



United States Department of the Interior

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January 10, 2012

EMS TRANSMISSION: 1/10/12
Information Bulletin No. WY-2012-011

To: District Managers

From: Deputy State Director, Division of Resources Policy and Management

Subject: Clarification of Program Coordination with the Wyoming Department of Environmental Quality Abandoned Mine Land Division

This supplemental information is intended to better outline the different steps involved in Abandoned Mine Land reclamation project clearances covered under Wyoming Instruction Memorandum No. 2011-046.

Wyoming Bureau of Land Management (BLM) and the Wyoming State Abandoned Mine Lands Program (State AML) partner in a considerable number of reclamation projects on BLM lands. In most cases¹, State AML acts as lead Federal agency as delegate to the Office of Surface Mining (OSM). In this partnership, the State AML Program generally completes all the necessary site investigations, resource surveys, and National Environmental Policy Act (NEPA) work, as well as providing engineering designs and doing the actual construction work for these reclamation projects. Under the cooperative agreement, BLM relies heavily upon the State AML Program to complete these mine closures and to accomplish BLM's public safety goals. Both the State AML Program and BLM are accountable for performance goals, therefore, the project clearance process is very time-critical. This is particularly true for the State AML because a lengthy review on BLM's part can result in significant delays in the State's ability to complete reclamation, and creates cost overruns for both agencies.

To aid in this cooperation on project clearances, the State BLM Office created two positions for personnel (the AML Team) specifically assigned to help facilitate the completion of resource clearances, the NEPA process, and consent to construct process. Please do not hesitate to rely on the AML team for help at any time during this cooperation between AML and BLM. The AML Team may be requested to assist by way of reviews, comments, verifications, field visits, or other help as needed, to complete reviews and responses in a timely fashion. To facilitate use of the AML Team for these time-critical reviews, State AML will provide concurrent copies of any documents to both the Field Office (FO) and to the AML Team.

¹ In most instances, the State AML will be preparing the EA and supporting resource studies and reports when all or a substantial portion of the reclamation funding is being provided by OSM through the State AML.

Roles and Responsibilities

This clearance and review process is viewed as a partnership between the two agencies, with the common goal of hazard remediation and environmental cleanup.

The jointly authorized Cooperative Agreement between State AML and BLM requires that State AML perform the site resource evaluation surveys and develop the respective resource reports. The State AML will author the NEPA documents (normally an Environmental Assessment). The State provides the draft documents to the BLM FO for review with the expectation that there may be some informal discussion to answer questions or clarify issues prior to the transmittal of formal comments or concurrence by BLM.

The BLM provides review and comment, as well as concurrence, and also identifies any protective stipulations the BLM wishes to apply to the reclamation action. To lessen the burden of AML clearance work on FO staff, in 2011 an Environmental Protection Specialist (EPS) and an Archaeologist were added to the State Office staff to serve as the state-wide AML Assistance Team (AML Team) to aid all the Field Managers in completing time critical AML tasks (see WY IM No. 2011-046). Both positions are stationed in the Lander FO, but are available to any FO upon request if assistance is desired.

To accomplish all the tasks involved in AML site reclamation the State AML has established a cooperative process which is broken into the following phases and steps. Although these are fairly independent tasks, they can overlap to a degree in their time-line.

Resource Evaluation Phase:

1) Cultural Resources – First, the cultural resource surveys are completed in order to identify potential issues with any National Register of Historic Places-eligible properties. AML retains qualified consultants to perform cultural resource evaluations. Under the normal process, AML/OSM is the lead Federal agency, and the cultural reports are compliant with Section 106 consultation requirements. In rare cases, the BLM may be the lead Federal agency and the BLM-SHPO protocol applies. Regardless, in both cases AML completes consultation with the State Historic Preservation Office (SHPO) on behalf of both agencies ².

Should there be questions or the need for clarification on the proposed project, the BLM cultural specialists reviewing the report are encouraged to discuss these questions with AML on an informal basis so that any small matters of concern can be clarified. The BLM and AML are partners in this reclamation effort, and a free exchange of concerns, ideas, or information will help AML protect the resource while accomplishing the joint goal of remediating hazards, and alleviating environmental degradation at these abandoned mine sites.

² As a result of the recently announced BLM/OSM consolidation, the lead federal agency status may be BLM only. The changes due to this consolidation will have to be worked out during the 2012 implementation phase of the consolidation.

The cultural resource survey reports are provided to the BLM FO in a separate phase, in advance of transmittal of the other resource evaluation results, so that final AML project design can incorporate cultural stipulations. Once BLM has concurred on the cultural evaluations, State AML completes State Historic Preservation Office consultation for both the BLM and State AML. WY IM No. 2011-046 outlines an example of this process and establishes a total response time of 20 working days for the BLM FO archaeologist(s) to complete these specific BLM tasks. It further outlines the manner in which FO Managers and staff may utilize the assistance of the AML Team Archaeologist to complete BLM's participation in this process within the 20 working day response period.

2) Natural Resources – Simultaneously with the cultural survey process, State AML's natural resource consultant contacts FO Biologists for pertinent plant and wildlife data prior to performing T&E/sensitive species surveys, bat evaluations, wetland identification, etc. As stated previously, it is very important that BLM specialists respond promptly to State AML's information and data requests. Using the BLM FO wildlife and plant data, the AML natural resource consultant performs field surveys to identify any natural resource concerns. These reports will be included as an appendix in the Environmental Assessment (EA) in their entirety.

If the work will occur in sage grouse core areas, AML consults with the Wyoming Game and Fish Department (WGFD) to determine if WGFD has any recommendations on how the project can better conserve sage grouse habitat. Prior to submitting the project for WGFD review, AML seeks input from the BLM FO biologists on plant species mixes and any other recommendations. The BLM recommendations and requests are incorporated into the sage grouse conservation plan for the project prior to transmittal to WGFD. Again, prompt BLM response is critical in this process. The sage grouse protection and/or habitat enhancement proposal, as well as the WGFD recommendations are incorporated into the project plans, and are included as an appendix to the EA.

NEPA Phase:

After cultural consultation has been completed, natural resource surveys have been completed, and sage grouse consultation has been concluded, then the NEPA document (EA) is submitted to the BLM FO for review and comment. As noted above, the AML natural resource consultant contacts the FO Biologists prior to field work to ensure we have areas of concern, nests, and other sensitive wildlife issues for the vicinity identified; then they do the surveys. So the species of concern related to the specific FO are therefore evaluated.

The EA includes a copy of the SHPO consultation concurrence letter, and copies of reports describing the results of the natural resource surveys (T&E/sensitive species, WGFD sage grouse consultation, bat evaluation results, etc.). AML will also include a copy of the public notice published. Here, again, informal discussion with AML on any questions or concerns is encouraged. These are joint projects with AML/OSM, with the goal of remediating abandoned mine hazards and alleviating environmental degradation at these sites. The FO provides any final comments and stipulations for the project back to AML for finalization in the final EA.

WY IM No. 2011-046 establishes a total response time of 20 working days (*a period which is independent of the Cultural Resources response period, but may overlap with it to some degree*) for the BLM FO AML Lead and affected resource specialists (wildlife biologist(s), reclamation specialist, etc.) to complete BLM’s involvement in these Natural Resource related and NEPA Phase tasks. It further outlines the manner in which FO Managers and staff may utilize the assistance of the AML Team Environmental Protection Specialist to complete BLM’s participation in this process within the 20 working day response period.

If the funding for the project is from the Office of Surface Mining (OSM), then OSM will issue the Finding of No Significant Impact (FONSI) and Decision Record. In some cases the funding is from the BLM. If the BLM is providing all the funding, then the FO Manager may be required to finalize the NEPA document according to the BLM process, and the BLM may issue the FONSI and Decision Record. Either way, AML does most of the NEPA documentation for the project ².

Construction Consent Phase:

The final part of this cooperative process is the issuance of consent to construct to AML by the BLM FO. This is completed after the NEPA process has resulted in a FONSI, and not until the AML Project Engineer has submitted the final design documents and a request for consent to construct to the appropriate BLM FO. This step requires AML to provide copies of final plans for *final review*, as well as a consent form giving permission to construct. The responsible BLM FO specialists promptly review the final plans, requests any final revisions, if necessary (though we should have collectively worked through the need for revisions prior to this), and then the Field Manager signs the construction consent form.

Again, WY IM No. 2011-046 establishes a total response time of 10 working days (*a period which is independent of the response periods for the Cultural Resources, and the Natural Resource related and NEPA Phase tasks*) for the BLM FO AML Lead and responsible resource specialists to complete BLM’s involvement in these final document review tasks and submission of the construction consent form to State AML. It further outlines the manner in which FO Managers and staff may utilize the assistance of the AML Team Specialists to complete BLM’s participation in this process within the 10 working day response period. Upon completion of these final tasks, AML is released to bid the job and commence construction.

Signed by:
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