ensure that all components in the agency are aware of the requirements of the memorandum. In addition, Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," *directs Federal agencies to consult with tribal governments regarding issues which "significantly or uniquely affect their communities."* (Italicized for emphasis- RST-THPO)

We sincerely hope that a remedy to the current impasse will result from furthering these negotiations via our elected respective leadership and your Commission.

Sincerely,



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