

**PROGRAMMATIC AGREEMENT**

**AMONG**

**WYOMING STATE HISTORIC PRESERVATION OFFICER,**

**U.S. NUCLEAR REGULATORY COMMISSION,**

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

**LANDER FIELD OFFICE, AND WYOMING STATE OFFICE**

**AND**

**POWER RESOURCES, INCORPORATED**

**REGARDING THE**

**GAS HILLS URANIUM RECOVERY PROJECT**

Enclosure

WHEREAS, the U.S. Nuclear Regulatory Commission (NRC)<sup>1</sup>, the lead Federal agency, has received an application from Power Resources, Incorporated (PRI), for the development and operation of an *in situ* leach uranium recovery facility at the Gas Hills Project site located in Fremont and Natrona Counties, Wyoming, as described in PRI's application dated June 24, 1998; and,

WHEREAS, NRC has determined that the proposed project is an undertaking which may have an effect upon historic properties included in or eligible for inclusion in the National Register of Historic Places (NRHP), and has consulted with the Advisory Council on Historic Preservation (Council)<sup>2</sup>, and is consulting with the U.S. Department of the Interior, Bureau of Land Management (BLM), Lander Field Office and Wyoming State Office, the State Historic Preservation Officer of Wyoming (SHPO), and PRI, pursuant to Section 800.14(b) of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA); and,

WHEREAS, the Council, in a letter dated April 28, 2003, from N. Kochan to S. Frant, NRC, has declined to participate in consultation to resolve potential adverse impacts of the Gas Hills Project; and,

WHEREAS, all of the above are signatories to this Agreement (Signatories); and,

WHEREAS, NRC has consulted with the Eastern Shoshone Business Council, the Northern Arapaho Business Council, the Northern Ute Tribe, and the Crow Tribal Council regarding this Agreement;<sup>3</sup> and,

WHEREAS, the applicable requirements of the NHPA, the American Indian Religious Freedom Act, 42 U.S.C. 1996 et. seq. (AIRFA), and the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et. seq. and 43 CFR 10 (NAGPRA), have been considered in the development of this Agreement; and,

WHEREAS, this Agreement does not waive the responsibilities of the Signatories under these regulations; and,

WHEREAS, NRC, in cooperation with the BLM, has prepared an Environmental Assessment (EA) in accordance with the requirements of the National Environmental Policy Act (NEPA) to address the potential impacts of the Gas Hills Project on a variety of human and natural resources.

NOW, THEREFORE, the Signatories to this Agreement consent that the proposed undertaking shall be implemented in accordance with the following stipulations in order to consider the effect of the undertaking on historic properties and to satisfy all Section 106 NHPA responsibilities for all aspects of the project.

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<sup>1</sup> The NRC is the lead agency under the National Environmental Policy Act (NEPA) for the Gas Hills Project

<sup>2</sup> The Council stated in writing on April 28, 2003 that it does not wish to consult further on this project.

<sup>3</sup> The NRC contacted these Tribes by letters dated July 17, 2003 inviting the Tribes to be Signatories to this Agreement and no response was received.

## STIPULATIONS

NRC has a statutory obligation as the lead Federal agency to fulfill the requirements of Section 106 (36 CFR Part 800); therefore, NRC shall ensure that the measures in the following parts are carried out:

### A. SURVEY PLAN

The Gas Hills Project site includes 5 distinct areas or mine units for well-field development and uranium recovery. Mine Unit 1 has been surveyed to a Class III level and approved for mining/construction by NRC, BLM, and SHPO (See attached letter dated August 8, 2000, from E. Womack, BLM, to W. Bredehoft, SHPO). The remaining mine units have mostly been surveyed to a Class III level, but additional areas may require survey to encompass proposed areas of mining/construction. In addition, some cultural resource sites within these units have not been fully evaluated (See attached letter dated August 8, 2000, from E. Womack, BLM, to W. Bredehoft, SHPO, and attached letter dated August 23, 2000, from R. Currit, SHPO, to J. Kelly, BLM). Any new areas to be surveyed will be determined through consultation with NRC, BLM, SHPO, PRI, and appropriate Tribal representatives. If requested by SHPO, this consultation will include a meeting with SHPO to further discuss survey issues. Any unresolved objections that result from these consultations shall be addressed in accordance with Stipulation M (Dispute Resolution).

#### A.1. CONSTRUCTION AREAS WITH NO HISTORIC PROPERTIES (Phased Approval)

If, after review by NRC, BLM, and SHPO, a proposed mine unit area has been determined by NRC to have been fully surveyed to a Class III level for cultural resources and to be negative for historic properties, and the survey report(s) have been accepted by NRC, BLM, and SHPO, then construction of project facilities in these areas may be allowed by NRC, upon concurrence by BLM and SHPO, subject to PRI obtaining permits or approvals as required.<sup>4</sup>

#### A.2 CONSTRUCTION AREAS WITH UNEVALUATED HISTORIC PROPERTIES

If, after review by NRC, SHPO, and BLM, a proposed mine unit area has been determined by NRC to have been fully surveyed to a Class III level, but contains cultural resources that have not yet been fully evaluated, then the evaluation must be completed prior to approval of mining/construction. If any of the resources are determined to be historic properties, PRI shall develop a treatment plan in accordance with Stipulation B (Treatment Plans for Historic Properties).

### B. TREATMENT PLANS FOR HISTORIC PROPERTIES

#### B.1. FORMAT

Upon completion of survey of mining/construction areas and evaluation of identified cultural resources, and as early as reasonable during project development, PRI will

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<sup>4</sup>Historic properties may include sites, building, structures, bridges and other objects that are eligible for inclusion in the National Register of Historic Places.

develop a Treatment Plan for each property found to be eligible for NRHP nomination. Each Treatment Plan will be developed in consultation with the Signatories. If requested by the SHPO, this consultation will include a meeting with the SHPO to further review the framework for how Treatment Plans will be developed, and to review opportunities and alternatives that could avoid or minimize adverse effects to a historic property. Any unresolved objections that result from these consultations shall be addressed in accordance with Stipulation M (Dispute Resolution).

Each Treatment Plan will address the historic property adversely affected and set forth means to mitigate the undertaking's effects where the Signatories determine it is not feasible or prudent to relocate the project to avoid effects. The Treatment Plans will conform to the principles of the Council's *Treatment of Archaeological Properties: A Handbook, Parts I and II*, the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (Federal Register, Vol. 48 No. 190, September 29, 1983, pp. 44716-44742) and appropriate SHPO guidelines.

## **B.2. CONTENT**

The Treatment Plans for the undertaking will address historic properties and portions of historic properties as follows:

### **a. Historic Properties**

Specification of all historic properties to be affected by the project, including a description of the nature of the effects.

### **b. Treatment**

A detailed description of the treatments proposed for historic properties or portions of historic properties eligible for the NRHP under 36 CFR Part 60.4 criteria (a), (b), (c) and/or (d), with an explanation or rationale provided for the choice of the proposed treatments. These treatments will take into account the setting, including, but not limited to, visual, auditory, and atmospheric elements, as appropriate, and be responsive to the qualities that contribute to the significance of the affected properties.

### **c. Research Design**

An archaeological research design for adversely affected properties eligible for the NRHP under 36 CFR Part 60.4 criteria (d) will be developed. The research design will specify and explain the following:

- Where data recovery is determined by NRC, through consultation with the other Signatories, to be appropriate mitigation response. Research questions to be explored through the data recovery efforts (taking into consideration that data recovery is an adverse effect).
- Justification of the appropriateness of the chosen research questions.
- Data needed to explore the questions posed.
- Properties and portions of those properties to be further investigated.

- Methods used to collect data needed to explore the research questions posed, where the adverse effect of data recovery is deemed the appropriate treatment.
- Laboratory methods used in the examination of the physical material that is recovered.
- Proposed disposition of the recovered materials and records.
- The timing for the preparation and distribution of reports.

**d. Human Remains**

The procedures for consulting about the treatment and disposition of Native American human remains and associated grave goods, if encountered, shall be in accordance with Stipulations H (Discovery) and J (Human Remains).

**e. Monitoring**

A description and rationale for selection of the areas proposed for construction monitoring (a qualified archaeologist, as defined in the *Secretary of Interior's Professional Qualifications and Standards*, 48 FR 22716, September 1983, present to observe ground surfaces exposed during the actual construction activities) and construction inspection conducted by a qualified archaeologist of areas of ground disturbance after specific phases of construction are completed. Should the archaeological monitor identify a previously undiscovered archaeological property, procedures in accordance with Stipulation H (Discovery) shall be followed.

**C. TREATMENT PLANS - REVIEW**

**C.1 DEVELOPMENT AND REVIEW**

PRI will develop, in cooperation with the other Signatories, each Treatment Plan to ensure that it addresses their concerns, in accordance with Stipulation B.2(b) (Treatment).

PRI shall provide the Treatment Plan(s) to the NRC and BLM for concurrent reviews. The NRC and BLM will have a 30-day review and comment period. At the conclusion of this comment period, the NRC and BLM will forward any comments resulting from their reviews to the SHPO who will then have a 30-day review and comment period. If any appropriate reviewing party to this Agreement fails to comment within their specified review period, PRI shall assume that reviewing party's concurrence. Based upon comments received, PRI will revise the Treatment Plan(s) for submittal to, and review by, the other Signatories.

**C.2 REVISED TREATMENT PLAN(S) REVIEW**

The resultant revised Treatment Plan(s) will be submitted by PRI to the other Signatories for a final 30-day comment period. If any reviewing party has an objection to the final Treatment Plan(s), they shall notify PRI within the 30-day comment period. Disputes will be resolved in accordance with Stipulation M (Dispute Resolution).

## **D. TREATMENT PLANS - IMPLEMENTATION**

### **D.1. CONSTRUCTION PLAN**

Upon concurrence by the reviewing parties, each Treatment Plan will be incorporated by PRI into their Operations Plan, and NRC and/or the appropriate Federal or State agency shall provide authorization to proceed with the implementation of the Treatment Plan on lands under their jurisdiction. PRI or its authorized representative will obtain Archaeological Resources Protection Act (ARPA) excavation and removal permits for Federal lands and/or required State permits. Termination of the project after initiation of the Treatment Plan(s) will require completion of any work in progress, and amendment of each Treatment Plan as described below.

### **D.2. AMENDMENTS**

Amendments to the Treatment Plans will be incorporated by written agreement among the Signatories. Amendments to the appropriate ARPA permits will be submitted as part of the approval of the amendments.

### **D.3. PROGRESS REPORTS**

PRI or its authorized representative shall prepare a progress report(s) to the other Signatories every two weeks, documenting progress in the implementation of each Treatment Plan. These progress reports will include:

- Dates of mitigation work included in the progress reporting period.
- Historic properties where treatment was conducted.
- Type and amount of treatment performed.
- Brief summary of the treatment results during the period covered by the report.
- Concerns or comments of the principal investigator for plan implementation.

## **E. CHANGES IN ANCILLARY AREAS OR MINING/CONSTRUCTION AREAS**

PRI will notify the other Signatories of changes in the size or location of ancillary areas or mining/construction areas that may become necessary during actual construction. If any changes result in the use of unsurveyed areas, NRC will ensure that these areas are subject to Class III survey in order to locate any potentially significant cultural resources and that those resources are evaluated for NRHP eligibility. The Reports addressing these areas will be reviewed in accordance with Stipulation A and Treatment Plans will be developed in accordance with Stipulations B and C and implemented for those sites, structures, buildings, bridges and other objects determined to be Historic Properties.

## **F. MINING/CONSTRUCTION AREAS WITH HISTORIC PROPERTIES**

In those areas where historic properties are present, PRI will implement the Treatment Plan and will provide the results of the completed Treatment Plan to the Signatories when implementation of the Treatment Plan is completed. Within 45 days of this notification of Treatment Plan completion, the other Signatories will be invited to inspect the site of the historic property to concur that Treatment Plan implementation is complete. Upon concurrence of complete Treatment Plan implementation, NRC may authorize construction along that portion of the project addressed by the completed Treatment Plan. If concurrence of complete Treatment Plan implementation cannot be reached, the dispute will be resolved in accordance with Stipulation M (Dispute Resolution).

## **G. DOCUMENTATION OF TREATMENT**

Within 90 days of completion of the field work on the eligible sites pursuant to the Treatment Plan, PRI will prepare a report documenting the implementation and results of the Treatment Plan(s). This report will be the Draft Final Cultural Resource Report for the project. The report will contain a detailed account of the information gained during implementation of the Treatment Plan(s), and the effectiveness of the work measures implemented to mitigate the adverse effects of mining/construction. A review copy of the report will be distributed to the other Signatories. There will be a 30-day period to review and comment on the report. The Final Cultural Resource Report will be prepared within 120 days of receipt of the comments from the other Signatories. The Final Cultural Resource Report will then be provided to the other Signatories for a 30-day review period.

## **H. DISCOVERY**

If a previously undiscovered archaeological, historical, or cultural property is encountered during mining/construction, or previously-known properties will be affected in an unanticipated manner, all activity will cease within 300 feet of the property to avoid or minimize harm to the property until NRC, in consultation with SHPO, BLM, and, if appropriate, any affected Tribe(s), can evaluate and, if necessary, authorize steps to mitigate impacts to the new discovery. Evaluation and mitigation will be carried out by NRC in consultation with SHPO, affected Tribe(s), PRI, and BLM as expeditiously as possible in accordance with 36 CFR 800.13(b).

## **I. CONFIDENTIALITY**

All Signatories shall ensure that shared data, including data concerning the precise location and nature of historic properties and properties of religious and cultural significance are protected from public disclosure to the greatest extent permitted by law, including conformance to Section 304 of the NHPA, as amended and Section 9 of the ARPA and Executive Order No. 13007 on Indian Sacred Sites (Federal Register, Vol. 61 No. 104, May 24, 1996).

## **J. HUMAN REMAINS**

### **J.1. NOTIFICATION AND TREATMENT**

If human remains are encountered on Federal lands, PRI will inform NRC and NRC shall notify the appropriate Federal land management agency, other consulting agencies if requested, SHPO, and designated NAGPRA tribal contact(s). Treatment and disposition of remains and associated grave goods will be consistent with measures outlined in Stipulation H and applicable Federal and State laws. If human remains are

encountered on state or private lands, PRI will inform NRC and NRC will notify and consult with SHPO, and appropriate Tribal representative(s). Treatment and disposition of remains and associated grave goods will be consistent with measures outlined in applicable Federal, State and local laws.

## **J.2. RE-INTERMENT**

NRC will insure that every effort is taken to avoid disturbing known human burial sites. Where avoidance is not possible, and in consultation with appropriate Tribal representative(s), burials will be removed prior to construction and re-interred in accordance with reburial procedures outlined in any applicable Federal and State laws. The consultations with the Tribal representative(s) shall include consideration of any interest in, and provisions for, further analysis of the remains prior to re-interment. In accordance with BLM policy, burials found on BLM land may remain there if not removed or substantially disturbed, however, burials removed may not be re-interred on BLM land.

## **J.3. DISCOVERY**

If human remains are inadvertently discovered during mining/construction activities, PRI will notify NRC and cease all construction within 300 feet in all directions of the human remains. NRC will immediately notify the appropriate parties in accordance with Stipulation J.1. Human remains and grave goods found on Federal lands will be treated in accordance with applicable NAGPRA regulations and guidelines.

## **K. CURATION**

### **K.1. FEDERAL LANDS**

NRC shall ensure that curation of all records and other archaeological items resulting from identification and data recovery efforts is completed in accordance with 36 CFR Part 79, and the provisions of 43 CFR Part 10 (NAGPRA). NRC shall ensure that documentation of the curation of these materials is prepared and provided to the appropriate Signatories to this Agreement within 10 days of receiving it. All archaeological materials recovered from Federal lands shall be curated in accordance with the appropriate agency's policies and regulations.

### **K.2. PRIVATE LANDS**

Private landowners will be encouraged to curate archaeological materials recovered from their lands in accordance with Federal curation policies. Private landowners will also be encouraged to coordinate with appropriate Tribes for disposition of any human remains or funerary objects discovered on their lands. Materials from private lands to be returned to the private landowners shall be maintained in accordance with 36 CFR Part 79 until all necessary analysis has been completed. NRC shall document the return of materials to private landowners and submit copies of this documentation to the appropriate Signatories to this Agreement.

### **K.3. STATE LANDS**

NRC will ensure that all cultural materials discovered on State lands will be curated in accordance with Federal curation policies.



## **L. AUTHORITIES**

Compliance with the provisions of this Agreement does not relieve NRC or other Federal agencies of their responsibilities to comply with other legal requirements, including those imposed by NAGPRA (25 U.S.C. Section 3001 and 43 CFR Part 10), ARPA (16 U.S.C. Section 470 aa-47011), and NEPA (42 U.S.C. Section 4321-4347), and applicable Executive Orders.

## **M. DISPUTE RESOLUTION**

Should any Signatory to this Agreement object within 30 days to any action proposed or any document provided for review pursuant to this Agreement, NRC shall consult with the objecting Signatory to resolve the objection unless otherwise specified in this document. If NRC determines that the objection cannot be resolved, NRC shall forward all documentation relevant to the dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council shall either: provide NRC with recommendations, which NRC shall take into account in reaching a final decision regarding the dispute; or notify NRC that it will comment in accordance with 36 CFR Part 800.7(c). Any Council comment provided in response to such a request will be taken into account by NRC in accordance with 36 CFR Part 800.7(c)(4) with reference to the subject of the dispute.

Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; NRC's responsibility to carry out all actions under this Agreement that is not subject to dispute will remain unchanged.

## **N. AMENDMENT**

If any Signatories to this Agreement determine that an amendment of this Agreement is needed, that party shall notify NRC and request an amendment, whereupon the Signatories will consult in accordance with 36 CFR Part 800.14 to consider such amendment.

## **O. TERMINATION**

### **O.1. AGREEMENT**

Any Signatory may terminate this Agreement by providing 30 days written notice to the other Signatories; the Signatories shall consult during the 30-day notice period prior to termination to seek agreement on amendments or other actions that would avoid termination. If any Signatory individually terminates its participation in the Agreement, then the Agreement is terminated in its entirety. In the event of termination, the Signatories will comply with 36 CFR Part 800 Subpart B.

### **O.2. TERM AND ANNUAL REPORT**

The term of this agreement shall be ten (10) years from the date of execution unless otherwise terminated, in accordance with Stipulation O.1, or amended by the Signatories. By December 31 of each year that the Agreement is in effect, PRI shall provide an annual report to the other Signatories which summarizes all actions or accomplishments resulting from the terms of this Agreement.

**P. FAILURE TO CARRY OUT THE TERMS OF THE AGREEMENT**

In the event that the terms of this Agreement are not carried out, NRC and all other appropriate Signatories shall comply with 36 CFR Part 800 Subpart B with regard to individual actions covered by this Agreement.

**Q. EXECUTION AND IMPLEMENTATION**

This Programmatic Agreement shall take effect when executed by the Signatories. Execution and implementation of this Agreement evidences that the Signatories have satisfied their NHPA Section 106 responsibilities for all individual actions of PRI's Gas Hills Project.

**SIGNATORIES**

**Federal Agencies**

The U.S. Nuclear Regulatory Commission

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

The U.S. Department of the Interior, Bureau of Land Management, Lander Field Office

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

The U.S. Department of the Interior, Bureau of Land Management, Wyoming State Office

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

**State Historic Preservation Office**

Wyoming State Historic Preservation Office

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

**Applicant**

Power Resources, Incorporated

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_