

*Private Fuel Storage, L.L.C.*

7677 East Berry Ave., Englewood, CO 80111-2137

Phone 303-741-7009 Fax: 303-741-7806

John L. Donnell, P.E., Project Director

U.S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, D.C. 20555-0001

February 28, 2001

**DRAFT MEMORANDUM OF AGREEMENT REGARDING PROTECTION OF  
CULTURAL RESOURCES DURING PFSF CONSTRUCTION AND OPERATION  
DOCKET NO. 72-22 / TAC NO. L22462  
PRIVATE FUEL STORAGE FACILITY  
PRIVATE FUEL STORAGE L.L.C.**

Reference: U.S. NRC Letter, Delligatti to Parkyn, "Request for Concurrence on Determination of Adverse Effects for the Archeological and Historic Sites Identified Within the Area of Potential Effects and Draft Memorandum of Agreement for the Proposed Private Fuel Storage Facility", dated December 1, 2000

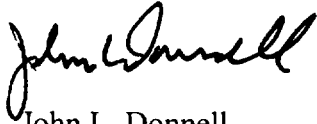
Private Fuel Storage (PFS) has completed a detailed review of the draft Memorandum of Agreement that was transmitted with the referenced letter. The purpose of this letter is to submit a revised draft Memorandum of Agreement that includes PFS comments (attached). Please note that PFS has preserved the integrity of the agencies' draft as closely as possible. The draft changes are generally intended to (1) clarify the facts outlined in the WHEREAS clauses (based on PFS's understanding of the facts to date); (2) establish consistency between the Treatment Plan provisions and the agreed upon mitigation measures; (3) clarify the specific time periods associated with dispute resolution; and (4) identify the status of the signatory and concurring parties consistent with the pertinent laws and implementing regulations. For clarity, PFS has not attempted to identify ("redline") all its revisions in the attachment but can provide a redline upon agency request.

PFS appreciates consideration of our comments and would like to review any supplemental comments received by any party or entity. After agency review, PFS would welcome an opportunity for follow-up in a conference call to discuss specific issues.

*Handwritten signature: NMS/ARL*

If you have any questions regarding this response, please contact me at 303-741-7009.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Donnell". The signature is fluid and cursive, with the first name "John" being more prominent.

John L. Donnell  
Project Director  
Private Fuel Storage L.L.C.

Attachment

Copy to (with enclosure):

Mark Delligatti  
Scott Flanders  
John Parkyn  
Jay Silberg  
Sherwin Turk  
Greg Zimmerman  
Scott Northard  
Denise Chancellor  
Richard E. Condit  
John Paul Kennedy  
Joro Walker

**COPY**

**STONE & WEBSTER ENGINEERING CORPORATION**

JLDonnell-1/1

JLCooper-1/1

JRJohns-1/1

DWLewis-1/0

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**DRAFT**  
**MEMORANDUM OF AGREEMENT**  
**among the**  
**U.S. NUCLEAR REGULATORY COMMISSION,**  
**U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS,**  
**WESTERN REGIONAL OFFICE,**  
**U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT,**  
**SALT LAKE FIELD OFFICE,**  
**U.S. SURFACE TRANSPORTATION BOARD,**  
**SKULL VALLEY BAND OF GOSHUTE INDIANS,**  
**ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**and**  
**PRIVATE FUEL STORAGE, L.L.C.**  
**regarding the**  
**CONSTRUCTION AND OPERATION OF AN INDEPENDENT**  
**SPENT FUEL STORAGE INSTALLATION ON THE RESERVATION**  
**OF THE SKULL VALLEY BAND OF GOSHUTE INDIANS AND THE**  
**RELATED TRANSPORTATION FACILITY IN TOOELE COUNTY, UTAH**

WHEREAS, the cooperating Federal agencies, the U.S. Nuclear Regulatory Commission (NRC), U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Western Regional Office, U.S. Department of the Interior, Bureau of Land Management (BLM), Salt Lake Field Office, and U.S. Surface Transportation Board (STB) propose to approve the Private Fuel Storage L.L.C. (PFS) Project (hereafter the Project), described as the preferred alternative on page 9-xx of the Final Environmental Impact Statement, dated XXXX 2001, on the Reservation of the Skull Valley Band of Goshute Indians in Tooele County, Utah; and

WHEREAS, the cooperating Federal agencies in consultation with the Utah State Historic Preservation Officer (SHPO) have established the Project's Area of Potential Effects (APE), as defined at 36 CFR 800.16(d), as shown in Figures 1-2 of the Class III Cultural Resource Inventory of the Private Fuel Storage Project Area in Skull Valley, Tooele County, Utah, (hereafter the Report); and

WHEREAS, the cooperating Federal agencies have consulted with the SHPO on (1) determinations regarding eligible properties and (2) potential adverse effects on historic properties within the APE; eight of these properties have been determined to be eligible for inclusion on the National Register of Historic Places through application of the criteria at 36 CFR 60.4; a list of these properties and their eligibility and effect determinations are presented in Enclosure 1; and,

WHEREAS, the cooperating Federal agencies have consulted with the Advisory Council on Historic Preservation (hereafter the Council) pursuant to Section 800.2 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (the Act) on the determination regarding the adverse effect of the Project on properties eligible for inclusion on the National Register of Historic Places and to resolve any potential adverse effects of the Project on historic properties; and

WHEREAS, the cooperating Federal agencies have contacted the SHPO and invited the SHPO to consult on this Memorandum of Agreement (Agreement); and

WHEREAS, the SHPO has not provided substantive response on the Agreement such that the cooperating Federal agencies determined that further consultation would not be productive and accordingly requested that the Council comment on the Agreement; and

WHEREAS, the cooperating Federal agencies have consulted with the Skull Valley Band of Goshute Indians (Skull Valley Band), a Federally recognized Indian Tribe, pursuant to the Treaty, Shoshoni-Goships of October 12, 1863, ratified by Executive Orders in 1917 and 1918, which exercises general governmental jurisdiction over all lands of the Reservation of the Skull Valley Band, and for purposes of this consultation is an Indian tribe as described at 36 CFR 800.3(d), regarding this Agreement; and

WHEREAS, no provision of this Agreement will be construed by any of the signatory or concurring parties as abridging or debilitating any sovereign powers of the Skull Valley Band; affecting the trustee-trustor relationship between the Secretary of the Interior and the Skull Valley Band; or interfering with the government-to-government relationship between the United States and the Skull Valley Band; and

WHEREAS pursuant to 36 CFR 800.2, the cooperating Federal agencies have consulted with The Confederated Tribes of the Goshute Reservation, The Tribal Council of the Te-Moak Western Shoshone Indians of Nevada, Paiute Indian Tribe of Utah, Ohngo Gaudadeh Devia, and Utah Historic Trail Consortium and invited them to concur in this Agreement; and

WHEREAS this consultation has been coordinated to address other statutory and legal obligations including the American Indian Religious Freedom Act, the Native American Graves and Repatriation Act, Executive Order 13007, and the Archaeological Resources Protection Act; and

WHEREAS, pursuant to 36 CFR 800.2(c)(4), the cooperating Federal agencies have consulted with PFS, the applicant for the Project; and

WHEREAS, the cooperating Federal agencies, as part of the National Environmental Policy Act (NEPA) review process, have sought public comments and notified the public of the potential effects of the Project on historic properties as required in 36 CFR Part 800 and have considered the applicable requirements of Section 106 of the Act in the course of consultation; and

WHEREAS, the cooperating Federal agencies have consulted with the signatory parties, the concurring parties and others on (1) determinations regarding eligible properties and (2) potential adverse effects on historic properties within the APE; eight of these properties have been determined to be eligible for inclusion on the National Register of Historic Places through application of the criteria at 36 CFR 60.4 and as presented in Enclosure 1; and,

WHEREAS, a Class III Inventory, the purpose of which is the identification of prehistoric sites, historic sites and structures, and cultural landscapes that may be affected by the Project, has been conducted, and a report on the results of the Class III Inventory (the Report)

has been provided to the cooperating Federal agencies, the SHPO, the other signatory and the concurring parties through submission to them in September and October 2000; and

WHEREAS, the cooperating Federal agencies, in consultation with the other signatory and concurring parties to this Agreement agree to avoid, minimize, or mitigate any adverse effects to historic properties; and the signatory and concurring parties have already agreed to mitigation measures that will be incorporated into a Treatment Plan to be approved by the signatory parties to mitigate any adverse effects to historic properties.

NOW, THEREFORE, the signatory parties agree that if approved, the Project shall be implemented in accordance with the following stipulations in order to take into account the effects of the Project on historic properties and that these stipulations shall govern the Project and all of its parts until the Agreement expires or is terminated.

### **STIPULATIONS**

The cooperating Federal agencies agree that the following measures are to be carried out:

#### **I. Development of Treatment Plan (for Eligible Resources)**

a. PFS shall submit a Treatment Plan to the NRC. The Treatment Plan will identify (1) all eligible historic properties in the APE or segment thereof, (2) the nature of the effects to which each property will be subjected, and (3) the mitigation measures agreed to by the consulting and concurring parties as evidenced by NRC letter dated December 12, 2000 to Mr. John Parkyn, Chairman of the Board, PFS, to avoid, minimize, or mitigate the effects of the Project. The Treatment Plan will be submitted by the NRC to the other signatory and concurring parties for 30 day review. The Treatment Plan will be consistent with the Secretary of the Interior's "Standards and Guidelines for Archaeological Documentation" (48 FR 44734-37) and will take into account the Council's publication, "Treatment of Archaeological Properties" (1980). Unless any signatory party objects to the Treatment Plan within 30 calendar days after receipt of the plan, NRC shall ensure that it is implemented and construction shall be authorized to proceed in accordance with Stipulation II.

b. Should a signatory party object to the Treatment Plan within 30 calendar days of receipt, the issue shall be resolved in accordance with this Agreement's dispute resolution provision, Stipulation VI.

#### **c. Failure to Comment on Treatment Plan**

Failure to comment within 30 calendar days after receipt of the Treatment Plan will be presumed to represent concurrence with the Treatment Plan, except that the Treatment Plan may not be implemented before the BLM has issued an Archaeological Resources Protection Act (ARPA) permit authorizing the investigations required by the Treatment Plan.

d.      Revisions to the Treatment Plan

If any signatory party requests revisions to the Treatment Plan, NRC shall provide the signatory parties to this Agreement 20 calendar days from receipt to review and comment upon the proposed revisions.

e.      Treatment Plan Report Preparation and Review

Within 180 calendar days of completion of field work pursuant to the Treatment Plan, a report will be prepared incorporating all appropriate data analysis and interpretations. The report will be submitted to signatory and concurring parties; the signatory parties will be provided 30 calendar days to review and comment upon the report. Failure to comment within 30 calendar days after receipt of the report will be presumed to represent concurrence with the report.

**II.      Construction**

a.      Upon issuance of the authorizations requested from the cooperating Federal agencies, the cooperating Federal agencies will allow PFS to begin construction in those portions of the APE that have been subjected to the Class III Inventory and that are not within 200 feet of eligible historic properties.

b.      Where eligible properties are present, PFS will notify the cooperating Federal agencies when treatment is completed for an area. Within 45 calendar days of notification, NRC will determine whether treatment has been satisfactorily completed and will notify PFS of its determination. If NRC does not notify PFS within the 45 calendar day time period, PFS may presume concurrence of NRC and the cooperating Federal agencies and proceed with construction in that area.

**III.     Discovery**

a.      A Discovery Plan for previously unencountered sites will be incorporated into the Treatment Plan. If a previously undiscovered archaeological, historical, or cultural property is encountered during construction or previously known properties will be affected in an unanticipated manner, all work will cease within 200 feet in all directions of the property until the cooperating Federal agencies can evaluate and, if necessary, authorize steps to mitigate impacts to the property. Evaluation and mitigation will be carried out in consultation with the signatory parties to this Agreement as expeditiously as possible in accordance with 36 CFR 800.13(b).

b.      If cultural properties are encountered on Federal lands, the agency controlling the land will be consulted to develop appropriate mitigation measures. PFS will provide the construction contractor with written notification of the proper protocol for reporting discovery of previously unencountered sites.

**IV.     Changes in the Area of Potential Effects**

a.      If a change in the APE is determined to be necessary as a result of a substantial change in the Project design, the cooperating Federal agencies will initiate review, evaluation,

and determination of effects in consultation with signatory and concurring parties and ensure that any such change is inventoried or treated in a manner consistent with this Agreement.

b. Where no historic property is present or will be affected, the cooperating Federal agencies shall consult with and submit documentation to the signatory and concurring parties. If all cooperating Federal agencies agree to the adequacy of documentation and no adverse comment from signatory parties other than the cooperating Federal agencies is received within 15 calendar days of receipt, the cooperating Federal agencies may assume concurrence.

c. Where an historic property will be affected and is the same property type as addressed in the Treatment Plan, PFS shall consult with and submit documentation to the signatory and concurring parties to determine applicability of the existing plan. If all cooperating Federal agencies agree to the adequacy of documentation and the determination and no adverse comment from signatory parties other than the cooperating Federal agencies is received within 15 calendar days of receipt, the cooperating Federal agencies may assume concurrence.

d. Where an historic property will be affected but is not the same property type as addressed by the Treatment Plan, PFS shall submit the Supplemental Treatment Plan to the signatory and concurring parties for review. If all cooperating Federal agencies agree to the adequacy of the Supplemental Treatment Plan and no adverse comment from signatory parties other than the cooperating Federal Agencies is received within 30 calendar days of receipt, the cooperating Federal agencies may assume concurrence. Once finalized, the Supplemental Treatment Plan will be submitted to the Council for its information

e. Should a signatory party object to a determination regarding applicability of the existing plan or a Supplemental Treatment Plan, NRC shall forward all documentation relative to the dispute to the Council and the issues shall be resolved in accordance with this Agreement's dispute resolution provision, Stipulation VI.

## **V. Confidentiality**

a. The cooperating Federal agencies shall ensure that all sensitive material, as defined in Section 9 of the ARPA and Section 304 of the Act, is managed in such a way that historic properties, traditional cultural values, and sacred objects are not compromised, to the fullest extent available under law.

b. Each signatory and concurring party to this Agreement shall safeguard information about the nature and location of archaeological, historic, and traditional cultural properties and not reveal that information to any additional party, pursuant to Section 304 of the Act and Section 9 of the ARPA, without the express written permission of the cooperating Federal agencies.

## **VI. Dispute Resolution**

a. Should any signatory party to this Agreement object to any actions pursuant to this Agreement within 30 calendar days of initiation of that action, the cooperating Federal agencies shall consult with the objecting party to resolve the objection. The objection must be



identified specifically and the reasons for the objection documented. If the cooperating Federal agencies determine that an objection cannot be resolved, the NRC shall forward all documentation relevant to the dispute to the Council in accordance with 36 CFR 800.2(b)(2).

b. The Council will, within 45 calendar days of receipt of all pertinent documentation, provide the cooperating Federal agencies with a recommendation or comments related to the dispute. (Any comments provided by the Council and all comments from the parties to this Agreement will be taken into account by the cooperating Federal agencies in accordance with 36 CFR 800.7(c)(4) in reaching a final decision regarding the dispute).

c. Failure of the Council to provide a recommendation or comments pursuant to such a request shall indicate that the Council has waived its right to comment so that NRC can proceed with a determination regarding the dispute.

d. NRC shall make a determination regarding a dispute within 15 calendar days of receipt of Council recommendation, comments or the Council's waiver of its right to comment. The NRC will notify all parties of its decision in writing before implementing that portion of the Project subject to dispute under this stipulation. The NRC's decision will be final.

e. The cooperating Federal agencies' responsibilities to carry out all actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

f. Any recommendation or comments provided by the Council will be understood to pertain only to the subject of the dispute; and no additional work shall occur within 200 feet of the area of the dispute until resolution of said dispute. The cooperating Federal agencies' responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

## **VII. Effective Date**

This Agreement shall become effective when executed by the authorized representatives of each party. This Agreement will become effective on the date that the cooperating Federal agencies receive the last signature from a signatory party. The cooperating Federal agencies shall ensure that each signatory and concurring party is provided with a copy of the fully executed Agreement.

## **VIII. Amendments**

If any signatory of this Agreement determines that its terms will not or cannot be carried out or that an amendment to its terms is needed, that party shall immediately notify the cooperating Federal agencies and request an amendment. The signatory parties to this Agreement will expeditiously consult to consider such amendment in accordance with 36 CFR 800.3(g).

## **IX. Termination**

Any signatory party to this Agreement may terminate it by providing 30 calendar days notice, in writing, to the other parties, provided that the signatory parties will consult during the

period prior to termination to seek agreement or amendments or other action that would avoid termination. In the event of a termination, the cooperating Federal agencies will comply with 36 CFR Part 800.4 through 800.7 to execute a new Agreement.

#### **X. Term of Agreement**

This Agreement will remain in effect until construction of the rail line and PFS facility ceases. Prior to that date, the signatories must consult if there are issues that require amendment or termination; otherwise the Agreement will automatically terminate after construction ceases unless it is amended or the expiration date extended by written agreement of the signatory parties.

#### **XI. Failure to Carry Out Terms**

Failure on the part of the cooperating Federal agencies to carry out the terms of this Agreement requires that the cooperating Federal agencies again request the Council's comments. If the cooperating Federal agencies cannot carry out the terms of this Agreement, they shall not sanction any action or make any irreversible commitment that would foreclose the Council's consideration of alternatives to avoid or mitigate adverse effects, until such time as the commenting process has been completed. Failure on the part of PFS to carry out the terms of this Agreement requires that PFS notify the cooperating Federal agencies. If PFS cannot carry out the terms of this Agreement, it shall not take any action that would result in any irreversible commitment that would foreclose the cooperating Federal agencies' consideration of alternatives to avoid or mitigate adverse effects.

#### **XII. Execution of this Agreement**

Execution and implementation of this Agreement evidences that the cooperating Federal agencies have afforded the Council a reasonable opportunity to comment on the Project and its effects on historic properties and that the cooperating Federal agencies have taken into account the effects of the Project on historic properties.

#### **SIGNATORY CONSULTING PARTIES:**

##### **U.S. NUCLEAR REGULATORY COMMISSION**

By: \_\_\_\_\_  
Date: \_\_\_\_\_

##### **U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS**

By: \_\_\_\_\_  
Date: \_\_\_\_\_

**U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT**

**By:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**U.S. SURFACE TRANSPORTATION BOARD**

**By:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**SKULL VALLEY BAND OF GOSHUTES**

**By:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**PRIVATE FUEL STORAGE, L.L.C.**

**By:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**By:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**INVITED CONCURRING PARTIES:**

**CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION**

**By:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**TRIBAL COUNCIL OF THE TE-MOAK WESTERN SHOSHONE INDIANS OF  
NEVADA**

**By:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**PAIUTE INDIAN TRIBE OF UTAH**

**By:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**UTAH HISTORIC TRAILS CONSORTIUM**

**By:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**OHNGO GAUDADEH DEVIA**

**By:** \_\_\_\_\_  
**Date:** \_\_\_\_\_