

StrataRossLAPEm Resource

From: Moore, Johari
Sent: Friday, April 11, 2014 10:28 AM
To: Moore, Johari
Subject: Ross Project Final Programmatic Agreement for Signature
Attachments: Ross Project Final Programmatic Agreement.pdf; Ross Project Final PA Appendix B.pdf; Ross Project Final PA Appendix A.pdf

Good morning,

Thank you for your involvement in the development of the Ross Project Programmatic Agreement (PA). The NRC has signed the final PA (attached) and a letter with the final PA enclosed has been mailed to each of the consulting parties. The NRC staff requests that all required signatories respond within 7 business days of receipt of this letter to sign the PA. The PA becomes effective upon receipt of the required signatories' signature pages. Invited signatories and concurring parties are requested to respond within 45 days of receipt of the letter to sign the PA.

Please forward your signed signature page to me at the address below or via email at Johari.Moore@nrc.gov.

Ms. Johari Moore
U.S. Nuclear Regulatory Commission
11545 Rockville Pike
Rockville, Maryland 20852

Thank you,

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"Moore, Johari" <Johari.Moore@nrc.gov>
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**PROGRAMMATIC AGREEMENT
AMONG
THE U.S. NUCLEAR REGULATORY COMMISSION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE WYOMING STATE HISTORIC PRESERVATION OFFICE,
THE BUREAU OF LAND MANAGEMENT–NEWCASTLE FIELD OFFICE,
AND
STRATA ENERGY, INC.,
REGARDING
THE ROSS IN SITU URANIUM RECOVERY PROJECT
IN CROOK COUNTY, WYOMING**

WHEREAS, this Programmatic Agreement (PA or “Agreement”) addresses the federal action regarding the issuance of a license for the Ross In Situ Uranium Recovery (ISR) Project (Ross Project) pursuant to the U.S. Nuclear Regulatory Commission’s (NRC) authority under the Atomic Energy Act of 1954 (AEA), 42 U.S.C. §§ 2011 *et. seq.* for purposes of NRC’s compliance with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470 *et. seq.*; and

WHEREAS, on January 4, 2011, Strata Energy, Inc. (Strata) submitted to the NRC for review and approval a new source and byproduct materials license for an ISR project at the Ross Project site located in Crook County, Wyoming; and

WHEREAS, the NRC is considering issuance of a license for the Ross Project pursuant to its authority under the Atomic Energy Act of 1954 (AEA), 42 U.S.C. §§ 2011 *et seq.*, which makes the Project an undertaking requiring compliance by NRC with Section 106 of the NHPA, 16 U.S.C. § 470, and its implementing regulations (36 CFR § 800 (2004)); and

WHEREAS, the U.S. Department of the Interior, Bureau of Land Management (BLM), Newcastle, Wyoming Field Office received from Strata on January 21, 2011, a Plan of Operations for the Ross Project for review and approval which requires compliance with Section 106 of NHPA for the Undertaking as defined at 36 CFR § 800.16(y) and pursuant to BLM’s authority under the Mining Law of 1872, 30 U.S.C. §§ 22-54 and the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701-1784; and

WHEREAS, review and approval of a Plan of Operations (POO) for the Ross Project that meets the requirements of 43 CFR Subpart 3809 by the BLM, Newcastle, Wyoming Field Office makes the Project an undertaking requiring compliance by BLM with Section 106 of the NHPA, 16 U.S.C. § 470 and 36 CFR Part 800; and

WHEREAS, the BLM, by letter dated November 21, 2011, has designated the NRC as the lead agency for compliance with requirements of Section 106 of the NHPA regarding the Ross Project pursuant to 36 CFR § 800.2(a)(2) of the Section 106 regulations; and

WHEREAS, upon issuance of a license and approval of a mine plan, the Undertaking would use ISR technology to extract uranium and would process the extracted uranium into yellowcake at the Ross Project site, which consists of 1,721 acres (697 ha) located approximately 38 km (24 mi) north of Moorcroft on County Route 68 in Crook County, Wyoming (in portions of Sections 7,

17, 18, and 19, Township 53 North, Range 67 West and portions of Sections 12, 13, and 24, Township 53 North, Range 68 West), as shown in Appendix A; and

WHEREAS, the NRC, by letter dated August 19, 2011, initiated Section 106 consultation with the Wyoming State Historic Preservation Office (WYSHPO); and

WHEREAS, the NRC, in consultation with WYSHPO as provided in 36 CFR § 800.4(a) and 36 CFR § 800.16(d), established the area of potential effects (APE) for the Undertaking as the area at the Ross Project site and its immediate environs, which may be impacted by activities associated with the construction and operation of the proposed facility. The direct APE is the Ross Project boundary within which areas may be directly affected by physical ground disturbance and construction of the Ross Project, and the indirect APE is comprised of the area within three miles of the Ross Project boundary wherein potential visual and audible effects to historic properties may occur, as described in Appendix A; and

WHEREAS, the Phase I area, shown in Figure 3 of Appendix A, encompasses all areas within the direct APE where Strata's physical ground disturbance and construction of the Ross Project is currently proposed to occur; and

WHEREAS, surveys to locate cultural properties that may be eligible for inclusion on the National Register of Historic Places (NRHP) have been completed for the Undertaking, including background research of the existing records and Class III and Tribal field surveys within the APE, as described in Appendix B; and

WHEREAS, the NRC has made determinations of eligibility for the NRHP for two historic properties within the direct APE (48CK1603 and 48CK2083) and WYSHPO has concurred with these findings, as described in Appendix B; and

WHEREAS, the NRC in consultation with WYSHPO has yet to make determinations of eligibility for the NRHP for 32 cultural properties within the direct APE, as shown in Table 1-D and Table 3 of Appendix B; and

WHEREAS, effects on all historic properties within the APE cannot be fully determined prior to approval of the Undertaking (36 CFR § 800.14(b)(1)(ii)); and

WHEREAS, the NRC has determined that a phased process for compliance with Section 106 of NHPA is appropriate for the Undertaking, as specifically permitted under 36 CFR § 800.4(b)(2), such that completion of the evaluation of historic properties, determinations of effect on historic properties, and consultation concerning measures to avoid, minimize, or mitigate any adverse effects will be carried out in phases, as set forth in this PA; and

WHEREAS, by letter dated April 17, 2013, Strata has submitted an Additional Testing Plan to the NRC to test two unevaluated sites (48CK2076 and 48CK2073) that are located within the Phase I area for NRHP eligibility and to test two eligible sites (48CK1603 and 48CK2083) that are located within the Phase I area for effects; and

WHEREAS, the NRC is coordinating with the BLM to review Strata's Additional Testing Plan and, if accepted by the NRC in consultation with WYSHPO, the Additional Testing Plan will be implemented as necessary; and

WHEREAS, the NRC, by letter dated February 9, 2011, invited the following Indian Tribes to participate in Section 106 consultation for the Ross Project: The Apache Tribe of Oklahoma; The Blackfeet Tribe; The Cheyenne and Arapaho Tribes of Oklahoma; The Cheyenne River Sioux Tribe; The Confederated Salish and Kootenai Tribe; The Crow Tribe; The Crow Creek Sioux Tribe; The Eastern Shoshone Tribe; The Flandreau Santee Sioux Tribe; The Fort Belknap Community; The Fort Peck Assiniboiné and Sioux Tribes; The Kiowa Indian Tribe of Oklahoma; The Lower Brulé Sioux Tribe; The Northern Arapaho Tribe; The Northern Cheyenne Tribe; The Oglala Sioux Tribe; The Rosebud Sioux Tribe; The Santee Sioux Tribe of Nebraska; The Sisseton-Wahpeton Sioux Tribe; The Spirit Lake Tribe; The Standing Rock Sioux Tribe, The Three Affiliated Tribes; The Turtle Mountain Band of Chippewa Indians; and the Yankton Sioux Tribe; and

WHEREAS, the following twenty-two tribes are the Ross Project Consulting Tribes: The Blackfeet Tribe; The Cheyenne and Arapaho Tribes of Oklahoma; The Cheyenne River Sioux Tribe; The Chippewa Cree Tribe; The Confederated Salish and Kootenai Tribe; The Crow Tribe; The Crow Creek Sioux Tribe; The Eastern Shoshone Tribe; The Flandreau Santee Sioux Tribe; The Fort Belknap Community; The Fort Peck Assiniboiné and Sioux Tribes; The Lower Brulé Sioux Tribe; The Northern Arapaho Tribe; The Northern Cheyenne Tribe; The Oglala Sioux Tribe; The Rosebud Sioux Tribe; The Santee Sioux Tribe of Nebraska; The Sisseton-Wahpeton Sioux Tribe; The Standing Rock Sioux Tribe, The Three Affiliated Tribes; The Turtle Mountain Band of Chippewa Indians; and the Yankton Sioux Tribe; and

WHEREAS, the applicable requirements of NHPA, the American Indian Religious Freedom Act, 42 U.S.C. 1996 *et. seq.*, the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 *et. seq.* and 43 CFR § 10 (NAGPRA), and the Archaeological Resources Protection Act, 16 U.S.C. 1979 *et. seq.* (ARPA) have been considered in this Agreement and this Agreement does not waive the responsibilities of the Signatories and Invited Signatory under these Acts and regulations; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1)(i)(C), the NRC, by letter dated September 19, 2013, has invited the Advisory Council on Historic Preservation (ACHP) to participate in Section 106 consultation and development of this PA and the ACHP, by letter dated October 28, 2013, accepted the invitation and is a Signatory; and

WHEREAS, the NRC, by letters dated September 19, 2013, invited each of the Ross Project Consulting Tribes to participate in the development of this PA and representatives from The Cheyenne and Arapaho Tribes of Oklahoma, The Cheyenne River Sioux Tribe, The Chippewa Cree Tribe, The Fort Peck Assiniboiné and Sioux Tribes, The Northern Cheyenne Tribe, The Northern Arapaho Tribe, and the Santee Sioux Tribe of Nebraska participated; and

WHEREAS, each of the Ross Project Consulting Tribes will be invited to sign the PA as a Concurring Party; and

WHEREAS, the NRC, by letter dated September 19, 2013, invited the Crook County Museum District and the Alliance for Historic Wyoming, to participate in the development of this PA, and no response was received; and

WHEREAS, by email dated November 8, 2013, the National Park Service—Devils Tower National Monument informed the NRC that it would like to be involved with the development of the PA and subsequently participated in the development of this PA; and

WHEREAS, Strata has participated in the development of this PA, shall implement the Undertaking in accordance with this PA, and will be invited to sign the PA as an Invited Signatory; and

WHEREAS, the NRC, WYSHPO, ACHP, BLM, and Strata are collectively hereafter called “Signatories;” and

WHEREAS, the Signatories, Invited Signatory, and Concurring Parties are collectively referred to as the “Parties”; and

WHEREAS, the refusal of any Invited Signatory or Invited Concurring Party to sign this PA does not invalidate the PA;

NOW, THEREFORE, the NRC, WYSHPO, ACHP, and BLM agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties.

STIPULATIONS

As appropriate, the NRC within its regulatory authority or the BLM shall ensure that the following measures are carried out:

A. GENERAL STIPULATIONS

1. The NRC will require as a condition of any license issued to Strata, and the BLM will require as a condition of approval of Strata’s Plan of Operations, that Strata complies with all stipulations and other provisions in this PA.
2. Strata shall fund all required fieldwork, analysis, reporting, curation, and mitigation necessary to comply with this PA.
3. The NRC will ensure that all work undertaken to satisfy the terms of this PA, including all cultural resource inventory reports and documentation, meets the Secretary of the Interior’s Standards for Archaeology and Historic Preservation (48 FR 44716-42), WYSHPO standards, and ACHP guidance on archaeology found at www.achp.gov/archguide. In recognition of the special expertise Tribal experts have concerning properties of religious and cultural significance, the standards of 36 CFR § 61 will not apply to knowledgeable, designated Tribal representatives carrying out identification and evaluation efforts for properties of religious and cultural significance to Tribes.
4. Strata shall have a qualified archaeologist, as defined in the Secretary of Interior’s Professional Qualifications and Standards (48 FR 22716), conduct recordation and testing, prepare testing reports, conduct data recovery, and prepare data recovery reports whenever these activities are required.

5. Strata shall direct all of its employees, contractors, subcontractors, inspectors, monitors, and any authorized additional parties involved in the Ross Project not to search for, retrieve, deface, or impact historic and prehistoric materials (e.g., archaeological materials such as, arrowheads, pottery sherds, petroglyphs) and ensure that they receive training regarding the sensitivity of all historic and cultural resources, both Native American and non-Native American. Strata shall cooperate with the NRC, BLM and the WYSHPO to ensure compliance with ARPA of 1979 as amended (16 U.S.C 470) and NAGPRA (25 U.S.C. 3001) on public lands, and with Wyoming Statute § 36-1-115 on state lands.
6. The NRC will continue to consult with the representatives of the Ross Project Consulting Tribes throughout the implementation of the PA. The Ross Project Consulting Tribes will be invited to participate in the determinations of eligibility for the unevaluated properties, the determinations of effect to historic properties, and the development of any plans to avoid, minimize, or mitigate adverse effects to historic properties. Any information provided by the Ross Project Consulting Tribes on sites of traditional religious and cultural importance will remain confidential to the greatest extent permitted by law.
7. For each Ross Project Phase, all cultural resources that may be affected by that Phase of the Undertaking will be evaluated by the NRC in consultation with the Parties and Ross Project Consulting Tribes pursuant to 36 CFR § 800.4(c)(1) if not previously evaluated.
8. 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 BLM shall review all reports concurrently with the NRC. The NRC will coordinate with the BLM when fulfilling the NRC's PA responsibilities. The NRC will provide information on the project timelines to the BLM and the BLM will make a good faith effort to support the NRC's timelines. The NRC may designate the BLM staff as the local point of contact to address unanticipated discoveries or other tasks as needed.

B. CONTINUING DETERMINATIONS OF ELIGIBILITY

1. Completing Recordation of Four Unevaluated Properties Identified Within the Direct APE and Testing of Two Eligible and Six Unevaluated Properties Identified Within the Phase I Area
 - a. Strata shall complete recordation of 48CK2087, 48CK2229, 48CK2230, and 48CK2231 (see Table 1-A of Appendix B) and prepare a report on this inventory to be submitted to the NRC.
 - b. Strata shall submit a supplement to the Additional Testing Plan, which includes 48CK1603, 48CK2073, 48CK2076, and 48CK2083 within the Phase I area, to the NRC to include 48CK2075, 48CK2085, 48CK2229 and 48CK2231, which are also within the Phase I area.
 - c. Upon receipt of Strata's supplement to the Additional Testing Plan, the NRC and BLM will review the complete Additional Testing Plan and request any corrections or modifications from Strata within 30 days of receipt. During review of the Additional Testing Plan, the NRC will consult with Strata concerning whether any sites or

portions of sites may be avoided. If avoidance is possible, the testing plan shall be revised to include a map and documentation to support this avoidance.

- d. The NRC will then distribute the Additional Testing Plan to the Parties (excluding WYSHPO) and Ross Project Consulting Tribes for a 30 day review and comment period. The NRC will share comments and objections with the Parties and Ross Project Consulting Tribes and consider any comments received in writing from the Parties or the Ross Project Consulting Tribes within the specified review period.
 - e. The NRC will then submit the final Additional Testing Plan to the WYSHPO for a 30 day review and concurrence. Copies of this correspondence will be sent to the other Parties and Ross Project Consulting Tribes.
 - f. If the WYSHPO concurs with the NRC's final Additional Testing Plan or fails to respond within 30 days, the NRC will notify Strata in writing that it may proceed with the final Additional Testing Plan.
 - g. The NRC will consult to resolve any comments or objections regarding the final Additional Testing Plan received in writing from the WYSHPO within the 30 day review period. If the NRC determines that a dispute cannot be resolved through consultation, it will be resolved in accordance with Stipulation I (Dispute Resolution).
2. Testing Unevaluated Properties Outside of Phase I Area for NRHP Eligibility
- a. For subsequent Phases of the Ross Project, Strata shall not conduct activities, such as ground disturbance activities, which may have direct effects on historic properties or unevaluated sites beyond the boundaries of the Phase I area (see Appendix A, Figure 3) and within the direct APE without first notifying the NRC and fulfilling the relevant requirements set forth in this Agreement.
 - b. If Strata proposes activities, such as ground disturbance activities, which may have direct effects on historic properties or unevaluated sites beyond the boundaries of the Phase I area and within the direct APE, then, consistent with the phased process for Section 106 compliance under this PA, Strata shall submit a Notice of Intent (NOI) to the NRC. The NOI shall state Strata's intent to prepare a plan for testing the eligibility of any unevaluated properties previously identified within the New Phase area. The NOI shall be submitted at least three months prior to the testing plan's proposed submission date so that the NRC and BLM can appropriately allocate staff resources to the extent possible, acknowledging that additional time may be necessary in the event that NRC and BLM staff resources are limited due to conditions beyond the staff's control.
 - c. Strata's NOI shall include a description of the area of ground disturbance activities for the New Phase. Strata shall delineate the New Phase area with township/section/range, GPS data points, GIS map, or other land survey techniques such that the New Phase area can be reproducibly defined and illustrated with appropriate graphic materials and sufficient documentation to enable any reviewer to readily understand its scope and basis.
 - d. Strata shall submit a testing and evaluation plan for all unevaluated sites that may be affected by each subsequent Phase of the Ross Project. Upon receipt of Strata's testing and evaluation plan for each subsequent Phase of the Project, the NRC in

coordination with the BLM will review the plan and request any corrections or modifications from Strata within 30 days of receipt.

- e. Prior to accepting Strata's testing plan, the NRC will consult with Strata to determine if the unevaluated properties can be avoided in the proposed project phase. If any properties in the original testing plan can be avoided, Strata shall submit a revised testing plan, including a map and sufficient documentation to support this avoidance determination.
 - f. The NRC will distribute the revised testing plan to the Parties (excluding WYSHPO) and Ross Project Consulting Tribes for a 30 day review and comment period. The NRC will share comments and objections with the Parties and Ross Project Consulting Tribes and consider any comments received in writing within the specified review period.
 - g. The NRC will then submit the final testing plan to the WYSHPO for a 30 day review and concurrence, copying the other Parties and Ross Project Consulting Tribes on this correspondence.
 - h. If the WYSHPO concurs with the NRC's final testing plan or fails to respond within 30 days, the NRC will notify Strata in writing that it may proceed with the testing plan.
 - i. The NRC will consult to resolve any comments or objections received in writing from WYSHPO within the 30 day review period regarding the final testing plan. If the NRC determines that a dispute cannot be resolved through consultation, it will be resolved in accordance with Stipulation I (Dispute Resolution).
3. Determination of Eligibility
- a. In accordance with an approved final testing plan from Sections B.1 or B.2, Strata shall evaluate and make NRHP eligibility recommendations for unevaluated properties.
 - b. Upon receipt of Strata's eligibility recommendations, the NRC in coordination with BLM will review the recommendations and request any corrections or modifications from Strata within 30 days of receipt.
 - c. The NRC will then distribute revised eligibility determinations to the Parties (excluding WYSHPO) and Ross Project Consulting Tribes for a 30 day review period. The NRC will share comments and objections with the Parties and Ross Project Consulting Tribes and consider any comments received in writing from the Parties and the Ross Project Consulting Tribes within the specified review period.
 - d. The NRC will then provide its eligibility determinations to the WYSHPO for a 30 day review and concurrence, copying the other Parties and Ross Project Consulting Tribes on this correspondence. The NRC will share comments and objections with the Parties and Ross Project Consulting Tribes and consider any objections regarding eligibility determinations received from the WYSHPO or the ACHP in writing within the specified WYSHPO review period.
 - e. If the WYSHPO concurs with the NRC's eligibility determinations, or if no written objections are received from WYSHPO or ACHP within the 30 day review period, the NRC's eligibility determinations are final.

- f. If the WYSHPO and NRC agree that a cultural resource is not eligible for the NRHP, no further review or consideration under this PA will be required for the cultural resource. If, after appropriate consultation, the WYSHPO and NRC agree that the property is eligible, then a determination of effect will be made in accordance with Stipulation C.
- g. In accordance with 36 CFR § 800.4(c)(2), if there is disagreement regarding eligibility between the NRC and the WYSHPO, and that disagreement cannot be resolved after further consultation, or if the ACHP so requests, the NRC will refer the property(ies) in question to the Keeper of the National Register (Keeper) and request a formal determination of eligibility. The Keeper's decision is final.

4. Sites of Traditional Religious and Cultural Importance

- a. The NRC, in coordination with the BLM, will consult with the Ross Project Consulting Tribes and WYSHPO to make NRHP eligibility determinations and effects determinations for the 18 properties identified during the Tribal field survey (see Table 3 of Appendix B). For any unevaluated cultural resources, the NRC will conduct further consultation with the Ross Project Consulting Tribes.
- b. The NRC has prepared a report documenting its eligibility determinations for the 18 properties and submitted the report to the WYSHPO for a 30 day review and concurrence period, copying the other Parties and the Ross Project Consulting Tribes on this correspondence. The report was received by WYSHPO on March 17, 2014.
- c. If the WYSHPO concurs with the NRC's eligibility determinations, or if the WYSHPO or ACHP does not object to the NRC's eligibility determinations within the 30 day review period, the NRC's eligibility determinations are final.
- d. The NRC will consult to resolve any written objections from the WYSHPO or the ACHP received during the 30 day review period regarding eligibility determinations.
- e. If the WYSHPO and NRC agree that a cultural resource is not eligible for the NRHP, no further review or consideration under this PA will be required for the cultural resource. If the WYSHPO and NRC agree that the property is eligible, then a determination of effect will be made in accordance with Stipulation C.
- f. In accordance with 36 CFR § 800.4(c)(2), if there is disagreement regarding eligibility between the NRC and the WYSHPO, and that disagreement cannot be resolved after further consultation, or if the ACHP so requests, the NRC will refer the property(ies) in question to the Keeper and request a formal determination of eligibility. The Keeper's decision is final.

C. CONTINUING ASSESSMENT OF EFFECTS

1. Determinations of Indirect Effects

The NRC, in consultation with the Parties and Ross Project Consulting Tribes, will make determinations of the indirect effects of the proposed Undertaking on all known historic properties within the direct APE and the three-mile indirect APE of the Undertaking during the process defined in Stipulation C.3.

2. Testing Historic Properties for Direct Adverse Effects

- a.** Following eligibility determinations, if additional testing is needed to assess the effects of the proposed Project Phase on a historic property, Strata shall submit to the NRC a testing plan to determine the direct (i.e., physical disturbance) adverse effects to historic properties that cannot be avoided.
- b.** Upon receipt of Strata's testing plan, the NRC in coordination with the BLM will review the plan and request any corrections or modifications from Strata within 30 days of receipt.
- c.** Prior to accepting Strata's testing plan, the NRC will consult with Strata to determine if the historic properties can be avoided. If any historic properties in the testing plan can be avoided, Strata shall submit a revised testing plan, including a map and sufficient documentation to support this avoidance determination.
- d.** The NRC will distribute the revised testing plan to the Parties (excluding WYSHPO) and the Ross Project Consulting Tribes for a 30 day review period. The NRC will share comments and objections with the Parties and Ross Project Consulting Tribes and consider any comments received in writing within the specified review period.
- e.** The NRC will then distribute the final testing plan to the WYSHPO for a 30 day review and comment period, copying the other Parties and the Ross Project Consulting Tribes on this correspondence.
- f.** If the WYSHPO concurs with the NRC's final testing plan or fails to respond within 30 days, the NRC will notify Strata that it may proceed with the testing plan, and Strata shall submit the results of the testing to the NRC.
- g.** The NRC will consult to resolve any comments or objections received in writing from the WYSHPO within the 30 day review period regarding the testing plan. If the NRC determines that a dispute cannot be resolved through consultation, it will be resolved in accordance with Stipulation I (Dispute Resolution).
- h.** Strata shall have a qualified archaeologist conduct the testing in accordance with the approved adverse effects testing plan and shall submit a report to the NRC that documents Strata's evaluations and recommendations, which the NRC may use in making determinations of effect on identified historic properties within the area of ground disturbance activities for each Ross Project Phase.

3. Assessment of Effects and Consultation on Effects

- a.** Upon receipt of Strata's assessments of effects, the NRC in coordination with the BLM will review those recommendations and request any corrections or modifications from Strata within 30 days of receipt.
- b.** Prior to accepting Strata's assessments of effects, the NRC will consult with Strata to determine if the adverse effects to historic properties can be avoided. If adverse effects to historic properties can be avoided, Strata shall provide its avoidance assessment, including a map and sufficient documentation to support this avoidance assessment, in the report documenting its recommendations of effect.
- c.** The NRC will then distribute its determinations of effects (indirect and direct) and the associated documentation [pursuant to 36 CFR §§ 800.5 and 800.6(a)(3)] to the

Parties (excluding WYSHPO) and the Ross Project Consulting Tribes for a 30 day review period. The NRC will share comments and objections with the Parties and Ross Project Consulting Tribes and consider any comments received in writing within the specified review period.

- d. The NRC will then distribute the determinations of effects to the WYSHPO for a 30 day review period, copying the other Parties and the Ross Project Consulting Tribes on this correspondence.
- e. If the WYSHPO concurs with NRC's determinations of effects, or if no written objections are received from the WYSHPO or ACHP within the 30 day review period, the effects determinations are final.
- f. The NRC will consult to resolve any written objections received within the 30-day review period from the WYSHPO or ACHP regarding determinations of effects. If the NRC determines that a dispute cannot be resolved through consultation, it will be resolved in accordance with Stipulation I (Dispute Resolution).
- g. If any eligible properties will be adversely affected, plans to resolve the adverse effects will be developed in accordance with the Stipulation D of this PA.

D. RESOLUTION OF ADVERSE EFFECTS

- 1. Avoidance of Adverse Effects (This step can be combined with D.2.)
 - a. Once the assessment of adverse effects to historic properties has been finalized per Stipulation C, Strata shall notify the NRC in writing within 30 days if it can avoid the adverse effects to any historic properties within the area of ground disturbance activities for each Ross Project Phase, including properties of traditional religious and cultural significance to the Tribes. Potential avoidance measures include, but are not limited to, relocating pipelines, roads, facilities, monitoring wells, and other disturbances.
 - b. Upon receipt of Strata's proposed avoidance measures, the NRC in coordination with the BLM will review those proposed measures and request any corrections or modifications from Strata within 30 days of receipt.
 - c. The NRC will then distribute proposed avoidance measures to the Parties (excluding WYSHPO) and Ross Project Consulting Tribes for a 30 day review period. The NRC will share comments and objections with the Parties and Ross Project Consulting Tribes and consider any comments received in writing from the Parties and the Ross Project Consulting Tribes within the specified review period.
 - d. The NRC will then provide its proposed avoidance measures to the WYSHPO for a 30 day review and concurrence, copying the other Parties and Ross Project Consulting Tribes on this correspondence. The NRC will share comments and objections with the Parties and Ross Project Consulting Tribes and consider any objections regarding avoidance measures received from the WYSHPO or the ACHP in writing within the specified WYSHPO review period.
 - e. If the WYSHPO concurs with the NRC's proposed avoidance measures or fails to respond within 30 days and there are no timely written comments or objections from

the ACHP, the NRC will then document the decision to avoid adverse effects to the historic property(ies) and notify the Parties and Ross Project Consulting Tribes.

- f. The NRC will consult to resolve any comments or objections received in writing from WYSHPO or ACHP within the 30 day review period regarding the proposed avoidance measures. If the NRC determines that a dispute cannot be resolved through consultation, it will be resolved in accordance with Stipulation I (Dispute Resolution).

2. Development of Plan(s) for the Minimization and Mitigation of Adverse Effects

- a. If the NRC determines adverse effects (indirect or direct) to historic properties within the area of ground disturbance activities for any Ross Project Phase cannot be avoided, for each Phase of the Undertaking, 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. A wide range of options to minimize and/or mitigate adverse effects shall be considered.
- b. Meetings and conference calls shall be scheduled as needed to develop mitigation measures for the Undertaking.
- c. For each Project Phase, following the development of measures to minimize and/or mitigate adverse effects, Strata shall prepare a Mitigation Plan. The Mitigation Plan shall identify minimization and/or mitigation measures to address the adverse effects of the Undertaking on each individual historic property.
 - i. The Mitigation Plan shall contain a map of all proposed effects for that Project Phase, a description of the effects on each historic property, and a description of the proposed treatment for each historic property.
 - ii. A Monitoring Plan shall be included in the Mitigation Plan if monitoring by a qualified archaeologist and/or by Tribal monitors is part of the strategy for resolving adverse effects. The objective of monitoring is to protect historic properties from construction impacts, identify at the time of discovery any archaeological materials exposed during ground disturbance, and protect such resources from damage until the procedures for Discoveries per Stipulation F are implemented.
 - iii. If data recovery is part of the strategy for resolving adverse effects, the Mitigation Plan shall specify all details of the research design, field and laboratory work methodology (including mapping, geomorphological studies, controlled scientific excavation methods, analyses of data recovered, and photographic documentation), report preparation and scheduling.
- d. The NRC in coordination with the BLM will review the Mitigation Plan developed by Strata and request any corrections or modifications within 30 days of receipt.
- e. The NRC will distribute the Mitigation Plan to the Parties (excluding WYSHPO) and the Ross Project Consulting Tribes for a 30 day review period. The NRC will share all comments and objections it receives in writing from the Parties and the Ross Project Consulting Tribes with all the Parties and the Ross Project Consulting Tribes

and consider all such comments/objections and forward its requirements for any revisions to the draft Mitigation Plan to Strata.

- f. Within 30 days of the close of the above review period, Strata or its consultant will address the comments and make revisions to the Mitigation Plan as required by the NRC. The NRC will then distribute the final Mitigation Plan to the WYSHPO for a 30 day review period, copying the other Parties and the Ross Project Consulting Tribes on this correspondence.
 - g. Upon final concurrence by the WYSHPO, or if WYSHPO fails to respond in writing within 30 days, and there are no timely written comments or objections from the ACHP, the final Mitigation Plan will be appended to this PA.
 - h. The NRC will consult to resolve any timely written comments or objections received from the WYSHPO or the ACHP regarding the final Mitigation Plan. If the NRC determines that a dispute cannot be resolved through consultation, it will be resolved in accordance with Stipulation I (Dispute Resolution).
 - i. The NRC will notify the Parties and the Ross Project Consulting Tribes of the approval of any Mitigation Plan.
- 3. Implementation of Mitigation Plan(s)
 - a. For any data recovery on BLM-administered lands, the archaeologist shall have a BLM Cultural Resource Use permit for Excavation and/or Removal.
 - b. For data recovery on State lands, the archaeologist shall have an Authorization for Archaeological Investigations on State Lands.
 - c. Upon completion of data recovery fieldwork, Strata shall submit a Fieldwork Completion Report documenting implementation and results within 60 days to the NRC, BLM, and WYSHPO for a 30-day review and comment period.
 - d. The NRC in coordination with the BLM will review the Fieldwork Completion Report, distribute it as necessary and request any corrections or modifications within 30 days of receipt of the report, allowing additional time if a NRC/BLM fieldwork inspection is needed and is not feasible within the 30 day review period. Strata can implement proposed activities for that Phase of the Undertaking after the Fieldwork Completion Report has been approved by written notification from the NRC. The Parties and the Ross Project Consulting Tribes will be copied on the written notification to Strata.
 - e. Strata will provide a draft Final Mitigation Report for each archaeological data recovery to the NRC and BLM within 2 years of approval of the Fieldwork Completion Report unless otherwise specified in the Mitigation Plan. The NRC will then distribute the draft Final Mitigation Report or revised report to the Parties and Ross Project Consulting Tribes for a 30 day review and comment period. The NRC will share comments and objections with the Parties and Ross Project Consulting Tribes and consider any written comments received from the Parties and the Ross Project Consulting Tribes during the specified review period.
 - f. If any changes are made to the draft Final Mitigation Report based on comments or objections received from the Parties or the Ross Project Consulting Tribes, the NRC

will submit the Final Mitigation Report to WYSHPO, copying the other Parties and Ross Project Consulting Tribes on this correspondence.

- g. If the NRC determines that a dispute regarding the Mitigation Report cannot be resolved through consultation, it will be resolved in accordance with Stipulation I (Dispute Resolution).
- h. For other mitigation measures specified in the Mitigation Plan that result in a product or process that requires review and acceptance by the NRC, the process of review and acceptance and description of how Strata can proceed with implementation of ground disturbance activities in the vicinity of affected historic properties shall be specified in the Mitigation Plan.

E. CURATION

- 1. BLM will ensure that curation of all records and other archaeological items resulting from identification, evaluation, and data recovery efforts on BLM and State land is completed in accordance with 36 CFR § 79 and the provisions of 43 CFR § 10 (NAGPRA). All archaeological materials recovered from Federal and State land shall be curated at the University of Wyoming Archaeological Repository. Strata shall provide documentation of the curation of the materials to the NRC, BLM, and WYSHPO within 60 days of acceptance of the final cultural resource inventory report, test excavation report, and/or data recovery report.
- 2. BLM will encourage private landowners to curate archaeological materials recovered from their lands in accordance with Federal curation policies. If private landowners agree to curate archaeological materials recovered from their lands, the curation shall be done in accordance with Federal curation policies. Materials from private lands to be returned to private landowners shall be maintained in accordance with 36 CFR § 79 until all necessary analysis has been completed and the final cultural resource inventory report, text excavation report, and/or data recovery report has been accepted. Strata shall provide documentation of the disposition of private collections to the NRC, BLM, and WYSHPO.

F. DISCOVERIES

- 1. Inadvertent Discoveries of Historic and Cultural Resources

 - a. If previously unknown cultural resources, including archaeological sites, are discovered during implementation of the Ross Project, or previously known historic properties will be affected in an unanticipated manner, all construction activities will cease within 150 feet of the area of discovery to avoid or minimize harm to the resource, and Strata shall immediately notify the NRC and the WYSHPO. Activity in the area will cease until NRC, in consultation with the Parties and Ross Project Consulting Tribes, can evaluate the eligibility of the properties, evaluate any adverse effects on historic properties, and, if necessary, authorize steps to resolve the adverse effects. Strata shall have any discovered materials evaluated for NRHP eligibility by a qualified archaeologist meeting the Secretary of Interior's Standards for Archaeology and History. Documentation of the discovery and evaluation will be promptly provided to the NRC in order for the NRC, in consultation with the

WYSHPO, ACHP, BLM, and the Ross Project Consulting Tribes, to make a determination of eligibility and effect.

- b. If a cultural resource monitor or Tribal monitor is present, the monitor shall have the authority to temporarily halt construction operations within 150 feet of the find or exposed resource and shall flag or otherwise mark the area of avoidance. If a monitor is not present, Strata shall halt work and mark the location for avoidance.
- c. Strata shall have a qualified archaeologist and, if needed, a Tribal monitor, inspect the area for additional resources, document the discovery, make recommendations concerning eligibility, and submit the findings to the NRC. The Parties and Ross Project Consulting Tribes shall consult to determine what data recovery or other mitigation may be needed.
- d. Work may continue in other areas of the site; however, construction shall not resume in the area of discovery unless the NRC has issued a written Notice to Proceed.
- e. Evaluation and mitigation will be carried out by NRC in consultation with the WYSHPO, Ross Project Consulting Tribes, BLM, ACHP, and Strata as expeditiously as possible in accordance with 36 CFR § 800.13(b).

2. Inadvertent Discoveries of Human Remains

- a. In the event human remains are discovered on private or State land during implementation of the Undertaking, all work within 300 feet of the discovery will cease, the area will be secured, and Strata shall immediately notify the BLM Field Office Authorized Officer, the BLM Ranger, the Crook County Sheriff's Office, and WYSHPO of the discovery. If Native American human remains, funerary objects, sacred objects, or items of cultural patrimony are found on State or private land, the BLM will notify and consult the Ross Project Consulting Tribes. Non-Native American remains discovered on State or private land will be treated in accordance with applicable law.
- b. In the event human remains are discovered on Federally-administered land during implementation of the Undertaking, all work within 300 feet of the discovery will cease, the area will be secured, and Strata shall immediately notify the BLM Field Office Authorized Officer and the BLM Ranger, who will notify the Crook County Sheriff's Office, the County Coroner, and the WYSHPO. In the event that Strata cannot reach a BLM contact, Strata should proceed with notifying the Sheriff's Office. 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 NAGPRA and its implementing regulations (43 CFR § 10). BLM will be responsible for compliance with the provisions of NAGPRA on Federal land. If non-Native American human remains are found on Federal land, BLM will treat such remains in accordance with applicable law.
- c. 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.

G. CONFIDENTIALITY OF CULTURAL RESOURCE DATA

Cultural resource data, including data concerning the location and nature of historic properties and properties of religious and cultural significance, will be treated as confidential by all Parties and any additional parties involved in the Ross Project, including but not limited to employees, contractors, and subcontractors of Strata. These data shall be protected from public disclosure to the greatest extent permitted by law, including conformance with Section 304 of the NHPA, as amended, Section 9 of the ARPA, and Executive Order No. 13007 on Indian Sacred Sites (Federal Register, Vol. 61 No. 104, May 24, 1996). Confidentiality concerns for properties that have traditional religious and cultural importance to the Ross Project Consulting Tribes will be respected and will remain confidential to the greatest extent permitted by law. Duplication or distribution of cultural resource data from BLM-managed lands by any Party requires written authorization from the BLM Newcastle Field Manager.

H. ANNUAL REPORT AND EVALUATION

1. On or before January 1 of each year, beginning in 2015, unless the Parties agree in writing that the terms of this PA have been fulfilled, Strata shall prepare and provide a letter report to the NRC detailing how the applicable terms of the PA are being implemented. Upon acceptance, Strata shall provide this annual report to the Parties and Ross Project Consulting Tribes. The Parties may provide comments on the report to Strata within 30 days of receipt, and Strata shall distribute all comments to the Parties.
2. Strata shall coordinate a meeting or conference call of the Parties and Ross Project Consulting Tribes, in coordination with the NRC, within 60 days after providing the annual report for the first five (5) years, and (if the PA is still in effect) every third year after that, unless the Parties agree to another timeframe. The purpose of the meeting/conference call is to review implementation and achieved outcomes of the terms of this PA and to discuss the annual report, as needed. As appropriate, Parties may request a separate meeting to discuss the annual report.

I. DISPUTE RESOLUTION

1. Should any Signatory object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the NRC shall consult with the Signatories to resolve the objection. If the NRC determines that such objection cannot be resolved, the NRC will:
 - a. Forward all documentation relevant to the dispute, including the NRC's proposed resolution, to the ACHP. The ACHP shall provide the NRC with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the NRC shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories and Ross Project Consulting Tribes, and provide them with a copy of this written response. The NRC will then proceed according to its final decision.
 - b. If the ACHP does not provide its advice regarding the dispute within the 30 day time period, the NRC may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the NRC shall prepare a written response that

takes into account any timely comments regarding the dispute from the Signatories and Ross Project Consulting Tribes, and provide them and the ACHP with a copy of such written response.

2. The NRC's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

J. COORDINATION WITH OTHER FEDERAL AGENCY REVIEWS

In the event that Strata or other agency applies for federal funding or approvals for the Undertaking and the Undertaking remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this PA and notifying and consulting with WYSHPO and ACHP. Any necessary modifications will be considered in accordance with Stipulation K.

K. AMENDMENT

Any Signatory to this PA may request that it be amended, whereupon the Signatories will consult to reach agreement. Such amendment shall be effective upon the signature of all Signatories to this PA, and the amendment shall be appended to the PA as an Appendix.

L. TERMINATION

1. If any Signatory to this PA determines that its terms will not or cannot be carried out, if circumstances change over time and warrant revision of the stipulations, that Signatory shall immediately consult with the other Signatories to attempt to develop an amendment to the PA pursuant to Stipulation K—Amendment. If within 30-days (or another period agreed to by all Signatories) an amendment cannot be reached, any Signatory may terminate the PA upon written notification to the other Signatories.
2. If this PA is terminated, the NRC shall either (a) execute a new PA or MOA pursuant to 36 CFR § 800.6(c)(8) with the Signatories as defined in Section 800.6 (c)(1) of Title 36 or, (b) the NRC shall request comments, take into account, and respond to the comments of the ACHP under § 800.7(c)(4). The NRC shall notify the Signatories as to the course of action it will pursue.
3. The NRC shall include a condition on the license it issues for this Undertaking such that after the termination of this PA and until the NRC completes consultation and a new PA or MOA is executed or the NRC has requested, taken into account, and responded to the comments of the ACHP under 36 CFR § 800.7(c)(4), Strata is required to follow the terms and conditions of this PA for current ground-disturbing activities and is not permitted to begin any such activities in new areas.
4. 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.

M. DURATION OF AGREEMENT

1. This PA shall remain in effect for 20 years from its date of execution by the Signatories (last date of signature), or until completion of the work stipulated (in accordance with Stipulation L.4.), whichever comes first, unless extended by agreement among the Signatories. If this PA is terminated, prior to work continuing on the Undertaking, the NRC shall either (a) execute a PA or MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. Prior to termination of the PA, the NRC may consult with the other Signatories to reconsider the terms of the PA and amend it in accordance with Stipulation K. The NRC shall notify the Signatories as to the course of action it will pursue.
2. The NRC shall include a condition on the license it issues for this Undertaking such that if this PA expires and the Undertaking is still underway, the NRC shall either (a) execute a new PA or MOA pursuant to 36 CFR § 800.6(c)(8) with the Signatories as defined in Section 800.6(c)(1) of Title 36 or, (b) the NRC shall request comments, take into account, and respond to the comments of the ACHP under § 800.7(c)(4). The NRC shall notify the Signatories as to the course of action it will pursue.
3. The license condition shall specify that in such a situation, after the expiration of this PA and until the NRC completes consultation and a new PA or MOA is executed or the NRC has requested, taken into account, and responded to the comments of the ACHP under 36 CFR § 800.7(c)(4), Strata is required to follow the terms and conditions of this PA for current ground-disturbing activities and is not permitted to begin any such activities in new areas.

N. ANTI DEFICIENCY ACT

The stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act (31 U.S.C. §1341). If compliance with the Anti-Deficiency Act alters or impairs the NRC's ability to implement the stipulations of this Agreement, the NRC will consult in accordance with the amendment and termination procedures found in this Agreement.

O. GENERAL PROVISIONS

1. **Entirety of Agreement.** This PA, consisting of twenty-two (22) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral, regarding compliance with Section 106 of NHPA.
2. **Prior Approval.** This PA shall not be binding upon any party unless this PA has been reduced to writing before performance begins as described under the terms of this PA, and unless the PA is approved as to form by the Wyoming Attorney General or his representative.
3. **Severability.** Should any portion of this PA be judicially determined to be illegal or unenforceable, the remainder of the PA shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.

- 4. Sovereign Immunity.** The State of Wyoming, the WYSHPO, the NRC, the BLM, the ACHP, and Ross Project Consulting Tribes do not waive their sovereign or governmental immunity by entering into this PA and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of the PA.
- 5. Indemnification.** Each Signatory to this PA shall assume the risk of any liability arising from its own conduct. Each Signatory agrees they are not obligated to insure, defend or indemnify the other Signatories to this PA.

Execution of this PA by the NRC, BLM, ACHP, WYSHPO, Strata, the submission of documentation and filing of this PA with the ACHP pursuant to 36 CFR § 800.6(b)(1)(iv) prior to the Signatories' approval of the Undertaking, and implementation of its terms, are evidence that the NRC has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

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SIGNATURES: In witness thereof, the Signatories to this PA through their duly authorized representatives have executed this PA on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this PA as set forth herein.

The effective date of this PA is the date of the last signature affixed to this page.

This PA may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

Federal Agencies:

The U.S. Nuclear Regulatory Commission

By:  Date: 4/10/14
Title: Larry W. Camper, Director
Division of Waste Management and Environmental Protection

The U.S. Department of the Interior, Bureau of Land Management, Newcastle Field Office

By: _____ Date: _____
Title: _____

Wyoming State Historic Preservation Officer

By: _____ Date: _____
Title: Mary Hopkins, SHPO

Advisory Council on Historic Preservation

By: _____ Date: _____
Title: John M. Fowler, Executive Director

Strata Energy, Inc.

By: _____ Date: _____
Title: Ralph Knode, CEO

Approval as to Form:

Wyoming Attorney General's Office

By: _____ Date: _____
Title: S. Jane Caton,
Senior Assistant Attorney General

Concurring Parties:

Blackfeet Tribe

By: _____ Date: _____
Title: _____

Cheyenne and Arapaho Tribes

By: _____ Date: _____
Title: _____

Cheyenne River Sioux Tribe

By: _____ Date: _____
Title: _____

Chippewa Cree Tribe

By: _____ Date: _____
Title: _____

Confederated Salish and Kootenai Tribe

By: _____ Date: _____
Title: _____

Apsaalooke (Crow) Nation

By: _____ Date: _____
Title: _____

Crow Creek Sioux Tribe

By: _____ Date: _____
Title: _____

Eastern Shoshone Tribe

By: _____ Date: _____
Title: _____

Flandreau-Santee Sioux Tribe

By: _____ Date: _____
Title: _____

Fort Belknap Community

By: _____ Date: _____
Title: _____

Fort Peck Assiniboine/Sioux

By: _____ Date: _____
Title: _____

Lower Brule Sioux Tribe

By: _____ Date: _____
Title: _____

Northern Arapaho Tribe

By: _____ Date: _____
Title: _____

Northern Cheyenne Tribe

By: _____ Date: _____
Title: _____

Oglala Sioux Tribe

By: _____ Date: _____
Title: _____

Rosebud Sioux Tribe

By: _____ Date: _____
Title: _____

Santee Sioux Tribe of Nebraska

By: _____ Date: _____
Title: _____

Sisseton-Wahpeton Oyate Tribes

By: _____ Date: _____
Title: _____

Standing Rock Sioux Tribe

By: _____ Date: _____
Title: _____

**Mandan, Hidatsa & Arikara Nation
Three Affiliated Tribes**

By: _____ Date: _____
Title: _____

Turtle Mountain Band of Chippewa

By: _____ Date: _____
Title: _____

Yankton Sioux Tribe

By: _____ Date: _____
Title: _____

Appendix B

Ross Project Cultural Resource Inventories

Cultural Resource Inventory

A Class III Cultural Resource Inventory (Class III Inventory) was conducted in support of the Ross Project in April 2010 and July 2010. The Inventory included a pedestrian survey in transects of 30-m [102-ft] intervals throughout the Ross Project area. Subsurface exposures such as cut banks, anthills, rodent burrows, roads ruts, and cow tracks were examined. Shovel probes were placed at the discretion of the surveyors, primarily in locations where artifacts or features were located or where soil had accumulated. The Inventory focused on landforms where intact sites might be expected, such as intact, stable terraces and their margins, as well as areas of exposure. Site evaluations were not completed for all sites during this Inventory and sites were not assessed for project effect.

In November 2011, additional site evaluation field work was accomplished: A geophysical magnetometer survey was conducted at several sites, but it was found to be ineffective because of the nature of the soils. During the fieldwork, which was conducted in May and June 2012, 6 back-hoe trenches, approximately 27 test pits measuring 0.5 m x 0.5 m [1.6 ft x 1.6 ft], and approximately 44 test pits measuring 1.0 m x 1.0 m [3.3 ft x 3.3 ft] were excavated to further evaluate sites near areas where road construction and other impacts would be expected. The testing report for this fieldwork was submitted in August 2012.

In preparation for the Class III Inventory, a records search was conducted for the Ross Project area in 2010; this search included the records of the Wyoming Cultural Records Office (WYCRO), the WYCRO online data base, and the BLM's Newcastle Field Office. The records search showed that, prior to the 2010 Class III Inventory, no substantial block inventory had been conducted in the Project area. Small-scale investigations, including two associated with power lines and buried telephone cables as well as a drilling-pad and access-road survey, had been conducted in the Ross Project area. One survey, an inventory for a linear buried telephone cable in Section 13, identified one prehistoric campsite, 48CK1603. This site was re-recorded during the 2011 fieldwork and determined to be eligible for the National Register of Historic Places despite damage from a county road that bisects the site.

Buildings and Structures

No buildings or structures eligible for the National Register of Historic Places (NRHP) or Wyoming State Register were identified within the Ross Project area. An earthen structure in the Ross Project area, the Oshoto Dam, did not meet the criteria for eligibility for listing in the NRHP (48 CFR Part 2157). The original dam has been rebuilt numerous times because of flood damage, most recently in 2005, and is considered to be essentially a reconstruction rather than the original dam.

Archaeological Sites

During the Applicant's initial Class III Inventory for the Ross Project, 24 new sites and 21 isolated resources were recorded. Twenty-three of the recorded sites are prehistoric habitations, camps, and stone features, and one is a historic-period homestead. A number of sites produced projectile points that represent Middle Archaic, Late Archaic, and Late Prehistoric occupations. Twenty-one isolated resources were also recorded during the Inventory. All but two of these contain prehistoric artifacts; the two historic isolated resources are historic artifact scatters. In addition to the sites identified during the Class III Inventory, the potential exists for deeply buried sites to be found within the Ross Project area because of its propitious location near the headwaters of the Little Missouri River and the percentage of the Ross Project area that consists of deep alluvium.

As described in the Tribal Consultation section below, a Class III Inventory in the Ross Project area designed to identify and evaluate the NRHP significance of properties of religious and cultural significance to Tribes was performed by representatives of ten Tribes during May and June 2013. During the June Tribal field survey, additional archaeological materials including bone and lithic artifacts were found at 48CK2087, a site identified in the cultural resource inventory as consisting only of a hill-top cairn. The new cultural finds at 48CK2087 extend the boundary of 48CK2087. Additionally, three new archaeological sites were found within the Ross Project Area: 48CK2229, 48CK2230, and 48CK2231.

The 27 sites along with previously identified 48CK1603 are listed in Table 1-A, Table 1-B, Table 1-C, and Table 1-D. Consultations on the eligibility determinations for these sites are documented in the following letters between the NRC and the Wyoming State Historic Preservation Office (WYSHPO): NRC letter to WYSHPO, dated March 8, 2013; WYSHPO letter to NRC, dated March 28, 2013; NRC letter to WYSHPO, dated September 20, 2013; WYSHPO letter to NRC, dated October 22, 2013.

Table 1-A. Summary of Ross Project Cultural Properties

Site Number	NRHP Eligibility
48CK1603	Eligible
48CK2070	Unevaluated
48CK2071	Not Eligible
48CK2072	Not Eligible
48CK2073	Unevaluated
48CK2074	Not Eligible
48CK2075	Unevaluated
48CK2076	Unevaluated
48CK2077	Not Eligible
48CK2078	Unevaluated
48CK2079	Unevaluated
48CK2080	Unevaluated
48CK2081	Unevaluated
48CK2082	Unevaluated
48CK2083	Eligible

Site Number	NRHP Eligibility
48CK2084	Not Eligible
48CK2085	Unevaluated
48CK2086	Not Eligible
48CK2087	Unevaluated
48CK2088	Not Eligible
48CK2089	Unevaluated
48CK2090	Unevaluated
48CK2091	Unevaluated
48CK2092	Unevaluated
48CK2093	Not Eligible
48CK2229	Unevaluated
48CK2230	Unevaluated
48CK2231	Unevaluated

Table 1-B. Summary of NRHP Eligible Ross Project Cultural Properties

Site Number	NRHP Eligibility
48CK1603	Eligible
48CK2083	Eligible

Table 1-C. Summary of NRHP Not Eligible Ross Project Cultural Properties

Site Number	NRHP Eligibility
48CK2071	Not Eligible
48CK2072	Not Eligible
48CK2074	Not Eligible
48CK2077	Not Eligible
48CK2084	Not Eligible
48CK2086	Not Eligible
48CK2088	Not Eligible
48CK2093	Not Eligible

Table 1-D. Summary of Unevaluated Ross Project Cultural Properties

Site Number	NRHP Eligibility
48CK2070	Unevaluated
48CK2073	Unevaluated
48CK2075	Unevaluated
48CK2076	Unevaluated
48CK2078	Unevaluated
48CK2079	Unevaluated
48CK2080	Unevaluated

Site Number	NRHP Eligibility
48CK2081	Unevaluated
48CK2082	Unevaluated
48CK2085	Unevaluated
48CK2087	Unevaluated
48CK2089	Unevaluated
48CK2090	Unevaluated
48CK2091	Unevaluated
48CK2092	Unevaluated
48CK2229	Unevaluated
48CK2230	Unevaluated
48CK2231	Unevaluated

Tribal Consultation

According to Executive Order (EO) No. 13175, *Consultation and Coordination with Indian Tribal Governments*, the NRC is encouraged to promote government-to-government consultation and coordination with Federally-recognized Tribes that have a known or potential interest in existing licensed uranium-recovery facilities or applications for new facilities. The BLM is required to comply with this Order. Although the NRC, as an independent regulatory agency, is explicitly exempt from the Order, NRC remains committed to its spirit. The agency has demonstrated a commitment to achieving the Order's objectives by implementing a case-by-case approach to interactions with Native American Tribes. The NRC's case-by-case approach allows both the NRC and the Tribes to initiate outreach and communication with one another.

As part of its obligations under Section 106 of the NHPA and the regulations at 36 CFR 800.2(c)(2)(ii)(A), the NRC must provide Native American Tribes "a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties and evaluation of historic properties, including those of religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects." Tribes that have been identified as potentially having concerns about actions near Devils Tower were formally invited by the NRC staff, by letter dated February 9, 2011, to participate in the Section 106 consultation process for the proposed Ross Project (see Table 2). The NRC staff invited the Tribes to participate as consulting parties in the NHPA Section 106 process and sought their assistance in identifying Tribal historic sites and cultural resources that may be affected by the Undertaking.

Table 2. Tribes Invited to Participate in Section 106 Consultation for the Ross Project

1	Apache Tribe of Oklahoma ^a
2	Blackfeet
3	Cheyenne and Arapaho Tribes of Oklahoma
4	Cheyenne River Sioux
5	Chippewa Cree ^b
6	Confederated Salish & Kootenai Tribes
7	Crow Tribe
8	Crow Creek Sioux Tribe

9	Eastern Shoshone Tribe
10	Flandreau Santee Sioux Tribe
11	Fort Belknap Community
12	Fort Peck Assiniboiné and Sioux Tribes
13	Kiowa Tribe of Oklahoma ^c
14	Lower Brule Sioux Tribe
15	Northern Arapaho Tribe
16	Northern Cheyenne Tribe
17	Oglala Sioux Tribe
18	Rosebud Sioux Tribe
19	Santee Sioux Tribe of Nebraska
20	Sisseton-Wahpeton Sioux Tribe
21	Spirit Lake Tribe ^b
22	Standing Rock Sioux Tribe
23	Three Affiliated Tribes
24	Turtle Mountain Band of Chippewa Indians
25	Yankton Sioux Tribe

^aThe Apache Tribe of Oklahoma notified the NRC by email dated August 19, 2011 that it did not wish to participate in consultation on the Ross Project.

^bThe Chipewa Cree Tribe was not among the recipients of the NRC's February 9, 2011 consultation invitation letter. This Tribe informed the NRC of its interest in consulting on the Ross Project during the NRC's planning for the November 2011 site visit and consultation meeting with the Tribes.

^cNo response was received from the Kiowa Tribe of Oklahoma or the Spirit Lake Tribe.

Culturally Significant Locations

No Native American heritage, special interest, or sacred sites were previously formally identified or recorded to date that are in the Ross Project APE. The geographic position of the Project area between mountains considered sacred by various Native American cultures (the Big Horn Mountains to the west and the Black Hills including nearby Devils Tower to the east), however, creates the possibility that the Project area could have sites and locations of special religious or sacred significance to Native American groups.

Properties of Religious and Cultural Significance to Tribes

As required by Section 106 of the NHPA, the NRC requested information about places of cultural, religious, and traditional significance that could be affected by the Ross Project from various interested Tribes in order to complete government-to-government consultation efforts. Places of cultural, religious, and traditional significance that meet the NRHP criteria are included in the definition of Historic Property under 36 CFR Part 800.16(l)(1).

The NRC invited the Tribes listed in Table 2 (excluding The Apache Tribe of Oklahoma) to participate in a field survey of the Ross Project area under an "Open-Site approach" and a "Tribal Working Group" approach. A detailed description of the NRC's efforts to provide an opportunity for Consulting Tribes to conduct a field survey of the Ross Project area is provided in the NRC's letter to the Advisory Council on Historic Preservation (ACHP), dated August 14, 2013. A Class III Inventory in the Ross Project area designed to identify and evaluate the

NRHP significance of properties of religious and cultural significance to Tribes was performed by representatives of six Tribes on May 13 – 16, 2013. The six Tribes participating in the May Tribal field survey included:

- Santee Sioux Tribe of Nebraska (Niobrara, Nebraska)
- Crow Creek Sioux Tribe (Fort Thompson, South Dakota)
- Rosebud Sioux Tribe (Rosebud, South Dakota)
- Yankton Sioux Tribe (Wagner, South Dakota)
- Northern Cheyenne Tribe (Lame Deer, Montana)
- Turtle Mountain Band of Chippewa Indians (Belcourt, North Dakota)

A second Tribal field survey was performed by representatives of four Tribes on June 3 – 6, 2013. The four Tribes participating in the May Tribal field survey included:

- Cheyenne and Arapaho Tribes of Oklahoma (Concho, Oklahoma)
- Northern Arapaho Tribe (Fort Washakie, Wyoming)
- Fort Belknap Indian Community (Harlem, Montana)
- Eastern Shoshone Tribe (Fort Washakie, Wyoming)

The entire 697 ha [1,721-ac] Ross Project area was inventoried using current Class III-inventory methods during both Tribal field surveys. Crew members performed the surveys using transects spaced no greater than 30 meters (m) [100 ft]. Parallel transects were walked across the Ross Project area, guided by GPS bearings in addition to natural and cultural features, and the transects were adjusted in direction when major obstacles, such as Oshoto Reservoir, were met. Because of the large numbers of personnel involved in the two surveys, radio communications were provided by Strata to Tribal leaders to facilitate survey communications and coordination. In most instances, a limited time was spent at previously recorded archaeological sites. To facilitate relocation and recording, newly discovered archaeological sites were located by a single GPS point and briefly noted as to the site's general content and setting. Newly discovered prehistoric isolated resources were also mapped and recorded during both surveys.

When sites of potential religious and cultural significance to Tribes were noted during the May Tribal field survey, the pedestrian survey was brought to a halt, and the find was recorded by the NRC archaeological consultant supporting the survey in consultation with leaders of the May Tribal crew. Sites of potential religious and cultural significance to Tribes noted during the June Tribal field survey were briefly identified and plotted by GPS location. The survey then resumed. Once the walkover was completed, the June crew returned to the mapped sites and recorded and evaluated them.

As a result of the May and June Tribal field surveys, 18 properties of religious and cultural significance to Tribes were located, recorded, and evaluated for NRHP eligibility in the Ross Project area (see Table 3). A *Tribal Field Surveys in the Ross Project Area* report documenting these findings, based on the eligibility and effects recommendations provided by the Northern Arapaho Tribe, the Cheyenne and Arapaho Tribes of Oklahoma, and the NRC archaeological consultants that supported the survey, was submitted to the Wyoming SHPO for review and comment by letter dated March 6, 2014. A copy of this letter was provided to the Ross Project

Consulting Tribes. By letter dated August 27, 2012, Strata provided to the NRC the results of its analysis to identify and assess the potential visual effects to properties located within 3 miles of the Ross Project boundary. The NRC, in coordination with the BLM, utilized this analysis and additional records search information to analyze indirect effects and incorporated this analysis into the *Tribal Field Surveys in the Ross Project Area* report.

Table 3. Summary of Ross Project Properties of Religious and Cultural Significance to Tribes

Site Number	NRHP Eligibility
48CK2070	Unevaluated
48CK2080	Unevaluated
48CK2087	Unevaluated
48CK2089	Unevaluated
48CK2214	Unevaluated
48CK2215	Unevaluated
48CK2216	Unevaluated
48CK2217	Unevaluated
48CK2218	Unevaluated
48CK2219	Unevaluated
48CK2220	Unevaluated
48CK2221	Unevaluated
48CK2222	Unevaluated
48CK2223	Unevaluated
48CK2224	Unevaluated
48CK2225	Unevaluated
48CK2226	Unevaluated
48CK2227	Unevaluated

Appendix A

Description of Undertaking and Area of Potential Effects

Undertaking

On January 4, 2011, Strata Energy, Inc. (Strata or the Applicant) submitted to the U.S. Nuclear Regulatory Commission (NRC) a license application to construct and operate the Ross Project, which is a proposed uranium in situ recovery (ISR) facility located in Oshoto, Crook County, Wyoming.

The Atomic Energy Act of 1954, as amended, authorizes the NRC to issue licenses, either as a general or specific license, to qualified applicants for the receipt, possession and use of byproduct and source materials resulting from the removal of uranium ore from its place of deposit in nature. An NRC specific license is issued to a commercial uranium or thorium ISR facility pursuant to NRC implementing regulations listed in Title 10 of the Code of Federal Regulations (10 CFR) Part 40.

On January 21, 2011, Strata submitted to the U.S. Department of the Interior, Bureau of Land Management (BLM), Newcastle, Wyoming Field Office a Plan of Operations for the Ross Project for review and approval.

The Mining Law of 1872, 30 U.S.C. §§ 22-54 authorizes the BLM to review and approve mining plans for use of Federal minerals and the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701-1784 requires the BLM to manage all BLM-administered lands and minerals for multiple uses.

Ross Project Location and Proposed Activities

The proposed activities consist of constructing and operating an ISR facility at the Ross Project site located in Oshoto, Crook County, Wyoming. Strata is a U.S.-based corporation registered in Wyoming and a wholly owned subsidiary of Peninsula Energy Limited, an Australian registered company. Peninsula Energy is a publicly traded corporation on the Australian Securities Exchange. For this Undertaking, Strata is the Applicant.

As shown in Figure 1, Crook County is located in the northeastern corner of Wyoming, abutted by Montana to the north, South Dakota to the east, Weston County, Wyoming, to the south, and Campbell County, Wyoming to the west. The total area encompassed by Crook County is 2871 square miles. The nearest town to the project is Moorcroft, which is located approximately 22 miles south of the Ross Project. The closest community is Oshoto, which includes 11 residences located within 2 miles (mi) [3.2 kilometers (km)] of the project area. In addition to Moorcroft, the other nearest major urban centers include Sundance, Hulett, and Pine Haven, all of which are located in Wyoming. The largest population in those nearby urban centers is in Sundance with a 2010 population of 2602 persons (Strata, 2011).

As shown in Figure 2, the Ross Project comprises approximately 697 hectares (ha) [1,721 acres (ac)]. Surface ownership of land located within the Ross Project is as follows: private entities,

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553 ha [1367.2 ac]; State of Wyoming, 127 ha [314.1 ac]; and the Federal Government as administered by the BLM, 16 ha [40.0 ac]. Mineral rights are owned by the same entities as the surface rights; however, the distribution differs slightly from that of the surface ownership in that federal mineral rights ownership occurs in 65 ha [161 ac] for which surface land is owned by private entities. The Ross Project includes parts of the following sections of the Public Land Survey System:

<u>Section</u>	<u>Township</u>	<u>Range</u>
7, 17, 18 & 19	53 North	67 West
12, 13 & 24	53 North	68 West

The proposed activities for the Ross Project include the construction of wellfields and a central processing plant (CPP) with ancillary equipment. The ancillary equipment includes underground piping from the wellfield to the CPP and from the CPP to the deep disposal wells, two to three dozen header houses, an administrative and warehouse/maintenance building, a chemical and equipment storage area, lined retention ponds, deep disposal wells, and roads. Except for the wellfields, header houses, deep disposal wells, piping, and roads, most of the development is limited to a 50-acre area referred to as the “CPP area” within the project.

The Applicant proposes in situ recovery processes for this project. The ISR process involves extracting uranium from underground ore bodies without bringing the ore bodies to the surface by injecting a leaching solution through wells into underground ore bodies to dissolve the uranium. The leaching solution is recovered from the subsurface through the extraction wells and piped to the CPP through a system of underground piping. At the CPP, two generic processes produce the final product, which is referred to as yellowcake.

From the initial construction to final decommissioning, the Applicant-proposed timeline for the Ross Project is approximately 10 years; however, the Applicant also requests processing of uranium-rich resins derived from other ISR operations (either a future Strata facility or a facility operated by another licensee) or other entity (e.g., water treatment resins). The Applicant states that processing of resins from outside sources could extend the life of the CPP to 20 years.

The Applicant proposes restoration of the production aquifer and stability monitoring. Restoration of portions of wellfields may occur simultaneously with operations (recovery of uranium) at other wellfields. After restoration is completed and approved by NRC staff, the wellfields will undergo decommissioning and reclamation by removing the piping and other ancillary equipment. Upon completion of operations, all surface facilities that were installed for the Ross Project will be decommissioned to allow unrestricted future use of the property. All equipment not fully decontaminated for unrestricted use will be disposed of at an NRC-licensed facility.

Ross Project Area of Potential Effects

As indicated in the NRC's letters to the Wyoming State Historic Preservation Office and the Advisory Council on Historic Preservation, dated August 19, 2011, the Area of Potential Effects (APE) is the area at the Ross Project site and its immediate environs, which may be impacted by activities associated with the construction and operation of the proposed facility. The direct APE is comprised of the areas within the Ross Project boundary that may be directly affected by physical ground disturbance and construction of the Ross Project, including the Phase I area shown in Figure 3, and the indirect APE is comprised of the area within three (3) miles of the Ross Project boundary wherein potential visual and audible effects to historic properties may occur.

Reference:

Strata, 2011. Ross ISR Project USNRC License Application, Crook County, Wyoming, prepared by Strata Energy, Inc., Docket No. 040-09091. ADAMS Accession No. ML110120063, January 2011.

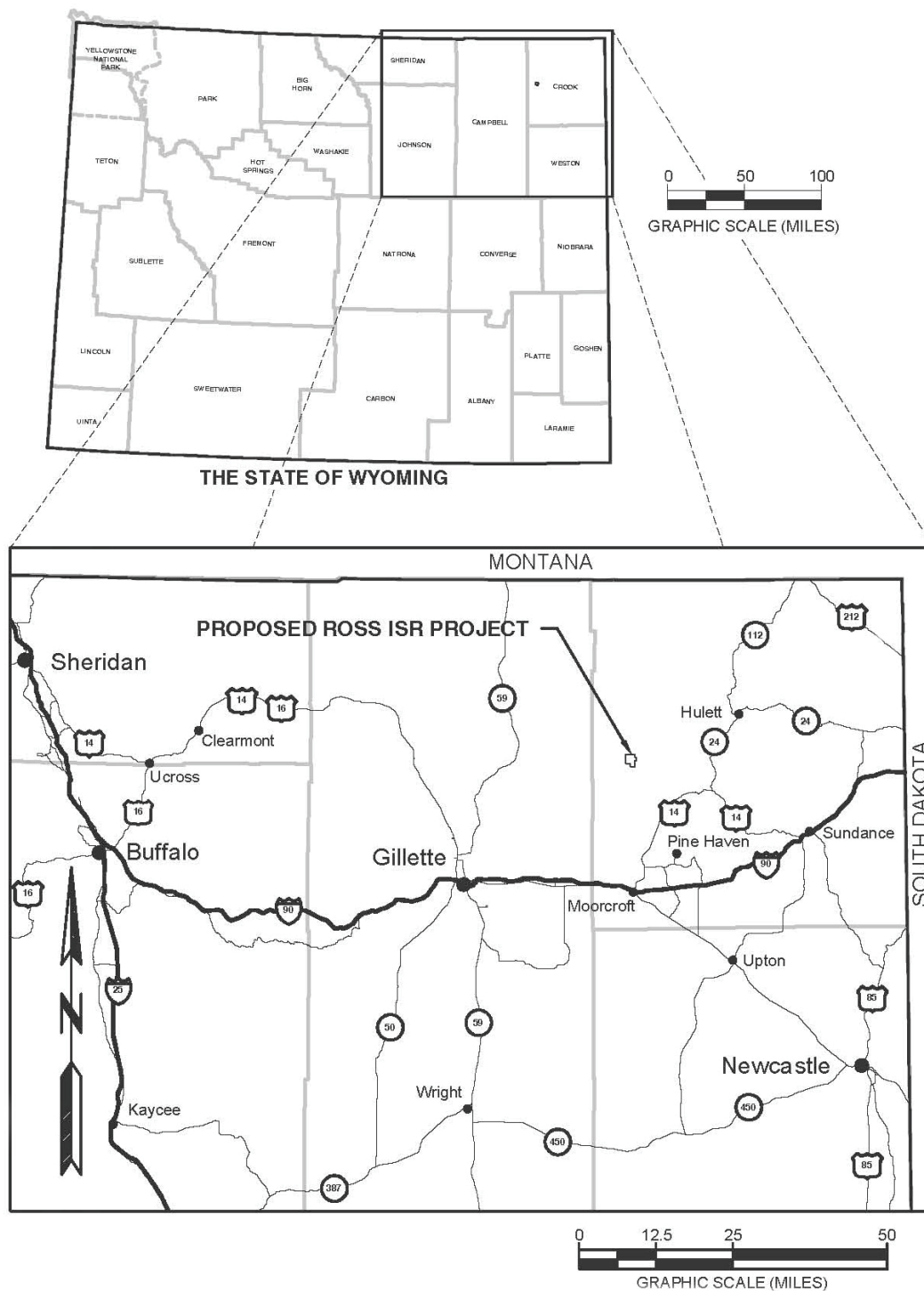


Figure 1 Ross Project Location Map

Source: Figure 1.4-1 of the Ross ISR Project USNRC License Application, Technical Report, Crook County, Wyoming, prepared by Strata Energy, Inc., Docket No. 040-09091. ADAMS Accession No. ML110120063, January 2011.

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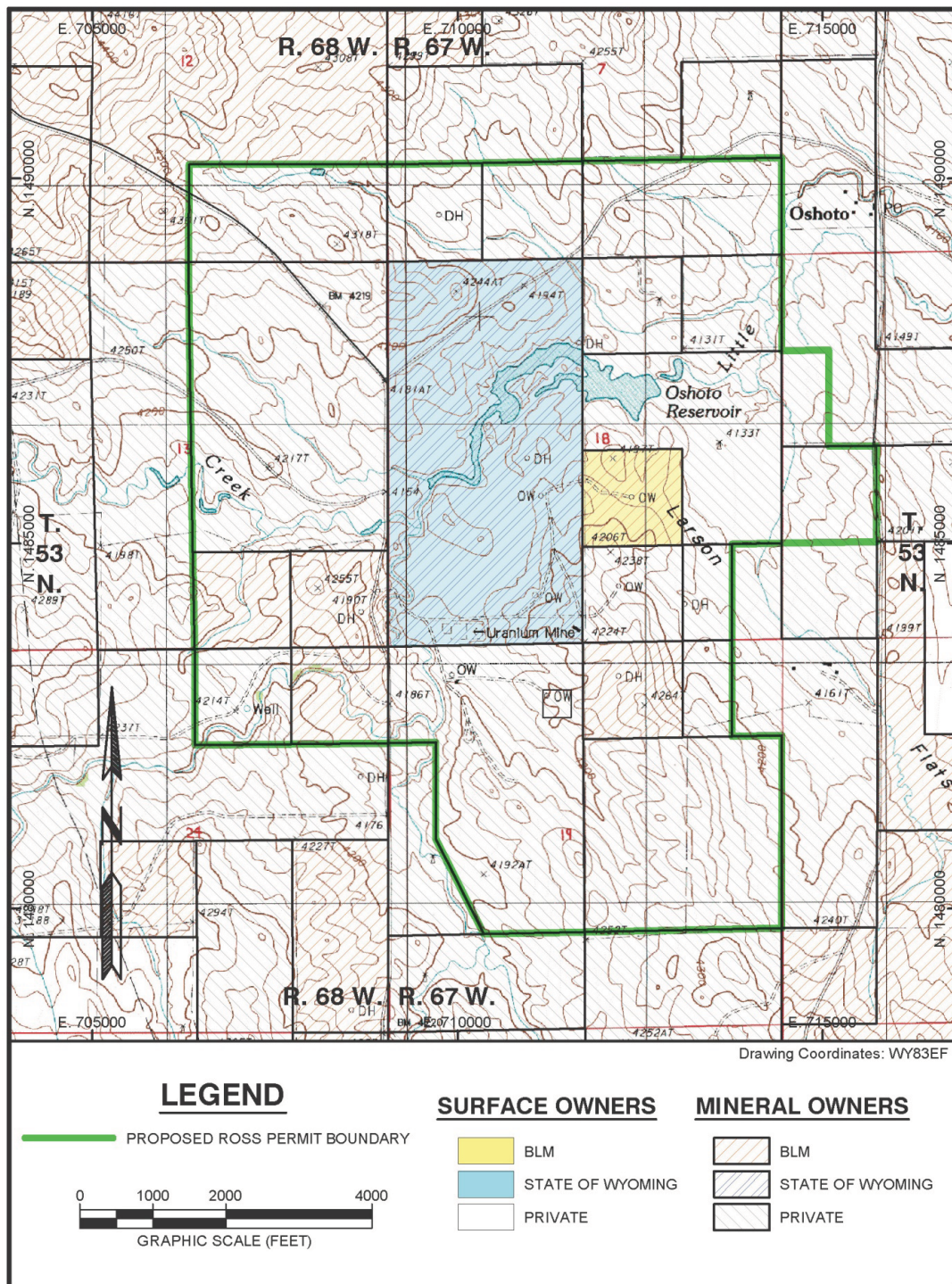


Figure 2 Ross Project License Boundary and Distribution of Land Ownership

Source: Figure 2.1-1 of the Ross ISR Project USNRC License Application, Technical Report, Crook County, Wyoming, prepared by Strata Energy, Inc., Docket No. 040-09091. ADAMS Accession No. ML110120063, January 2011.

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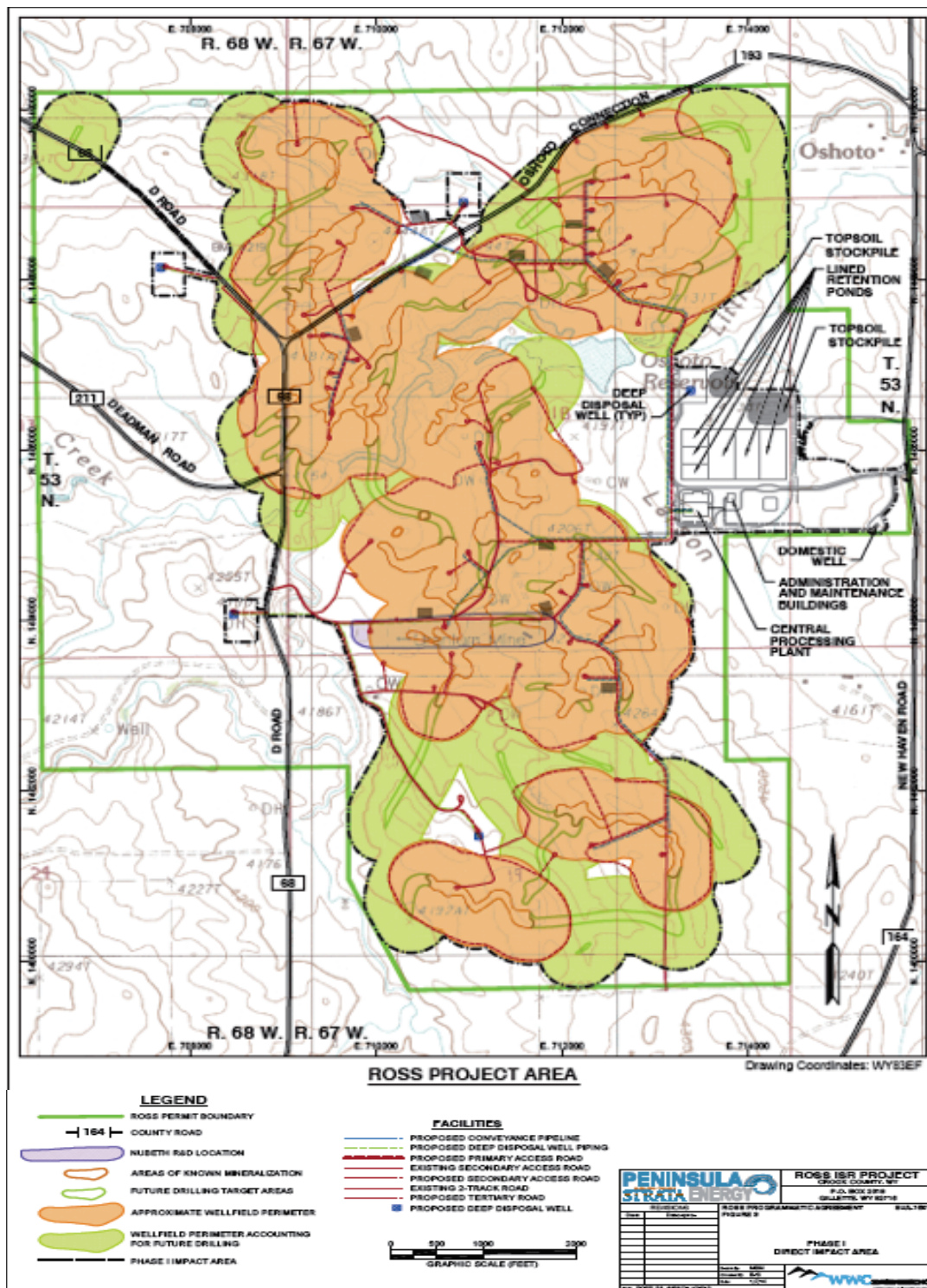


Figure 3 Ross Project Phase I Area

Source: Email to Johari Moore (NRC) from Ben Schiffer [WWC (Strata)]. Re: Request for Additional Information to Develop Draft Programmatic Agreement. Docket No. 040-09091. January 7, 2014.

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