



# United States Department of the Interior

## OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Region 7  
1999 Broadway St., Suite 3320  
Denver, CO 80202-3050



September 18, 2019

Mr. John M. Fowler  
Executive Director  
Advisory Council on Historic Preservation  
401 F Street NW, Suite 308  
Washington, D.C. 20001-2637

Dear Mr. Fowler,

Pursuant to 36 CFR 800.4(d)(1)(iv)(C), the Office of Surface Mining Reclamation and Enforcement (OSMRE) is providing the Advisory Council on Historic Preservation (Council), the Colorado State Historic Preservation Officer (SHPO), the Bureau of Land Management (BLM), and the Ute Mountain Ute Tribal Historic Preservation Officer (THPO) a summary of its determination of effect decision for the King II Dunn Ranch Lease by Application Project (King II). This summary of the determination of effect decision contains the rationale for the decision and considers the Council's opinion provided to OSMRE by letter on July 12, 2019. Upon considering the Council's comments, OSMRE has elected to affirm the initial agency finding of no historic properties affected.

OSMRE and BLM are co-leads for the purposes of the National Environmental Policy Act and OSMRE is the lead federal agency for the purposes of the National Historic Preservation Act, consulting with parties on behalf of the BLM. The King II undertaking is comprised of multiple federal actions: 1) whether the BLM will approve the lease of federal coal, 2) OSMRE's preparation of a mining plan decision document, and 3) whether OSMRE will approve a federal "Indian Lands" permit where the surface lands are owned by the Ute Mountain Ute Tribe. Although the Ute Mountain Ute Tribe has an approved THPO program, OSMRE must also consult with the SHPO because the King II project is outside the exterior boundaries of the Ute Mountain Ute Indian Reservation.

OSMRE respects the interests of the Ute Mountain Ute Tribe, and if the Ute Mountain Ute Tribe chooses to provide additional comments on this issue, OSMRE will continue to conduct government-to-government consultation with the Ute Mountain Ute Tribe to appropriately respond to their concerns.

The Council provided the following rationale for its opinion that OSMRE's finding of no historic properties affected is inappropriate:

- The Council indicated that it is unclear to what extent the observations of limited potential for subsidence fractures in certain areas are based on actual monitoring and recording.
- The Council further believes that subsidence in general, with or without subsidence cracks, should be considered an effect on historic properties as it may include changes in the relationship

of a property to its surroundings, including changes in its surface contours, topography, and erosional patterns.

- The Council indicated that opening and subsequent refilling of subsidence fractures, if they were to occur, should also be considered an effect.
- The Council re-states 36 CFR 800.4(d)(2), clarifying that if the agency official finds there are historic properties that may be affected by the undertaking, the agency must proceed to assess adverse effects.
- The Council recommended additional work necessary to evaluate the eligibility of the three referenced archaeological sites for inclusion to the National Register of Historic Places (NRHP).
- The Council indicated that if all three sites were to be found ineligible for the inclusion to the National Register of Historic Places, then a finding of no historic properties would be appropriate.
- The Council indicated that if any or all three sites are determined eligible only under Criterion D, or treated as such, the resolution of any potential adverse effect might reasonably include some level of subsidence monitoring to provide a more objective basis for findings of effect and adverse effect.

OSMRE now provides rationale for the decision considering the Council's opinion:

- The knowledge base for subsidence on previously mined areas at the King I and King II Mines supports the conclusion that surficial effects of subsidence only occur under specific geologic conditions. The sites in question do not correspond to areas that exhibit these conditions.
- OSMRE disagrees with the suggestion that subsidence in general, even in the absence of surface manifestations, should be considered an effect.
- OSMRE agrees that opening and subsequent closing of subsidence fractures is an effect. Again, OSMRE's maintains that surficial effects of subsidence only occur under specific geologic conditions. The sites in question do not correspond to areas that exhibit these conditions.
- OSMRE understands the requirements of 36 CFR 800.4(d)(2) and affirms that the undertaking will not affect historic properties or potential historic properties.
- OSMRE does not believe additional work to affirm the eligibility of the sites in question for the NRHP would be beneficial in this situation or appropriate. Any site testing would be at least minimally invasive and destructive to a degree. Because the sites are not planned to be affected by surface activities, OSMRE deems it more appropriate to leave them undisturbed. OSMRE considers the three sites likely to be historic properties and both the Council and the SHPO indicated that they may be treated as such.
- OSMRE recognizes the Council's expertise and experience in resolving adverse effects to historic properties. OSMRE does not consider the potential to monitor as solely a means of resolving adverse effects, but also a means of confirming the absence of effects.

In consideration of the Council's opinion that if adverse effects were present, then monitoring could be a reasonable resolution, and the Council's uncertainty over the existing level of subsidence observation, OSMRE will require the mining operator to incorporate monitoring measures at the site locations or identify the site locations for OSMRE inspection.

Thank you for your comments regarding the current King II undertaking. Should you have any further questions, please contact me at (303) 293-5049 or [myellowman@osmre.gov](mailto:myellowman@osmre.gov).

Sincerely,

A handwritten signature in blue ink, reading "Mychal Yellowman", is positioned above a horizontal line.

Mychal Yellowman

Manager, Indian Programs Branch

CC:  
Tres Rios Field Office, BLM  
Colorado State Historic Preservation Office  
Ute Mountain Ute

