FINAL

MEMORANDUM OF AGREEMENT
among the
U.S. NUCLEAR REGULATORY COMMISSION
NEW MEXICO STATE HISTORIC PRESERVATION OFFICER
NEW MEXICO STATE LAND OFFICE
LEA COUNTY
and
LOUISIANA ENERGY SERVICES
regarding the
MEASURES TO MITIGATE EFFECTS ON LA 140701, LA 140702, LA 140703, LA 140704, LA 140705, LA 140706, AND LA 140707
in
LEA COUNTY, New Mexico

WHEREAS, the U.S. Nuclear Regulatory Commission (NRC), the lead Federal agency, has received an application from Louisiana Energy Services (LES), for the construction, operation, and decommissioning of a gas centrifuge uranium enrichment facility (hereafter the undertaking), located in Lea County, New Mexico, as described in LES's application dated December 12, 2003, and revised February 27, 2004, July 30, 2004, and September 30, 2004; and,

WHEREAS, the approval or disapproval of the undertaking would be documented in a licensing action, according to NRC rules, regulations, and requirements; and,

WHEREAS, the New Mexico State Land Office (NMSLO), prior to the proposed undertaking, would convey trust lands to Lea County in exchange for a conveyance of non-trusts land by LES; and

WHEREAS, the undertaking's Area of Potential Effect (APE), as defined at 36 CFR 800.16(d) is shown in Figure 4 of An Intensive Cultural Resource Inventory of 543 Acres for the National Enrichment Facility Near Eunice, Lea County, New Mexico; and,

WHEREAS, pursuant to 36 CFR Part 800, the NRC has determined that the proposed project adversely affects LA 140701, LA 140702, LA 140703, LA 140704, LA 140705, LA 140706, and LA 140707, archaeological sites eligible for inclusion on the National Register of Historic Places (National Register) under criterion "d", and has consulted with the Advisory Council on Historic Preservation (Council), the State Historic Preservation Officer of New Mexico (SHPO), NMSLO, and LES on this Memorandum of Agreement (Agreement); and,

WHEREAS, pursuant to 36 CFR 800.3(f), the NRC has consulted with the Apache Tribe of Oklahoma, Kiowa Tribe of Oklahoma, Comanche Tribe of Oklahoma, Mescalero Apache, and Ysleta del Sur Pueblo regarding this Agreement; and,

WHEREAS, the NRC, as part of the National Environmental Policy Act review process, has sought public comments and notified the public of the potential effects of the undertaking on historic properties as required in 36 CFR Part 800 and has considered the applicable

requirements of Section 106 of the National Historic Preservation Act in the course of the consultation; and,

WHEREAS, LES has submitted to the SHPO a Treatment Plan for the archeological sites, which has been developed and prepared in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 Fed. Reg. 44734-37) and the Council's Handbook, Treatment of Archaeological Properties; and,

NOW, THEREFORE, the signatories parties agree that the undertaking shall be administered in accordance with the following stipulations in order to consider the effect of the undertaking on historic properties and to satisfy Section 106 of the National Historic Preservation Act.

STIPULATIONS

I. To the extent of its legal authority and in coordination with the SHPO and NMSLO, the NRC will ensure that the measures and procedures specified in the Treatment Plan, as approved by the SHPO, are implemented; this Agreement addresses all aspects of the Treatment Plan developed by LES.

II. LES will prepare a final report discussing the findings resulting from the Treatment Plan efforts. This report will be reviewed by the signatory and concurring parties within a 30-day comment period and any necessary revisions will be completed by LES.

III. Discovery

In the event that unrecorded or unanticipated properties that may be eligible for inclusion on the National Register are located during the Treatment Plan efforts, or it is recognized that such actions may affect known historic properties in an unanticipated manner, LES will terminate treatment in the vicinity of the property and will take all reasonable measures to avoid or minimize harm to the property until consultation with the signatory and concurring parties regarding significance and effect can be concluded. LES will notify the NRC, SHPO and the NMSLO at the earliest possible time and consult to develop actions that will take the effects of the undertaking into account. LES will further notify the NRC, SHPO, and NMSLO of any time constraints and they will mutually agree upon time frames for the consultation. These procedures will be addressed in the Treatment Plan.

IV. Contingency

LES shall prepare a draft nomination of the identified historic properties to the State Register of Cultural Properties prior to the land exchange. The draft nomination of these seven eligible archaeological sites shall be submitted to the SHPO, NMSLO, and Lea County for their review and files.

In the event that LES does not receive their NRC license for the National Enrichment Facility, Lea County shall formally submit the nomination to the Cultural Properties Review Committee for their consideration.

V. Human Remains

If human remains are inadvertently discovered during construction activities, LES will notify the signatory parties and cease all construction within 300 feet in all directions of the human remains. Treatment and disposition of remains and associated grave goods will be consistent with applicable Federal and State laws including consultation with the appropriate Indian tribes. All of these sensitive objects will be treated with dignity and respect and consideration of the specific cultural and religious traditions applicable until their analysis is complete and their disposition has occurred. The limited analysis of human remains and associated funeral objects will be non-destructive unless otherwise agreed to by the culturally affiliated tribe(s).

VI. Curation

LES shall provide for all records and materials resulting from data recovery efforts to be curated in accordance with standards and guidelines generated by 36 CFR Part 79. Artifacts will be curated at the Museum of New Mexico.

VII. Confidentiality

All signatory and concurring parties 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 National Historic Preservation Act, as amended and Section 9 of the Archaeological Resources Protection Act and Executive Order No. 13007 on Indian Sacred Sites (Federal Register, Vol. 61 No. 104, May 24, 1996).

VIII. Dispute Resolution

A. Should any signatory party to this Agreement object within 30 calendar days to any action proposed or any document provided for review pursuant to this Agreement, the NRC shall consult with the objecting party to resolve the objection unless otherwise specified in this document. If NRC determines that the objection cannot be resolved, the NRC shall forward all documentation relevant to the dispute to the Council.

B. The Council will, within 45 days after receipt of all pertinent documentation, either:

1. Provide the NRC with recommendations, (any comments provided by the Council and all comments from the parties to this Agreement will be taken into account by the NRC in reaching a final decision regarding the dispute.); or

2. Notify the NRC that it will comment in accordance with 36 CFR Part 800.7 and proceed to comment. (Any Council comment provided in response to such a request will be taken into account by the NRC in accordance with 36 CFR Part 800.7(c)(4) with reference to the subject of the dispute.)

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

D. Should any concurring party to this Agreement object to any actions pursuant to this Agreement within 30 calendar days of initiation of that action, the NRC shall consult with the

objecting parties to resolve the objection. The objection must be identified specifically and the reasons for the objection documented. Any timely objections by a concurring party shall be resolved by the NRC in such a manner as it deems appropriate, upon consultation with the signatory and concurring parties.

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 parties consult during the period prior to termination to seek agreement or amendments or other action 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.

X. Amendment

Any signatory to this Agreement pursuant to 36 CFR 800.6(c)(1) may request that it be amended, whereupon the Signatories will consult in accordance with 36 CFR Part 800.6(c)(7) to consider such amendment.

XI. Failure to carry out the terms of the Agreement

In the event that the terms of this Agreement are not carried out, the NRC shall comply with 36 CFR 800.3 through 800.6 with regard to individual actions covered by this Agreement.

XII. Term of this Agreement

In the event that the terms of this Agreement are not carried out within two (2) years from the date of its execution, this agreement shall be null and void, unless the signatories agree in writing to an extension for carrying out its terms.

XIII. Execution of this Agreement

Execution and implementation of this Agreement evidences that the NRC has afforded the Council a reasonable opportunity to comment on the undertaking and its effects on historic properties and that the NRC has taken into account the effects of the undertaking on historic properties.

SIGNATORY PARTIES:

U.S. NUCLEAR REGULATORY COMMISSION

By:_____ Date: 1 April 2005

NEW MEXICO STATE HISTORIC PRESERVATION OFFICE

By:_____ Date:_____

NEW MEXICO STATE LAND OFFICE

By:_____ Date:_____

LEA COUNTY

By:_____ Date:_____

LOUISIANA ENERGY SERVICES

By:_____ Date:_____

SIGNATORY PARTIES:

U.S. NUCLEAR REGULATORY COMMISSION

By:_____ Date:_____

NEW MEXICO STATE HISTORIC PRESERVATION OFFICE

By: Katherine Slick Date: 8 March 2005

NEW MEXICO STATE LAND OFFICE

By:_____ Date:_____

LEA COUNTY

By:_____ Date:_____

LOUISIANA ENERGY SERVICES

By:_____ Date:_____

SIGNATORY PARTIES:

U.S. NUCLEAR REGULATORY COMMISSION

By:_____ Date:_____

NEW MEXICO STATE HISTORIC PRESERVATION OFFICE

By:_____ Date:_____

NEW MEXICO STATE LAND OFFICE

By: Patrick A. Lyons /JLK Date: 3/7/05

LEA COUNTY

By:_____ Date:_____

LOUISIANA ENERGY SERVICES

By:_____ Date:_____

SIGNATORY PARTIES:

U.S. NUCLEAR REGULATORY COMMISSION

By:_____ Date:_____

NEW MEXICO STATE HISTORIC PRESERVATION OFFICE

By:_____ Date:_____

NEW MEXICO STATE LAND OFFICE

By:_____ Date:_____

LEA COUNTY

By: Harry Teague Date: 3-22-05

LOUISIANA ENERGY SERVICES

By:_____ Date:_____

SIGNATORY PARTIES:

U.S. NUCLEAR REGULATORY COMMISSION

By:_____ Date:_____

NEW MEXICO STATE HISTORIC PRESERVATION OFFICE

By:_____ Date:_____

NEW MEXICO STATE LAND OFFICE

By:_____ Date:_____

LEA COUNTY

By:_____ Date:_____

LOUISIANA ENERGY SERVICES

By:_____ Date: 3/3/05

CONCURRING PARTIES:

APACHE TRIBE OF OKLAHOMA

By:_____ Date:_____

KIOWA TRIBE OF OKLAHOMA

By:_____ Date:_____

COMANCHE TRIBE OF OKLAHOMA

By:_____ Date:_____

MESCALERO APACHE TRIBE

By:_____ Date:_____

YSLETA DEL SUR PUEBLO

By:_____ Date:_____