

**Peabody Trout Creek Reservoir Project
Proposed Study Plan
(FERC Project No. P-14446)
(URS Project No 22242691)
Cultural Resources Study Subset Conference Call
March 21, 2013, 10:00 a.m. – 11:00 a.m.**

Call Participants (Listed Alphabetically by First Name)

- David Merritt, URS Corporation (URS), Project Manager
- Frank Winchell, Federal Energy Regulatory Commission (FERC), Senior Archaeologist
- Gordon Tucker, URS, Senior Archaeologist
- Jody Glennon, URS, Environmental Planner
- Mark Tobias, History Colorado, Section 106 Compliance Officer
- Sandi Snodgrass, Holland & Hart (H&H), Peabody Trout Creek Reservoir LLC (PTCR) Outside Legal Counsel

Materials Referenced on the Call

- Proposed Study Plan, Peabody Trout Creek Reservoir Project, January 18, 2013.
- Draft Section 3.19, Class III (Intensive Pedestrian) Cultural Resources Survey Excerpt, Proposed Study Plan, Peabody Trout Creek Reservoir Project, March 15, 2013 *(with track changes denoting draft updates made between January 18, 2013 and March 15, 2013)*.

Call Notes

Introduction

Jody Glennon/URS opened the call and noted the call participants on the line. Ms. Glennon suggested Frank Winchell/FERC begin the call by going over FERC's comments and questions on the Class III (Intensive Pedestrian) Cultural Resources Survey that is part of PTCR's Proposed Study Plan for the Peabody Trout Creek Reservoir Project (Project).

Mr. Winchell requested that Ms. Glennon provide him with the current track change version of the Cultural Resources Study and a clean (i.e., track change edits accepted) version for him to review. Mr. Winchell committed to adding FERC's additional suggestions/edits for the Cultural Resources Study in track change format in the "clean" file and returning that to URS following the call to incorporate into the master file and ultimately be reflected in PTCR's Proposed Study Plan filing due to FERC by May 18, 2013.

Action Items:

URS will further update the Cultural Resources Study from March 15, 2013 in track change format to reflect the updates discussed on the March 21, 2013, subset conference call. A track change and "clean" version of that file will then be submitted to Mr. Winchell. Mr. Winchell will update the "clean" file in track change format to address Advisory Council on Historic Preservation (ACHP) and Programmatic

Agreement (PA) versus Memorandum of Agreement (MOA) language updates, in addition to other updates Mr. Winchell feels are appropriate.

MOA versus PA Discussion

Jody Glennon/URS suggested Sandi Snodgrass/H&H take time to go over her concerns regarding the use of the term “PA” to reflect what is typically (and what the regulations refer to as) an “MOA.” Ms. Snodgrass had previously voiced several concerns regarding the differences between a PA and an MOA at the February 12, 2013, Proposed Study Plan Meeting. Ms. Snodgrass indicated a “PA” seemed like an ill-fit for the agreement noted in the Cultural Resources Study if, as Frank Winchell/FERC suggested, the ACHP elects not to sign and is not supplanting the Code of Federal Regulations (CFR), as described in Appendix A to Part 800, 800.16, Criteria for Council Involvement in Reviewing Individual Section 106 Cases.

Mr. Winchell indicated FERC would follow the Section 106 process, and communicated that activities like defining the Area of Potential Effects (APE) for the Project and performing a cultural resources inventory/survey do not require an MOA or PA. Mr. Winchell went on to say that a Historic Properties Management Plan (HPMP) would be required for the Project if any properties are identified during survey that meets National Register of Historic Properties (NRHP) eligibility. FERC would review such properties during its National Environmental Policy Act (NEPA) analysis (i.e., an Environmental Analysis [EA] or Environmental Impact Statement [EIS]), which would likely start about a year from now. Mr. Winchell stated referring to the noted agreement in the Cultural Resources Study as a PA instead of an MOA was standard for FERC and something FERC has been doing for a couple of decades.

Mr. Winchell went on to say that FERC typically issues a Draft PA with a Draft EIS and that the PA is essentially an agreement document that provides ACHP with the opportunity to comment on any adverse effects, and that a PA is of course only issued if there would be an adverse effect. Mr. Winchell indicated in FERC’s experience, ACHP declines to participate 99 percent of the times it is invited to comment (as FERC takes no response by ACHP to indicate no comment). When FERC issues a Final EIS it includes a Final PA for signature typically with FERC and the State Historic Preservation Officer (SHPO) as signatories. Mr. Winchell communicated that FERC refers to “PA” not in the strict sense cited at CFR 800.14, because FERC typically issues licenses for projects that span 30 to 50 years (so they qualify or meet the long-term criterion).

Mr. Winchell indicated that to FERC, a PA is essentially an MOA and that FERC worked this out with the ACHP a long time ago and it is standard operating procedure for FERC to refer to such agreements this way – it was an academic thing.

Ms. Snodgrass indicated she was concerned about the potential risk to her client, PTCR, if FERC refers to the agreement as a PA instead of an MOA due to the legal loopholes regarding such agreements. Gordon Tucker/URS asked if FERC had a blanket agreement with ACHP that approved such terminology use, and whether that such an agreement would illustrate compliance with CFR 800.14. Ms. Snodgrass indicated it could but that she would like to review such an agreement and talk with FERC’s legal counsel more about this topic. Mr. Winchell suggested and encouraged Ms. Snodgrass to contact Linda Gilbert, FERC’s attorney, regarding this matter further.

Action Items:

Ms. Snodgrass will contact Ms. Gilbert and notify Mr. Winchell and URS if any additional follow-up is requested in regards to the PA versus MOA terminology in the Cultural Resources Study.

Cultural Resources Study Updates

Jody Glennon/URS asked Mark Tobias/History Colorado if he had specific comments or questions on the Cultural Resources Study that he would like to discuss. Mr. Tobias requested that PTCR modify the "Goals and Objectives" language in the study to not limit the goals and objectives to the APE for direct effects and to include the APE for indirect effects. Mr. Tobias also requested that the U.S. Army Corps of Engineers (Corps) be added to the discussions in the study pertaining to agencies with legal responsibilities since the Corps would have responsibilities for this Project pertaining to wetlands/a Section 404 Permit.

Mr. Tobias noted the one track change update reflected in the March 15, 2013 version of the study that updated the language regarding consultation with the tribes from, "PTCR will," to, "The Commission, with assistance from PTCR, will..." Mr. Tobias requested that update be rippled to other appropriate places in the study.

Mr. Tobias referenced Section 3.19.3, Project Nexus, of the March 15, 2013, version of the Cultural Resources Study and requested that PTCR note the potential for buried cultural resources and how FERC plans to identify effects on those resources should they be significant. Mr. Tobias requested that PTCR consider future effects of reservoir drawdown and scour in the Project area in its analysis. Through exchanges between Mr. Tobias, Gordon Tucker/URS, Mr. Winchell, and Ms. Glennon, it was agreed that Mr. Winchell would forward Mr. Tucker the article pertaining to inadvertent discoveries, and that PTCR would update the study with language to indicate that if any inadvertent discoveries are made during survey/inventory work, work will immediately stop and FERC and SHPO will be consulted on appropriate next steps. It was also agreed that PTCR would update the Cultural Resources Study to indicate that the technical report that will be prepared for the Cultural Resources Study following survey work, will include an appendix with a discovery clause for the Project.

Mr. Tobias also inquired about whether any shovel testing/coring/etc. was proposed for the inventory/survey and whether an Archaeological Monitor should be present during any such tests. Mr. Winchell indicated that was a good question and that the purpose of the inventory was to help assess the *potential* for buried archaeology. Ms. Glennon interjected and reminded call participants that a preliminary suite of soil data had previously been collected and analyzed for the Project by Northwest Colorado Consultants Inc. (NWCC); Ms. Glennon proposed that Mr. Tucker review that data and make a recommendation to Mr. Tobias following that review on the appropriate level, if any, of shovel testing/coring that should be proposed as part of the inventory/survey. Mr. Tobias then agreed that PTCR does not need to have an Archaeological Monitor on-site and that a review of the data that Ms. Glennon noted should provide a good indication of the potential for buried cultural resources based on the soil/sediment ranges.

Ms. Glennon asked if Mr. Winchell had an opportunity to review the SHPO correspondence contained in Exhibit B of the Proposed Study Plan and if FERC concurred with the proposed APE for direct effects and the APE for indirect effects that SHPO concurred on. Mr. Winchell indicated he had and that he thought the definitions looked good. Mr. Tobias indicated History Colorado also agreed with those, as indicated in its letter of concurrence on the APE definitions.

Mr. Tobias requested PTCR's rationale for including 30 meter spacing between transects instead of 15 to 20 meters, indicating that History Colorado is used to seeing spacing of 15 to 20 meters for "intensive" surveys. Mr. Tucker indicated survey crews would of course follow the SHPO's recommendation on this and update the language in the Proposed Study Plan to read: "The crew will walk multiple parallel transects, each transect spaced 15 to 20 meters apart, throughout the APE for direct Project effects. The spacing between transects may be increased up to 30 meters in some areas where vegetation obscures the ground or the likelihood of encountering significant cultural resources is judged to be low."

Action Items:

PTCR will incorporate the study plan updates that Mr. Tobias suggested (and as noted above) into the Cultural Resources Study in track change format. Mr. Tucker will review the two reports* cited below from NWCC and make a recommendation on ground/soil testing; that recommendation will be reflected in the track change file that PTCR submits to Mr. Winchell for additional review and update.

*Northwest Colorado Consultants, Inc. (NWCC). 2012a. Monitoring Well Installation Summary Report, Trout Creek Wetlands Mapping, Trout Creek Ranch, Routt County, Colorado. February 13.

*Northwest Colorado Consultants, Inc. (NWCC). 2012b. Preliminary Geotechnical Investigation, Proposed Trout Creek Dam, Routt County, Colorado. Prepared for Peabody Energy. Job Number: 06-6914. January 24.

Call Closeout

Jody Glennon/URS thanked the call participants and discussed the appropriate path forward for this study. The call participants agreed that:

- Sandi Snodgrass/H&H will contact Linda Gilbert/FERC to discuss her remaining concerns of FERC's use of "PA" when referring to an "MOA." Ms. Snodgrass will inform call participants of any requested changes to the Proposed Study Plan following that contact.
- URS, on behalf of PTCR, will update the March 15, 2013, version of the Proposed Study Plan to reflect the additional updates discussed on the call and noted in the subset conference call notes here. Note: URS' recommendation for ground/soil testing, following Gordon Tucker's/URS' review of the two NWCC reports noted above, will be included as part of those track change updates.
- URS will e-mail Frank Winchell/FERC the March 15, 2013 track change version of Section 3.19, Class III (Intensive Pedestrian) Cultural Resources Survey, excerpted from the Proposed Study Plan, in PDF format; a file showing the track changes made to Section 3.19 between the March

15, 2013 submittal and the subset conference call on March 21, 2013; and a clean (i.e., all track changes accepted) file containing the current Section 3.19. At Mr. Winchell's request, URS will denote in turquoise highlight where changes were made in direct response to a comment or suggestion from Mark Tobias/History Colorado in the track change file.

- Mr. Winchell will update the "clean" file URS provides him to reflect FERC's additional requested changes and return that to URS. URS will incorporate those changes into its master file and then release a file to Mr. Tobias that shows all changes made since the March 15, 2013 version in track change format for his review. At that time, URS will request concurrence that History Colorado concurs with the updates made to the Cultural Resources Study and an indication that History Colorado's comments were sufficiently addressed.