

DOE

**PROGRAMMATIC AGREEMENT  
BETWEEN THE  
UNITED STATES DEPARTMENT  
OF ENERGY  
AND THE ADVISORY COUNCIL  
ON HISTORIC PRESERVATION**

YUCCA MOUNTAIN, NEVADA

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**DECEMBER 1988**

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BETWEEN  
THE UNITED STATES DEPARTMENT OF ENERGY  
AND THE  
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FOR THE  
NUCLEAR WASTE DEEP GEOLOGIC REPOSITORY PROGRAM  
YUCCA MOUNTAIN, NEVADA

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WHEREAS, the United States Department of Energy (DOE) has been directed by Congress under the Nuclear Waste Policy Act of 1982 (Public Law 97-425) and the Nuclear Waste Policy Amendments Act of 1987 (Public Law 100-203, Part A) to identify and evaluate sites for repositories for the deep geological disposal of high-level radioactive waste and spent nuclear fuel; and

WHEREAS, the undertaking, for purposes of this Programmatic Agreement, is considered to be the:

1. Characterization of the Yucca Mountain site as provided by the Nuclear Waste Policy Amendments Act, including extensive data collection and analysis and testing.
2. Recommendation by the Secretary of Energy to the President of a site for development as the repository, supported by a final environmental impact statement (EIS) prepared pursuant to the National Environmental Policy Act, and the Nuclear Waste Policy Act, as amended by the Nuclear Waste Policy Amendments Act; and

WHEREAS, development of the repository and other facilities specified in the Nuclear Waste Policy Act are not within the scope of this Programmatic Agreement, but will be dealt with through additional consultation with the Advisory Council on Historic Preservation (Council) per the Council's regulations "Protection of Historic Properties" (36 CFR Part 800 as revised on September 2, 1986) (Appendix 1); and

WHEREAS, Section 120 of the Nuclear Waste Policy Act requires Federal agencies, including the Council, to expedite consideration and issuance of any required authorizations related to site characterization; and

WHEREAS, DOE has undertaken preliminary surveys of the Yucca Mountain site to identify historic, prehistoric, archeological, architectural, and cultural properties included in or eligible for inclusion in the National Register of Historic Places (hereinafter referred to as "historic properties") the results of which surveys are listed in Appendix 2; and

WHEREAS, DOE has determined that the proposed undertaking potentially could have effects upon historic properties including, but not limited to, those historic properties identified in surveys conducted to date; and

WHEREAS, pursuant to Sections 106 and 110 of the National Historic Preservation Act of 1966, Section 2(b) of Executive Order 11593, and the Council's regulations, the DOE has requested the comments of the Council; and

WHEREAS, pursuant to 36 CFR 800.13 of the Council's regulations, the DOE has requested the development of a Programmatic Agreement to fulfill DOE's responsibilities under Sections 106 and 110 of the National Historic Preservation Act, the Council's regulations, and the Secretary of the Interior's "Guidelines for Historic and Archeological Resource Management; for Federal Agency Responsibilities Under Section 110 of the National Historic Preservation Act" (FR Vol. 53, No. 31, February 17, 1988, pages 4727 - 4746); and

WHEREAS, DOE has consulted with the Council and the Nevada State Historic Preservation Officer (SHPO) and will continue to consult and to review the undertaking to consider feasible and prudent alternatives to avoid, minimize, or satisfactorily mitigate adverse effects to historic properties;

NOW, THEREFORE, it is mutually agreed between DOE and the Council that implementation of the undertaking in accordance with the following stipulations will avoid or satisfactorily mitigate the adverse effects of the undertaking on historic properties and will, therefore, satisfy all of DOE's responsibilities under Sections 106 and 110 of the National Historic Preservation Act, the Council's regulations, and the guidelines for Federal agency responsibilities under Section 110 of the National Historic Preservation Act.

#### STIPULATIONS

##### 1. MONITORING THE PROGRAMMATIC AGREEMENT

DOE will monitor compliance with the Programmatic Agreement and will afford the Nevada SHPO the opportunity to participate in monitoring. At a minimum, DOE will provide the Nevada SHPO the opportunity to inspect the project areas to ensure adherence to the stipulations of this Programmatic Agreement on a quarterly basis, if requested by the SHPO.

Representatives of DOE will ensure that the stipulations in this Programmatic Agreement are satisfied in a complete and timely fashion and will send reports to the Council and Nevada SHPO annually on implementation progress. This annual report will

include a compilation of the monitoring reports written during the year and provided to the SHPO as actions occurred.

## 2. RESEARCH DESIGN

DOE will develop and implement a research design which will permit the archeological and historic data base to be seen as a whole in order to better guide archeological and historical data recovery efforts during site characterization. DOE will seek guidance from the SHPO in preparing this research design. This research design should:

- A. Be built on data identification already undertaken by DOE at the Yucca Mountain site and elsewhere on the Nevada Test Site. Systematic cultural resource surveys have been conducted in advance of land disturbing activities on the Nevada Test Site since 1977, the area has been studied by archeologists since 1940, and numerous potentially eligible historic properties already have been identified (reference by number in Appendix 2). Cultural resource overviews have been prepared for both Yucca Mountain and Pahute and Rainier Mesas (Appendix 2, references 17 and 23), and intensive archeological surveys have identified and evaluated over 200 historic properties on over 17 square miles of the proposed repository locality (references 4, 6, 7, 10-12, 14, 15, 19-22, 27, 28, 31-32). Test excavations have been performed at 29 sites and long-term management procedures and research objectives have been recommended specifically for the Yucca Mountain locality (reference 16). Related cultural resource studies also have been conducted in Yucca Flat (reference 29), on the Groom Range (reference 30), and throughout the Nellis Bombing and Gunnery Range (reference 1, 2, 8, and 9).
- B. Be at a level of detail appropriate to the known and expected resource base at the site and its environs.
- C. Establish and address significant, defensible research questions. Such questions should be developed with reference to the Council's Handbook, "Treatment of Archeological Properties" (Handbook), particularly Appendix A (Appendix 3), and the archeological element of the Nevada State Historic Preservation Planning Process.
- D. Establish and use cost-effective strategies and methods for addressing the research questions.
- E. Identify those historic properties useful in addressing the research questions, and which are subject to direct or indirect effect by the project.

- F. Be consistent with the Handbook, cultural resources management programs developed by the Air Force for the Nellis Bombing Range, and by the Bureau of Land Management (BLM) for subject lands in the public domain, the Nevada State Historic Preservation Planning Proces, Secretary of the Interior's Standard and Guidelines "Archeology and Historic Preservation" (Appendix 4); and, as applicable, the "Standards of Research Performance of the Society of Professional Archeologists" (Appendix 5).

3. DATA RECOVERY

- A. The research design described in Stipulation 2 shall include a plan for the recovery of archeological data from historic properties subject to effect during site characterization, where such effects cannot otherwise be avoided.
- B. DOE will make every effort to design project activities to avoid damage to any historic property.
- C. Archeological sites identified (Appendix 6) as of the date of this agreement as potentially meeting the eligibility criteria of the National Register are assumed by DOE to be eligible for inclusion in the National Register of Historic Places and will be treated as such under Section 106 of the National Historic Preservation Act unless a formal determination is made by the Keeper of the National Register that they are not eligible. Archeological sites and other historic properties identified subsequent to the date of this agreement will be reviewed by DOE and the Nevada SHPO to determine eligibility in accordance with 36 CFR Part 800.4(c).
- D. The data recovery plan will outline activity-specific and site-specific procedures to be followed in mitigating adverse impacts through data recovery. Further consultation with the Council and Nevada SHPO will not be required unless conditions differ from those specified in the data recovery plan.
- E. Permanent curation of any recovered artifact will be coordinated with the Nevada SHPO to assure use of a qualified local facility.
- F. DOE will request an opportunity for consultation with the Nevada SHPO, the Nevada Indian Commission, and the Indian groups identified pursuant to Stipulation 5C to determine treatment of prehistoric or historic American Indian burials in the event any such burials are discovered, in a manner consistent with the January 4, 1979, Memorandum of

Understanding between the Nevada SHPO and the Nevada State Indian Commission (Appendix 7).

- G. DOE will submit the data recovery plan to the Nevada SHPO, the BLM, and the Council for review and comment within 120 days after execution of this agreement, and will request consultation with the Nevada SHPO and the Council to resolve any disagreements concerning its implementation. No disturbance of a historic property to which the data recovery plan pertains will be permitted by DOE until the data recovery plan has been implemented with respect to that property.

#### 4. ADDITIONAL SURVEY

- A. Before any earthmoving or other activities that could effect a unit of land are undertaken in connection with site characterization, DOE will continue to ensure completion of archeological surveys in areas not previously surveyed on that unit of land. Such surveys will:
- i) be conducted to identify and evaluate historic properties on the basis of the criteria of the National Register of Historic Places (36 CFR Part 60) (Appendix 8);
  - ii) identify properties which may be subject to effect as determined with reference to the Council's regulations (36 CFR Part 800) (Appendix 1); and
  - iii) be consistent with the research design developed pursuant to Stipulation 2.
- B. Surveys will concentrate on both on-site and off-site direct and indirect effects (such as impacts from construction, land-use changes, vandalism, and induced growth). Such effects are those which are reasonably foreseeable and can reasonably be tied to the project. Such potential effects will be those identified during the **EIS** scoping process, in ongoing environmental planning, and in site planning and evaluation documents.
- C. If potentially eligible properties which are already known or are identified as the result on ongoing surveys are subject to effect, they will be treated according to the direction in Stipulation 3, "Data Recovery."

#### 5. COORDINATION

In carrying out the terms of this agreement, as soon as possible, before any earthmoving or other activities connected

with site characterization that could affect a unit of land are undertaken on the site, and throughout the process, DOE will:

- A. Consult with the Advisory Council on Historic Preservation and the BLM to ensure that their concerns relevant to historic properties are met. DOE will ensure that data, materials, and reports from its contractors will be available in a timely manner to those agencies during the course of ongoing work relevant to this Programmatic Agreement.
- B. Provide opportunities for consultation with the SHPO to ensure that their concerns relevant to historic properties are met. DOE will ensure that data, materials, and reports from its contractors will be available in a timely manner to the Nevada SHPO during the course of ongoing work relevant to this Programmatic Agreement.
- C. Consult with the Bureau of Indian Affairs, the Western Shoshone, the Southern Paiute, other tribes with current or historic ties to the land, and other parties that have expressed interest to ensure identification and notification of all potentially involved American Indian groups. DOE will conduct consultation with American Indian groups having traditional cultural ties to the area, including both Federally recognized tribes and groups that are not Federally recognized, but that can be identified through consultation with ethnographic authorities and others as having traditional cultural ties to the area. Consultation will be held to assure that significant properties of traditional cultural or religious value to such groups are identified and avoided to the extent feasible.

If such properties are identified and effects on them cannot be avoided, DOE will consult further with the American Indian group(s) involved, the Nevada SHPO, and the Council to seek ways to mitigate project effects on such properties. DOE will consider recommended mitigation measures.

Consultation will be undertaken with reference to the Council's March 1985, draft, "Guidelines for Consideration of Traditional Cultural Values in Historic Preservation Review" (Appendix 9).

DOE will ensure that reports from its contractors will be available in a timely manner during the course of ongoing work relevant to this Programmatic Agreement to those local tribes with current or historic ties to the land which request such information.

## 6. WORKER EDUCATION PROGRAM

As early as possible, and before a significant influx of workers arrives at the site, DOE will develop and implement a comprehensive worker education program for archeological and historic resources. The program will be integrated with the data recovery, survey, and consultation required by Stipulations 3, 4, and 5 and will include, but need not be limited to, the following components:

- A. Distribution of information to all project workers and their dependents, informing them about the Archeological Resources Protection Act, warning them against the unauthorized collection or disturbance of archeological materials, and explaining the requirement to report the discovery of such materials to appropriate authorities.
- B. Development of an education program using such techniques as video tape, brochures, or films to inform workers and their dependents about local history and prehistory, the science of archeology, and the importance of archeological resources.
- C. Consultation with Archaeo-Nevada, the avocational archeological organization in southern Nevada, to establish ways to encourage interested workers, dependents, and Nevada Test Site employees to participate in Archaeo-Nevada activities, in order to provide interested workers and dependents an opportunity to view the archeological record in a positive way.
- D. Continued development and maintenance of the Nevada Test Site archeology display in the Mercury Cafeteria.
- E. Placement of warning signs and physical barriers as necessary around highly visible sites which are potentially subject to vandalism.

## 7. PROFESSIONAL QUALIFICATIONS

All required archeological work will be carried out under the direct supervision of a professional archeologist who meets the Certification Requirements of the Society of Professional Archeologists (Appendix 10) or the Secretary of the Interior's "Professional Qualifications Standards" (Appendix 11). Historic work will be carried out under the direct supervision of a professional historian, architectural historian, or historic architect, as appropriate, who meets the Secretary of the Interior's "Professional Qualifications Standards" for historians (Appendix 11).

## 8. DOE CONTRACTORS

DOE will ensure that contractors and subcontractors used in connection with this undertaking are provided copies of this Programmatic Agreement and will comply with its terms.

## 9. DISPUTE RESOLUTION

- A. Disagreements regarding interpretation and implementation of this Programmatic Agreement will be resolved by consultation between DOE and the Nevada SHPO, with participation by the Council, at the request of either DOE or the Nevada SHPO.
- B. Should disagreements not be resolved in accordance with Stipulation 9A (above), DOE will provide to the Council documents and information regarding the disagreement necessary to allow the Council to comment pursuant to its responsibilities under 36 CFR 800.6. Within 15 working days of receipt of such documents and information, the Council will:
- i) provide DOE a finding of fact and recommendations, after consideration of which DOE will make a final decision in the matter; or
  - ii) notify DOE that the matter will be scheduled for review and comment by the full Council or a panel and conclude such review and comment within 45 days thereafter, after which DOE will make a final decision in the matter.
- C. DOE will provide to the Nevada SHPO, the Council, and relevant agencies copies of all written objections, findings, and recommendations or comments of the Council, determinations from the Keeper, and determinations of final action of its own.

## 10. COUNCIL MEMBERS

If DOE is unable to carry out the terms of the Programmatic Agreement, in accordance with 36 CFR 800.13(g), DOE will not take or sanction any action or make any irreversible commitment that would result in an adverse effect on National Register or eligible properties within the scope of this Programmatic Agreement or would foreclose the Council's consideration of avoidance or mitigation alternatives until it has obtained the Council's comments, pursuant to the Council's regulations, for each individual action carried out as part of the undertaking.

#### 11. MODIFICATION

Any modification of this Programmatic Agreement, to become effective, will require consultation and agreement in the same manner as the original Programmatic Agreement was developed and signed, pursuant to 36 CFR 800.13.

#### 12. EFFECTIVE DATE AND TERM

This Programmatic Agreement will become effective upon the latest date of execution by DOE and the Council signatories, and will remain in effect until terminated by DOE or the Council, by 30 days prior written notice to the other party.

#### 13. ONGOING WORK

DOE already has initiated implementation of various stipulations in this Programmatic Agreement, and will not be required to begin them anew, but will continue ongoing activities in satisfaction of the terms of this Programmatic Agreement, including seeking determinations of eligibility to the National Register and appropriately treating potentially eligible properties previously identified.

#### 14. DEVELOPMENT OF THE REPOSITORY

DOE will again seek the comments of the Council and the appropriate State Historic Preservation Officer pursuant to Section 106 and the Council's regulations prior to the development of the repository site.

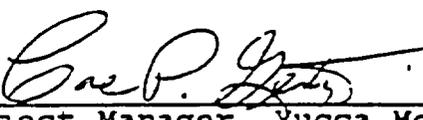
Execution of this Programmatic Agreement evidences that DOE has afforded the Council a reasonable opportunity to comment on the subject undertaking and its effect on historic properties and that DOE has taken and will continue to take into account the effects of its undertakings on historic properties.

  
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Director, Office of Civilian Radioactive  
Waste Management, Department of Energy

11/1/88  
Date

  
\_\_\_\_\_  
Chairman, Advisory Council on Historic  
Preservation

12/15/88  
Date

  
\_\_\_\_\_  
Project Manager, Yucca Mountain Project  
Office

10/6/88  
Date