

EXHIBIT 2

Nov. 29, 2021 Email

Re: [EXTERNAL] Follow up to RSIC's ARPA Appeal Conference

Rehberg, Kathleen L <krehberg@blm.gov>

Mon 11/29/2021 10:46 AM

To: Will Falk <falkwilt@gmail.com>; McCullough, Ester M <emccullo@blm.gov>; Deep, Shannon E <sdeep@blm.gov>; Michon Eben <meben@rsic.org>; Hall, Mark E <mehall@blm.gov>

Cc: Terry Lodge <tjlodge50@yahoo.com>; Max Wilbert <max@maxwilbert.org>

Mr. Falk,

You are correct in understanding that your appeal to me to reconsider the issuance of the ARPA permit was denied. Requests for input into the ARPA permit were sent to to the Reno-Sparks Indian Colony on July 9, July 19, August 12, and September 10, 2021. Another letter was sent on September 28, 2021, stating that the ARPA permit would be signed that week, but stated that additional mitigations could be included in the field work authorization (FWA). I have not signed the FWA for Far Western as of this date, but request that any suggested terms or conditions be sent to me by December 10, 2021, to ensure timely processing of the FWA. As stated in our call on November 16, 2021, any "post-review" discoveries will follow the process outlined in 36 CFR 800.13.

Thank you,



Kathleen Rehberg
Field Manager
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From: Will Falk <falkwilt@gmail.com>

Sent: Wednesday, November 17, 2021 2:14 PM

To: Rehberg, Kathleen L <krehberg@blm.gov>; McCullough, Ester M <emccullo@blm.gov>; Deep, Shannon E <sdeep@blm.gov>; Michon Eben <meben@rsic.org>; Hall, Mark E <mehall@blm.gov>

Cc: Terry Lodge <tjlodge50@yahoo.com>; Max Wilbert <max@maxwilbert.org>

Subject: [EXTERNAL] Follow up to RSIC's ARPA Appeal Conference

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Dear Ms. Rehberg, McCullough, Ms. Deep, and Mr. Hall,

I wanted to write to follow up on our conference yesterday and get your confirmation that RSIC's understanding on a few issues is correct. I can't remember if there was a Solicitor on the call yesterday. Please forward this to your Solicitor if you need to.

1. RSIC's understanding is that BLM has denied RSIC's appeal of the ARPA permit and plans on proceeding under the current ARPA permit. Is this correct?
2. RSIC understands that BLM is waiting for revisions to the Field Work Authorization from Far Western. Is this correct?
3. RSIC understands that Tribes still have a chance to suggest terms and conditions for the Field Work Authorization. Is this correct?

How long do you plan on giving Tribes to suggest these terms and conditions? And will you provide the draft Field Work Authorization so that RSIC can suggest terms and conditions?

4. RSIC understands that BLM is treating the discovery of the September 12, 1865 massacre is currently being treated as a "post-review discovery" under Section IV.A the Thacker Pass MOA.

Section IV.A states: "Inadvertent discoveries or unanticipated adverse effects to historic properties during implementation of the HPTP will be address in accordance with the Discovery Plan in the HPTP."

Then, the "Plans for Unanticipated Discoveries" in the HPTP states:

"If TPP construction activities encounter...previously undocumented finds, work will stop immediately, and the appropriate BLM contact will be notified via phone call and email correspondence of the location and nature of the find. All work will cease within 30 meters (100 feet) of the find until the BLM (or a qualified archaeologist) can assess the find's significance with regards to National Register eligibility. If a National Register eligibility recommendation cannot be made, additional testing may be required to further delineate the nature, extent, and significance of the discovery with regards to the National Register aspects of integrity. Testing will be limited to a sufficient level needed to [sic] resource evaluation. Additional treatment or monitoring may be necessary depending on the outcome of consultation between the BLM, SHPO, and Tribes. Any return to work (i.e. NTP) after the report of an unanticipated discovery will be approved by the BLM in writing."

Is this correct?

5. RSIC understands that BLM plans on surveying 200 acres as part of its evaluation of the September 12, 1865 massacre site for eligibility on the National Register of Historic Properties. Is this correct?
6. RSIC seeks clarification about whether the Plan for Unanticipated Discoveries will be executed before field work is authorized.

RSIC asserts that the two newspaper accounts – *The Humboldt Register* and the *Owyhee Avalanche* accounts (attached) – describing the September 12, 1865 Thacker Pass massacre explain that the massacre happened over a wide area in Thacker Pass and in much of the project area. RSIC also asserts

that it is likely that archaeological digs will affect the eligibility of the Thacker Pass massacre site for inclusion on the National Register of Historic Places.

Furthermore, BLM asserts that some of the Indian Camps described in the 1868 GLO records are actually within the Indirect APE and provides a map (attached) based on where the 1868 GLO record placed the Indian Camps, and the APE found in the Thacker Pass CRINA to show this is true.

The CRINA states: "...sites within the Indirect APE that were recorded more than 10 years ago and have potential to be adversely affected by the visual effects of the project (e.g. sites with historic structures that are eligible or unevaluated, sites eligible under Criteria A, B, or C) will be revisited/updated and assessed for potential project effects." CRINA, pg. 10.

Because of this, RSIC requests that BLM not authorize any field work or physical disturbance in Thacker Pass until the eligibility determination is complete - including the requisite tribal consultation, as required by the State Protocol Agreement and defined in BLM Handbook 1780-1 (Improving and Sustaining BLM-Tribal Relations).

Will BLM honor this request?

Sincerely,

Will Falk
on behalf of the Reno-Sparks Indian Colony

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Will Falk

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