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Subject: FD 36284 - Draft Tribal Participation Plan
Attachments: UBRY_Tribal Participation Plan(52018051.3).docx

Hi Josh and Alan,

On behalf of the Coalition, please find attached a copy of the Tribal Participation Plan prepared pursuant to Stipulation III of the Section 106 Programmatic Agreement.

Best,

Maggie

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**UINTA BASIN RAILWAY PROJECT
TRIBAL PARTICIPATION PLAN
DRAFT**

April 23, 2021

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1 INTRODUCTION

The Seven County Infrastructure Coalition (Coalition) proposes to construct and operate the Uinta Basin Railway Project (Project), an approximately 80-mile rail line between two terminus points in the Uinta Basin and the interstate railway network that would be constructed and operated under the authority of the Surface Transportation Board (STB). The Coalition has entered into, or intends to enter into, agreements with Drexel Hamilton Infrastructure Partners (Drexel Hamilton), Rio Grande Pacific Corporation (Rio Grande), and the Ute Indian Tribe of the Uintah and Ouray Reservation (the Tribe). If the STB authorizes the proposed construction and operation, the Coalition’s petition states that Drexel Hamilton would be responsible for financing and commercialization of the proposed rail line, and Rio Grande would operate and maintain it. The Coalition expects that the Tribe would become an equity partner in the proposed rail line. The term “Coalition” is intended to encompass any future third party to which the Coalition transfers its authority to construct and operate the Project in accordance with Board process.

The Project is in Carbon, Duchesne, Uintah, and Utah Counties, Utah. The rail line would cross lands in private ownership; lands owned by the Tribe; and public lands managed by the Bureau of Land Management (BLM) (Vernal, Price, and Salt Lake Field Offices), the State of Utah School and Institutional Trust Lands Administration, the U.S. Forest Service, and the Utah Department of Transportation (for easements). A programmatic agreement (PA) (Coalition 2021) was developed and executed to meet the requirements of the National Historic Preservation Act (NHPA). The Tribe is a signatory to the agreement. The PA became effective on March 25, 2021.

In accordance with the Stipulation III.C¹ of the PA, this Tribal Participation Plan (TPP) sets forth provisions for the Tribe’s participation in consultation and involvement in field investigation. The TPP outlines steps and processes for the Tribe’s participation relating to the topics in Stipulation III.B of the PA, provides parameters for in-person meetings and teleconferences, and discusses the Coalition’s financial responsibility regarding Tribal participation in consultation.

In accordance with the NHPA, the STB Office of Environmental Analysis (OEA), as the lead federal agency, has oversight responsibility for implementation of the TPP and retains authority and responsibility for formal Section 106 consultation under the terms of the PA, including the TPP, as well as government-to-government consultation with the Tribe. This document was prepared to supplement and not replace the government-to-government relationship between OEA and the Tribe.

Under the PA and this TPP, the Tribe will be consulted and asked to review reports during each step of the identification, evaluation, and resolution of adverse effects of cultural and historic resources affected by the Project within the area of potential effects (APE), as established under Stipulation IV.B of the PA. OEA will respectfully consider the recommendations of the Tribe concerning sites of religious and cultural significance throughout the implementation of the PA.

¹ Stipulation III appears to have an error in the numbering of subsections, with two As and two Bs. Thus, the second stipulation III.A should be III.C, and the second stipulation III.B should be III.D.

2 ROLES AND RESPONSIBILITIES

The following are the roles and responsibilities for OEA, the Coalition, and the Tribe.

2.1 Surface Transportation Board Responsibilities

OEA will ensure that the following measures will be carried out on land crossed by the Project within the survey area(s):

- OEA will consult with the Tribe regarding historic properties of religious and cultural significance within the APE per Stipulation IV.A.2.
- OEA will share its decision with the Tribe regarding expansion of the APE within 30 days of receiving consulting party comments from the visual and hydrological analysis per Stipulation VI.B.8.
- OEA will facilitate coordination between the Coalition and the Tribe to develop cultural sensitivity training per Stipulation X.A.
- OEA will have responsibility for reviewing and accepting this TPP, per Stipulation III.D.
- OEA will consult with the Tribe regarding any recommended modifications to the PA, per Stipulation XIII.F.

2.2 Seven County Infrastructure Coalition Responsibilities

The Coalition will ensure that the following measures will be carried out on land crossed by the Project within the APE:

- For the convenience of OEA and the Tribe, the Coalition will arrange for any necessary teleconferences or in-person meetings to be held at a location acceptable to the Tribe.
- The Coalition, through its cultural resources consultant (CRC), will facilitate Tribal involvement to participate in Class III inventories within the APE (Stipulation VI.C.8.p); develop a confidential methodology for identifying historic properties of religious and cultural significance (Stipulation VI.C.8.l); provide input on the NRHP eligibility and assessment of effects of historic properties and historic properties of religious and cultural significance (Stipulations VII.A and VIII.D.1; and monitor field investigations (Stipulation VI.C.8). Procedures for Tribal participation can be found in the research and survey plan and the historic properties treatment plan (HPTP).
- The Coalition will coordinate with OEA to communicate with the Tribe, including for purposes of obtaining access to Tribal lands for fieldwork and construction activities per Stipulation VI.C. 6.
- The Coalition, through its CRC, will ensure that any Tribal concerns regarding eligibility and effects are documented during the Class III inventory are included in the Class III inventory reports, per Stipulation VIII.C.3 for Tribal lands and Stipulation VIII.D.5 for non-Tribal lands
- The Coalition, through its CRC, will ensure that any Tribal concerns documented during archaeological data recovery and construction or reclamation are included in a monitoring report to be completed at the conclusion of the data recovery and construction or reclamation phases, per Stipulation IX.D.3 for Tribal lands and IX.E.6 for non-Tribal lands.

- The Coalition will coordinate with the Tribe to conduct cultural sensitivity training during construction environmental training for personnel working on the Project (Stipulation X.E) and that all training personnel are provided or approved by the Tribe (Stipulation X.A).

2.3 Tribal Responsibilities

The Tribe will ensure that the following measures will be carried out on land crossed by the Project within the survey area(s):

- The Tribe shall communicate report format and content confidentiality requirements to OEA upon completion of fieldwork per Stipulation VIII.A.2.a.
- The Tribe coordinate with the Coalition to determine the content of cultural sensitivity training. At their discretion, the Tribe may provide or approve personnel to deliver in-person cultural sensitivity training during construction environmental training for personnel working on the Project, per Stipulation X.A.

3 TRIBAL PARTICIPATION

The TPP presents the provisions for the Tribe's participation in the development of a research and survey plan (Stipulation VI.C.8); permission to enter Ute Tribal lands for field survey (Stipulation VI.C. 6); Coalition or Tribal cultural resources inventories (Stipulation VI.C.8.p and Stipulation VI. C. 7); the development of an HPTP (Stipulations IX.A and IX.E.4); NRHP evaluations and assessment of effects to properties with traditional and cultural significance to the Tribe (Stipulation VIII.D.6); review of cultural resources reports (Stipulation VIII.D.1); confidentiality requirements (Stipulation VIII.A.2.a); and the development, review, and delivery of cultural sensitivity trainings (Stipulation X.A). The TPP also provides parameters for in-person meetings and teleconferences. Traditional Cultural Specialists (TRCs) identified by the Tribe may participate in cultural resources inventory and monitoring activities. TCS experience and training is at the discretion of the Tribe, and Secretary of Interior Standards need not necessarily apply.

In accordance with Stipulation III.C of the PA, the TPP is to address financial responsibility for Tribal participation. Financial responsibility for Tribal participation will be determined at a later date depending on advancement of the Project and commercialization. This TPP will be amended, as needed, at that time to address financial responsibility.

3.1 Participation in Identification, Evaluation, and Assessment of Effects

3.1.1 *Development of a Research and Survey Plan*

The Project CRC holding current federal, state, and Tribal cultural resources use permits will work with the Tribe to develop a Research and Survey Plan. This plan will outline how the CRC will conduct pre-field research methods and cultural resources surveys for the Project, will meet the requirements of 36 CFR 800.4(b), and will follow the Secretary's Standards and Guidelines for Identification. The plan will also establish notification procedures in the event that human remains are discovered during field survey.

3.1.2 *Permission to Enter Ute Tribal Lands*

The Project CRC will coordinate with the Tribe to obtain all necessary permits prior to entering Tribal land for the purposes of conducting field surveys for the identification of historic properties, effects assessments, and adverse effects resolutions. The CRC will also coordinate with the Tribe regarding any additional requirements or Tribal regulations prior to entering Tribal lands.

3.1.3 *Cultural Resources Inventories*

The Project CRC holding current federal, state, and Tribal cultural resources use permits will work with the Tribe to conduct a preconstruction inventory on land within the survey area(s) per Stipulation VI.C.8.p of the PA.

Procedures for coordination with OEA and the Tribe regarding Tribal monitoring of field investigations on Ute Tribal lands will be described in detail in the research and survey plan.

The CRC will adhere to artifact collection stipulations that are outlined in the cultural resources use permits issued by the land managing agency or the Tribe as appropriate. Collected artifacts will be curated per the provisions detailed in Section 3.2.3, Collection and Curation, and in compliance with the CRC's permit's stipulations.

For preconstruction inventory, the TCS may express any issues, observations, concerns, or topics that might arise during a field survey session to the Coalition's lead archaeologist, the Coalition, and OEA. If the issue involves a discovery made during Class III inventory, the Coalition CRC will follow the guidelines in Stipulation V of the PA, as well as standard OEA procedures and requirements for recording the information. If human remains are discovered during the preconstruction inventory, then the procedures in Stipulation XII of the PA, Discovery of Human Remains, will be followed. Tribal issues, observations, concerns, or topics documented during Class III inventory will be included in the Class III inventory reports. The Coalition CRC will provide OEA and the Coalition with summary reports following each inventory phase that document any Tribal issues, observations, concerns, or topics.

3.1.4 *Evaluation of Eligibility and Assessment of Effects*

At OEA's direction, the Coalition will seek input from the Tribe on the Coalition CRC's recommendations of eligibility (Stipulations VIII.D.1 and VI.E.2.d of the PA) and findings of effect (Stipulations III.C and VII.A of the PA) on properties with religious and cultural significance to the Tribe within the APE.

OEA and SHPO will respectfully consider the Tribal recommendations regarding eligibility and effect concerning sites of traditional religious and cultural significance in any determinations of eligibility and findings of effect as described in Stipulation VIII.D.6 of the PA. The Tribe will be asked to participate in the review and request for concurrence of adverse effect resolutions in the HPTP as described in Stipulations IX.A and IX.E.4 of the PA.

3.1.5 *Review of Cultural Resources Reports*

The CRC will coordinate with the Tribe on all cultural resources reports including reports identifying and evaluating historic properties and properties of cultural and religious significance to the Tribe (Stipulations VIII.D.1 and VIII.D.6). The Tribe will be asked to review reports during each step of the identification, evaluation, and mitigation process within the designated survey area for the Project.

3.1.6 *Development of Historic Properties Treatment Plan*

OEA will request that the Tribe participate in the development and review of the HPTP for the Project, as outlined in Stipulations IX.A, IX.E.4, and IX.E.7 of the PA. The Coalition CRC will assist with the preparation of portions of the HPTP that deal with historic properties of traditional religious and cultural significance to the Tribe.

The Coalition CRC and OEA will coordinate with the Tribe regarding potential treatments to avoid, minimize, or mitigate adverse effects to historic properties that the Tribe identified as being of traditional religious and cultural significance. The Tribe shall provide input on treatments to OEA within 30 days of receipt of the list of properties that are subject to adverse effects.

3.2 *Initiation of Construction Activities and Construction Monitoring*

For construction Notice to Proceed (NTP), OES and SHPO will respectfully consider the Tribe's recommendations, (per Section III.B of the PA), regarding eligibility, effect, and treatment concerning historic properties and of traditional religious and cultural significance.

In the event of a discovery during construction monitoring, the Discovery Plan (Attachment A) and the NAGPRA Plan of Action (Attachment B) in the HPTP shall be adhered to for the reporting and treatment of discoveries.

3.2.1 *Construction Monitoring*

During construction monitoring, the Tribal monitors may express any issues, observations, concerns, or topics that might arise to OEA and the Coalition CRC. If an inadvertent discovery is made during monitoring, OEA, the Coalition CRC, and the Tribe will follow the procedures outlined in the HPTP monitoring and discovery plan. If human remains are discovered during construction monitoring, then the NAGPRA POA will be followed. The HPTP communication protocols will be followed during construction monitoring and in the event of a discovery during construction activities. Tribal issues, observations, concerns, or topics documented during construction monitoring will be included in a monitoring report to be completed at the conclusion of the data recovery and construction phases.

3.2.2 *Sensitivity Training for Construction Contractors/Personnel*

Before beginning any construction work within the APE, OEA will facilitate a partnership between the Coalition and the Tribe to develop cultural sensitivity training. The Tribe will determine the content of the cultural sensitivity training, and the Coalition will draft the training materials based on direction from the Tribe (Stipulation X.A).

The Coalition (and the Tribe, if they choose) will train all personnel working on the Project (including contractors, inspectors, and monitors) on cultural resources requirements and cultural sensitivity during environmental training. The Tribe shall be given the opportunity to provide or approve personnel to deliver in-person cultural sensitivity training and will be invited to participate in and/or observe trainings (Stipulation X.F.3).

If the training curricula should be revised, the Coalition CRC will deliver the revised curricula to all construction personnel prior to their first day of work and provide ongoing training to existing personnel (Stipulation X.E).

3.2.3 Collection and Curation

The Tribe has a non-collection policy for artifacts found on Ute Tribal lands. If collection cannot be avoided, and the Tribe is in agreement, the disposition of any artifacts discovered during construction activities on Ute Tribal lands will follow procedures established in the HPTP.

3.3 Confidentiality Requirements

Confidentiality concerns for cultural resources that have traditional religious and cultural significance to the Tribe will be respected. OEA will maintain confidentiality of such information regarding resources of traditional religious and cultural significance to the fullest extent permitted by law.

To the extent the Tribe have concerns about sharing of sensitive information, the Tribe may provide summaries of culturally sensitive information to OEA for use in making appropriate decisions.

All parties to this plan shall ensure that all confidential information is safeguarded, as defined in Section 9 of the Archaeological Resources Protection Act and the NHPA's provisions against disclosure of sensitive information (36 Code of Federal Regulations 800.11(c)). Sensitive information will be managed in such a way that the nature and location of historic properties, archaeological resources, traditional cultural values, and sacred objects are not compromised, to the fullest extent available under law.

To the extent consistent with NHPA Section 304 (54 United States Code 300310), and the Archaeological Resources Protection Act Section 9(a), cultural resources data from this Project will be treated as confidential by all parties and is not to be released to any person, organization, or agency not a party to the PA. OEA and affected landowners may require data sharing agreements with any consulting party to the PA who is interested in obtaining specific confidential information.

As part of the Tribal review of the Coalition CRC's recommendations of eligibility and effect, the Tribe shall note any cultural resources information provided to the CRC regarding properties of traditional religious and cultural significance that shall remain confidential and shall not be released to the Utah State Historic Preservation Officer (SHPO). The Coalition CRC, in coordination with the Tribe, shall include any confidential information deemed necessary to share for this Project in a separate confidential report appendix for use by OEA for the purposes of making determinations of eligibility and effect, per Stipulation VIII.A.9 of the PA. Additionally, for these purposes of determining eligibility and effect, the Tribe will also have the option to provide a separate confidential appendix only to OEA that does not contain information previously provided by the CRC.

4 IN-PERSON MEETINGS AND TELECONFERENCES

Depending on the purpose of the meeting, in-person meetings and/or teleconferences that require Tribal participation will be coordinated by either OAE or the Coalition's CRC. Minimum notification time for standard meetings, procedures for emergency notification, a list of participants, contact information, and preferred method of contact will be arranged at a later date.

5 COMMUNICATION PROTOCOLS

OEA, the Coalition, the Tribe, and the Coalition CRC will each identify a primary point of contact for Tribal coordination and will provide the other parties with a current telephone number, email, and mailing address for each point of contact.

The following protocols will be applied to preconstruction inventory and construction monitoring:

- If a TCS is unable to arrive at work at the scheduled time, the TCS is to immediately notify the Coalition CRC's field director(s).
- If scheduled work is cancelled or delayed, the Coalition CRC's lead archaeologist will contact the TCS as soon as possible.
- If appropriate notice has been given and the TCS does not report for work at the designated location, work may proceed, but phone calls will be made as soon as possible to the appropriate Tribal point of contact, and a backup TCS will be requested, if necessary. Likewise, if a TCS arrives at a scheduled work location and no workers are there, the Coalition CRC's lead archaeologist and Tribal point of contact will be notified.

6 REFERENCES CITED

Seven County Infrastructure Coalition (Coalition)

- 2021 *Programmatic Agreement Among the Surface Transportation Board, Utah State Historic Indian Affairs, Bureau of Land Management, Seven County Infrastructure Coalition, State of Utah School and Institutional Trust Land Administration, U.S. Army Corps of Engineers, U.S. Forest Service Ashley National Forest, and Utah Public Lands Policy Coordinating Office Regarding Seven County Infrastructure Coalition Construction and Operation of the Preservation Officer, Ute Indian Tribe Of The Uintah and Ouray Reservation, Bureau of Utah.*