

MODIFIED DECISION RECORD
Categorical Exclusion (CX), WY-070-CX13-264
Tate Geological Museum, Willow Creek Turtle Paleontological Excavation Permit
Bureau of Land Management, Buffalo Field Office, Wyoming

DECISION. The BLM updates and approves BLM’s and the Tate Geological Museum’s (Tate) (repository) request for an time and scope of work increase in renewing their application for paleontological development for paleontological excavation for apparent vertebrate fossils and site invertebrate fossils, if any, the site described in the Willow Creek Turtle Paleontological Excavation Permit Categorical Exclusion (CX), WY-070-CX13-264, DOI Forms 8270-1 with attachments (March 27, 2014), and 8270-5 with attachments (December 16, 2013) - all incorporated here by reference.

Compliance. This decision complies with:

- Federal Land Policy and Management Act of 1976 (FLPMA) (43 USC 1701); DOI Orders 3104, 3310.
- National Environmental Policy Act of 1969 (NEPA) (42 USC 4321).
- National Historic Preservation Act of 1966 (NHPA) (16 USC 470).
- Paleontological Resources Preservation Act, 2009 (PRPA) (16 USC 470)
- Archaeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. 470 et seq.)
- Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001)
- Buffalo Resource Management Plan (RMP) 1985, Amendments 2001, 2003, 2011.

BLM summarizes the details of the approval of the paleontological excavation permit, below. The CX and administrative record includes the project description, including and site-specific mitigation measures (terms and conditions). Alternative site descriptions include: Lat -redacted: see administrative record - or UTM NAD 27 CONUS Zone 13 -redacted: see administrative record -.

Legal Description.

County	Feature	Twp	Rng	Sec	Qtr	Acres
Johnson	Willow Creek Trionyx Specimen		-redacted: see administrative record -			
TOTAL						2.0

Limitations. This decision approves the renewal and expansion in time and scope of the small excavation permit limited to the legal description, above, and bounded by the description of the initial discovery and supporting photographs in CX3, WY-070-CX13-264 and the AR. This is does not approve a survey and limited collection permit. This paleontological excavation permit does not include any materials associated with an archaeological resource defined by ARPA or any cultural item defined by NAGPRA. Also see the terms and conditions (T&Cs).

FINDING OF NO SIGNIFICANT IMPACT (FONSI). Analysis of the permit request forms, CX WY-070-CX13-264, and Tate’s request for permit renewal (all incorporated here by reference) found Tate’s proposal will have no significant impacts on the human environment beyond those described in the Buffalo and Powder River Basin Final Environmental Impact Statements (FEISs). There is no requirement for an EIS or environmental assessment.

COMMENT OR NEW INFORMATION SUMMARY. BLM internally scoped this proposal, to which it is a party. BLM experience in the PRB revealed little public input or new issue discovery for paleontological resources. BLM received new information from Tate. During Tate’s permitted excavation in September 2013 the archeologists realized the fossil finds numbered more than first anticipated, were over a larger area than they first anticipated and permitted, that Tate had insufficient persons available to adequately complete an excavation, and that the proper excavation would require the use of hand-held

power tools. This new information, see AR, bears on the rationale supporting this modified decision to renew Tate's excavation permit in time and scope.

DECISION RATIONALE. BLM bases the decision authorizing the selected project on:

1. BLM and Tate included mitigation measures to reduce environmental impacts while meeting the BLM's need. For a complete description of all site-specific T&Cs, see the T&Cs, incorporated by reference in this decision.
2. The PRB FEIS analyzed and predicted that the PRB development would have significant impacts to the region's Greater Sage-Grouse (GSG) population. The impact of this development cumulatively contributes to the potential for local extirpation yet its effect is acceptable because it is outside priority habitats, amounts to less than 1 acre, is within the parameters of the PRB FEIS and ROD and current BLM and Wyoming GSG conservation strategies.
3. Tate and BLM will conduct operations to minimize adverse effects to surface and subsurface resources, prevent unnecessary surface disturbance, and conform to current best practices.
4. Tate and volunteers under its direct, on-site supervision are authorized to use hand-held power tools to assist with the excavation, interim, and final reclamation of the site.
5. The proposal will help advance scientific understanding of our natural world and its paleontological resources.
6. Tate committed to:
 - Comply with the law that the US Government (BLM) owns the fossils.
 - Obtain necessary permits from agencies.
 - Curate, store (be the repository), and provide reasonable public access to the fossils and scientific knowledge yielded from the study of them.
 - Credit the BLM in any publications or display concerning these fossils.
 - Withhold communicating the field location of the excavation site of the fossils to third parties until receiving written authorization to release such information from the Secretary of the Interior.
7. The project is clearly lacking in wilderness characteristics due to many area mineral developments.
8. In order to ensure that these significant specimens are collected and conserved by reputable and responsible parties, the BLM Field Manager shall suspend a paleontological resource use permit issued to any individual or entity charged with a criminal or civil charge that relates to performance of work under any BLM paleontological resources use permit. Where an individual or entity is convicted of a criminal or civil charge that relates to performance of work under any BLM paleontological resources use permit, the BLM Field Manager shall seek revocation of that permit and shall not issue or recommend issuance any further paleontological resource use permits to that individual or entity. In a criminal matter, "convicted" means any plea of guilty, *nolo contendere*, or no contest, or finding of guilt by any court or administrative body, whether federal, state, or local. In a civil matter, "convicted" means any resolution in which an admission of liability is made, or in which there is a finding of liability by any court or administrative body, whether federal, state, or local.

ADMINISTRATIVE REVIEW AND APPEAL. Applicants and permittees have the right to dispute and appeal any adverse decision; BLM Manual 8270-1, Chapter IV, C.8.

a. Disputes. Any applicant or permittee may question the decision of the Authorized Officer (i.e., State Director or Field Office Manager, as applicable) with respect to the denial of a permit application, the inclusion of specific terms and conditions in a permit, or the modification, suspension, revocation or non-renewal of a permit.

(1) Request for Review. The disputant may file a written request to the State Director for review of his or her decision, setting out reasons for believing that the decision should be reconsidered. The State Director may modify the original decision in light of information presented, or may sustain the original decision, in either case providing the disputant with written explanation.

(2) Request for Conference. Either the disputant or the State Director may request a conference to discuss the original decision and its basis. The State Director may modify the original decision in light of information presented, or may sustain the original decision, in either case providing the disputant with written explanation.

(3) Review at Higher Organizational Level.

(a) The disputant, if unsatisfied with the outcome of a review or conference addressing the State Director's decision, may request in writing, that the decision be reviewed at the next higher organizational level. The disputant's written request should set out the procedural or substantive basis for thinking that the State Director's decision is in error. The State Director's decision shall stand during the course of any higher level review.

(b) Decisions of a Field Office Manager may be reviewed by the State Director, and those of a State Director may be reviewed by the Director.

(c) Upon receiving a request for higher level review, the Authorized Officer shall transmit the request and the pertinent file(s) to the reviewing official, i.e., the State Director or Director, as appropriate.

(d) The reviewing official should begin review within five working days. If it appears that the review will take more than 10 working days, the disputant should be informed of the estimated time required by mail (copy to the Authorized Officer).

(e) If the reviewing official determines that the Authorized Officer's decision is procedurally and substantively correct and should stand unchanged, the reviewing official shall notify the disputant by mail (return receipt requested).

(f) If the reviewing official determines that the Authorized Officer's decision is procedurally or substantively incorrect, the reviewing official shall consult with the Authorized Officer, establish a course for correcting the decision, and notify the disputant by mail (return receipt requested).

(g) Upon concluding the review, the reviewing official shall return the pertinent file(s) to the Authorized Officer (i.e., the State Director will return a temporary file to the Field Office Manager; the Director will return any file(s) reviewed to the State Director).

(h) The Authorized Officer shall immediately take any corrective actions determined under the above.

(4) Record of Review. Record of any reexamination of an Authorized Officer's decision shall be included in the permanent file at the State Office.

b. Appeals.

(1) Initiated by Disputant. After the dispute opportunities above have been exhausted, the disputant may file a formal appeal with the Interior Board of Land Appeals by following the procedures in 43 CFR Part 4, Subpart E. When the Authorized Officer finds that suspension of the decision in accordance with 43 CFR 4.21(a) would cause harmful effects to paleontological resources, the Authorized Officer shall apply to the Board for a determination that the decision being appealed, or pertinent parts of the decision, shall stand in full force and effect during the appeal period in the public interest.

(2) Initiated by Other Affected Person. Other affected persons wishing to appeal a decision connected with a permit may file a formal appeal with the Interior Board of Land Appeals by following the procedures in 43 CFR Part 4, Subpart E. As necessary, the Authorized Officer shall apply to the Board for a determination that the decision being appealed shall stand during the appeal period.

Acting Field Manager: 

Date: 4/28/14